

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of
contribution-in-aid-of-
construction gross-up funds
collected by Sandalhaven
Utility, Inc. in Charlotte
County.

DOCKET NO. 980120-SU
ORDER NO. PSC-98-1142-FOF-SU
ISSUED: August 24, 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 REQUIRING REFUNDS FOR THE YEAR 1995
BUT NO REFUNDS 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

Sandalhaven Utility, Inc. (Sandalhaven or utility), is a Class
C wastewater utility providing service to the public in Charlotte
County. As of December 31, 1996, the utility served 623 wastewater
customers. The utility had gross operating revenues of \$161,918,
and reported a net operating loss of \$41,249.

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

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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 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.

Sandalhaven was previously authorized by the Charlotte County Board of County Commissioners to collect gross-up for CIAC. By Proposed Agency Action (PAA) Order No. PSC-95-0478-FOF-SU, issued April 13, 1995, we granted Sandalhaven Wastewater Certificate No. 495-S and authorized it to collect CIAC gross-up tax on an interim basis. On July 17, 1995, pursuant to Order No. 23541, Sandalhaven filed for authority to gross-up CIAC. The information as filed met the filing requirements of Order No. 23541. Order No. PSC-95-1569-FOF-SU, issued December 19, 1995, granted Sandalhaven authority to gross-up.

However, on August 1, 1996, The Small Business Job Protection Act of 1996 (The Act), which became law on August 20, 1996, provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996. The purpose of this Order is to address the amount of CIAC gross-up funds that should be refunded for the years 1995 and 1996.

REFUND REQUIREMENT

In compliance with Orders Nos. 16971 and 23541, Sandalhaven filed its 1995 and 1996 annual CIAC reports and tax returns regarding its collection of gross-up for each year. Our calculations and the utility's calculations are in agreement on the refund amounts for the years listed.

Based on the information provided by the utility in its CIAC report and tax returns, we have calculated the amount of refund which is appropriate. A summary of the 1995 and 1996 refund calculation follows.

1995

The utility proposes a refund of \$28,059 for 1995 gross-up collections. We agree that a refund of the entire \$28,059 in gross-up collections for 1995 is appropriate.

Based upon our review of the utility's 1995 filing, the utility did not include CIAC in income on its tax return. As a result, there is no tax liability associated with the CIAC income collected. Therefore, all gross-up taxes collected on the CIAC income must be refunded. Based upon the foregoing, the utility shall refund \$28,059 in gross-up taxes. However, through an inter-company bookkeeping transfer, the utility refunded \$5,271 in 1996 to a related contributing construction company. Order No. 23541 requires that refunds be made with interest. Because the utility refunded \$5,271 in 1996 and the contributor accepted it, we find that no accrued interest is due or payable on that amount.

The remaining \$22,788 of the gross-up taxes shall be returned to Cape Haze Marine Village, Inc. (Cape Haze). According to the utility, a gentlemen's agreement between Cape Haze and Sandalhaven was made, which allowed the utility to keep the money in settlement of some outstanding financial issues. According to the utility, Cape Haze's financial obligations exceed the \$22,788. The utility assumed that the agreement between the parties in October 1997 resolved all amounts due to Cape Haze. The utility provided a certified signed letter describing the terms of the agreement between the parties. However, because the letter was not signed by both parties, we could not ascertain whether such an agreement took place. Our staff therefore gave the utility an additional thirty days to secure and remit a letter signed by Cape Haze showing that such an agreement had been reached. To date the utility has been unable to provide documentation to support this agreement. Therefore, we find the refund is incomplete. In the absence of documented support for the agreement, the \$22,788 shall be refunded with accrued interest from December 31, 1995 through the date of the refund to Cape Haze.

Therefore, in accordance with Orders Nos. 16971 and 23541, all amounts collected to pay gross-up taxes shall be refunded on a pro rata basis to those persons who contributed the taxes. The refunds shall be completed within six months from the effective date of this order. 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

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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.

1996

No gross-up taxes were collected in 1996; therefore, no refund is appropriate for that year.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, this docket shall remain open pending completion and verification of the refunds. 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 Sandalhaven Utility, Inc., shall refund, with accrued interest from December 31, 1995, through the date of the refund, excess gross-up of contributions in aid of construction in the amount of \$22,788 for 1995 in the manner set forth herein to Cape Haze Marine Village, Inc. It is further

ORDERED that no refunds are required for 1996. 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 28-106.201, 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

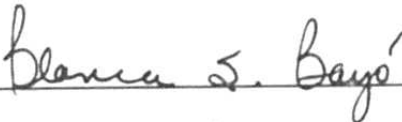
ORDERED that the refunds required herein shall be completed within six months of the effective date of this Order, and that Sandalhaven Utility, Inc., shall submit copies of canceled checks, credits applied to monthly bills or other evidence verifying that the refunds have been made within 30 days of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

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ORDERED that within 30 days of completion of the refund, Sandalhaven Utility, 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 24th day of August, 1998.



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 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. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 September 14, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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.