



Public Service Commission

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RECORDS AND REPORTING

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DATE: JULY 23, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER AND WASTEWATER (JOHNSON) *Johnson*
DIVISION OF LEGAL SERVICES (JAEGER) *Jaeger*

RE: DOCKET NO. 980120-SU - DISPOSITION OF CONTRIBUTION-IN-AID-OF-CONSTRUCTION GROSS-UP FUNDS COLLECTED BY SANDALHAVEN UTILITY, INC. IN CHARLOTTE COUNTY.
COUNTY: CHARLOTTE

AGENDA: AUGUST 4, 1998 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\980120.RCM

CASE BACKGROUND

Sandalhaven Utility Inc. (Sandalhaven or utility) is a Class C wastewater utility providing service to the public in Charlotte County. As of December 31, 1996, the utility served 623 wastewater customers. The utility had gross operating revenues of \$161,918, and reported a net operating loss of \$41,249.

As a result of the repeal of Section 118(b) of the Internal Revenue Code (I.R.C.), contributions-in-aid-of-construction (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.

Orders Nos. 16971, issued December 18, 1986, and 23541, issued October 1, 1990, required 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

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information would also determine whether refunds of gross-up would be appropriate. These orders require 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.

On April 13, 1995, this Commission issued Proposed Agency Action (PAA) Order No. PSC-95-0478-FOF-SU, which granted Sandalhaven wastewater certificate No. 495-S to serve the territory in Charlotte County and authority to collect CIAC gross-up tax on an interim basis. Sandalhaven was previously authorized by the Charlotte County Board of County Commissioners to collect gross-up for CIAC. On July 17, 1995, pursuant to Order No. 23541, Sandalhaven Utilities, filed for authority to gross-up CIAC. The information as filed met the filing requirements of Order No. 23541. Order No. PSC-95-1569-FOF-SU, issued December 19, 1995, granted Sandalhaven Utility, Inc. authority to gross-up.

However, on August 1, 1996, The Small Business Job Protection Act of 1996 (The Act), which became law on August 20, 1996, provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996.

The purpose of this recommendation is to address the amount of CIAC gross-up funds that should be refunded for the years 1995 and 1996.

DISCUSSION OF ISSUES

ISSUE 1: Should Sandalhaven Utility Inc., be required to refund excess gross-up collections for the years 1995 through 1996?

RECOMMENDATION: Yes, the Utility overcollected CIAC gross-up in the amount of \$28,059 for 1995. However, the utility refunded \$5,271 of this amount to the contributor in 1996; therefore, only \$22,788 remains to be refunded. The refunds should be completed within six 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. Within 30 days from the date of the refund, the utility also should provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refunds. No gross-up taxes were collected in 1996, therefore, no refund is necessary. (JOHNSON)

STAFF ANALYSIS: In compliance with Orders Nos. 16971 and 23541, Sandalhaven Utility, Inc. filed its 1995 and 1996 annual CIAC reports and tax returns regarding its collection of gross-up for each year. Staff's calculations and the utility's calculations are in agreement on the refund amounts for the years listed. The utility did not include CIAC in income on its tax return for 1995 and utility incurred a net operating loss. Therefore, all CIAC gross-up collected in 1995 should be refunded. No refund is necessary for 1996, because the utility did not collect CIAC gross-up in 1996. By correspondence dated February 20, 1998, the utility provided staff with documentation on the disposition of the CIAC gross-up tax. According to the utility's documentation, \$5,721 was transferred through inter-company bookkeeping to a related contributing Construction Company. The remaining monies (\$22,788) should be returned to the contributor (Cape Haze Marine Village Inc. The utility did not request recovery of consultants fees for accounting and legal services; therefore, none were included in staff's refund calculation.

ANNUAL GROSS-UP REFUND AMOUNTS

Based upon the foregoing, staff has calculated the amount of refund which is appropriate, based on the information provided by the utility in its CIAC report and tax returns. A summary of the 1995 and 1996 refund calculation follows.

1995

The utility proposes a refund of \$28,059 for 1995 gross-up collections. Staff agrees that a refund of the entire \$28,059 in gross-up collections for 1995 is appropriate.

Based upon our review of the utility's 1995 filing, the utility did not include CIAC in income on its tax return. As a result, there is no tax liability associated with the CIAC income collected. Therefore, all gross-up taxes collected on the CIAC income must be refunded. Based upon the foregoing, the utility should refund \$28,059 in gross-up taxes. The utility refunded \$5,271 in 1996. Order No. 23541 requires that refunds be made with interest. However, because the utility refunded \$5,271 in 1996 and the contributor accepted it, no accrued interest is due or payable on that amount.

The remaining \$22,788 of the gross-up taxes should be returned to Cape Haze Marine Village, Inc. According to the utility a gentlemen's agreement between Cape Haze and Sandalhaven was made, which allowed the utility to keep the money in settlement of some outstanding financial issues. Cape Haze's financial obligations exceed the \$22,788, according to the utility. The utility assumed that the agreement between the parties in October 1997 resolved all amounts due to Cape Haze. The utility provided staff with a certified signed letter describing the events of the agreement between the parties. It was decided by staff that this certified letter wasn't sufficient, because the letter was not signed by both parties. Staff, therefore, requested another letter where all parties would acknowledge that this agreement took place. The utility was given thirty days to secure and remit this letter to staff. To date the utility has been unable to provide staff with documentation to support this agreement, therefore, we believe the refund is incomplete. In the absence of documented support for the agreement, the \$22,788 should be refunded to Cape Haze. Therefore, in accordance with Orders Nos. 16971 and 23541, all amounts collected to pay gross-up taxes should be refunded on a pro rata basis to those persons who contributed the taxes. The refunds should be completed within six 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. Within 30 days from the date of the refund, the utility also should provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refunds.

1996

No gross-up taxes were collected in 1996; therefore, no refund is appropriate.

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ISSUE 2: Should the docket be closed?

RECOMMENDATION: No. Upon expiration of the protest period this docket should remain open pending verification of the refunds. Staff should be given administrative authority to close the docket upon verification that the refunds have been completed. (JAEGER)

STAFF ANALYSIS: Upon expiration of the protest period if a timely protest is not filed by a substantially affected person, this docket should remain open pending completion and verification of the refunds. Staff recommends that administrative authority be granted to staff to close the docket upon verification that the refunds have been made.