**FLORIDA PUBLIC SERVICE COMMISSION**

 **Fletcher Building**

 **101 East Gaines Street**

 **Tallahassee, Florida 32399-0850**

 **M E M O R A N D U M**

 **September 16, 1993**

**TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING**

**FROM: DIVISION OF WATER AND WASTEWATER (MEADOR)**

 **DIVISION OF LEGAL SERVICES (JABER)**

**RE:UTILITY: SOUTHSIDE UTILITIES, INC.**

**DOCKET NO.: 930576-WS**

**COUNTY: DUVAL COUNTY**

**CASE: DISPOSITION OF GROSS-UP FUNDS COLLECTED**

**AGENDA: 9/28/93 - CONTROVERSIAL - PROPOSED AGENCY ACTION - PARTIES MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**RECOMMENDATION FILE NAME: I:\PSC\WAW\WP\930576.RCM**

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 **CASE 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 impact resulting from the inclusion of CIAC as gross income.

 Orders Nos. 16971, issued December 18, 1986, and 23541, issued October 1, 1990, 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, and whether a refund of the gross-up is appropriate for any given year for which gross-up was in effect. These orders also required that all gross-up amounts 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 refunded on a pro rata basis to those persons who contributed the taxes.

 In Order No. 23541, the Commission determined that any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue collecting the gross-up, had to file a petition for approval with the Commission on or before October 29, 1990. By Order No. 25527, issued February 24, 1992, Southside Utilities, Inc. (Southside or Utility) was authorized to continue to gross-up CIAC for the related tax impact.

 On February 24, 1992, this Commission issued Order No. 25776, which approved gross-up refunds for fiscal years ended June 30, 1987 through 1990. The refunds have been completed and verified.

 On September 9, 1992, this Commission issued 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 to include Attachment A which reflects the generic calculation form. No protests were filed, and the Order became final.

 On May 14, 1993, the City of Jacksonville filed its application requesting Commission acknowledgement of the City's purchase of Southside's water and wastewater facilities. The purchase of all of Southside's facilities was concluded on October 30, 1992. Order No. PSC-93-0939-FOF-WS, issued June 22, 1993, the Commission acknowledged transfer of the system.

 Southside is a Class B utility which provides water and wastewater service to customers in Duval County. According to their 1991 annual report, operating revenue of $545,370 for water and $633,356 for the wastewater system were reported. The utility reported net operating income of $135,888 for the water system and $78,751 for the wastewater systems.

 **DISCUSSION OF ISSUES**

**ISSUE 1:** Should Southside Utilities, Inc. be required to refund excess gross-up collections of $6,762 for 1991 and no refund for 1992, for a total of $6,762 plus accrued interest through the date of refund?

**RECOMMENDATION:** Yes, the utility should refund $6,762 for 1991 and no refund for 1992, for a total of $6,762 plus accrued interest through the date of refund, for gross-up collected in excess of the tax liability resulting from the collection of CIAC. In accordance with Orders Nos. 16971 and 23541, all amounts should be refunded on a pro rata basis to those persons who contributed the taxes. The refund should be completed within 6 months. The utility should submit copies of canceled checks, credits applied to monthly bills or other evidence which verifies that the refunds have been made, within 30 days from the date of refund. (MEADOR)

**STAFF ANALYSIS:** In compliance with Order No. 16971, Southside filed its 1991 and 1992 annual CIAC reports regarding its collection of gross-up for each year. In response to staff's preliminary calculations, the utility submitted a revised calculation for the June 30, 1991 fiscal year.

 **ANNUAL GROSS-UP REFUND AMOUNTS**

 Based upon the foregoing, staff has calculated the amount of refund per year which is appropriate. Our calculations, taken from the information provided by the utility in its amended gross-up reports filed each year are reflected on Schedule No. 1. A summary of each year's refund calculation follows.

 **1991**

 The utility calculated the refund to be $6,763 for 1991.

 Staff calculates a refund of $6,762 for 1991. The 1991 CIAC report indicates that a total of $305,826 of gross-up collections were received, with the first year's depreciation reported as $12,908. The utility did not have an above-the-line loss for 1991, therefore no reduction is necessary to the amount of taxable CIAC. Staff has used the 37.63% combined federal and state tax rates that were in effect during 1991 to calculate the tax effect. Based upon the foregoing, staff calculates a refund of $6,762 for 1991. This amount does not include the accrued interest which must also be refunded from December 31, 1991 to the date of refund.

 **1992**

 The utility states a refund is not necessary for 1992.

 Staff calculates that no refund is necessary for 1992. The 1992 CIAC report indicates that a total of $24,953 of gross-up collections were received, with the first year's depreciation reported as $1,491. The utility did not have an above-the-line loss for 1992, therefore no reduction is necessary to the amount of taxable CIAC. Staff has used the 37.63% combined federal and state tax rates that were in effect during 1991 to calculate the tax effect. Based upon the foregoing, the utility had a tax liability resulting from its collection of CIAC which was greater than the amount of gross-up collected and no refund is necessary.

 **1993**

 The utility was sold to the City of Jacksonville as of October, 1992, therefore gross-up collections received during 1992 are not subject to this Commission's jurisdiction.

 Based upon the foregoing, staff recommends that the utility be required to refund a total of $6,762 ($6,762 for 1991 and no refund for 1992), plus accrued interest through the date of refund, for gross-up collections, in excess of the actual tax liability resulting from the collection of CIAC. The refund should be completed within 6 months. The utility should submit copies of canceled 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.

**ISSUE 2:** Should the docket be closed?

**RECOMMENDATION:** Yes, the docket should be closed upon expiration of the protest period. (MEADOR, JABER)

**STAFF ANALYSIS:** Staff believes this docket should be closed if a timely protest is not filed. Staff will monitor the processing of the refunds separately.

SOUTHSIDE UTILITIES, INC. STAFF CALCULATED GROSS‑UP REFUND

SOURCE: (Line references are from CIAC Reports)

 1991 1992

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 1 Form 1120, Line 30 (Line 15) $ 819,073 $ 297,845

 2 Less CIAC (Line 7) (508,591) (82,642)

 3 Less Gross‑up collected (Line 19) (305,826) (24,953)

 4 Add First Year's Depr on CIAC (Line 8) 12,908 1,491

 5 Add/Less Other Effects (Lines 20 & 21) 0 0

 6 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

 7 Adjusted Income Before CIAC and Gross‑up $ 17,564 $ 191,741

 8

 9 Taxable CIAC (Line 7) $ 508,591 $ 82,642

10

11 Taxable CIAC Resulting in a Tax Liability $ 508,591 $ 82,642

12 Less first years depr. (Line 8) (12,908) (1,491)

13 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

14 Net Taxable CIAC $ 495,683 $ 81,151

15 Effective state and federal tax rate 37.63% 37.63%

16 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

17 Net Income tax on CIAC $ 186,526 $ 30,537

18 Less ITC Realized 0 0

19 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

20 Net Income Tax $ 186,526 $ 30,537

21 Expansion Factor for gross‑up taxes 1.603334937 1.603334937

22 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

23 Gross‑up Required to pay tax effect $ 299,064 $ 48,961

24 Less CIAC Gross‑up collected (Line 19) (305,826) (24,953)

25 ‑‑‑‑‑‑‑‑‑‑‑‑ ‑‑‑‑‑‑‑‑‑‑‑‑

26 PROPOSED REFUND (excluding interest) $ (6,762) $ 0

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29 TOTAL REFUND $ (6,762)

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