

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of contributions-in-aid-of-construction (CIAC) funds received by Martin Downs Utilities, Inc., in Martin County during 1990, 1991, 1992, and 1993.

DOCKET NO. 931065-WS  
ORDER NO. PSC-97-1147-FOF-WS  
ISSUED: September 30, 1997

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER REQUIRING REFUNDS FOR THE YEARS 1989 THROUGH 1991 BUT DETERMINING THAT NO REFUNDS ARE REQUIRED FOR THE YEARS 1992 AND 1993

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, required utilities to annually file information which would be used to determine the actual state and federal income tax liability directly attributable to the CIAC.

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The information would also determine whether refunds of gross-up would be appropriate. Those orders also required that all gross-up collections for a tax year, which are in excess of a utility's actual tax liability for the same year, be refunded on a pro rata basis to those persons who contributed the gross-up.

In Order No. 23541, this Commission required that 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. Martin Downs Utilities, Inc. (Martin Downs or utility) filed for authority to continue to gross-up on October 26, 1990. By Order No. 25360, issued November 19, 1991, Martin Downs was granted authority to continue to gross-up using the full gross-up formula.

On September 9, 1992, this Commission issued Proposed Agency Action 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 which included Attachment A which reflected the generic calculation form. No protests were filed, and the Order became final.

Martin Downs was a Class A utility which provided service to approximately 3,486 water and 2,981 wastewater customers in Martin County. According to the 1992 annual report, operating revenues were reported as \$1,112,379 for water and \$1,040,717 for wastewater. The utility reported net operating income of \$291,382 for the water system and \$261,177 for the wastewater system.

Martin Downs facilities were sold to Martin County on August 12, 1993. By administrative Order No. PSC-93-1484-FOF-WS, in Docket No. 930818-WS, issued October 12, 1993, we acknowledged the transfer of the water and wastewater facilities and canceled Certificates Nos. 343-W and 301-S. The records of the Department of State show that Martin Downs was administratively dissolved as of August 25, 1995.

The disposition of CIAC gross-up collections was not addressed in Docket No. 930818-WS. However, we have jurisdiction to address the disposition of gross-up collections even though the facilities have been sold to the County. See, Charlotte County V. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1st DCA 1995), discussed below.

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Therefore, Docket No. 931065-WS was opened on November 4, 1993 to address the disposition of excess gross-up funds collected for the period of October 1, 1989 through August 12, 1993. We addressed the disposition of CIAC gross-up collections for the years ended December 31, 1987 through September 30, 1989, in Docket No. 910192-WS, Order No. 25388, issued November 25, 1991. Also, by letter dated November 23, 1993, our staff advised the attorney that had been representing Martin Downs that the collection of gross-up funds from October 1, 1989 through August 12, 1993, would be addressed. That letter referenced Orders Nos. 16971 and 23541.

At the May 30, 1995 Agenda Conference in the refund case of Canal Utilities, Inc. in Docket No. 941083-WS, questions were raised about whether or not our staff's method of calculating refunds was contrary to the requirements of Order No. 23541 and our previous practice. Also at issue, among others, was how prior years' depreciation on CIAC should be handled in determining the refund, and the offsetting of above-the-line net operating losses (NOLs) and investment tax credits (ITCs) with CIAC income. As a result of these issues, among others, we directed our staff to hold workshops to discuss the current practices we employed in dealing with the taxability of CIAC and to discuss viable alternatives. We also directed our staff to consider the need, if any, to change our current policy.

Workshops were held and comments and proposals were received from the industry and other interested parties. Pending the holding of these workshops and further guidance on the proper handling of CIAC gross-up cases, our staff temporarily delayed the processing of these types of cases. On March 29, 1996, we opened Docket No. 960397-WS to review our policy concerning the collection and refund of CIAC gross-up.

Pending this review, we directed, by Order No. PSC-96-0686-FOF-WS, issued on May 24, 1996, our staff to continue processing CIAC gross-up and refund cases pursuant to Orders Nos. 16971 and 23541; however, we also directed our staff, upon completion of its review of the proposals and comments offered by the workshop participants, to make a recommendation to us 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.

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However, the Small Business Job Protection Act of 1996 (The Act) was signed into 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. Consequently, we issued, on September 20, 1996, in Docket No. 960965-WS, Order No. PSC-96-1180-FOF-WS revoking the authority of utilities to collect gross-up of CIAC and cancelling the respective tariffs unless, within 30 days of the issuance of the Order, affected utilities requested a variance.

Because there was no longer a need to review our policy, we issued Order No. PSC-96-1253-FOF-WS on October 8, 1996, closing Docket No. 960397-WS. However, as established in Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases are still being processed pursuant to Orders Nos. 16971 and 23541. The purpose of this Order is to address the disposition of CIAC gross-up funds for Martin Downs for the period October 1, 1989 through August 12, 1993.

#### REFUND CALCULATIONS

Martin Downs was incorporated in the State of Florida in April 1981. Until January 26, 1990, Martin Downs was a wholly-owned subsidiary of Southern Realty Group, Inc. (SRG). On January 25, 1990, Martin Downs was recapitalized and then sold by SRG, to an entity controlled by certain SRG shareholders. On August 12, 1993, Martin County purchased the water and wastewater facilities from Martin Downs.

By administrative Order No. PSC-93-1484-FOF-WS, issued October 12, 1993, we canceled Martin Downs certificates and acknowledged the sale of the utility to an exempt governmental entity. Less than one month later, on November 4, 1993, we opened this docket to address any excess gross-up funds. In compliance with Order No. 16971, Martin Downs filed its CIAC reports for the fifteen-month period October 1, 1989 through December 31, 1990 and for the year ended December 31, 1991. By letter dated November 23, 1993, staff submitted its preliminary refund calculation numbers to the utility. In that letter, our staff specifically advised the utility that the preliminary analysis indicated that the utility had collected excess gross-up.

On December 16, 1993, the utility responded indicating that it disagreed with certain adjustments made by staff. Staff and the utility had several telephone discussions regarding the

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differences. As a result, by letter dated October 11, 1994, our staff requested additional clarifying information. On January 12, 1995, the utility responded to staff's concerns with revised schedules and additional clarifying information.

By letter dated November 15, 1994, Martin Downs former shareholders inquired about whether the Commission had continuing jurisdiction over the CIAC gross-up refund now that the utility was being liquidated. By letter dated, November 29, 1994, counsel for the Commission advised Martin Downs that the Commission still had jurisdiction over the CIAC gross-up funds.

Martin Downs cited two orders in which the Commission acknowledged a sale and specifically addressed refunds associated with the utility. In Docket No. 940063-WS, involving Mid-Clay Services Corporation, Order No. PSC-94-0201-FOF-WS, issued February 18, 1997, canceled the utility's certificate. The order stated that a separate docket concerning the refund of excess gross-up funds had been opened: "Because the excess funds were collected prior to the sale to Clay County, Mid-Clay remains subject to our jurisdiction until all refunds have been made." Order No. PSC-94-0198-FOF-WS, issued February 17, 1994, in Docket No. 940051-WS, addressed a similar situation. However, in the case at hand, the docket concerning the refund of CIAC gross-up funds was not opened until after the issuance of the Order acknowledging transfer and canceling certificate.

We did not relinquish jurisdiction over Martin Downs in Order No. PSC-93-1484-FOF-WS as it relates to the refund of CIAC gross-up. As stated in the Mid-Clay order cited above, we retain jurisdiction over any matter which arose while the utility was under our jurisdiction. The gross-up funds were collected subject to refund prior to the cancellation of Martin Downs's certificates. Even though the order did not explicitly address the disposition of the gross-up funds, pursuant to Orders Nos. 16971 and 23541, and under our general authority, the disposition of those funds remained within our purview.

Our authority to address matters which occurred prior to the cancellation of a utility's certificate has been addressed in Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1st DCA 1995). Charlotte County claimed that the utility overbilled it for service. The complaint was filed after the sale of the utility and cancellation of its certificate, but involved overbilling which occurred prior to the sale and

cancellation. The Court held that the Commission had exclusive jurisdiction over the matter which occurred before the sale and cancellation of the certificate. The Court looked to the Commission's jurisdiction as defined by Section 367.011(2), Florida Statutes, and the definition of "utility" under Section 367.021(12), Florida Statutes.

Based on our continuing jurisdiction, our staff, by letter dated July 2, 1997, requested Martin Downs to respond to the following questions:

1. Are there any funds in the CIAC Tax Impact Account of MDU[Martin Downs]?
2. The CIAC Reports filed by MDU indicate that the utility collected \$1,143,129 of gross-up for 1990 and \$528,593 for 1991. How much was in the CIAC Tax Impact Account as of:
  - a) August 11, 1995,
  - b) October 12, 1993. (Corrected by telephone to October 12, 1995)

If the amount in the account was less than the amount of gross-up collected, please explain how the difference was used.

3. On whose authority were the funds distributed?
4. Who (name and address) received and how much did they receive from distribution of the CIAC Tax Impact Account?
5. Is a record of the contributors of the gross-up available for 1990 and 1991?

By letter dated July 25, 1997, Steve Fry responded for the utility as follows:

1. Martin Downs Utilities, Inc. (MDU) sold all of its assets to Martin County. That sale was closed in August, 1993. Subsequent to the sale, MDU was dissolved and the MDU Liquidating Trust was established to liquidate the company.

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2. The Public Service Commission (PSC) relinquished its jurisdiction in October, 1993. The PSC's Order did not reserve any jurisdiction over any MDU matters.
3. The last contact I had with the PSC was in early 1996.
4. The Liquidating Trust was terminated in late 1996.
5. Neither MDU nor the Liquidating Trust have any assets or employees, nor do they transact any business. There are no bank accounts.
6. Due to two floods that occurred in the building formerly occupied by this company, and the relocation of this office, the few remaining MDU files are in a state of general disorder.

Based on the foregoing, I cannot answer any of the questions described in your letter other than the first question, "Are there any funds in the CIAC Tax Impact Account of MDU?" That question is answered by number 5 above.

In reviewing the response, we do not agree with the assertions made in the first sentence of paragraph 2. above. Order No. PSC-93-1484-FOF-WS, issued on October 12, 1993, was an administrative order that merely acknowledged the sale (approved as a matter of right pursuant to Section 367.071(4)(a), Florida Statutes), canceled the certificates, and closed the docket. It did not address any continuing jurisdictional questions and said nothing about relinquishing jurisdiction. As stated previously (see analysis of the Charlotte County case above), we do not believe that it was necessary for the October 12 Order to specifically retain jurisdiction or advise Martin Downs that refunds of CIAC gross-up for the period from October 1, 1989, through the date of sale might be required. Section 367.011, Florida Statutes speaks for itself. Also, by opening Docket No. 931065-WS (opened November 4, 1993), by sending the November 23, 1993 letter, and by several other letters and meetings, we gave Martin Downs ample notice that the funds in the CIAC Tax Impact Account were still subject to refund. Also, Orders Nos. 16971 and 23541 specifically stated that the funds in this account would only be used to pay the taxes

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associated with the collection of the CIAC gross-up or they would be refunded to the contributors.

Despite all this, the Liquidating Trust apparently distributed all funds without retaining at least the amount left in the CIAC Tax Impact Account to cover any possible refunds. Section 607.0834(1), Florida Statutes, specifically provides in pertinent part:

A director who votes for or assents to a distribution made in violation of s. 607.06401 . . . is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating s. 607.06401 . . . if it is established that he did not perform his duties in compliance with s. 607.0830.

Section 607.06401(3) provides in pertinent part:

No distribution may be made, if after giving it effect:  
(a) The corporation would not be able to pay its debts as they become due in the usual course of business;

In this case the Liquidating Trust apparently distributed all funds without retaining any amounts whatsoever and without giving notice to the Commission. In order for a dissolved corporation to dispose of claims which are contingent, conditional, or unmatured, the corporation must, pursuant to Section 607.1406(4), Florida Statutes, give notice to the claimant. The Liquidating Trust did not appear to follow this procedure.

Also, Section 607.1406(13), Florida Statutes, states that a shareholder may be held liable for a claim against the corporation if a proceeding is begun prior to the expiration of three years following the effective date of dissolution. The effective date of dissolution appears to be August 25, 1995, and it appears that a proceeding against the shareholders could be brought as late as August 25, 1998.

Therefore, we have completed our analysis of the amount of CIAC gross-up funds that should be refunded. In every year reviewed, we made several adjustments to the utility's above-the-line computation. These adjustments are discussed below:



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Management Fees, Accounting, Legal and Engineering Expenses:

In its January 12, 1995 filing, for each year under consideration for gross-up refund disposition, the utility made adjustments to management fees, accounting, legal, and engineering expenses to reflect the amount that was established in its last rate case in Order No. 22869, issued April 27, 1990. In response, we note that the utility's annual reports for the period ended 1990 and 1991 show that the utility included the entire amount as regulatory expense. Further, upon review of the utility's annual report to determine whether it was overearning, the entire amount was considered to be utility related and used and useful. For annual report review purposes, these expenses were included and considered when determining the utility's net income. The utility's officer attests to the accuracy of the annual reports by signing them each year. Therefore, we find that the entire amount shall be included as above-the-line expense in calculating the utility's taxable income.

Based on the above, we have adjusted the above-mentioned expenses to reflect the amount that is consistent with the amount reported in the annual report for each period. This adjustment changed the utility's reported above-the-line taxable income/loss for both periods.

Depreciation Computed on Capacity Fees: The utility's calculation of first year depreciation expense was calculated based on the contributed property, and not capacity fees. The utility did not include the cash CIAC contributions in their calculation of depreciation, because cash is not depreciable property.

Rule 25-30.515(3), Florida Administrative Code, defines CIAC as:

any amount or item of money, services, or property received by a utility, from any person or governmental agency, any portion of which is provided at no cost to the utility, which represents an addition or transfer to the capital of the utility, and which is utilized to offset the acquisition, improvement, or construction costs of the utility's property, facilities, or equipment used to provide utility services to the public. The term includes . . . system capacity charges, main extension charges and customer connection charges. (Emphasis added)

By definition, CIAC charges are intended for plant and are to be utilized for the acquisition, or construction of utility property; therefore, we find it is appropriate to assume the cash CIAC was converted into property in determining the amount of depreciation expense.

According to the utility's annual report, the utility added \$3,167,750 of plant additions in 1990. The utility collected CIAC totaling \$2,140,990, which consisted of \$950,365 of property CIAC and \$1,190,625 of cash CIAC. Plant additions exceeded the property and cash CIAC collections. Subtracting the amount of property CIAC from the total plant additions to determine how much cash CIAC was converted into plant, shows that all cash CIAC was converted. Using the Modified Accelerated Cost Recovery System (MACRS), the first year's depreciation for 1990 is calculated to be \$64,167.

For 1991, however, it appears that only a portion of the cash CIAC was converted to plant. The utility collected CIAC totaling \$1,073,666, which consisted of \$527,633 of property CIAC and \$546,033 of cash CIAC. However, according to the utility's annual report, the utility only added \$829,982 of plant additions in 1991. Subtracting the property CIAC (\$527,633) from the total plant additions (\$829,982) indicates that the total cash CIAC converted to plant was only \$302,349. Using the MACRS, the depreciation for 1991 was calculated to be \$31,124.

Prior Years' CIAC Depreciation Classified Below-the-Line: The Commission classifies all prior year CIAC depreciation expense below-the-line. In its filing the only CIAC depreciation that the utility placed below-the-line was nonused and useful depreciation. Therefore, we have reclassified the prior year CIAC depreciation as a below-the-line expense.

#### ANNUAL GROSS-UP REFUND AMOUNTS

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. Our calculations, taken from the information provided by the utility in its gross-up reports, supplemental information, and annual reports are reflected on Schedule No. 1. A summary of each year's refund calculation follows.

1990

The utility's 1990 CIAC report covers a fifteen-month period from October 1, 1989 through December 31, 1990. During this period the utility changed tax year end, recapitalized, and was sold to an entity controlled by certain SRG shareholders.

The utility proposed a refund of \$3,854 for 1990 excess gross-up collections. The utility's refund is based, in part, on an above-the-line income of \$178,969, before the inclusion of the taxable CIAC in income.

However, we calculate a refund of \$32,361 for 1990, excluding accrued interest. Our calculation of above-the-line income includes the above-mentioned adjustments to the utility's above-the-line expenses. Also, in its filing, the utility classified \$156,951 of its management fees and accounting, legal, and engineering expense below-the-line and \$138,249 as above-the-line expense. The utility explained that its above-the-line amount agrees with the amount established in its last rate proceeding by Order No. 22869, issued April 27, 1990. In response, we note that the utility's annual report for 1990 and a prorated portion of the 1989 annual report shows that the utility included the entire \$295,200 as an above-the-line expense. When the utility's annual report was reviewed to determine whether it was overearning, these expenses were included and considered when determining the utility's net income. Therefore, we have reclassified the entire \$295,200 as an above-the-line expense, and included it in calculating the utility's taxable income.

With these adjustments, the utility's reported above-the-line taxable income of \$178,969 was reduced to \$69,306 before the inclusion of taxable CIAC income. Therefore, all taxable CIAC received during the year would still be taxed, net of first year's depreciation and CIAC that was collected but not grossed-up pursuant to contracts entered into before January 1, 1987.

The report indicates that a total of \$1,143,129 of gross-up monies was collected for the CIAC that was grossed-up. According to the copy of the utility's CIAC journal account, the utility received taxable CIAC of \$2,513,062 and deducted \$16,879 for the first year's depreciation. We have deducted \$607,847 for CIAC that was not grossed-up and \$64,167 for the first year's depreciation on CIAC capacity and property collections. As a result, the net taxable CIAC was calculated to be \$1,841,048. Using the 37.63%

combined marginal federal and state tax rates as provided in the 1990 CIAC Report, the tax effect is calculated to be \$692,786. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$1,110,768.

Since the utility collected \$1,143,129 in gross-up, the utility shall be required to refund \$32,361 for 1990. This amount does not include the accrued interest which also must be refunded as of December 31, 1990, to the date of the refund.

1991

The utility proposes a refund of \$15,234 for 1991 excess gross-up collections. The utility's refund is based on an above-the-line income of \$63,790, before the inclusion of the taxable CIAC in income.

However, we calculate a refund of \$22,064 for 1991, excluding accrued interest. Our calculation of above-the-line income includes the above-mentioned adjustments to the utility's above-the-line expenses. Also, in its filing, the utility classified \$100,390 of its management fees and accounting, legal, and engineering expense below-the-line and \$99,324 as above-the-line expense. The utility explained that its above-the-line amount agrees with the amount established in its last rate proceeding by Order No. 22869, issued April 27, 1990. In response, we note that the utility's annual report for 1991 shows that the utility included the entire \$199,714 as an above-the-line expense. When the utility's annual report was reviewed to determine whether it was overearning, these expenses were included and considered when determining the utility's net income. Therefore, we have reclassified the entire \$199,714 as an above-the-line expense, and included it in calculating the utility's taxable income.

With these adjustments, the utility's reported above-the-line taxable income of \$63,790 was reduced to \$42,488 before the inclusion of taxable CIAC income. Therefore, all taxable CIAC received during the year would still be taxed, net of first year's depreciation and CIAC that was collected but not grossed-up pursuant to contracts entered into before January 1, 1987.

The report indicates that a total of \$528,593 of gross-up monies was collected for the CIAC that was grossed-up. The utility received taxable CIAC of \$1,073,665 and deducted \$19,786 for the

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first year's depreciation. We have deducted \$202,992 for CIAC that was not grossed-up and \$31,124 for the first year's depreciation on CIAC capacity and property collections. As a result, the net taxable CIAC was calculated to be \$839,549. Using the 37.63% combined marginal federal and state tax rates as provided in the 1991 CIAC Report, the tax effect is calculated to be \$315,922. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$506,529.

Since the utility collected \$528,593 in gross-up, the utility shall be required to refund \$22,064 for 1991. This amount does not include the accrued interest which also must be refunded as of December 31, 1991 to the date of the refund.

#### 1990 and 1991

Based on all the above, the utility shall refund \$54,425, which consists of \$32,361 for the fifteen-month period ending December 31, 1990, and \$22,064 for fiscal year 1991, plus accrued interest through the date of the refund, for gross-up collected in excess of the tax liability resulting from the collection of CIAC. In accordance with Orders Nos. 16971 and 23541, all amounts for both 1990 and 1991 shall be refunded on a pro rata basis to those persons who contributed the taxes. The refund shall be completed within six months.

The utility shall submit copies of canceled checks, credits applied to monthly bills or other evidence which verifies that the refunds have been made, within 30 days from the date of the refund. 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. Further, the utility shall deliver any unclaimed refunds to the State of Florida Comptroller's Office as abandoned property. The unclaimed refunds shall be delivered to the Comptroller's office following our staff's written notification to the utility that the refunds have been made in accordance with this Order.

Because the utility has been dissolved, a copy of this Order requiring refunds shall be sent to Steve Fry, the representative of Martin Downs, and to Martin Downs's last counsel of record, F. Marshall Deterding. Also, a copy shall be sent to the former directors at their last known address.

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1992 and 1993

Mr. James H. Anderson, Vice President of Martin Downs filed an affidavit which stated that the utility ceased collecting CIAC gross-up monies after December 31, 1991. Therefore, no refund is necessary for these last two years.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, the docket shall remain open pending verification of the refund. Our staff shall be granted administrative authority to close the docket upon verification that the refunds have been made.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the provisions of this order are issued as proposed agency action and shall become final, unless a substantially affected person files an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, with the Director of the Division of Records and Reporting 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 Martin Downs Utilities, Inc., shall refund contributions-in-aid-of-construction gross-up funds in the amount of \$32,361 for the fifteen-month period ending December 31, 1990, and \$22,064 for fiscal year 1991, plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability for those periods. It is further

ORDERED that, in accordance with Orders Nos. 16971 and 23541, all refund amounts shall be refunded on a pro rata basis to those persons who contributed the taxes. The refunds shall be completed within six months of the effective date of this order. Within thirty days from the date of the refund, Martin Downs Utilities, Inc., shall submit copies of cancelled checks, credits applied to monthly bills or other evidence that verifies that the utility has made the refunds. Within thirty days from the date of the refund, Martin Downs Utilities, Inc., shall also provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refunds. It is further

ORDERED that, following staff's written notification to Martin Downs Utilities, Inc., that the refunds have been made in

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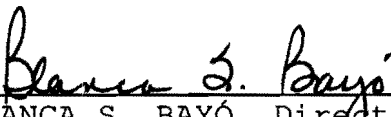
accordance with this Order, the utility shall deliver the unclaimed refunds to the Comptroller's office. It is further

ORDERED that no refund is necessary for the years 1992 and 1993. It is further

ORDERED that all findings in this Order and the attachment thereto are incorporated and made a part of this Order. It is further

ORDERED that, upon expiration of the protest period, this docket shall remain open pending the verification of refunds. This docket shall be closed administratively upon verification that the refunds have been completed.

By ORDER of the Florida Public Service Commission this 30th day of September, 1997.

  
\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

RRJ

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.

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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 October 21, 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 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  
 MARTIN DOWNS UTILITIES, INC.

COMMISSION CALCULATED GROSS-UP REFUND

	1990	1991	1992
1 A-T-L Taxable Income Per Staff	\$ 3,708,618	\$ 1,624,960	\$ N/A
2 Less CIAC	(2,513,062)	(1,073,665)	
3 Less Gross-up Collected	(1,143,129)	(528,593)	
4 Add First Year's Depr. on CIAC	16,879	19,786	
5 Add/Less Other Effects	0	0	
6			
7 Adjusted Income Before CIAC and Gross-up	\$ 69,306	\$ 42,488	\$
8			
9 Taxable CIAC	\$ 2,513,062	\$ 1,073,665	\$
10			
11 Taxable CIAC Resulting in a Tax Liability	\$ 1,905,215	\$ 870,673	\$
12 Less First Year's Depr.	(64,167)	(31,124)	
13			
14 Net Taxable CIAC	\$ 1,841,048	\$ 839,549	\$
15 Combined marginal state and federal tax rate	37.63%	37.63%	
16			
17 Net Income Tax on CIAC	\$ 692,786	\$ 315,923	\$
18 Less ITC Realized	0	0	
19			
20 Net Income Tax on CIAC	\$ 692,786	\$ 315,923	\$
21 Expansion Factor for gross-up taxes	1.603334937	1.603334937	
22			
23 Gross-up Required to Pay Tax Effect	\$ 1,110,768	\$ 506,529	\$
24 Less CIAC Gross-up Collected	(1,143,129)	(528,593)	
25			
26 (OVER) OR UNDER COLLECTION	\$ (32,361)	\$ (22,064)	\$
27			
28			
29 TOTAL YEARLY REFUND	(32,361)	(22,064)	
30			
31			
32 PROPOSED REFUND (excluding interest)	(54,425)		
33			