

MEMORANDUM

July 1, 1997

RECEIVED

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12:16
FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (JAEGER) *[Signature]*
RE: DOCKET NO. 970275-WS - Disposition of gross-up funds
collected by Hydratech Utilities, Inc. in Martin County

0816-EEF

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER ACCEPTING SETTLEMENT OFFER AND REQUIRING REFUNDS to be issued in the above referenced docket. (Number of pages in Order - 7)

RRJ/dp

Attachment

cc: Division of Water & Wastewater (Gilchrist)

I: 970275OR.RRJ

2/0

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of gross-up
funds collected by Hydratech
Utilities, Inc. in Martin County

DOCKET NO. 970275-WS
ORDER NO. PSC-97-0816-FOF-WS
ISSUED: July 7, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
JOE GARCIA

NOTICE OF PROPOSED AGENCY ACTION ORDER ACCEPTING SETTLEMENT OFFER
AND REQUIRING REFUNDS

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 interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

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

Orders Nos. 16971 and 23541, issued December 18, 1986 and October 1, 1990, respectively, require that utilities annually file information which would be used to determine the actual state and federal income tax liability directly attributable to the CIAC. The information would also determine whether refunds of gross-up would be appropriate. These orders also require that all gross-up collections for a tax year, which are in excess of a utility's actual tax liability for the same year, should be refunded on a pro rata basis to those persons who contributed the taxes.

DOCUMENT NUMBER-DATE

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In Order No. 23541, we required any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue, to file a petition for approval with the Commission on or before October 29, 1990. By Order No. 25525, issued December 20, 1991, Hydratech Utilities, Inc. (Hydratech or utility) was granted authority to gross-up CIAC using the full gross-up formula.

On September 9, 1992, we issued Proposed Agency Action (PAA) Order No. PSC-92-0961-FOF-WS, which clarified the provision of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992, we issued PAA Order No. PSC-92-0961A-FOF-WS. This order included Attachment A which reflected the generic calculation form. No protests were filed, and the Order became final.

On March 29, 1996, Docket No. 960397-WS was opened to review our policy concerning the collection and refund of CIAC gross-up. Workshops were held and comments and proposals were received from the industry and other interested parties. By PAA Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, we directed our staff to review the proposals and comments offered by the workshop participants and make a recommendation concerning whether our policy regarding the collection and refund of CIAC should be changed. In addition, we directed our staff to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up. Pending this review, we directed our staff to continue processing CIAC gross-up and refund cases pursuant to Orders Nos. 16971 and 23541.

However, on August 1, 1996, Congress passed the Small Business Job Protection Act of 1996 (the Act), and the President signed the law on August 20, 1996. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities, effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, in Docket No. 960965-WS, we issued Order No. PSC-96-1180-FOF-WS revoking the authority of utilities to collect gross-up of CIAC and canceling the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Since there was no longer a need to review our policy on the gross-up of CIAC, we issued, on October 8, 1996, Order No. PSC-96-1253-FOF-WS, which closed Docket No. 960397-WS. However, as established in PAA Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Orders Nos. 16971 and 23541.

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By PAA Order No. PSC-97-0454-FOF-WS, issued on April 21, 1997, we proposed to require Hydratech to refund excess gross-up funds of \$71,902 for 1995. However, on May 12, 1997, Hydratech filed a timely protest of the referenced order, and the matter was set for hearing.

In order to avoid the time and expense of further litigation in this docket, the utility submitted a settlement offer along with its petition. Hydratech is proposing that a settlement effectively splitting the legal and accounting costs between the ratepayer and the contributor be recognized. This would be consistent with the decision made by us at the May 19, 1997 Agenda Conference, in Docket No. 961076-WS, regarding the disposition of gross-up funds collected by Hydratech in 1991-1994. The purpose of this Order is to address this settlement offer and the disposition of gross-up funds collected by the utility in 1995.

SETTLEMENT OFFER

In compliance with Order No. 16971, Hydratech filed its annual CIAC report regarding its collection of gross-up for 1995. As stated above, PAA Order No. PSC-97-0454-FOF-WS, proposed that Hydratech be required to refund \$71,902 for 1995. However, Hydratech filed its petition protesting the PAA Order.

In its petition, Hydratech argues that the legal and accounting costs are appropriately applicable to the gross-up process and, therefore, should be charged to the contributors of the CIAC and not to the general body of ratepayers through the rate-setting process. Further, the utility argues that the provisions of Orders Nos. 16971 and 23541 require this treatment. However, our review of those orders shows that this treatment is not required.

Nevertheless, we note that at the May 19, 1997 Agenda Conference, in Docket No. 961076-WS, which addressed the disposition of gross-up funds collected by Hydratech in 1991-1994, we voted to accept Hydratech's settlement proposal to partially offset the legal and accounting fees incurred in preparing the CIAC gross-up reports with the contributors refund amount. In its Petition of May 12, 1997, Hydratech indicated that it is willing to accept a similar arrangement with regard to this case. The utility submitted its proposed offer of settlement, whereby it is proposing that 50 percent of the legal and accounting fees be offset against the refund calculated for 1995.

The utility has provided documentation supporting legal and accounting fees of \$11,623.25. Those costs appear to be directly associated with preparing the required reports and calculating the tax effect, and, thus, are considered to be legitimate expenses. Fifty percent of this amount is \$5,811. When this amount is offset against the \$71,902, the refund for 1995 is calculated to be \$66,091.

We believe the utility's settlement proposal is a reasonable "middle ground" that effectively gives the utility an offset substantially less than that which it had originally proposed, both for this adjustment and other adjustments that the utility has agreed to forego for the purposes of attempting to negotiate a settlement. Therefore, while not adopting the utility's position, we find it appropriate to accept Hydratech's settlement proposal.

Therefore, the utility shall refund the amount set out above. The refunds shall be completed within 6 months of the effective date of this PAA Order. Within 30 days from the date of the refund, the utility shall submit copies of canceled checks, credits applied to the monthly bills or other evidence that verifies that the utility has made the refunds. Within 30 days from the date of the refund, the utility shall also provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refunds.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall remain open pending completion and verification of the refunds. Upon verification that the refunds have been made, the docket shall be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement offer of Hydratech Utilities, Inc., shall be accepted. It is further

ORDERED that pursuant to the settlement offer, Hydratech Utilities, Inc. shall refund gross-up of contributions-in-aid-of-construction in the amount of \$66,091 for 1995. It is further

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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, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at his office at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the date set forth in the Notice of Further Proceedings below. It is further


ORDERED that, pursuant to Orders Nos. 16971 and 23541, all refund amounts shall be refunded on a pro rata basis to those persons who contributed the funds. It is further

ORDERED that the refunds required herein shall be completed within six months of the effective date of this Order, and that Hydratech Utilities, Inc., shall submit copies of canceled checks, credits applied to monthly bills or other evidence verifying that the refunds have been made within 30 days of completion of the refund. It is further

ORDERED that within 30 days of completion of the refund, Hydratech Utilities, Inc., shall provide a list of unclaimed refunds detailing the contributor and the amount, and an explanation of the efforts made to make the refunds. It is further

ORDERED that the docket shall be administratively closed upon expiration of the protest period, if no timely protest is filed, and upon our staff's verification that the refunds have been made.

By ORDER of the Florida Public Service Commission, this 7th day of July, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RRJ

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 28, 1997.

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

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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.