

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 930576-WS
contributions-in-aid-of-) ORDER NO. PSC-93-1545-FOF-WS
construction (CIAC) gross-up) ISSUED: October 21, 1993
funds received by SOUTHSIDE)
UTILITIES, INC. in Duval County.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING REFUND OF EXCESS 1991 CIAC
GROSS-UP COLLECTIONS

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

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, the Commission 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, issued December 18, 1986, and 23541, issued October 1, 1990, 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, and whether a refund of the gross-up is appropriate for any given year for which gross-up was in effect. These orders also required that all gross-up amounts for a tax year which are in excess of a utility's

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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.

In Order No. 23541, the Commission 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. By Order No. 25527, issued February 24, 1992, Southside Utilities, Inc. (Southside or utility) was authorized to continue to gross-up CIAC for the related tax impact.

On February 24, 1992, this Commission issued Order No. 25776, which approved gross-up refunds for fiscal years ended June 30, 1987 through 1990. The refunds have been completed and verified.

On September 9, 1992, this Commission issued Order No. PSC-92-0961-FOF-WS, which 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 to include the generic calculation form. In compliance with Order No. 16971, Southside filed its 1991 and 1992 annual CIAC reports regarding its collection of gross-up for each year. The utility submitted an amended calculation for the June 30, 1991 fiscal year.

On May 14, 1993, the City of Jacksonville filed its application requesting Commission acknowledgement of the City's purchase of Southside's water and wastewater facilities. The purchase of all of Southside's facilities was concluded on October 30, 1992. By Order No. PSC-93-0939-FOF-WS, issued June 22, 1993, the Commission acknowledged the transfer of the system to the City of Jacksonville.

Annual Gross-Up Refund Amounts

Based upon the foregoing, we have calculated 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 1991 CIAC report indicates that a total of \$305,826 of gross-up collections was received, with the first year's depreciation reported as \$12,908. The utility did not have an above-the-line loss for 1991, therefore no reduction is

necessary to the amount of taxable CIAC. We used the 37.63 percent combined federal and state tax rates that were in effect during 1991 to calculate the tax effect. Based upon the foregoing, we calculate a refund of \$6,762 for 1991. This amount does not include the accrued interest which must also be refunded from December 31, 1991 to the date of refund.

The utility's 1992 CIAC report indicates that a total of \$24,953 of gross-up collections was received, with the first year's depreciation reported as \$1,491. The utility did not have an above-the-line loss for 1992, therefore no reduction is necessary to the amount of taxable CIAC. Again, we used the 37.63 percent combined federal and state tax rates that were in effect during 1991 to calculate the tax effect. Based upon the foregoing, we find that the utility had a tax liability resulting from its collection of CIAC which was greater than the amount of gross-up collected, and therefore, no refund is necessary.

Since the utility was sold to the City of Jacksonville in October of 1992, gross-up collections received during 1993 are not subject to this Commission's jurisdiction, and are not at issue here.

In consideration of the foregoing, we find it appropriate that the utility refund \$6,762 for 1992, plus accrued interest through the date of refund, for gross-up collections, in excess of the actual tax liability resulting from the collection of CIAC in 1991. The refund shall be completed within 6 months. The utility shall submit copies of canceled checks, credits applied to monthly bills, or other evidence which verifies that the refund has been made, within 30 days from the date of the refund.

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

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Southside Utilities, Inc., shall refund \$6,762 plus accrued interest through the date of refund, for 1991 gross-up collected in excess of the tax liability resulting from the collection of CIAC. It is further

ORDERED that Southside Utilities, Inc., shall refund the \$6,762 on a pro rata basis to those persons who contributed the

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taxes, and the refund shall be completed within 6 months of the effective date of this Order. It is further

ORDERED that Southside Utilities, Inc., shall submit copies of cancelled checks, credits applied to monthly bills, or other evidence which verifies that the refund has been made, within 30 days from the date of refund. 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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, 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 in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of October, 1993.



STEVE TRIBBLE, 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 120.59(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 November 12, 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.

SOUTHSIDE UTILITIES, INC.

COMMISSION CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1991	1992
	-----	-----
1 Form 1120, Line 30 (Line 15)	\$ 819,073	\$ 297,845
2 Less CIAC (Line 7)	(508,591)	(82,642)
3 Less Gross-up collected (Line 19)	(305,826)	(24,953)
4 Add First Year's Depr on CIAC (Line 8)	12,908	1,491
5 Add/Less Other Effects (Lines 20 & 21)	0	0
6	-----	-----
7 Adjusted Income Before CIAC and Gross-up	\$ 17,564	\$ 191,741
8		
9 Taxable CIAC (Line 7)	\$ 508,591	\$ 82,642
10		
11 Taxable CIAC Resulting in a Tax Liability	\$ 508,591	\$ 82,642
12 Less first years depr. (Line 8)	(12,908)	(1,491)
13	-----	-----
14 Net Taxable CIAC	\$ 495,683	\$ 81,151
15 Effective state and federal tax rate	37.63%	37.63%
16	-----	-----
17 Net Income tax on CIAC	\$ 186,526	\$ 30,537
18 Less ITC Realized	0	0
19	-----	-----
20 Net Income Tax	\$ 186,526	\$ 30,537
21 Expansion Factor for gross-up taxes	1.603334936	1.603334936
22	-----	-----
23 Gross-up Required to pay tax effect	\$ 299,064	\$ 48,961
24 Less CIAC Gross-up collected (Line 19)	(305,826)	(24,953)
25	-----	-----
26 PROPOSED REFUND (excluding interest)	\$ (6,762)	\$ 0
27	=====	=====
28		
29 TOTAL REFUND	\$ (6,762)	
30	=====	