

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Clarification of) DOCKET NO. 920763-WS
contributions-in-aid-of-) ORDER NO. PSC-92-0961-FOF-WS
construction (CIAC) gross-up) ISSUED: 09/09/92
refund procedure)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER CLARIFYING THE PROVISIONS IN ORDERS NOS. 16971 AND 23541
FOR THE CALCULATION OF REFUNDS OF GROSS-UP OF
CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

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, this 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 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 expense 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 require 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. As part of the review of one

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gross-up refund calculation, a utility raised the issue of whether the taxes paid on the amount of gross-up collected should be included in the calculation of the refund.

CLARIFICATION OF APPROPRIATE CALCULATION OF GROSS-UP REFUNDS

The language in Orders Nos. 16971 and 23541 does not clearly specify whether the calculation of the refund should or should not include the taxes paid on the amount of gross-up retained.

Order No. 16971 states on Page 3:

CIAC tax impact monies received during the tax year that are in excess of the actual amount of tax expense that is attributable to the receipt of CIAC, together with interest earned on such excess monies held in the CIAC Tax Impact Account must be refunded on a pro rata basis to the parties which made the contribution and paid the tax impact amounts during the tax year.

Order No. 23541 states on Page 24:

We find that all gross-up amounts in excess of a utility's actual tax liability resulting from its collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes.

Both Orders are silent as to the treatment of the tax liability resulting from the collection of gross-up.

We have utilized two interpretations of the appropriate calculation of the refund of gross-up of CIAC, both consistent with the language in the above referenced Orders. In the calculation of the refund for ten cases, we compared the tax liability resulting from the CIAC alone, excluding gross-up collections, with the amount of gross-up collections, and required the excess of gross-up collections to be refunded. In two other cases, we compared the tax liability resulting from the CIAC plus gross-up collections with the amount of gross-up collections, and required the resulting excess collections to be refunded.

Our concern is that the intent of gross-up and any resulting refunds is not explicitly addressed in the above referenced Orders. As Order No. 23541 states, full gross-up allows a utility to collect the full tax impact associated with CIAC, including the "tax-on-tax". It was contemplated that the collection of gross-up would in itself result in a tax liability. Therefore, we believe a utility should be required to refund gross-up collected in excess of the gross-up retained to pay the CIAC taxes and the tax on the gross-up retained. The gross-up collections which are refunded reduce taxable revenue and are no longer taxable to the utility. Therefore, no taxes are due.

In consideration of the foregoing, we find it appropriate to clarify this Commission's interpretation of the language contained in Orders Nos. 16971, Page 3, and 23541, Page 24, as follows:

All gross-up amounts collected which are in excess of a utility's actual tax liability directly attributable to the CIAC and the amount attributable to the gross-up retained to pay the CIAC taxes should be refunded on a pro rata basis to those persons who contributed the taxes.

This clarification in the appropriate calculation of gross-up refunds to include the tax liability associated with the amount of gross-up retained shall be applied on a prospective basis. Attachment A hereto reflects the calculation we will employ in our determination of the amount of taxable CIAC.

Upon expiration of the protest period, if no protests are filed, no further action is required in this docket, and it shall be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the appropriate calculation of refunds of gross-up of contributions-in-aid-of-construction in Orders Nos. 16971 and 23541 is hereby clarified as set forth in the body of this Order. It is further

ORDERED that the action discussed herein is preliminary in nature and will become final unless a person whose interests are

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adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

By ORDER of the Florida Public Service Commission this 9th day of September, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SFS

by: Kay J. Jernigan

Chief, Bureau of Records

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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on September 30, 1992.

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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 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 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.