

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of gross-up
funds collected by Indiantown
Company, Inc. In Martin County.

DOCKET NO. 981797-WS
ORDER NO. PSC-99-0250-FOF-WS
ISSUED: February 9, 1999

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER FINDING NO REFUNDS TO BE DUE FOR THE YEARS 1991 THROUGH
1994 AND REQUIRING REFUNDS FOR THE YEARS 1995 AND 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

Indiantown Company, Inc. (Indiantown or utility), is a Class B utility providing service to approximately 1,715 water and 1,582 wastewater customers in Martin County. According to its 1997 annual report, the utility reported gross operating revenues of \$457,745 and \$516,694 for water and wastewater, respectively, and net operating income of \$36,660 for water and a loss of \$6,266 for wastewater.

As a result of the repeal of Section 118(b) of the Internal Revenue Code, effective January 1, 1987, contributions-in-aid-of-construction (CIAC) became gross income and were depreciable for federal tax purposes. Therefore, by Order No. 16971, issued December 18, 1986, we authorized corporate utilities to collect the

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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 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, should be refunded on a pro rata basis to those persons who contributed the taxes.

However, 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.

On October 16, 1990, Indiantown filed a petition for continued authority to gross-up CIAC. By Order No. 24303, issued March 29, 1991, we granted the utility interim authority to collect CIAC gross-up, pending our further investigation. By Order No. 25366, issued November 20, 1991, we approved the continued collection of CIAC gross-up. The purpose of this Order is to address the disposition of CIAC gross-up funds collected by the utility for the years 1991-1996.

REFUND CALCULATIONS FOR THE YEARS 1991-1996

In compliance with Orders Nos. 16971 and 23541, Indiantown filed its 1991-1996 annual CIAC reports regarding its collection of gross-up. By letter dated October 13, 1998, our staff submitted preliminary refund calculation numbers to the utility. On November 30, 1998, the utility's attorney advised our staff that the utility agreed with staff's preliminary refund calculations.

Our calculations, taken from the CIAC gross-up reports of the utility, are reflected on Schedule No. 1, which is attached hereto and by reference incorporated herein. Gross-up calculations are in accordance with the method adopted in Order No. PSC-92-0961-FOF-WS. A summary of each year's calculations follows.

1991 and 1992

As mentioned above, By Order No. 25366, issued November 20, 1991, the utility was granted approval to continue its collection of CIAC gross-up. As of the date of that Order, the utility had not collected any CIAC gross-up. Also, the utility's CIAC reports for 1991 and 1992 showed that the utility did not collect any CIAC gross-up in 1991 and 1992. Since there were no gross-up funds collected by the utility during those years, no refunds are required for 1991 and 1992.

1993

The utility's 1993 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$291,000 in taxable CIAC was received, with \$1,645 being deducted for the first year's depreciation. Using the 37.63 percent combined marginal federal and state tax rate as provided in the 1993 CIAC report, and multiplying that amount by the net of \$289,355, we calculate the tax effect to be \$108,884. 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 \$174,578. The utility collected \$109,000 of gross-up monies; therefore, no refund is required for 1993.

1994

The utility's 1994 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$88,591 in taxable CIAC was received, with \$1,594 being deducted for the first year's depreciation. Using the 37.63 percent combined marginal federal and state tax rate as provided in the 1994 CIAC report and multiplying that amount by the net of \$86,997, we calculate the tax effect to be \$32,737. 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 \$52,488. The utility collected \$38,963 of gross-up monies; therefore, no refund is required for 1994.

1995

The utility's 1995 CIAC report indicates that the utility had an above-the-line loss before the inclusion of taxable CIAC in income. Order No. 23541 requires that CIAC income be netted against the above-the-line loss; therefore, not all of the CIAC collected would create a tax liability.

The utility's CIAC report indicates a total of \$56,579 in taxable CIAC was received, with \$1,695 being deducted for the first year's depreciation, resulting in taxable CIAC of \$54,884. When this amount is netted against the above-the-line loss of \$43,690, the amount of taxable CIAC resulting in a tax liability is \$11,194. Using the 37.63 percent combined marginal federal and state tax rate as provided in the 1993 CIAC report, and multiplying that amount by the net of \$11,194, we calculate the tax effect to be \$4,212. 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 \$6,753. The utility collected \$28,855 of gross-up monies; therefore, a refund of \$22,102 is required. This amount does not include accrued interest which must be refunded from December 31, 1995 through the date of the refund.

1996

The utility's 1996 CIAC report indicates that the utility had an above-the-line loss before the inclusion of taxable CIAC in income. Order No. 23541 requires that CIAC income be netted against the above-the-line loss; therefore, not all of the CIAC collected would create a tax liability.

The utility's CIAC report indicates that a total of \$51,615 in taxable CIAC was received, with \$908 being deducted for the first year's depreciation, resulting in taxable CIAC of \$50,707. When this amount is netted against the above-the-line loss of \$102,882, the amount of taxable CIAC resulting in a tax liability is \$0. The utility collected \$9,169 of gross-up monies; therefore, a refund of \$9,169 is required. This amount does not include accrued interest which must be refunded from December 31, 1996 through the date of the refund.

For both 1995 and 1996, the refunds 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

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checks, credits applied to 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 refund.

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. The docket shall be closed administratively upon verification that the refunds have been made, and that there are no unclaimed refunds.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that no refunds of contributions-in-aid-of-construction gross-up are required for the years 1991 through 1994. It is further

ORDERED that Indiantown Company, Inc. shall refund \$22,102, plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability for 1995. It is further

ORDERED that Indiantown Company, Inc., shall refund \$9,169, plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability for 1996. It is further

ORDERED that the schedule attached to this Order is incorporated herein by reference. 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 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. It is further

ORDERED that within thirty days from the date of the refund, Indiantown Company, Inc. shall submit copies of cancelled checks, credits applied to monthly bills or other evidence that verifies that the utility has made the refunds, and shall also provide a

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list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refunds. 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 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, and that there are no unclaimed refunds.

By ORDER of the Florida Public Service Commission this 9th day of February, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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 March 2, 1999.

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.

SCHEDULE ONE
 COMMN CALCULATED GROSS-UP REFUNDS

Indiantown Utility Company
 SOURCE: (Line references are from CIAC Reports)

	1993	1994	1995	1996
1 Form 1120, Line 30 (Line 15) \$	496,407	\$ 299,843	\$ 40,049	\$ (52,175)
2 Less CIAC (Line 7)	(291,000)	(88,591)	(56,579)	(51,615)
3 Less Gross-up collected (Line 19)	(109,000)	(38,963)	(28,855)	0
4 Add First Year's Depr on CIAC (Line 8)	*1,645	1,594	1,695	908
5 Add/Less Other Effects (Lines 20 & 21)	0	0	0	0
6	-	-	-	-
7 Adjusted Income Before CIAC and Gross-up \$	98,052	\$ 173,883	\$ (43,690)	\$ (102,882)
8				
9 Taxable CIAC (Line 7) \$	291,000	\$ 88,591	\$ 56,579	\$ 51,615
10 Less first years depr. (Line 8) \$	(1,645)	\$ (1,594)	\$ (1,695)	\$ (908)
11				
12 Adjusted Income After CIAC \$	387,407	\$ 260,880	\$ 11,194	\$ (52,175)
13 Less: NOL Carry Forward \$	0	\$ 0	\$ 0	\$ 0
14				
15 Net Taxable CIAC \$	289,355	\$ 86,997	\$ 11,194	\$ 0
16 Combined Marginal state & federal tax rates	37.63%	37.63%	37.63%	37.63%
17				
18 Net Income tax on CIAC \$	108,884	\$ 32,737	\$ 4,212	\$ 0
19 Less ITC Realized	0	0	0	0
20				
21 Net Income Tax \$	108,884	\$ 32,737	\$ 4,212	\$ 0
22 Expansion Factor for gross-up taxes	1.60333493666827	1.60333493666827	1.60333493666827	1.60333493666827
23				
24 Gross-up Required to pay tax effect \$	174,578	\$ 52,488	\$ 6,753	\$ 0
25 Less CIAC Gross-up collected (Line 19)	(109,000)	(38,963)	(28,855)	(9,169)
26				
27 (OVER) OR UNDER COLLECTION \$	65,578	\$ 13,525	\$ (22,102)	\$ (9,169)
28	=	=	=	=
29				
30 TOTAL YEARLY REFUND \$	0	\$ 0	\$ (22,102)	\$ (9,169)
31	=	=	=	=
32				
33 PROPOSED REFUND (excluding interest) \$	(31,271)	=	=	=
34	=	=	=	=

*1993 First Year's Depreciation - Estimated