

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to gross-up) DOCKET NO. 921218-SU
contributions-in-aid-of-) ORDER NO. PSC-93-0206-FOF-SU
construction (CIAC) in Pasco) ISSUED: 02/09/93
County for the related tax)
impact by HUDSON UTILITIES,)
INC. d/b/a HUDSON BAY COMPANY)

The following Commissioners participated in the disposition of this matter:

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

ORDER REFLECTING NO ACTION BY THE COMMISSION,
ALLOWING REQUEST FOR APPROVAL OF GROSS-UP OF
CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION TO
BECOME EFFECTIVE ON AN INTERIM BASIS

BY THE COMMISSION:

Background

By Order No. 16971, issued December 18, 1986, the Commission granted approval for water and wastewater utilities to amend their service availability policies to meet the tax impact on Contributions-in-Aid-of-Construction (CIAC) resulting from the amendment of Section 118(b) of the Internal Revenue Code. In Order No. 23541, issued October 1, 1990, we determined that utilities currently grossing-up CIAC must file a petition for continued authority to gross-up and also ordered that no utility may gross-up CIAC without first obtaining the approval of this Commission. On November 30, 1992, pursuant to Rule 25-22.036, Florida Administrative Code and Order No. 23541, Hudson Bay Company (Hudson or Utility) filed its petition for authority to gross-up CIAC.

Tariff Implementation

In its petition, the utility asserts that its request to gross-up CIAC is necessary because it anticipates that a substantial portion of CIAC received in the future will be taxed at federal statutory rates. Hudson anticipated that 2,457 new wastewater customers will be added during the years 1992 and 1995. The utility projects that CIAC collections for the next 12 months will total approximately \$1,157,562. The utility states that

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unless gross-up authority is effective throughout this period, Hudson will incur a substantial tax liability with no apparent source for the funding of such liability.

Although the information filed makes it appear that the utility will have a tax liability, we need additional information before we can find that a tax liability exists and that other sources of funds are not available at a reasonable cost, as required by Order No. 23541.

Section 367.081(6), Florida Statutes, provides that within sixty (60) days of the filing of an application to change a rate or charge other than the monthly rates for service, the Commission may withhold consent to the operations of any or all portions of the new rate schedule by a vote to that effect giving a reason or statement of good cause for withholding consent. If the Commission does not act within 60 days, the rates become effective. The file-and-suspend statutes have been interpreted by the Florida Supreme Court in Citizens of the State of Florida v. Wilson, 568 So.2d 904 (Fla. 1990), to provide that rates which become effective upon inaction by the Commission are merely interim rates pending final order by the Commission. The case law also provides that substantially affected persons have the right to a hearing on the interim rates.

In this instance, rather than suspending, approving, or denying Hudson's tariff, we are taking no action thereby allowing the tariff to become effective on an interim basis. If the tariffs were suspended, the utility would not be able to collect any gross-up since it has no gross-up tariff in effect presently and thus, would forever lose monies to which it might ultimately be found to be entitled to at the end of our investigation. If we approve the tariffs, we would be making the affirmative statement that the utility's gross-up tariff is correct as filed, and we cannot make that statement absent review. If the tariffs were denied, the utility would be unable to collect any CIAC gross-up and would have to refile. Therefore, we believe that it is appropriate to take no action on Hudson's tariff thereby allowing it to go into effect on an interim basis, pending final action. The interim charges will be subject to refund. Thus, both the utility and the ratepayers are protected.

Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund.

Orders No. 16971 and 23541 granted authority for utilities to gross-up CIAC, prescribed accounting and regulatory treatments for the gross-up, and required refunds of certain gross-up amounts collected. Pursuant to these Orders, CIAC tax impact amounts shall be deposited as received in a fully funded interest bearing escrow account and the utility shall maintain adequate records to account for the receipt, deposit, and withdrawal of monies in the CIAC tax impact account. Monies in the CIAC tax impact account may be withdrawn periodically for the purpose of paying that portion of the estimated Federal and State income tax expense which can be shown to be directly attributable to the repeal of Section 118(b) of the Internal Revenue Code and the inclusion of CIAC in taxable income. In the event that excess monies are determined to have been withdrawn from the escrow account, the utility shall repay said monies to the account together with any earnings on the account lost because of the excess withdrawals.

CIAC tax impact monies received during the tax year that are in excess of the utility's actual tax liability resulting from its collection of CIAC, together with interest on such excess monies must be refunded on a pro rata basis to the contributors of those amounts. All other matters discussed in the body of those Orders are expressly incorporated herein by reference. However, although Order No. 16971 states that the escrow account may be drawn upon to pay estimated taxes, because the gross-up is being allowed on an interim basis and may not be permitted after further examination, no monies shall be withdrawn from the escrow account until a final determination is made.

Therefore, Hudson's interim collections of the CIAC gross-up shall be made in accordance with the provisions of Orders Nos. 16971 and 23541, with the modification that no monies shall be withdrawn from the escrow account until a final determination of the utility's authority to collect CIAC gross-up is made.

Effective Date

Hudson's tariff allowing it to gross-up will become effective on an interim basis subject to refund, after January 30, 1993. However, substantially affected persons shall have 21 days from the date of this Order to request a hearing.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that this Commission takes no action on the tariff for CIAC gross-up

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collections filed by Hudson Utilities, Inc., thereby allowing said tariff to become effective on an interim basis. It is further

ORDERED that interim collections of the CIAC gross-up shall be subject to refund with interest as set forth in the body of this Order. It is further

ORDERED that the interim collections of the CIAC gross-up shall be made in accordance with the provisions of Orders Nos. 16971 and 23541 with the exception that no monies shall be withdrawn from the escrow account until a final determination is made. It is further

ORDERED that Hudson Utilities, Inc., shall provide, in accordance with Rule 25-30.360(6), Florida Administrative Code, a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. It is further

ORDERED that substantially affected persons shall have 21 days from the date of this Order to request a hearing.

By ORDER of the Florida Public Service Commission this 9th day of February, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LAJ

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 Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), 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 March 2, 1993.

In the absence of such a petition, this order shall become final 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 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 date this Order becomes final, 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.