

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 940096-WS
contributions-in-aid-of-) ORDER NO. PSC-95-0357-FOF-WS
construction (CIAC) gross-up) ISSUED: March 14, 1995
funds received by MID-CLAY)
SERVICE CORP. in Clay County)
during years ended 12/31/89)
through 12/31/93.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING REFUND FOR 1989

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose substantial interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

The repeal of Section 118(b) of the Internal Revenue Code resulted in making contributions in aid of construction (CIAC) gross income and depreciable for federal tax purposes. In Order No. 16971, issued December 18, 1986, the Commission authorized corporate utilities to collect the gross-up on CIAC in order to meet the tax liability resulting from the inclusion of CIAC as gross income.

Orders Nos. 16971 and 23541, issued October 1, 1990, require that utilities annually file information to be used in determining the actual state and federal income tax liability directly attributable to the CIAC, and whether a refund of the gross-up is appropriate for any given year for which gross-up was in effect. These orders also required that all gross-up collections for a tax

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year which are in excess of a utility's actual tax liability for the same year resulting from its collection of CIAC shall be refunded on a pro rata basis to those persons who contributed the taxes.

In Order No. 23541, we determined that any water or wastewater utility currently grossing-up had to file a petition for continued authority to gross-up. On January 4, 1991, Mid-Clay Service Corporation (Mid-Clay or utility) filed for continued gross-up authority. By Proposed Agency Action (PAA) Order No. PSC-92-0021-FOF-WS, issued March 10, 1992, we granted approval to Mid-Clay to continue collecting the gross-up on CIAC.

On September 9, 1992, this Commission issued PAA Order No. PSC-92-0961-FOF-WS, which clarified the provisions of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992, Order No. PSC-92-0961A-FOF-WS, was issued reflecting the generic calculation form.

On December 29, 1993, Mid-Clay was transferred to Clay County Water and Sewer Authority (Clay County) following the sale of its water and wastewater facilities to Clay County. On January 18, 1994, Mid-Clay filed an application with this Commission for acknowledgement of the transfer of its water and wastewater facilities to Clay County. By Order No. PSC-94-0201-FOF-WS, issued February 18, 1994, we acknowledged the transfer of the system and cancelled Mid-Clay's certificates. In Order No. PSC-94-0201-FOF-WS, we further stated that any excess gross-up funds, which were collected prior to the sale to Clay County, would remain subject to our jurisdiction until Mid-Clay had made all of the refunds. On January 26, 1994, we opened Docket No. 940096-WS to address those refunds associated with Mid-Clay's collection of gross-up funds in excess of the appropriate amount of taxes related to its CIAC.

Following the sale of its water and wastewater facilities to Clay County, Mid-Clay has retained the escrow account of CIAC tax gross-up monies. Mid-Clay has retained all rights and obligations to the escrow account pursuant to the sale terms. Complying with Order No. 16971, Mid-Clay filed annual CIAC reports for 1989 through 1992 regarding its collection of gross-up for these years. By letter dated February 4, 1994, our staff submitted its preliminary refund calculation numbers to Mid-Clay and requested additional information to finalize its review. Mid-Clay requested several extensions in order to wind up its business affairs. By letter dated December 20, 1994, Mid-Clay filed additional information and responded to our staff's inquiries.

ANNUAL GROSS-UP REFUND AMOUNTS

Based upon information provided by Mid-Clay in its gross-up reports filed each year, we have calculated the gross-up required to pay the tax liability resulting from the collection of taxable CIAC by grossing up the net taxable CIAC amount, in accordance with the method adopted in Order No. PSC-92-0961-FOF-WS. Based upon these calculations, Mid-Clay shall refund \$7,032 for 1989 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of taxable CIAC. In accordance with Orders Nos. 16971 and 23541, all amounts shall be refunded on a pro rata basis to those persons who contributed the taxes. The refund shall be completed within 6 months of the effective date of this Order. Within 30 days from the date of the refund, the utility shall submit copies of canceled checks or other evidence verifying that the refunds have been made. Since Mid-Clay has not collected any gross-up monies for 1990, 1991, and 1992, no refund will be required for these years. Furthermore, since Mid-Clay required more in gross-up than it collected for the year 1993, no refund will be required for 1993. Our calculation of the amount of refund for each year is set forth in Schedules Nos. 1 and 2 attached to this Order. A summary of each year's refund calculation is detailed below.

1989

We find that a refund of \$7,032 for gross-up collections for 1989 is appropriate. The 1989 CIAC report indicates that Mid-Clay was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all taxable CIAC received during the year would be taxed. The report indicates a total of \$493,926 in taxable CIAC was received, with \$2,598 being deducted to remove CIAC that was not subject to gross-up. Taxable CIAC was further reduced by \$18,424 for the first year's depreciation, resulting in net taxable CIAC of \$472,904. We used the 37.63% combined marginal federal and state tax rate as provided in the 1989 CIAC Report to calculate the tax effect of \$285,320. Mid-Clay collected \$292,352 of gross-up monies; therefore, based on our calculation, the appropriate refund amount is \$7,032.

1990 - 1992

In compliance with Order No. 16971, Mid-Clay filed its 1990, 1991, and 1992 annual CIAC reports regarding its collection of gross-up. Since Mid-Clay has not collected any taxable CIAC or gross-up monies for these years, no refund is required.

1993

We find that a refund of gross-up collections for 1993 is not appropriate. Mid-Clay's 1993 CIAC report indicates that it was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all taxable CIAC that Mid-Clay received during the year would be taxed. The CIAC report indicates that Mid-Clay has received a total of \$20,859 in taxable CIAC, with \$10,781 being deducted removing CIAC that had not been not subject to gross-up. Taxable CIAC was further reduced by \$249 for the first year's depreciation, resulting in net taxable CIAC of \$9,829. We used the 37.63% combined marginal federal and state tax rate as provided in Mid-Clay's 1993 CIAC Report to calculate the tax effect of \$5,931. Mid-Clay collected \$5,852 of gross-up monies. Based on our calculations, we find that Mid-Clay required more in gross-up to pay its tax impact than it collected. Accordingly, no refund is required.

This docket shall remain open pending verification of the 1989 refund. Upon verification that the refund has been made, this docket shall be closed administratively.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Mid-Clay Service Corporation shall refund \$7,032 for 1989 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of taxable CIAC. The refund shall be made in accordance with the terms set forth in this Order. It is further

ORDERED that the refunds shall be completed within six months of the effective date of this Order. It is further

ORDERED that Mid-Clay Service Corporation shall submit copies of cancelled checks or other evidence verifying that the refunds have been made, within 30 days from the date of the refund. It is further

ORDERED that Mid-Clay Service Corporation is not required to make any refunds for 1990, 1991, 1992, and 1993. It is further

ORDERED that all matters contained in the schedules attached hereto are by reference incorporated herein. It is further

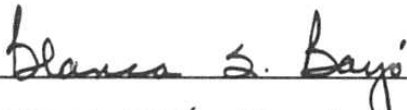
ORDERED that the provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029,

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Florida Administrative Code, is received by the Director of the Division of Records and Reporting at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that, if a timely protest is not filed by a substantially affected person, this docket shall be closed administratively upon verification that the refund specified herein has been made.

By ORDER of the Florida Public Service Commission, this 14th day of March, 1995.



BLANCA S. BAYO, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 4, 1995.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

SCHEDULE NO. 1

MID-CLAY SERVICE CORPORATION

COMMISSION CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1989	*1990	*1991
1 Form 1120, Line 30 (Line 15)	\$ 823,796	\$ 0	\$ 0
2 Less CIAC (Line 7)	(493,926)	0	0
3 Less Gross-up Collected (Line 19)	(292,352)	0	0
4 Add First Year's Depr. on CIAC (Line 8)	18,522	0	0
5 Add/Less Other Effects (Lines 20 & 21)	0	0	0
6			
7 Adjusted Income Before CIAC and Gross-up	\$ 56,040	\$ 0	\$ 0
8			
9 Taxable CIAC (Line 7)	\$ 493,926	\$ 0	\$ 0
10			
11 Taxable CIAC Resulting in a Tax Liability	\$ 491,328	\$ 0	\$ 0
12 Less First Year's Depr. (Line 8)	(18,424)	0	0
13			
14 Net Taxable CIAC	\$ 472,904	\$ 0	\$ 0
15 Combined marginal state and federal tax rate	37.63%	37.63%	37.63%
16			
17 Net Income Tax on CIAC	\$ 177,954	\$ 0	\$ 0
18 Less ITC Realized	0	0	0
19			
20 Net Income Tax	\$ 177,954	\$ 0	\$ 0
21 Expansion Factor for gross-up taxes	1.603334937	1.603334937	1.603334937
22			
23 Gross-up Required to Pay Tax Effect	\$ 285,320	\$ 0	\$ 0
24 Less CIAC Gross-up Collected (Line 19)	(292,352)	0	0
25			
26 (OVER) OR UNDER COLLECTION	\$ (7,032)	\$ 0	\$ 0
27			
28			
29 TOTAL YEARLY REFUND	(7,032)	0	0
30			
31			
32 PROPOSED REFUND (excluding interest)	(7,032)		
33			

*Utility did not collect any gross-up monies

SCHEDULE NO. 2

MID-CLAY SERVICE CORPORATION

COMMISSION CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	*1992	1993	1994
1 Form 1120, Line 30 (Line 15)	\$ 0	\$ 70,467	\$ 0
2 Less CIAC (Line 7)	0	(20,859)	0
3 Less Gross-up Collected (Line 19)	0	(5,852)	0
4 Add First Year's Depr. on CIAC (Line 8)	0	325	0
5 Add/Less Other Effects (Lines 20 & 21)	0	0	0
6			
7 Adjusted Income Before CIAC and Gross-up	\$ 0	\$ 44,081	\$ 0
8			
9 Taxable CIAC (Line 7)	\$ 0	\$ 20,859	\$ 0
10			
11 Taxable CIAC Resulting in a Tax Liability	\$ 0	\$ 10,078	\$ 0
12 Less First year's depr. (Line 8)	0	(249)	0
13			
14 Net Taxable CIAC	\$ 0	\$ 9,829	\$ 0
15 Combined Marginal State and Federal Tax Rate	37.63%	37.63%	37.63%
16			
17 Net Income Tax on CIAC	\$ 0	\$ 3,699	\$ 0
18 Less ITC Realized	0	0	0
19			
20 Net Income Tax	\$ 0	\$ 3,699	\$ 0
21 Expansion Factor for gross-up taxes	1.603334937	1.603334937	1.603334937
22			
23 Gross-up Required to Pay Tax Effect	\$ 0	\$ 5,931	\$ 0
24 Less CIAC Gross-up Collected (Line 19)	0	(5,852)	0
25			
26 (OVER) OR UNDER COLLECTION	\$ 0	\$ 79	\$ 0
27			
28			
29 TOTAL YEARLY REFUND	0	0	0
30			
31			
32 PROPOSED REFUND (excluding interest)	0		
33			

*Utility did not collect any gross-up monies