

MEMORANDUM

February 19, 1998

RECEIVED

FEB 23 1998

1:30

FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (JAEGER) *RRJ*
RE: DOCKET NO. 971658-SU - DISPOSITION OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION GROSS-UP FUNDS COLLECTED BY FOREST UTILITIES, INC. IN LEE COUNTY.

98-0320-AS-SU

Attached is a Notice of Proposed Agency Action Order Accepting Settlement Offer and Requiring No Refund for the Year 1996, to be issued in the above-referenced docket.

(Number of pages in order - 8)

RRJ/lw

Attachment

cc: Division of Water and Wastewater (Johnson)

I:971658or.rrj

*mailed - 3/6
Carr -*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of
contribution-in-aid-of-
construction gross-up funds
collected by Forest Utilities,
Inc. In Lee County.

DOCKET NO. 971658-SU
ORDER NO. PSC-98-0320-AS-SU
ISSUED: February 23, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION ORDER ACCEPTING SETTLEMENT OFFER
AND REQUIRING NO REFUND FOR THE YEAR 1996

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

Forest Utilities, Inc. (Forest Utilities), is a Class B
wastewater utility providing service to the public in Lee County.
As of December 31, 1996, the utility served 1,922 wastewater
customers. The utility had gross operating revenues of \$559,096,
and reported a net operating loss of \$38,523.

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.

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Orders Nos. 16971, issued December 18, 1986, and 23541, issued October 1, 1990, required 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 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.

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 December 27, 1990, pursuant to Order No. 23541, Forest Utilities filed for authority to continue to gross-up CIAC. The information as filed met the filing requirements of Order No. 23541. By Order No. 25299, issued November 5, 1991, we granted Forest Utilities request for continued gross-up authority 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 amendatory PAA Order No. PSC-92-0961A-FOF-WS. This Order included attachment A which is the generic calculation form. On October 12, 1994, Order No. PSC-94-1265-FOF-WS, revised the full gross-up method generic calculation form. No protests were filed, and these Orders became final.

On March 29, 1996, we opened Docket No. 960397-WS 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

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staff to continue processing CIAC gross-up refund cases pursuant to Orders Nos. 16971 and 23541.

However, on August 1, 1996, The Small Business Job Protection Act of 1996 (The Act) passed congress and 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. 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 closed Docket No. 960397-WS by Order No. PSC-96-1253-FOF-WS, issued October 8, 1996. However, as established in Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Orders Nos. 16971 and 23541.

On August 15, 1997, Forest Utilities, Inc., submitted its 1996 CIAC Gross-up Report. In that report, Forest 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 1996 gross-up refund report as was allowed in Docket No. 961152-SU.

REFUND REQUIREMENT

In compliance with Orders Nos. 16971 and 23541, Forest Utilities filed its 1996 annual CIAC report. The utility has requested that 50 percent of the \$4,650 of legal and accounting costs incurred for filing the CIAC report be deducted from the amount of the refund. In the letter, Forest Utilities indicated that it was willing to accept a similar arrangement which it received in a previous case (Docket No. 961237-SU). In Docket No. 961237-SU, which addressed the disposition of gross-up funds collected by Forest Utilities for the years 1990-1995, we voted to accept the utility's settlement proposal to offset 50 percent of the legal and accounting fees incurred in preparing the CIAC reports. The utility has again proposed this same settlement for 1996.

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We have considered on several occasions the question of whether such an offset should be allowed pursuant to the orders governing CIAC gross-up. In Order No. PSC-97-0647-FOF-SU, issued June 7, 1997, in Docket No. 961077-SU; Order No. PSC-97-0657-AS-WS, issued June 9, 1997 in Docket No. 961076-WS; and Order No. PSC-97-0816-FOF-WS, issued July 7, 1997 in Docket No. 970275-WS, we accepted the utilities' settlement proposals that 50 percent of the legal and accounting costs be offset against the refund amount.

As in the other cases referenced above, 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 Forest Utilities' settlement proposal.

Our refund calculations are based on 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 report and tax return are reflected on the schedule attached to this Order. A summary of the 1996 refund calculation follows.

1996

The utility proposes that no refund for 1996 is appropriate. We agree.

Based upon our review of the utility's 1996 filing, the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income. Therefore, all taxable CIAC received would be taxed. The report indicates a total of \$9,415 in taxable CIAC was received, with \$1,428 being deducted for the first year's depreciation, resulting in net taxable CIAC of \$7,987. Using the 37.63 percent combined marginal federal and state tax rates, we calculate a tax effect of \$3,006. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$4,820. However, the utility collected \$5,083 in gross-up taxes; therefore, the utility overcollected the gross-

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up by \$263. However, the utility incurred \$4,650 in legal and accounting costs. When 50 percent of this amount is offset against the overcollection, no refund is required.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request of Forest Utilities, Inc., to offset fifty percent of the legal and accounting fees against any overcollections is accepted. 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

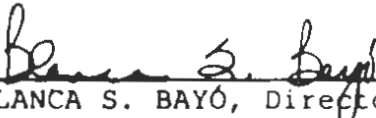
ORDERED that no refunds for overcollection of gross-up on Contributions-in-Aid-of-Construction for the year 1996 is required. It is further

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

ORDERED that in the event this Order becomes final, this Docket shall be closed.

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By ORDER of the Florida Public Service Commission this 27th
day of February, 1998.



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.

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

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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 March 16, 1998.

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

FOREST UTILITIES - INC.

SOURCE: (Line references are from CIAC Reports)	1996
1 Form 1120, Line 30 (Line 15)	\$ 73,847
2 Less CIAC (Line 7)	(9,415)
3 Less Gross-up collected (Line 19)	(5,083)
4 Add First Year's Depr on CIAC (Line 8)	1,428
5 Add/Less Other Effects (Lines 20 & 21)	0
6	
7 Adjusted Income Before CIAC and Gross-up	\$ 60,777
8 Taxable CIAC (Line 7)	9,415
9 Less first years depr. (Line 8)	(1,428)
10	
11 Taxable CIAC Resulting in a Tax Liability	\$ 7,987
12 Less: NOL Carryforward	0
13	-
14 Net Taxable CIAC	\$ 7,987
15 Effective state and federal tax rate	37.63%
16	-
17 Net Income tax on CIAC	\$ 3,006
18 Less ITC Realized	0
19	
20 Net Income Tax	\$ 3,006
21 Expansion Factor for gross-up taxes	1.603334936668
22	-
23 Gross-up Required to pay tax effect	\$ 4,870
24 Less CIAC Gross-up collected (Line 19)	-5083
25	
26 (OVER) OR UNDER COLLECTION	(263)
27 Offset of Legal & Accounting fees	263
28	
29 Proposed refund (excluding interest)	\$ 0