

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of ) DOCKET NO. 940076-WS  
contributions-in-aid-of- ) ORDER NO. PSC-97-0147-FOF-WS  
construction (CIAC) gross-up ) ISSUED: February 11, 1997  
funds received by SUNBELT )  
UTILITIES, INC. in Lake and )  
Sumter Counties. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

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

ORDER FINDING REFUNDS OF CIAC GROSS-UP  
FUNDS NOT APPROPRIATE

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 sale of Sunbelt Utilities, Inc. (Sunbelt or utility) to the Village Center Community Development District occurred on November 29, 1993. By Order No. PSC-94-0274-FOF-WS, in Docket No. 931206-WS, issued March 9, 1994, the Commission acknowledged the purchase of the system, the certificates were cancelled and the docket was closed. Prior to the issuance of Order No. PSC-94-0274-FOF-WS, this docket was opened to address the disposition of contributions-in-aid-of-construction (CIAC) gross-up funds. This Order addresses the appropriate disposition of excess gross-up funds collected by the utility for the period December 31, 1987, through November 29, 1993.

As a result of the repeal of Section 118(b) of the Internal Revenue Code, CIAC became gross income and were 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.

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FPSC-RECORDS/REPORTING

Order No. 16971 and Order No. 23541, issued October 1, 1990, required utilities to 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.

In Order No. 23541, the Commission ordered any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue, to file a petition for approval with the Commission on or before October 29, 1990. Sunbelt filed for authority to continue to gross-up on June 20, 1991. By Order No. 25778, issued February 24, 1992, Sunbelt was granted authority to continue to gross-up using the full gross-up formula.

On September 9, 1992, this Commission issued Proposed Agency Action Order No. PSC-92-0961-FOF-WS, which clarified the provision 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. This order included Attachment A which reflects the generic calculation form. No protests were filed, and the Order became final.

On March 29, 1996, Docket No. 960397-WS was opened to review the Commission's policy concerning the collection and refund of CIAC gross-up. Workshops were held and comments and proposals were received from the industry and other interested parties. By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, staff was directed to continue processing CIAC gross-up and refund cases pursuant to Orders Nos. 16971 and 23541; to make a recommendation to the Commission concerning whether the Commission's policy regarding the collection and refund of CIAC should be changed upon staff's completion of its review of the proposals and comments offered by the workshop participants; and to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up.

However, on August 1, 1996, the Small Business Job Protection Act of 1996 (The Act) passed Congress and was signed into law by the President on August 20, 1996. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, in Docket No. 960965-WS, Order No. PSC-96-1180-FOF-WS was issued to revoke the authority of utilities to collect gross-up of CIAC and to cancel the respective

tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Since there was no longer a need to review the Commission's policy on the gross-up of CIAC, on October 8, 1996, Order No. PSC-96-1253-FOF-WS was issued closing Docket No. 960397-WS. However, as established in Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Order Nos. 16971 and 23541.

No Refund Required for Years 1987 through 1993

In compliance with Orders Nos. 16971 and 23541, Sunbelt filed its 1987 through 1993 annual CIAC reports regarding its collection of gross-up for each year. By letter dated June 18, 1996, staff submitted preliminary refund calculation numbers to the utility. By letter dated October 30, 1996, the utility indicated that although it disagrees with the above-the-line classification of officers' salaries and professional fees, it would accept the adjustments because the adjustments were not recognized in the last rate order and, also, because the adjustments will not have a material impact on above-the-line income before CIAC and the resulting computation of under/over collections of gross-up.

Initially, our refund calculations included adjustments for first year's depreciation. However, in its letter of October 30th, the utility indicated that it did not agree with staff's imputation of first year's depreciation. According to the utility, and as shown on the utility's 1993 tax return, all tax depreciation was recaptured in determining the taxable gain on sale of utility assets. Further, after recapture, all prior depreciation deductions and the related tax benefits, thereto, were effectively reversed. The utility states, and we agree that there are no first year depreciation benefits to recognize, therefore, no adjustment for first year's depreciation will be made. The refund calculations were revised accordingly.

Our initial refund calculation also included adjustments for the amortization of debt/bond issuance costs. Although it is normal policy to adjust the cost rate of debt for issuance costs and discounts/premiums, the utility explains, and we agree that because these costs were not recognized in the utility's last rate case, no adjustments for debt/bond issuance costs should be made. The refund calculations were revised accordingly. Based on the information above, new refund calculations were sent to the utility on December 16, 1996.

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.

#### Annual Gross-Up Refund Amounts

Our calculations, taken from the information provided by the utility in its gross-up reports filed each year, are reflected on Schedule No. 1. A summary of each year's refund calculation follows.

#### **1987**

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1987 is not appropriate. The utility's 1987 CIAC report indicates that the utility was operating at a loss before the inclusion of 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 \$376,959 in taxable income was received, and as explained above, an adjustment for first year's depreciation is not necessary. When this amount is netted against the utility's operating loss of \$20,769, the amount of taxable CIAC resulting in a tax liability is \$356,190. The 43.30% combined marginal federal and state tax rates as provided in the 1987 CIAC report were used to calculate net income taxes of \$154,230. 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 \$272,011. The utility collected \$209,301 of gross-up monies. The utility required more in gross-up to pay the tax impact than the utility collected, therefore, we find that no refund is appropriate.

#### **1988**

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1988 is not appropriate. The utility's 1988 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$346,240 in taxable CIAC was received, and as explained above, an adjustment for first year's depreciation is not necessary. The 37.63% combined marginal federal and state tax rates as provided in the 1988 CIAC report were used to calculate net income taxes of \$130,290 on the taxable CIAC. 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 \$208,899. The utility collected \$248,860 of gross-up monies. Normally, a refund of \$39,961 would be required.

Although the utility collected \$39,961 more than what was required to pay the tax impact on CIAC, we find it appropriate not to require a refund in this particular case. In its October 30th letter, the utility explains, "that all of the gross-up collected by Sunbelt was contributed by the related developer, the Villages of Lake-Sumter (VLS), Inc. As indicated in the utility's 1993 tax return, Sunbelt was merged into the Village Center Community Development District on November 30, 1993. With the merger, the utility was dissolved. Thus, any under or over collection of gross-up is owned by VLS to itself. Effectively, a gross-up settlement was made on the merger date because all assets of Sunbelt were merged with those of the gross-up contributor, VLS." Based on the above circumstances, we find that Sunbelt shall not be required to make a refund of \$39,961 for 1988.

#### 1989

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1989 is not appropriate. The utility's 1989 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The utility received taxable CIAC of \$356,480, and as previously explained, an adjustment for first year's depreciation is not necessary. The 37.63% combined marginal federal and state tax rates as provided in the 1989 CIAC report were used to calculate net income taxes of \$134,143 on the taxable CIAC. 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 \$215,076. The utility collected \$233,917 of gross-up monies. Normally, a refund of \$18,841 would be required. However, as previously explained, we will not require Sunbelt to make a refund of \$18,841 for 1989.

#### 1990

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1990 is not appropriate. The utility's 1990 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The utility received taxable CIAC of \$333,680, and as explained above, an adjustment for first year's depreciation is

not necessary. The 37.63% combined marginal federal and state tax rates as provided in the 1990 CIAC report were used to calculate net income taxes of \$125,564 on the taxable CIAC. 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 \$201,321. The utility collected \$201,319 of gross-up monies. The utility required more in gross-up to pay the tax impact than the utility collected, therefore, no refund is required.

#### 1991

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1991 is not appropriate. The utility's 1991 CIAC report indicates that the utility was operating at a loss before the inclusion of 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 \$286,320 in taxable income was received, and as explained above, an adjustment for first year's depreciation is not necessary. When this amount is netted against the utility's operating loss of \$909, the amount of taxable CIAC resulting in a tax liability is \$285,411. The 37.63% combined marginal federal and state tax rates as provided in the 1991 CIAC report were used to calculate net income taxes of \$107,400. 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 \$172,198. The utility collected \$172,745 of gross-up monies. Normally, a refund of \$547 would be required. However, as already explained, we find it appropriate not to require Sunbelt to make a refund of \$547 for 1991.

#### 1992

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1992 is not appropriate. The utility's 1992 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The utility received taxable CIAC of \$372,080, and as explained above, an adjustment for first year's depreciation is not necessary. The 37.63% combined marginal federal and state tax rates as provided in the 1992 CIAC report were used to calculate net income taxes of \$140,014 on the taxable CIAC. 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 \$224,489. The utility collected \$224,411 of

gross-up monies. The utility required more in gross-up to pay the tax impact than the utility collected, therefore, no refund is required.

**1993**

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1993 is not appropriate. 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 CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The utility received taxable CIAC of \$334,800, and as explained above, an adjustment for first year's depreciation is not necessary. The 37.63% combined marginal federal and state tax rates as provided in the 1993 CIAC report were used to calculate net income taxes of \$125,985 on the taxable CIAC. 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 \$201,996. The utility collected \$201,926 of gross-up monies. The utility required more in gross-up to pay the tax impact than the utility collected, therefore, no refund is appropriate.

If a timely protest is not filed upon expiration of the protest period by a substantially affected person, no further action is necessary and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sunbelt Utilities, Inc., shall not be required to refund contributions-in-aid-of-construction gross-up funds for the years 1987 through 1993. 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, 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 in the event this Order becomes final, this Docket shall be closed.

ORDER NO. PSC-97-0147-FOF-WS  
DOCKET NO. 940076-WS  
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By ORDER of the Florida Public Service Commission, this 11th  
day of February, 1997.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

LAJ



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.

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 March 4, 1997.

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 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.

COMMISSION CALCULATED GROSS-UP REFUND

SUNBELT UTILITIES, INC.

SOURCE: (Line references are from CIAC Reports)

	1987	1988	1989	1990	1991	1992	1993
1 Form 1120, Line 30 (Line 15)	\$ 565,491	\$ 759,435	\$ 960,778	1,117,591	458,156	790,027	1,225,569
2 Less CIAC (Line 7)	(376,959)	(346,240)	(356,480)	(333,680)	(286,320)	(372,080)	(334,800)
3 Less Gross-up collected (Line 19)	(209,301)	(248,860)	(233,917)	(201,319)	(172,745)	(224,411)	(201,926)
4 Add First Year's Depr on CIAC (Line 8)	0	0	0	0	0	0	0
5 Add/Less Other Effects (Lines 20 & 21)	0	0	0	0	0	0	0
6							
7 Adjusted Income Before CIAC and Gross-up	\$ (20,769)	\$ 164,335	\$ 370,381	582,592	(909)	193,536	688,843
8							
9 Taxable CIAC (Line 7)	\$ 376,959	\$ 346,240	\$ 356,480	333,680	286,320	372,080	334,800
10							
11 Taxable CIAC Resulting in a Tax Liability	\$ 356,190	\$ 346,240	\$ 356,480	333,680	285,411	372,080	334,800
12 Less first years depr. (Line 8)	0	0	0	0	0	0	0
13							
14 Net Taxable CIAC	\$ 356,190	\$ 346,240	\$ 356,480	333,680	285,411	372,080	334,800
15 Combined Marginal state & federal tax rates	43.30%	37.63%	37.63%	37.63%	37.63%	37.63%	37.63%
16							
17 Net Income tax on CIAC	\$ 154,230	\$ 130,290	\$ 134,143	125,564	107,400	140,014	125,985
18 Less ITC Realized	0	0	0	0	0	0	0
19							
20 Net Income Tax	\$ 154,230	\$ 130,290	\$ 134,143	125,564	107,400	140,014	125,985
21 Expansion Factor for gross-up taxes	1.7636684	1.6033349	1.6033349	1.6033349	1.6033349	1.6033349	1.6033349
22							
23 Gross-up Required to pay tax effect	\$ 272,011	\$ 208,899	\$ 215,076	201,321	172,198	224,489	201,996
24 Less CIAC Gross-up collected (Line 19)	(209,301)	(248,860)	(233,917)	(201,319)	(172,745)	(224,411)	(201,926)
25							
26 (OVER) OR UNDER COLLECTION	\$ 62,710	\$ (39,961)	\$ (18,841)	2	(547)	78	70
27							
28							
29 TOTAL YEARLY REFUND	\$ 0	\$ 0	\$ 0	0	0	0	0
30							
31 PROPOSED REFUND (excluding interest)	\$ 0						