

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF SUEZ WATER’S)	CASE NO. SUZ-W-20-01
PETITION FOR AUTHORIZATION TO)	
ELIMINATE COLLECTION OF GROSS-)	
UP PAYMENTS ASSOCIATED WITH)	ORDER NO. 34829
CONTRIBUTIONS IN AID OF)	
CONSTRUCTION)	

On June 22, 2020, SUEZ Water Idaho, Inc. (“Company”) asked the Commission to authorize the Company to stop collecting the federal and state income tax gross-up amount related to the Contribution in Aid of Construction (“CIAC”) received from developers. The Company proposed changing the CIAC income tax collection method by paying the tax itself and recovering its costs to serve new developments through rates paid by the new customers. The Company also asked to update its tariffs to reflect the proposed changes.¹ The Company requested its Petition be processed by Modified Procedure.

On July 29, 2020, the Commission issued a Notice of Petition and Notice of Modified Procedure establishing a public comment period and Company reply deadline. Order No. 34738.

On August 6, 2020, the Company supplemented its Petition by including the redlined version of its proposed tariff updates.

Commission Staff filed timely comments. Several written public comments were received. The Company responded to Staff, City of Boise City (“Boise City” or “City”), and the public comments.

Now, having reviewed the record, the Commission approves the Company’s Petition.

BACKGROUND

The Company’s tariffs include charges and rules that apply when a developer requests the Company to connect the Company’s water system to new individual, industrial, or commercial developments. Certain charges and allowances relate to main extensions requiring special facilities. These charges allow the Company to recover its construction costs, annual overhead expenses, and depending on current tax law, federal and state income tax associated with the developer’s CIAC.

¹ The Company is proposing to modify Tariff Sheet Nos. 27, 33, 36, 43, and 45.

From 1996 through 2017, federal tax law exempted CIAC from water utilities' taxable income. The 2017 Tax Cuts and Jobs Act ("TCJA") removed this exemption. As a result, the Company has included CIAC in its annual taxable income since January 1, 2018.

In May 2018, the Commission directed the Company to account for the taxability of CIAC by grossing-up developers' contributions. *See* Order No. 34074, Case No. GNR-U-18-01. Effective June 1, 2018, the Company's tariffs have included a table illustrating the basis for calculating the tax gross-up factor so the charges would reflect the net present value of CIAC-related cash flows and the future tax deductibility of contributed asset. The tariffs' "special facilities charges" to developers include the gross-up factor and offset the Company's increased tax liability from CIAC under the TCJA.

THE PETITION

The Company stated it has conducted a study that shows its existing rates for water service will generate sufficient revenue from new development customers to cover the Company's CIAC-related tax expenses from that development. Direct Testimony of Cathy Cooper at 5-7. The Company thus proposed to modify the method of CIAC payment approved in Order No. 34074 and update the Company's tariffs so developers no longer pay for future CIAC-related taxes. The Company stated its proposal ensures development will pay for the additional costs it imposes, and existing customers will not subsidize developments through rate increases.

The Company proposed to cease grossing-up contributed property on the effective date of the final order. CIAC would become taxable upon transfer of ownership to the Company. The Company would refund the tax gross-up to the developer for any project that closes on or after the effective date. If the Company has incurred a tax liability on a project that closed before the effective date, then the Company would retain the developer's gross-up payment.

THE COMMENTS

Comments from Staff and 24 public comments were filed regarding the Company's proposal to pay the CIAC tax gross-up instead of collecting it from developers. The Company filed reply comments.

1. Staff Comments

Staff reviewed the Company's Petition and supporting testimony. Staff believed the growth of the Company's system would pay for itself and generate additional revenue to benefit all customers. According to Staff, ending the CIAC tax gross-up will bring new developments and

new customers to connect to the Company’s system, helping spread costs over larger customer base.

Staff noted that collection of CIAC tax was potentially a barrier to growth, in some instances preventing the Company from growing its customer base. Staff stated the CIAC tax collection had driven large developers to explore alternative water sources, including municipal and private systems.

Staff reviewed and discussed the accounting treatment of the proposed changes to the Company paying CIAC taxes. Staff stated:

The income tax effect will be recorded in accumulated deferred income tax (“ADIT”), which will reduce ADIT in future rate cases. Future tax depreciation funded by non-grossed up CIAC will cause the deferred tax asset to reverse over its tax life, increasing ADIT liabilities as the tax benefit of the additional depreciation is realized over time. This future depreciation reduces current tax expense and incrementally reduces the revenue requirement in future rate cases, since the ADIT is a reduction to rate base. The associated tax on CIAC would be included in rate base and the deferred tax balances would be amortized over a 25-year period.

Staff reviewed development activity from 2014 through present, observing the associated annual tax obligations were between \$1 and \$2 million—about 1% of the Company’s rate base investment. Staff stated that from 2016 through March 2020, the average revenue from developer projects exceeded the incremental revenue requirement to serve customers and cover the CIAC tax gross-up amount. Staff confirmed the average annual revenue from developer projects would exceed the incremental costs of serving the new customers and the revenue requirement of the CIAC tax gross-up.

2. Boise City Comments

Boise City criticized the Company’s proposal and sought clarification on the impacts to existing customers. Boise City was concerned the general rate base could subsidize the costs the Company proposes to incur to avoid charging CIAC taxes to developers. Boise City stated “[i]t is unclear how [the Company] intends to recover the full amount of the CIAC income tax collection solely from the new customers within the new development and not from the general customer rate base.” Boise City was unpersuaded by the Company’s explanation that the increased annual revenue generated beyond the revenue requirement supported the concept that new development projects would pay the CIAC tax obligation.

Boise City indicated it had trouble understanding how the entire rate base would not end up paying for the additional CIAC tax obligation for new development through the Company's rate of return. The City inquired "how can general customers be assured that the funds needed to pay the CIAC tax obligation will be paid for by the rate of return or Company profit margin and not other revenue sources?"

The Company's Petition stated the proposed modification would provide a savings to existing customers. However, the City said no tangible evidence existed supporting the statement or quantifications showing how it would be achieved. The City requested additional information to support this suggestion.

Boise City mentioned it was concerned with the Company's outreach efforts. The City noted the substantial public comments filed by developers and those who would otherwise benefit from the Company paying the CIAC tax compared to general rate paying customers. Boise City was concerned the Company may not have offered the same outreach to general customers and stated general customers should be given the same notification and opportunity to provide input.

The City requested the Commission direct the Company to provide additional detail about how current customers would be prevented from subsidizing the cost of the CIAC tax obligation including assurances that rate of return from new customers would be held separately and used solely to pay for CIAC and an explanation of the proposed timeline for paying the tax obligations.

3. Public Comments

The Commission received 23 public comments from individuals, developers, and developer-adjacent businesses interested in the Company's proposal to cease collection of the CIAC tax gross-up from developers. The Independent School District of Boise City ("School District") also filed comments. All public comments supported the Company's proposal.

The overall tone of the public comments was supportive, encouraging the Commission to approve the Company's request. Several commenters suggested the addition of the CIAC tax was aiding the rapid increase in housing costs in the Company's service area. Commenters said that some developers had postponed potential developments until rents rose enough to cover the additional costs. Commenters also noted the financial inequity between receiving the Company's service and municipal service due to addition of the CIAC tax.

The School District filed comments supporting the Company's request to stop collecting CIAC tax gross-up. The School District pointed to invoices from several projects it had commissioned since Order No. 34074 was issued that included CIAC tax gross-up. The School District requested the Commission end the Company's authority to impose the CIAC tax gross-up on tax exempt public entities for three reasons: (1) The School District pointed out that it is not a developer based on the language in the Company's tariff and should not be charged CIAC tax for its non-development projects.² The School District cited four recent projects it had been invoiced \$141,749 for the CIAC tax gross-up but argued based upon the language of Order No. 34074, it is precluded from being charged the CIAC tax since it is not a developer; (2) the School District argued that as a tax exempt public agency, incurrence of the CIAC tax gross-up shifted the Company's tax burden to taxpayers; and (3) the School District argued that it was not a "person" for purposes of the CIAC applicability under 26 C.F.R. 10118.2(a)(1) and therefore should not be burdened with the CIAC tax gross-up based on this.³

4. Company Reply

The Company replied to Staff and Boise City. The Company reiterated that CIAC has become a barrier to growth and the revenue from eliminating the tax gross-up would sufficiently cover the incremental cost of serving new customers and the revenue requirement of the CIAC tax gross-up amount.

In response to Boise City's concerns, the Company noted that the City did not oppose the Petition but had concerns about how the Company would account for the income tax collections from new customers. The Company stated that Staff explained the additional revenue from new customers would cover the tax through the Company's approved rates and the income tax effect would be recorded in the ADIT account would be amortized over 25 years. The Company also noted that it processed its Petition in full compliance with the Commission's rules of procedure and Order No. 34738. The Company mentioned that several members of the public filed comments supporting the Petition, indicating the Company's outreach efforts were appropriate.

² "Rules and Regulations Governing the Rendering of Services" No. 55; Sheet No. 19

³ "Federal regulation defines CIAC as 'any amount of money or other property received from a person (whether or not a shareholder) by a regulated public utility that provides water or sewage disposal services.' See 26 C.F.R. 10118.2(a)(1). A 'Person' is 'an individual, a trust, an estate, a partnership, an association, a company or a corporation.' See 26 C.F.R. 10269.1(d)." Independent School District of Boise City Comments at 4.

COMMISSION FINDINGS AND DECISION

The Company is a water corporation as defined by *Idaho Code* § 61-125 and a public utility subject to the Commission's jurisdiction under *Idaho Code* § 61-129. The Commission has jurisdiction over the issues in this case pursuant to *Idaho Code* §§ 61-501 and 61-503. Based upon our review of the record, including the Petition, exhibits, direct testimony, and comments, we find it reasonable to authorize the Company to discontinue collection of CIAC tax gross-up from developers and instead pay the CIAC-related tax expense itself, as requested in the Company's Petition.

We appreciate the public input in this case. This Commission is mindful of unintended consequences that sometimes result from an action. While we approve the Company's Petition, and believe doing so will benefit existing customers and permit the Company to expand its customer base, we are also cognizant that the Company has filed Case No. SUZ-W-20-02. In that general rate case, the consequences of the Company's CIAC tax policies can be examined alongside the Company's other tariffs. The City has an opportunity to participate in the Company's general rate case if it wishes to further examine the Company's CIAC tax gross-up policies.


ORDER

IT IS HEREBY ORDERED that the Company's Petition to stop collecting the CIAC tax gross-up from developers and instead pay the tax itself is approved, effective upon the issuance of this Order.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order regarding any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

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DONE by order of the Idaho Public Utilities Commission at Boise, Idaho this 30th
day of October 2020.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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