

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for variance) DOCKET NO. 961270-SU
from Order No. PSC-96-1190-FOF-) ORDER NO. PSC-97-0040-FOF-SU
WS by Hudson Utilities, Inc.) ISSUED: January 9, 1997
d/b/a Hudson Bay Company)
_____)

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 GRANTING REQUEST FOR VARIANCE

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

Hudson Utilities, Inc. (Hudson or utility), a Class B wastewater utility, provides service in Pasco County. As of December 31, 1995, Hudson served 1,172 wastewater customers and had gross operating revenues of \$629,192 for the wastewater system. Hudson reported a net operating income of \$17,394.

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. Order No. PSC-96-1180-FOF-WS, required the utilities to refund the gross-up to those who paid it within 60 days of the date the proposed agency action portion of the order became final. Further, that Order required

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each utility to provide copies of cancelled checks, or other evidence, verifying that the refunds have been made, within 30 days from the date of the refund. On October 18, 1996, Hudson filed a request for a variance from that Order.

Request for Variance

As previously mentioned, Order No. PSC-96-1180-FOF-WS, revoked the authority of utilities to collect gross-up of CIAC and required the cancellation of the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. On October 18, 1996, Hudson requested a variance. The utility states that a variance from Order No. PSC-96-1180-FOF-WS is necessary because in 1994 and 1995, an installment payment plan was established to allow customers to pay the applicable service availability charge plus the CIAC gross-up tax on a 24-month installment plan. The down payment made by the customers using the installment plan was less than the service availability charge of \$1,600 (service availability charge of \$1,000 and the \$600 CIAC gross-up tax).

Hudson requests a variance from Order No. PSC-96-1180-FOF-WS authorizing it to collect the remaining installment payments, which include the CIAC gross-up tax. When a customer selects the installment plan, the utility establishes a receivable account for those customers. The utility reports the full amount of the service availability charge and the gross-up taxes as income on its tax return, in the year the contract is initiated. The utility has not collected all of the service availability charges and gross-up taxes from those customers paying in installments for the years 1994 and 1995. Hudson had 59 customers in 1994 and 89 customers in 1995 on the installment plan. Hudson explains that only the CIAC gross-up collected on or before June 12, 1996 will be reflected as income on its 1996 income tax return, so therefore, it does not seek a variance for installment arrangements entered into in 1996.

The utility would like to be reimbursed for taxes paid on the service availability charges that it has already included as income on its tax returns. Presently, there is no other mechanism for collecting the gross-up from those customers using the installment plan. Prior to the change of the tax code, utilities were allowed to collect CIAC and remain "whole" monetarily so as to not be adversely affected from the collection of CIAC.

Therefore, we find it appropriate to grant Hudson's request for the variance. Hudson shall be allowed to collect the remaining installment payments, including the gross-up of CIAC, for the installment arrangements entered into in 1994 and 1995. The

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utility's tariff sheets shall be revised accordingly. Once the utility has collected the taxes for those customers on the installment plan entered into in 1994 and 1995, the utility shall submit cancelled tariff sheets to the Commission.

Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request of Hudson Utilities, Inc., for a variance is granted as set forth in this Order. It is further

ORDERED that Hudson Utilities, Inc., shall collect the remaining installment payments, including the gross-up of contributions in aid of construction associated with the installment arrangements entered into in 1994 and 1995. Hudson Utilities, Inc.'s tariffs shall be revised accordingly. It is further

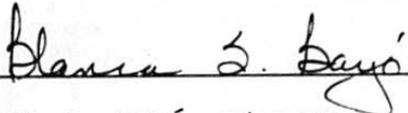
ORDERED that once Hudson Utilities, Inc. has collected the taxes for those customers on the installment plan entered into in 1994 and 1995, Hudson Utilities, Inc. shall submit cancelled tariff sheets to the Commission. It is further

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.

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By ORDER of the Florida Public Service Commission, this 9th
day of January, 1997.



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 January 30, 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.