

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 941083-WS
contributions-in-aid-of-) ORDER NO. PSC-95-0781-FOF-WS
construction (CIAC) gross-up) ISSUED: June 28, 1995
fund for 1987-1990 for CANAL)
UTILITIES, INC. in Duval County.)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER DISPOSING OF CIAC GROSS-UP FUNDS

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 (I.R.C.) 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 liability resulting from the inclusion of CIAC as gross income.

Orders Nos. 16971 and 23541, issued October 1, 1990, require that utilities annually file information to be used in determining 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 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 resulting from its collection of CIAC should be

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

On September 9, 1992, this Commission issued Proposed Agency Action 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 which included Attachment A which reflects the generic calculation form.

By Order No. 19137, issued April 13, 1988, the Commission found that in cases where a utility had incurred no tax liability as a result of its collection of CIAC, that it was appropriate for the staff of the Commission to administratively grant permission for utilities to implement refunds of the gross-up amounts. By letter dated April 27, 1988, Canal Utilities, Inc. (Canal or utility) reported on tax impact fees collected under the gross-up authorization of Order No. 16971 and proposed to refund to contributors \$135,736 plus interest for 1987. Additionally, by letter dated March 21, 1989, the utility indicated that during 1987, taxable income reported to the IRS was reduced in accordance with the April 27, 1988 proposed refund. As a result, the utility requested that the Commission act quickly to avoid the prospect of filing an amended return which would further complicate the tax impact refund process. Order No. 21436, issued June 26, 1989, in Docket No. 860184-PU, authorized the utility to refund \$135,736 on a pro rata basis to those who contributed the taxes on CIAC. However, the Order was protested. Subsequently, Order No. 23541, issued October 1, 1990, required that any gross-up amounts collected in excess of a utility's actual tax liability resulting from its collection of CIAC be refunded on a pro rata basis to the contributors of those amounts.

The sale of Canal's facilities to the City of Jacksonville occurred on December 11, 1990. In Docket No. 910034-WS, by Order No. 24209, issued March 8, 1991, the Commission acknowledged the purchase of the system. The docket remained open until the 1990 annual report was received and the appropriate 1990 regulatory assessment fees had been paid. The certificates were cancelled and Docket No. 910034-WS was closed by Order No. 24369, issued April 15, 1991. The disposition of CIAC gross-up funds was not addressed at that time. This order addresses the appropriate disposition of excess gross-up funds collected for the period of October 1, 1987 through December 11, 1990.

REFUND OF EXCESS GROSS-UP COLLECTIONS 1987-1990

Canal was dissolved in November of 1991. The Utility is currently in the process of winding up its business affairs. The escrow account of CIAC tax gross-up monies was not transferred to the City of Jacksonville. The Utility maintained all rights and obligations to it upon the sale. Therefore, in compliance with Order No. 16971, Canal filed its 1987 through 1990 annual CIAC reports regarding its collection of gross-up for each year. By letter dated August 19, 1994, our staff submitted their preliminary refund calculation numbers to the utility. By letter dated August 30, 1994, the utility responded that they did not agree with staff's 1989 preliminary calculation.

We have calculated the gross-up required to pay the tax liability resulting from the collection of taxable CIAC by grossing-up the net taxable CIAC amount, in accordance with the method adopted in Order No. PSC-92-0961-FOF-WS, issued September 9, 1992. We find that all tax depreciation benefits on CIAC (other than the first year's) should be classified below-the-line.

The utility shall refund \$73,005 for 1989 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of taxable 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. The refund shall be completed within 6 months of the effective date of this Order. Within 30 days from the date of the refund, the utility shall submit copies of cancelled checks, credits applied to monthly bills or other evidence which verifies that the refunds have been made. Within 30 days from the date of the refund, the utility shall also provide a list of unclaimed refunds detailing the contributors and the amounts, and an explanation of the efforts made to make the refunds. Further, the utility shall deliver any unclaimed refunds to the State of Florida Comptroller's Office as abandoned property. The unclaimed refunds shall be delivered to the Comptroller's Office on the 12 month anniversary following staff's written notification to the utility that the refunds have been made in accordance with this Commission Order. Any checks that are requested to be reissued before that time shall be issued by the utility or its representative.

Annual Gross-Up Refund Amounts

Based upon the foregoing, we have calculated the amount of refund per year which is appropriate. Our calculations are

reflected on Schedule No. 1. A summary of each year's refund calculation follows.

1987

By letter dated April 27, 1988, Canal requested to refund \$135,736 of the tax impact collected on CIAC for the calendar year 1987. The utility also proposed to refund all interest earned on the grossed-up amount. This refund was approved by Order No. 23541, issued October 1, 1990, which required that any gross-up amounts collected in excess of a utility's actual tax liability resulting from its collection of CIAC be refunded on a pro rata basis to the contributors of those amounts. By letter dated February 20, 1995, the utility's representative submitted the utility's 1987 refund report.

According to Canal's 1987 CIAC Tax Impact Report, the utility billed \$247,195 in tax impact fees on \$294,139 of taxable CIAC in 1987. The tax impact fee was billed at 84.04% on the taxable CIAC collected. The utility collected \$175,342 of the tax impact fees in 1987 and the balance of \$71,853 was due from the developers at December 31, 1987. The additional income tax directly related to the collection of taxable CIAC was \$111,459 in 1987. As a result, the utility accrued a refund to contributors of \$135,736 at December 31, 1987. Therefore, in accordance with Order No. 23541, the utility has completed the 1987 refund and no further action is required.

1988

We find that a refund of gross-up collections for 1988 is not appropriate. The 1988 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 taxable CIAC received during the year would be taxed. The report indicates a total of \$1,147,114 in taxable CIAC was received, with \$25,227 being deducted for the first year's depreciation. In addition, \$589,933 of gross-up collections were also received. We used the 37.63% combined federal and state tax rates as provided in the 1988 CIAC Report to calculate the tax effect of \$676,873. The gross-up required to pay the tax impact exceeded the gross-up collections for 1988. Therefore, we find that no refund is necessary for 1988.

1989

We find that a refund of \$73,005 for gross-up collections for 1989 is appropriate. The 1989 CIAC report indicates that the utility was not in a taxable position on an above-the-line basis

prior to the inclusion of taxable CIAC and gross-up. The report indicates a total of \$951,437 gross-up collections were received, with the first year's depreciation of \$53,191 associated with \$1,596,491 in taxable CIAC. We used the 37.63% combined federal and state tax rate as provided in the 1989 CIAC Report to calculate the tax effect of \$878,432. Based upon the foregoing, we find that the refund amount of \$73,005 is appropriate for 1989. This amount does not include the accrued interest which must also be refunded from December 31, 1989, to the date of refund.

1990

We find that a refund of gross-up collections for 1990 is not appropriate. The 1990 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 taxable CIAC received during the year would be taxed. The report indicates a total of \$1,046,167 in taxable CIAC was received, with \$34,133 being deducted for the first year's depreciation. In addition, \$592,208 of gross-up collections were also received. We used the 37.63% combined federal and state tax rates as provided in the 1988 CIAC Report to calculate the tax effect of \$610,595. The gross-up required to pay the tax impact exceeded the gross-up collections for 1990. Therefore, we find that no refund is necessary for 1990.

CLOSING OF DOCKET

This docket shall remain open pending verification of the refund. Upon verification that the refunds have been made, this docket shall be closed administratively.

Based on the foregoing, it is, therefore,


ORDERED by the Florida Public Service Commission that Canal Utilities, Inc. shall refund \$73,005 in gross-up collections for 1989. The refund shall be made in accordance with the terms set forth in this Order. It is further

ORDERED that Canal Utilities, Inc. shall not be required to make any refund in gross-up collections for 1987, 1988 or 1990. It is further

ORDERED that upon expiration of the protest period and verification that the refunds have been made in accordance with this Order, this docket shall be closed administratively.

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By ORDER of the Florida Public Service Commission, this 28th
day of June, 1995.



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 120.59(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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 19, 1995.

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

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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 and/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 No. 1

CANAL UTILITIES, INC.

COMMISSION CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1988	1989	1990
1 Form 1120, Line 30 (Line 15)	\$ 1,775,546	\$ 2,440,734	\$ 1,737,310
2 Less CIAC (Line 7)	(1,147,114)	(1,596,491)	(1,046,167)
3 Less Gross-up collected (Line 19)	(589,933)	(951,437)	(592,208)
4 Add First Year's Depr on CIAC (Line 8)	25,227	53,191	34,133
5 Add/Less Other Effects (Lines 20 & 21)	(14,832)	(33,336)	(21,155)
6			
7 Adjusted Income Before CIAC and Gross-up	\$ 48,894	\$ (87,339)	\$ 111,913
8			
9 Taxable CIAC (Line 7)	\$ 1,147,114	\$ 1,596,491	\$ 1,046,167
10			
11 Taxable CIAC Resulting in a Tax Liability	\$ 1,147,114	\$ 1,509,152	\$ 1,046,167
12 Less first years depr. (Line 8)	(25,227)	(53,191)	(34,133)
13			
14 Net Taxable CIAC	\$ 1,121,887	\$ 1,455,961	\$ 1,012,034
15 Combined Marginal state & federal tax rates	37.63%	37.63%	37.63%
16			
17 Net Income tax on CIAC	\$ 422,166	\$ 547,878	\$ 380,828
18 Less ITC Realized	0	0	0
19			
20 Net Income Tax	\$ 422,166	\$ 547,878	\$ 380,828
21 Expansion Factor for gross-up taxes	1.603334936	1.603334936	1.603334936
22			
23 Gross-up Required to pay tax effect	\$ 676,873	\$ 878,432	\$ 610,595
24 Less CIAC Gross-up collected (Line 19)	(589,933)	(951,437)	(592,208)
25			
26 (OVER) OR UNDER COLLECTION	\$ 86,940	\$ (73,005)	\$ 18,387
27			
28			
29 TOTAL YEARLY REFUND	\$ 0	\$ (73,005)	\$ 0
30			
31			
32 PROPOSED REFUND (excluding interest)	(73,005)		
33			