

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of
contributions in aid of
construction in Pasco County by
Hudson Utilities, Inc. d/b/a
Hudson Bay Company.

DOCKET NO. 970559-SU
ORDER NO. PSC-97-1349-FOF-SU
ISSUED: October 27, 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 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

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actual tax liability for the same year, should be refunded on a pro rata basis to those persons who contributed the taxes.

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. On November 30, 1992, pursuant to Order No. 23541, Hudson Utilities, Inc. (Hudson or Utility) filed for initial authority to gross-up CIAC. The information as filed met the filing requirements of Order No. 23541. By Order No. PSC-93-0206-FOF-SU, issued February 9, 1993, the Commission allowed the utility's proposed tariff to become effective by operation of law on an interim basis for gross-up on CIAC. Order No. PSC-93-0962-FOF-SU, issued June 28, 1993, granted Hudson authority to gross-up.

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

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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 closed Docket No. 960397-WS by Order No. PSC-96-1253-FOF-WS, issued on October 8, 1996. 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.

Hudson is a Class B wastewater utility providing service to the public in Pasco County. As of December 31, 1996, the utility served 1,337 wastewater customers. The utility had gross operating revenues of \$714,244 and a net operating income of \$101,919 for the wastewater system.

On July 10, 1997, Hudson submitted its 1995 CIAC Gross-up Report. In that report, Hudson suggested that it be allowed to offset any required refund with 50 percent of the accounting and legal expenses related to the preparation of the 1995 gross-up refund report as was allowed in Docket No. 961152-SU.

This Order addresses the amount of CIAC gross-up funds that should be refunded for 1995 and Hudson's request that it be allowed to offset 50 percent of the accounting and legal expenses related to the preparation of the 1995 gross-up refund report.

REFUND CALCULATIONS FOR 1995

In compliance with Orders Nos. 16971 and 23541, Hudson filed its 1995 annual CIAC report regarding its collection of gross-up for the year. By correspondence dated June 23, 1997, our staff submitted their preliminary refund calculation to the utility. By letter dated July 14, 1997, the utility amended its proposed refunds for 1995 to include the costs associated with filing refund reports. The utility has requested that 50 percent of the \$5,981 of legal and accounting costs incurred for filing the CIAC report be deducted from the amount of the refund, which was the same treatment it received in Docket No. 961152-SU.

As in the other Hudson case, we find that acceptance of the settlement proposal would avoid the substantial cost associated with a hearing, which may in fact exceed the amount of the legal and accounting costs to be recovered. We further note that the actual costs associated with making the refunds have not been included in these calculations and will be absorbed by the utility. Moreover, we believe the utility's settlement proposal is a reasonable "middle ground". Therefore, while not adopting the utility's position, we find it appropriate to accept Hudson's settlement proposal.

Calculation of Gross-up Refund Amount for 1995

Our calculations, taken from the information provided by the utility in its gross-up report and tax return filed, are reflected on Schedule No. 1. A summary of the 1995 refund calculation follows.

The utility proposed a base refund of \$43,929 and the recovery of \$2,991 in costs for preparing the refund report in 1995. Inclusion of the CIAC filing costs in the refund calculation resulted in a net total refund of \$40,938. However, we have calculated a refund of \$38,535 for excess gross-up collections for 1995. This calculation includes 50 percent of the accounting and legal costs for preparing the refund report.

The utility reported \$177,450 of gross-up collections for 1995. This amount included \$13,650 of gross-up related to CIAC collections that were reported in 1994. As a result, only \$163,800 of the gross-up reported related to CIAC in 1995.

Order No. PSC-95-0376-FOF-SU, issued March 16, 1995, gave the utility authority to give customers the option of paying the CIAC and the gross-up charge in installment payments. The installment payment plan allowed the contributor to pay the service availability charge of \$1,000 plus the gross-up taxes of \$600 in 24 monthly installment payments. In 1995 the utility collected CIAC and gross-up from 273 customers. One hundred and eighty four (184) customers paid the CIAC and gross-up in full and the remaining 89 customers signed notes to pay the CIAC and gross-up on the installment plan. For federal income tax purposes for 1995, the utility reported all of the CIAC and gross-up as income whether or

not it was paid in full or in installments. Therefore, for 1995, the utility reported \$273,000 of CIAC income on its tax return (273 customers x \$1,000 service availability charge). Of this amount, \$184,000 was collected from customers who paid the CIAC charge in full, and \$89,000 (\$1,000 x 89) was reported for those customers who paid the CIAC charge using the installment plan. In addition, the utility reported \$177,450 of gross-up collections as income on its tax return, of which \$13,650 related to CIAC reported in 1994 and \$163,800 related to CIAC reported in 1995. Of the \$163,800 of gross-up reported, \$110,400 (\$600 x 184) was collected from the customers who paid the gross-up in full, and \$53,400 was reported for customers who paid the gross-up in installments. It should be noted that although the utility reported \$53,400 on its tax return for gross-up collections from its installment customers, the utility had not actually collected the full \$53,400 because the installment customers were allowed to pay the gross-up over a 24-month period. Therefore, to the extent that these customers have not paid the required amount of gross-up, additional gross-up payments are due from them.

The 1995 CIAC report indicates that the utility had an above-the-line loss of \$66,359 prior to the inclusion of taxable CIAC in income. As a result, all of the CIAC collected would not be taxed. Order No. 23541 requires that above-the-line losses be offset against CIAC income. Therefore, the above-the-line loss of \$66,359 must be netted with the taxable CIAC collected. The CIAC report indicates that the utility collected \$273,000 of taxable CIAC, with \$3,978 being deducted for the first year's depreciation. As a result, the amount of taxable CIAC is calculated to be \$269,022. When this amount is offset with the above-the-line loss of \$66,359, net taxable CIAC is calculated to be \$202,663. Using the 37.63% combined federal and state tax rate as provided in the CIAC report, we calculate the tax effect to be \$76,262. 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 \$122,274.

As discussed earlier, the utility incurred accounting and legal costs that totaled \$5,981. These costs have been reviewed and have been determined to be directly associated with preparing the required reports and calculating the tax effect and, thus, are considered to be legitimate expenses. Taking 50 percent of this

amount, the utility should have been allowed to recover \$125,265, to pay the tax effect on the CIAC and the legal and accounting charges. The gross-up funds were collected from 273 separate customers during 1995. Based on this amount, the utility should have collected \$459 ($\$125,265/273$) of gross-up from each customer instead of \$600.

However, the utility reported \$163,800 ($\600×273) in gross-up for 1995. Therefore, we find that the utility overcharged its contributors a total of \$38,535 ($\$163,800 - \$125,265$), or \$141 per contributor. This amount does not include the accrued interest through the date of refund. Based on the total overcharged amount, each contributor that paid the gross-up in full shall receive a refund of \$141. In addition, the utility shall collect only \$459 instead of \$600 from the customers that pay in installments. However, to the extent that the utility has collected more than \$459 from those customers using the installment plan, the utility shall refund the difference in the \$459 that should have been collected and the amount that was actually collected in installments.

The refund shall be completed within 6 months of the effective date of the 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 file 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.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement offer of Hudson Utilities, Inc., d/b/a Hudson Bay Company, shall be accepted. It is further

ORDERED that pursuant to the settlement offer, Hudson Utilities, Inc., d/b/a Hudson Bay Company, shall refund gross-up of contributions-in-aid-of-construction in the amount of \$38,535 for 1995. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that the refunds shall be carried out as set forth in the body of this Order. It is further

ORDERED that the schedule attached to this Order is incorporated into and made a part of this Order. It is further

ORDERED that Hudson Utilities, Inc., d/b/a Hudson Bay Company, shall be required to refund \$25,944 or \$141 to each of the customers who paid the gross-up in full. It is further

ORDERED that Hudson Utilities, Inc., d/b/a Hudson Bay Company, shall refund \$12,591 of the \$38,535 overcharge related to customers who are paying the gross-up in installments. The utility shall collect only \$459 from the 89 customers that are paying the gross-up in installments. To the extent that the utility has collected more than \$459 from those customers using the installment plan, the utility shall refund the difference in the \$459 that should have been collected and the amount actually collected. It is further

ORDERED that Hudson Utilities, Inc., d/b/a Hudson Bay Company, shall refund accrued interest through the date of refund, for

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gross-up of contributions-in-aid-of-construction collected in excess of the tax liability. 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 Hudson Utilities, Inc., d/b/a Hudson Bay Company, 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, Hudson Utilities, Inc., d/b/a Hudson Bay Company, 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 27th day of October, 1997.



BLANCA S. BAYÓ, 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 120.569(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

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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 November 17, 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.

COMMISSION CALCULATED GROSS-UP REFUND

HUDSON UTILITIES, INC.

SOURCE: (Line references are from CIAC Reports)	1995
1 Form 1120, Line 30 (Line 15)	\$ 380,113
2 Less CIAC (Line 7)	(273,000)
3 Less Gross-up collected (Line 19)	(177,450)
4 Add First Year's Depr on CIAC (Line 8)	3,978
5 Add/Less Other Effects (Lines 20 & 21)	0
6	-
7 Adjusted Income Before CIAC and Gross-up	\$ (66,359)
8 Taxable CIAC (Line 7)	273,000
9 Less first years depr. (Line 8)	(3,978)
10	-
11 Taxable CIAC Resulting in a Tax Liability	\$ 202,663
12 Less: NOL Carrforward	0
13	-
14 Net Taxable CIAC	\$ 202,663
15 Effective state and federal tax rate	37.63%
16	-
17 Net Income tax on CIAC	\$ 76,262
18 Less ITC Realized	0
19	-
20 Net Income Tax	\$ 76,262
21 Expansion Factor for gross-up taxes	1.60333493666827
22	-
23 Gross-up Required to pay tax effect	\$ 122,274
24 Net Legal & Accounting Offset	2,991
25	-
26 Total Cost Recoverable	\$ 125,265
27 Less CIAC Gross-up collected (Line 19)	(163,800)
28	-
29 TOTAL OVERCHARGED	\$ (38,535)
30	=
31	
32 TOTAL OVERCHARGED	\$ (38,535)
33	=