

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of) DOCKET NO. 920634-WS
contributions-in-aid-of) ORDER NO. PSC-92-1358-FOF-WS
construction (CIAC) funds) ISSUED: 11/23/92
received by SOUTHERN STATES)
UTILITIES, INC. in Clay,)
Citrus, Duval, Lake, Marion,)
Martin, Orange, Osceola,)
Putnam, and Seminole Counties)

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 REQUIRING REFUND OF GROSS-UP COLLECTED IN EXCESS
OF TAX LIABILITY RESULTING FROM COLLECTION OF CIAC

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.

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, 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, 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 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.

DOCUMENT NUMBER-DATE

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FPC-RECORDS/REPORTING

In Order No. 23541, issued October 1, 1990, we 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 our approval on or before October 29, 1990. Southern States Utilities Services (SSU or utility) did not request authority to continue to gross-up CIAC for the related tax impact. By Order No. 24791, issued July 10, 1991, we canceled the utility's authority to gross-up.

By Order No. PSC-92-0961-FOF-WS, issued on September 9, 1992, we clarified the procedure to be used to calculate the amount of gross-up refunds. The calculations in this Order are consistent with Order No. PSC-92-0961-FOF-WS.

SSU is a Class A utility which provides water and wastewater service to water customers and wastewater customers in 16 counties in Florida. According to its 1991 annual report, SSU reported operating revenue of \$4,912,789 for water and \$3,931,643 for the wastewater system. The utility reported net operating income of \$274,918 for the water system and a net operating loss of \$277,432 for the wastewater system.

In compliance with Order No. 16971, SSU filed its 1987 through 1991 annual CIAC reports regarding its collection of gross-up for each year. We have a theoretical concern with the utility's calculations. This concern will be discussed below.

COMPARISON OF ANNUAL GROSS-UP COLLECTED WITH THE TAX LIABILITY RESULTING FROM ABOVE-THE-LINE OPERATIONS

The utility provided its proposed refund calculations on May 27, 1992. It appears that the utility calculates the above-the-line tax liability based upon the total taxable income at its federal and state tax rates. This above-the-line tax liability is then compared to the amount of gross-up collected for the year to determine the amount of gross-up refund, if any.

We have several problems with this method of refund calculation. First, Orders Nos. 16971 and 23541 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. The utility has in fact calculated the amount of above-the-line tax liability resulting from its overall operations. With the exception of taxable CIAC, federal and state income taxes due on above-the-line operations are recovered through service rates charged to the general body of ratepayers. Therefore, if a utility has an above-the-line loss, the amount of taxable CIAC collected for the year should be netted against the

above-the-line loss to determine the net amount of taxable CIAC and taxes which the gross-up was collected to pay. If a utility has above-the-line income, the total amount of CIAC collected, which is taxable because of the Amendment to Section 118(b), I.R.C., should be used to calculate the tax liability.

Furthermore, if the tax liability resulting from the collection of taxable CIAC is not looked at in isolation, the effect is that the developer or individual customer who pays gross-up is paying for the income taxes associated with the utility's overall operations, which is recoverable through service rates. We believe that it is appropriate to use the total amount of taxable CIAC to calculate the actual tax liability attributable to the CIAC when a utility has an above-the-line taxable income and the amount of taxable CIAC should be reduced by the amount of the above-the-line loss when an above-the-line loss exists.

ANNUAL GROSS-UP REFUND AMOUNTS

Based upon the foregoing, we have calculated the amount of refund per year which is appropriate. Our calculations are reflected on Schedule No. 1, attached hereto. A summary of each year's refund calculation follows.

The utility proposes a refund of \$113,078 plus accrued interest for 1987 excess gross-up collections. We calculated a refund of \$153,491 for 1987. The 1987 CIAC report indicates that a total of \$153,491 of gross-up collections was received. Based upon our review of the utility's 1987 filing, the utility incurred an above-the-line loss prior to inclusion of the taxable CIAC. The loss is almost as much as the amount of CIAC collected. We reduced the amount of taxable CIAC to reflect the loss. We have used the 43.30 percent combined federal and state tax rate as provided in the 1987 CIAC report. Based upon the foregoing, we find that a refund of \$153,491 for 1987 is appropriate. This amount does not include the accrued interest which must also be refunded from December 31, 1987, to the date of refund.

The utility did not propose a refund for 1988 excess gross-up collections. We calculated a refund of \$73,823 for 1988. The 1988 CIAC report indicates that a total of \$307,294 of gross-up collections was received. Based upon our review of the utility's 1988 filing, the utility had above-the-line income prior to inclusion of the taxable CIAC. Therefore, we did not reduce the amount of taxable CIAC. We used the 37.63 percent combined federal and state tax rate as provided in the 1988 CIAC Report. Based upon the foregoing, we find that a refund of \$73,823 for 1988 is appropriate. This amount does not include the accrued interest

which must also be refunded from December 31, 1988, to the date of refund.

The utility proposes a refund of \$345,252 plus accrued interest for 1989 excess gross-up collections. We calculated a refund of \$410,210 for 1989. The 1989 CIAC report indicates that a total of \$410,210 of gross-up collections was received. Based upon our review of the utility's 1989 filing, the utility incurred an above-the-line loss prior to inclusion of the taxable CIAC. The loss is greater than the amount of CIAC collected. We have made a reduction to the amount of taxable CIAC to reflect the loss. We used the 37.63 percent combined federal and state tax rate as provided in the 1989 CIAC report. Based upon the foregoing, we find that a refund of \$410,210 for 1989 is appropriate. This amount does not include the accrued interest which must also be refunded from December 31, 1989, to the date of refund.

The utility proposes a refund of \$794,359 plus accrued interest for 1990 excess gross-up collections. The 1990 CIAC report indicates that a total of \$794,359 of gross-up collections was received. Based upon our review of the utility's 1990 filing, the utility incurred an above-the-line loss prior to inclusion of the taxable CIAC. The loss is greater than the amount of CIAC collected. We have used the 37.63 percent combined federal and state tax rate as provided in the 1990 CIAC report. Based upon the foregoing, we find that a refund of \$794,359 for 1990 is appropriate. This amount does not include the accrued interest which must also be refunded from December 31, 1990, to the date of refund.

Based upon the foregoing, we find it appropriate to order the utility to refund a total of \$1,431,883 (\$153,491 for 1987; \$73,823 for 1988; \$410,210 for 1989; \$794,359 for 1990; and no refund for 1991), 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 shall be completed within six months. The utility shall 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. We shall monitor the refunds separately.

We find that it is appropriate to close this docket if no timely protest is received to this proposed agency action Order.

Therefore, based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that Southern States Utilities, Inc. shall refund \$153,491 for 1987; \$73,823 for 1988; \$410,210 for 1989; \$794,359 for 1990; and no refund for 1991; for a total of \$1,431,883 plus accrued interest through the date of refund to contributors on a pro rata basis. It is further

ORDERED that such refunds shall include interest through the date of the refund. It is further

ORDERED that Southern States Utilities, Inc. shall file copies of the cancelled refund checks, credits applied to monthly bills, or other evidence for verification as set forth in the body of this Order. It is further

ORDERED that Southern States Utilities, Inc. shall make all such refunds as provided within the body of this Order within six months of the effective date of this Order. It is further

ORDERED that Southern States Utilities, Inc. shall make the final report of such refunds within 30 days of the date that the refund is made. It is further

ORDERED that Southern States Utilities, Inc. shall correct or adjust the appropriate accounts to reflect the distribution of the required refunds. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final unless an appropriate petition is received by the Director of the Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that, in the event no timely protest is received, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 23rd day of November, 1992.



STEVE TRIBBLE, 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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 14, 1992.

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.

SOUTHERN STATES UTILITIES, INC.

COMMISSION CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1987	1988	1989	1990	1991
1 Form 1120, Line 30 (Line 15)	\$ 157,770	\$ 858,921	\$ 80,871	\$ (900,457)	\$ 0
2 Less CIAC (Line 7)	(253,377)	(512,551)	(885,897)	(1,208,006)	0
3 Less Gross-up collected (Line 19)	(153,491)	(307,294)	(410,210)	(794,359)	0
4 Add First Year's Depr on CIAC (Line 8)	9,502	19,221	33,221	45,300	0
5 Add/Less Other Effects (Lines 20 & 21)	(1,907)	(1,877)	(4,126)	(30,258)	0
6					
7 Adjusted Income Before CIAC and Gross-up	\$ (241,503)	\$ 56,420	\$ (1,186,141)	\$ (2,887,780)	\$ 0
8					
9 Taxable CIAC (Line 7)	\$ 253,377	\$ 512,551	\$ 885,897	\$ 1,208,006	\$ 0
10					
11 Taxable CIAC Resulting in a Tax Liability	\$ 11,874	\$ 512,551	\$ 0	\$ 0	\$ 0
12 Less first years depr. (Line 8)	(9,502)	(19,221)	(33,221)	(45,300)	0
13					
14 Net Taxable CIAC	\$ 2,372	\$ 493,330	\$ (33,221)	\$ (45,300)	\$ 0
15 Effective state and federal tax rate	43.30%	37.63%	37.63%	37.63%	37.63%
16					
17 Net Income tax on CIAC	\$ 1,027	\$ 185,640	\$ (12,501)	\$ (17,046)	\$ 0
18 Less ITC Realized	(47,331)	(40,024)	0	0	0
19					
20 Net Income Tax	\$ (46,304)	\$ 145,616	\$ (12,501)	\$ (17,046)	\$ 0
21 Expansion Factor for gross-up taxes	1.763668430	1.603334936	1.603334936	1.603334936	1.603334936
22					
23 Gross-up Required to pay tax effect	\$ (81,665)	\$ 233,471	\$ (20,043)	\$ (27,330)	\$ 0
24 Less CIAC Gross-up collected (Line 19)	(153,491)	(307,294)	(410,210)	(794,359)	0
25					
26 PROPOSED REFUND (excluding interest)	\$ (153,491)	\$ (73,823)	\$ (410,210)	\$ (794,359)	\$ 0
27	=====	=====	=====	=====	=====
28					NO GROSS-UP
29 TOTAL REFUND	\$ (1,431,883)				COLLECTED
30	=====				