

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of
contributions-in-aid-of-
construction gross-up funds
collected by Hudson Utilities,
Inc. d/b/a Hudson Bay Company in
Pasco County.

DOCKET NO. 980076-SU
ORDER NO. PSC-98-0316-AS-SU
ISSUED: February 23, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER ACCEPTING SETTLEMENT OFFER AND REQUIRING REFUNDS

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

As a result of the repeal of Section 118(b) of the Internal
Revenue Code, contributions-in-aid-of-construction (CIAC) became
gross income and were 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 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 require that all gross-up

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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, we required 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. On November 30, 1992, pursuant to Order No. 23541, Hudson Utilities, Inc. (Hudson or utility) filed for initial authority to gross-up CIAC. The information as filed met the filing requirements of Order No. 23541. By Order No. PSC-93-0206-FOF-SU, issued February 9, 1993, the Commission allowed the utility's proposed tariff to become effective by operation of law on an interim basis for gross-up on CIAC. Order No. PSC-93-0962-FOF-SU, issued June 28, 1993, granted Hudson authority to gross-up.

On September 9, 1992, we issued Proposed Agency Action (PAA) 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, we issued PAA Order No. PSC-92-0961A-FOF-WS. This order included Attachment A which reflected the generic calculation form. No protests were filed, and these Orders became final.

On March 29, 1996, Docket No. 960397-WS was opened to review our 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 PAA Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, we directed our staff to review the proposals and comments offered by the workshop participants and make a recommendation concerning whether our policy regarding the collection and refund of CIAC should be changed. In addition, we directed our staff to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up. Pending this review, we directed our staff to continue processing CIAC gross-up and refund cases pursuant to Orders Nos. 16971 and 23541.

However, on August 1, 1996, Congress passed the Small Business Job Protection Act of 1996 (the Act), and the President signed the law 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, we issued Order No. PSC-96-1180-FOF-WS revoking the authority of utilities to collect gross-up of CIAC and canceling 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 our policy on the gross-up of CIAC, we closed Docket No. 960397-WS by Order No. PSC-96-1253-FOF-WS, issued October 8, 1996. However, as established in PAA Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Orders Nos. 16971 and 23541.

Hudson is a Class B wastewater utility providing service to the public in Pasco County. As of December 31, 1996, the utility served 1,337 wastewater customers. The utility had gross operating revenues of \$714,244 and a net operating income of \$101,919 for the wastewater system.

On September 30, 1997, Hudson submitted its 1996 CIAC Gross-up Report. In that report, Hudson suggested that it again be allowed to offset any required refund with 50 percent of the accounting and legal expenses related to the preparation of the 1996 gross-up refund report as was allowed in Docket No. 961152-SU.

This Order addresses the amount of CIAC gross-up funds that should be refunded for 1996 and Hudson's request that it be allowed to offset 50 percent of the accounting and legal expenses related to the preparation of the 1996 gross-up refund report.

SETTLEMENT OFFER

In compliance with Orders Nos. 16971 and 23541, Hudson filed its 1996 annual CIAC report regarding its collection of gross-up for the year. The utility has requested that 50 percent of the \$6,088 of legal and accounting costs incurred for filing the CIAC report be deducted from the amount of the refund, which was the same treatment it received in Docket No. 961152-SU.

As in the other Hudson cases, we find that acceptance of the settlement proposal would avoid the substantial cost associated with a hearing, which may in fact exceed the amount of the legal

and accounting costs to be recovered. We further note that the actual costs associated with making the refunds have not been included in these calculations and will be absorbed by the utility. Moreover, we believe the utility's settlement proposal is a reasonable "middle ground". Therefore, while not adopting the utility's position, we find it appropriate to accept Hudson's settlement proposal.

REFUND REQUIREMENT

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. Our calculations, taken from the information provided by the utility in its gross-up report and tax return are reflected on the schedule attached to this Order. A summary of the 1996 refund calculation follows.

1996

The utility proposed a base refund of \$13,637 and the recovery of \$3,044 in costs for preparing the refund report in 1996. Inclusion of the CIAC filing costs in the refund calculation resulted in the utility calculating a net total refund of \$10,592. We agree with this calculation.

Based upon our review of the utility's 1996 filing, the utility incurred an above-the-line loss of \$20,287 prior to the inclusion of taxable CIAC and gross-up. The report indicates a total of \$32,400 in gross-up collections were received, with first year's depreciation of \$2,614 associated with \$54,000 in taxable CIAC. Order No. 23541 requires that CIAC income be netted against the above-the-line loss; therefore, we have reduced the total amount of taxable CIAC to reflect the loss. When the above-the-line loss of \$20,287 is netted with the total taxable CIAC of \$54,000; less the first year's depreciation of \$2,614, the amount of taxable CIAC resulting in a tax liability is \$31,099. Using the reported 37.63 percent combined marginal federal and state tax rate, we calculate a tax effect of \$11,703. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$18,764. We have increased this amount by \$3,044

ORDER NO. PSC-98-0316-AS-SU
DOCKET NO. 980076-SU
PAGE 5

for 50 percent of the legal and accounting costs incurred for preparation of the CIAC reports. Therefore, the total recoverable cost is \$21,808. However, the utility collected \$32,400 in gross-up taxes. Based upon the foregoing, the total refund for 1996 is calculated to be \$10,592, and the utility shall refund this amount. This amount does not include the accrued interest which, also must be refunded from December 31, 1996, to the date of refund.

The refund shall be completed within 6 months of the effective date of the order. Within 30 days from the date of the refund, the utility shall submit copies of canceled checks, credits applied to the monthly bills or other evidence that verifies that the utility has made the refunds. Within 30 days from the date of the refund, the utility shall also file a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refunds.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall remain open pending completion and verification of the refunds. Upon verification that the refunds have been made, the docket shall be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement offer of Hudson Utilities, Inc., d/b/a Hudson Bay Company, shall be accepted. It is further

ORDERED that pursuant to the settlement offer, Hudson Utilities, Inc., d/b/a Hudson Bay Company, shall refund gross-up of contributions-in-aid-of-construction in the amount of \$10,592 for 1996. 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

ORDER NO. PSC-98-0316-AS-SU
DOCKET NO. 980076-SU
PAGE 6

in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that the refunds shall be carried out as set forth in the body of this Order. It is further

ORDERED that the schedule attached to this Order is incorporated into and made a part of this Order. It is further

ORDERED that Hudson Utilities, Inc., d/b/a Hudson Bay Company, shall refund accrued interest through the date of refund, for gross-up of contributions-in-aid-of-construction collected in excess of the tax liability. It is further

ORDERED that, pursuant to Orders Nos. 16971 and 23541, all refund amounts shall be refunded on a pro rata basis to those persons who contributed the funds. It is further

ORDERED that the refunds required herein shall be completed within six months of the effective date of this Order, and that Hudson Utilities, Inc., d/b/a Hudson Bay Company, shall submit copies of canceled checks, credits applied to monthly bills or other evidence verifying that the refunds have been made within 30 days of completion of the refund. It is further

ORDERED that within 30 days of completion of the refund, Hudson Utilities, Inc., d/b/a Hudson Bay Company, shall provide a list of unclaimed refunds detailing the contributor and the amount, and an explanation of the efforts made to make the refunds. It is further

ORDERED that the docket shall be administratively closed upon expiration of the protest period, if no timely protest is filed, and upon our staff's verification that the refunds have been made.

ORDER NO. PSC-98-0316-AS-SU
DOCKET NO. 980076-SU
PAGE 7

By ORDER of the Florida Public Service Commission this 23rd
day of February, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RRJ

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The actions proposed herein concerning refunds 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

ORDER NO. PSC-98-0316-AS-SU
DOCKET NO. 980076-SU
PAGE 8

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 16, 1998.

In the absence of such a petition, the proposed agency action portion of 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.

Any party adversely affected by the Commission's decision not to initiate show cause proceedings which is final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance of this order,

ORDER NO. PSC-98-0316-AS-SU
DOCKET NO. 980076-SU
PAGE 9

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

HUDSON UTILITIES, INC.

SOURCE: (Line references are from CIAC Reports)	1996
1 Form 1120, Line 30 (Line 15)	\$ 63,499
2 Less CIAC (Line 7)	(54,000)
3 Less Gross-up collected (Line 19)	(32,400)
4 Add First Year's Depr on CIAC (Line 8)	2,614
5 Add/Less Other Effects (Lines 20 & 21)	0
6	-
7 Adjusted Income Before CIAC and Gross-up	\$ (20,287)
8 Taxable CIAC (Line 7)	54,000
9 Less first years depr. (Line 8)	(2,614)
10	-
11 Taxable CIAC Resulting in a Tax Liability	\$ 31,099
12 Less: NOL Carryforward	0
13	-
14 Net Taxable CIAC	\$ 31,099
15 Effective state and federal tax rate	37.63%
16	-
17 Net Income tax on CIAC	\$ 11,703
18 Less ITC Realized	0
19	-
20 Net Income Tax	\$ 11,703
21 Expansion Factor for gross-up taxes	1.603334936668
22	-
23 Gross-up Required to pay tax effect	\$ 18,764
24 Net Legal & Accounting Offset	3,044
25	-
26 Total Cost Recoverable	\$ 21,808
27 Less CIAC Gross-up collected (Line 19)	(32,400)
28	-
29 TOTAL OVERCHARGED	\$ (10,592)
30	=
31	-
32 TOTAL OVERCHARGED	\$ (10,592)
33	=