

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 921240-WS
contributions-in-aid-of-) ORDER NO. PSC-93-0389-FOF-WS
construction (CIAC) gross-up) ISSUED: 03/15/93
funds received by Florida Cities)
Water Company in Brevard,)
Collier, and Lee Counties.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING REFUNDS OF EXCESS CIAC GROSS-UP
COLLECTIONS FOR THE YEARS 1987 THROUGH 1990

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

The repeal of Section 118(b) of the Internal Revenue Code resulted in making contributions-in-aid-of-construction (CIAC) gross income and 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 to be used to determine the actual state and federal income tax liability directly attributable to CIAC, and whether a refund of the gross-up is appropriate for any given year for which gross-up was in effect. These Orders also require that all gross-up amounts for a tax year which are in excess of a utility's actual tax liability for the same year resulting from its collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes.

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REG. REPORTS/REPORTING

ORDER NO. PSC-93-0389-FOF-WS
DOCKET NO. 921240-WS
PAGE 2

In Order No. 23541, we determined that any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue collecting the gross-up, had to file a petition for approval with the Commission on or before October 29, 1990. Florida Cities did not request authority to continue to gross-up CIAC for the related tax impact. By Orders Nos. 24773, 24774, and 24775, all issued July 8, 1991, we canceled the utility's authority to gross-up.

Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, 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. That Order included the generic calculation form.

In compliance with Order No. 16971, Florida Cities filed its 1987 through 1990 annual CIAC reports regarding its collection of gross-up for each year. The utility's gross-up authority was cancelled as of January 1, 1991; therefore, no action is necessary for 1991. However, the utility indicated in the CIAC reports filed with this Commission that no refund is necessary. We find that the utility's refund calculations are not correct, and we have addressed our concerns and findings regarding the utility's refunds below.

Reduction to Taxable CIAC

In the utility's proposed calculation of the refund of gross-up funds collected, the utility failed to include the first year's depreciation as a reduction to the taxable amount of CIAC. The annual CIAC reports filed by the utility detail the amount of depreciation per year. Order No. 23541 states that the full gross-up formula takes into account the first year's depreciation using a half-year convention. The depreciation is an expense item which reduces the amount of CIAC which is taxable. We have included the first year's depreciation in our calculation of the net taxable amount of CIAC.

Gross-up Collected

On May 12, 1992, the utility filed a schedule showing its calculation of jurisdictional federal and state income taxes on CIAC and withdrawals from the escrow account used to pay the taxes. In its filing, the utility stated that annual withdrawals from the escrow account used to pay federal and state income tax on CIAC

have not exceeded the tax liability. However, the threshold for a refund is not the amount of the withdrawal for payment of taxes. Orders Nos. 16971 and 23541 require that utilities annually file information to be used to determine the actual state and federal income tax liability directly attributable to the CIAC. Order No. 23541 specifically states that all gross-up amounts in excess of a utility's actual tax liability resulting from its collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes. If gross-up collections exceed this determination of tax liability, a refund is required.

The utility incorrectly calculated the tax liability based upon 100 percent of the CIAC and gross-up collected as if the total amount were taxable. However, Order No. PSC-92-0961-FOF-WS clarified the procedure to be used in calculating the amount of gross-up refunds. The calculations used in this Order are consistent with Order No. PSC-92-0961-FOF-WS.

Annual Gross-up Refund Amounts

Based upon the foregoing, we have recalculated the amount of refund per year. Our calculations, taken from the information provided by the utility in its gross-up reports filed each year, are reflected on Schedule No. 1, attached hereto. A summary of each year's refund calculation follows.

The utility's 1987 CIAC report indicates that a total of \$961,547 of gross-up collections was received, with the first year's depreciation reported as \$47,502. We used the 43.30 percent combined federal and state tax rate as provided in the 1987 CIAC Report to calculate the tax effect. Based upon the foregoing, we calculate a refund of \$30,478 for 1987.

The 1988 CIAC report indicates that a total of \$2,572,243 of gross-up collections was received, with the first year's depreciation reported as \$159,949. We used the 37.63 percent combined federal and state tax rate as provided in the 1988 CIAC Report to calculate the tax effect. Based upon the foregoing, we calculate a refund of \$95,341 for 1988.

The 1989 CIAC report indicates that a total of \$2,329,660 of gross-up collections was received, with the first year's depreciation reported as \$144,881. We used the 37.63 percent combined federal and state tax rate as provided in the 1989 CIAC

ORDER NO. PSC-93-0389-FOF-WS
DOCKET NO. 921240-WS
PAGE 4

Report to calculate the tax effect. Based upon the foregoing, we calculate a refund of \$86,097 for 1989.

The 1990 CIAC report indicates that a total of \$1,893,911 of gross-up collections was received, with the first year's depreciation reported as \$117,773. We used the 37.63 percent combined federal and state tax rate as provided in the 1990 CIAC Report to calculate the tax effect. Based upon the foregoing, we calculate a refund of \$70,121 for 1990.

The refund amounts discussed above do not include the accrued interest which must also be refunded from December 31st of each year to the date of refund. The utility did not collect gross-up during the year 1991. Therefore, no refund was proposed by the utility, and we agree that no refund is necessary for 1991.

In consideration of the foregoing, we find it appropriate that the utility shall refund \$30,478 for 1987; \$95,341 for 1988; \$86,097 for 1989; and \$70,121 for 1990, for a total of \$282,037 plus accrued interest through the date of 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 shall be refunded on a pro rata basis to those persons who contributed the taxes, and the refund shall be completed within 6 months of 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 refund.

In the event no timely protest is received, this docket should be closed.

Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that Florida Cities Water Company shall make refunds of \$30,478 for 1987; \$95,341 for 1988; \$86,097 for 1989; and \$70,121 for 1990, for a total of \$282,037 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of CIAC. It is further

ORDERED that Florida Cities Water Company shall refund all of the amounts on a pro rata basis to those persons who contributed the taxes, and the refund shall be completed within 6 months of the effective date of this Order. It is further


ORDER NO. PSC-93-0389-FOF-WS
DOCKET NO. 921240-WS
PAGE 5

ORDERED that Florida Cities Water Company 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 refund. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final unless an appropriate petition is received by the Director of the Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the Notice of Further Judicial Proceedings or Judicial Review. It is further

ORDERED that in the event no timely protest is received, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 15th day of March, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LAJ

Commissioner Luis J. Lauredo dissented without opinion.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 5, 1993.

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 adversely 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.

FLORIDA CITIES WATER COMPANY

COMMISSION CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1987	1988	1989	1990	1991
1 Form 1120, Line 30 (Line 15)	\$ 3,793,099	\$ 8,666,070	\$ 6,901,695	\$ 5,459,735	\$ 0
2 Less CIAC (Line 7)	(1,266,708)	(4,265,300)	(3,863,484)	(3,140,623)	0
3 Less Gross-up collected (Line 19)	(961,547)	(2,572,243)	(2,329,660)	(1,893,911)	0
4 Add First Year's Depr on CIAC (Line 8)	47,502	159,949	144,881	117,773	0
5 Add/Less Other Effects (Lines 20 & 21)	0	176,261	669,110	676,856	0
6					
7 Adjusted Income Before CIAC and Gross-up	\$ 1,612,346	\$ 2,164,737	\$ 1,522,542	\$ 1,219,830	\$ 0
8					
9 Taxable CIAC (Line 7)	\$ 1,266,708	\$ 4,265,300	\$ 3,863,484	\$ 3,140,623	\$ 0
10					
11 Taxable CIAC Resulting in a Tax Liability	\$ 1,266,708	\$ 4,265,300	\$ 3,863,484	\$ 3,140,623	\$ 0
12 Less first years depr. (Line 8)	(47,502)	(159,949)	(144,881)	(117,773)	0
13					
14 Net Taxable CIAC	\$ 1,219,206	\$ 4,105,351	\$ 3,718,603	\$ 3,022,850	\$ 0
15 Effective state and federal tax rate	43.30%	37.63%	37.63%	37.63%	37.63%
16					
17 Net Income tax on CIAC	\$ 527,916	\$ 1,544,844	\$ 1,399,310	\$ 1,137,498	\$ 0
18 Less ITC Realized	0	0	0	0	0
19					
20 Net Income Tax	\$ 527,916	\$ 1,544,844	\$ 1,399,310	\$ 1,137,498	\$ 0
21 Expansion Factor for gross-up taxes	1.763668430	1.603334936	1.603334936	1.603334936	1.603334936
22					
23 Gross-up Required to pay tax effect	\$ 931,069	\$ 2,476,902	\$ 2,243,563	\$ 1,823,790	\$ 0
24 Less CIAC Gross-up collected (Line 19)	(961,547)	(2,572,243)	(2,329,660)	(1,893,911)	0
25					
26 PROPOSED REFUND (excluding interest)	\$ (30,478)	\$ (95,341)	\$ (86,097)	\$ (70,121)	\$ 0
27					
28					No Gross-up
29 TOTAL REFUND	\$ (282,037)				Collected
30					