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September 21, 1995

VIA HAND DELIVERY

Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

Re: Undocketed Workshop on Gross-up of CIAC

Dear Ms. Bayo:

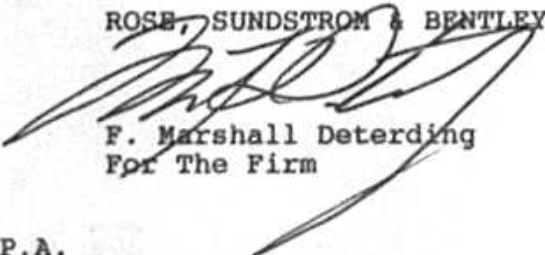
On Tuesday, September 19, 1995, I received a copy of the notice of workshop related to the above referenced matter. I also attended on behalf of the Florida Waterworks Association and several effected utilities, the Staff workshop held on August 30, 1995. At the Staff workshop, we were informed of the Commission Staff's September 29, 1995 deadline for preparing a package to be presented to the Commission in advance of the full Commission workshop. We stated to the Staff that we intended to provide materials to be included in that package by that date. We have set up our scheduling of review and preparation of information in order to provide that information to the Staff by September 29, 1995.

The second paragraph of the workshop notice now states that all such submittals should be provided to the Staff by September 22, 1995. Because of our arrangements in accordance with our previous understandings with Staff, we are unable to meet this September 22 deadline. However, we will try to provide that information for inclusion in the Staff's package to the Commissioners as much in advance of the September 29th date as is possible.

Should you have any questions in this regard, please let me know.

Sincerely,

ROSE, SUNDBSTROM & BENTLEY

  
F. Marshall Deterding  
For The Firm

FMD/lts  
Enclosure

cc: Robert C. Nixon, C.P.A.  
Mr. James Moore, FWWA President  
Effected Utilities and Interested Parties

DOCUMENT NUMBER-DATE  
09880 SEP 21 95  
FPSC-RECORDS/REPORTS

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CAF \_\_\_\_\_  
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B. What formula or formulae should be used when gross-up is collected?

1. Should the first year's depreciation be considered in determining the amount of gross-up to collect?
2. How should the first year's depreciation be determined:
  - i. Should the half year's convention or other convention be used?
  - ii. Should the utility be required to use the most liberal method of available tax depreciation?
3. Should the same formula apply to both plant and cash contributions?
4. What is the appropriate tax rate to use in the formula?

IV. RETENTION OR REFUND OF GROSS-UP

A. Is there ever excess gross-up?

B. How should excess gross-up be measured? That is:

1. Should the excess be determined on an above the line basis? If not, how should it be determined?
2. Should the excess be measured by what is on the actual tax return for the year?
  - a. What effect, if any, should amended tax returns have and when should they be recognized?
  - b. What effect, if any, should NOLs (current, carry-back and carry-forward) have?
3. How should what is on the tax return be allocated to above and below the line operations?
  - a. What effects do used and useful adjustments have, if any?
  - b. How should the depreciation taken on the tax return be treated?

- i. How should first year's depreciation be treated?
  - ii. How should subsequent year's depreciation be treated?
  - iii. What is the best source of information to use in determining the amount of cash converted to assets, for use in calculating first year's depreciation benefits to the developer? Tax return? Annual Report?
- c. How should revenues and expenses that are treated differently on the books and the tax return be treated?
- i. How should amortization of debt/bond issue costs be treated?
  - ii. How should above-the-line and below-the-line interest expense be calculated?
  - iii. How should the state emergency excise tax be treated in the refund calculation?
- d. How should meter fees and similar revenues be treated?
- e. Is the level of expense set in the utility's last rate case relevant?
- f. Is the disallowance of an expense in the utility's last rate case relevant?
- g. When a utility is sold, how should gains or losses be treated for refund purposes?
  - i. Should the state income tax effect of the gain or loss be above-the-line?
4. For purposes of gross-up refunds, how should the tax rate be calculated?
- C. If there is excess gross-up, should the utility be required to refund the excess?
1. Is there an amount below which something other than a refund is appropriate? If so, what is the amount?

- c. If liability is calculated on an above the line basis, how should the information on the actual tax return, i.e., revenues, expenses, tax losses (current, carry-backs and carry-forwards) and credits against the income tax be allocated to above the line operations?
  - i. What effect should amended returns have and when should it be recognized?
- d. Should the cash flow requirements of the utility during the time CIAC is to be collected be considered a criteria?
  - i. If a utility will incur a tax liability as a result of collecting CIAC, but the utility has the ability to pay all or a portion of the taxes, should the utility be allowed to gross-up or be required to fund all or a portion of the taxes itself?
  - ii. If the utility has a parent or affiliate that can fund the CIAC taxes, should the utility be allowed to gross-up?
- e. Should the utility's ability to go into the financial markets to get investor sources of funds in lieu of gross-up be considered a criteria?
  - i. How should the utility's ability to go into the financial markets be measured?
  - ii. Should the utility's willingness to go into the financial markets be considered?
  - iii. Should the utility's interest coverage be considered?
  - iv. Should alternative methods of financing be considered?
- f. What is the effect on existing utility earnings and customer rates if the utility does not collect gross-up?

- F. If there is not enough money in the escrow account for refunds, how should shortages in the escrow account be treated?

#### VI. RATEMAKING TREATMENT OF GROSS-UP

- A. Who should receive the benefit of tax depreciation taken on contributed assets?
  - 1. How should that benefit be provided?
- B. How should the tax on tax be treated?
- C. How should gross-up be treated in a rate case?
  - 1. How should use of NOLs for gross-up or in past rate cases be recognized?

#### VII. ACCOUNTING FOR GROSS-UP

- A. What journal entries should be used to account for gross-up?
  - 1. In the year of receipt of gross-up?
  - 2. In subsequent years?
  - 3. For refunds?
- B. Should CIAC that is not grossed-up be identified on the utility's books?

#### VIII. ALTERNATIVES TO GROSS-UP

- A. What alternatives are there to gross-up of CIAC?
- B. In determining whether there should be gross-up, should the Commission consider the utility's willingness to use or seek alternatives to gross-up?
- C. Should the gross-up of CIAC for cash contributions be a component of the total service availability charge, thus eliminating the separate gross-up amount?
- D. Should refunds be determined over a three to five year period, rather than on an annual basis?

**JURISDICTION**

Jurisdiction is vested in this Commission pursuant to Chapter 367, Florida Statutes. The workshop will be governed by the provisions of that Chapter and Chapters 25-22 and 25-30, Florida Administrative Code.

By DIRECTION of the Florida Public Service Commission, this  
14th day of September, 1995.

BLANCA S. BAYO, Director  
Division of Records and Reporting

by: Kary Hegan  
Chief, Bureau of Records

( S E A L )

BRJ

Service Commission using the Florida Relay Service, which can be reached at 1 (800) 955-8771 (TDD).

**General Information**

The purpose of this workshop is to review and discuss the Commission's current practices for treating the taxability of CIAC. Participants are encouraged to share their ideas and concerns about the current method of treatment afforded the utilities and to discuss alternatives to the current treatment. The following questions are posed in order to focus the direction of the workshop in an organized manner.

- I. PURPOSE OF GROSS-UP OF CONTRIBUTIONS IN AID OF CONSTRUCTION (CIAC)
  - A. Should CIAC gross-up keep the utility whole in relation to:
    1. The taxes actually paid on the CIAC?
    2. The tax effect of the CIAC?
- II. AUTHORITY TO GROSS-UP
  - A. Should the Commission continue to allow utilities to gross-up CIAC?
  - B. If so, should gross-up be permissive or required?
  - C. If gross-up is permissive, should the Commission require the utilities to meet certain criteria to gross-up? For example:
    1. Should the utility be a taxable entity, i.e., a company that files an 1120 federal and F1120 state income tax return?
    2. Should gross-up apply to only CIAC that was made taxable by the Tax Reform Act of 1986 (TRA '86)?
    3. Is there an actual tax liability due to the collection of CIAC?
      - a. How should the Commission define above and below the line?
      - b. Should the liability be measured on a total company basis or an above the line basis?

2. How should uneconomic cash refunds be treated?
- D. Should refunds be made in accordance with Rule 25-30.360, Florida Administrative Code? If not, how should the interest be calculated?
- E. Should the refunds be made to the original contributors?
- F. Should the refunds be made to the rstepayers?
- G. How should the Commission verify refunds?
- H. How should unclaimed refunds be treated?
  1. Should unclaimed refunds be credited to CIAC or turned over to the State as abandoned property?
  - I. Should refunds that have been made be treated, if at all, in calculating the amount of subsequent refunds?
    1. When the refunds were ordered by the Commission?
    2. When made by the utility but not ordered by the Commission?

#### V. ESCROW ACCOUNT

- A. Should the gross-up monies be placed in an escrow account until used to actually pay taxes to the Internal Revenue Service (IRS) or Department of Revenue (DOE)?
  1. Should the gross-up monies be used to pay costs related to the escrow account?
  2. Should the escrow account require Commission approval for the withdrawal of funds?
- B. If so, should the escrow account be interest bearing?
- C. What records should be kept of the escrow account?
  1. At a minimum, should the utility provide documentation that the account has been opened?
- D. What reports, if any, should the utility file with the Commission?
- E. When should these records be made available to the Commission?

4. Is there an item(s) you would like to see eliminated from the above-referenced list. Is there an item(s) you would like to see added to the above-referenced list? If so, please indicate what the items are.
- D. How frequently should a utility prove its entitlement to gross-up?
- E. If gross-up is permissive, should criteria be based on historic data, projected data, or a combination of historic and projected data?
  1. For how many years should the utility be required to provide information?

#### III. METHOD OF GROSS-UP

- A. If gross-up is collected, what method should be used: net present value (NPV) gross-up, full gross-up or some other method? If some other method, what?
  1. Should the same method apply to all contributors of the same utility?
    - a. Should the Commission allow project-specific gross-up?
    - b. Should CIAC transactions with affiliates be treated differently?
      1. If so, how should they be treated?
    - c. Should the relative amount of CIAC to be collected be a factor?
      1. If so, how should the amount to be collected by considered?
  2. Should the utility be permitted to change methods?
    - a. If so, should Staff be given administrative authority to reduce the amount of gross-up collected?
    - b. Should the utility be required to meet all of the original criteria to increase the amount of gross-up collected?

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF WORKSHOP

TO

TO WATER AND WASTEWATER UTILITIES

AND

ALL INTERESTED PERSONS

RE: UNDOCKETED

WORKSHOP ON GROSS-UP OF  
CONTRIBUTIONS IN AID OF CONSTRUCTION

ISSUED: September 14, 1995

NOTICE is hereby given that the Florida Public Service Commission will conduct a workshop, in the above-referenced docket, to which all persons are invited, at the following time and place:

9:30 a.m., October 5, 1995  
Room 148, Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0850

PURPOSE

The purpose of this workshop is to discuss the current practices of the Commission employed in dealing with the taxability of contributions in aid of construction (CIAC) and to discuss viable alternatives. A copy of relevant questions are attached to focus the discussion at the workshop. Workshop participants should review the attached questions and be prepared to comment on and/or discuss them.

Staff is preparing a package to be presented to the Commission on or about September 29, 1995. Any information, comments or written material to be considered by staff and placed in the staff package, should be filed by no later than September 22, 1995. Also, parties who wish to comment, but cannot attend the workshop are encouraged to file comments with the Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, on or before September 22, 1995, specifically referencing "Undocketed CIAC Gross Up Workshop."

Any person requiring some accommodation at this hearing, meeting, etc. because of a physical impairment should call the Division of Records and Reporting at (904) 413-6770 at least five calendar days prior to the hearing, meeting, etc. If you are hearing of speech impaired, please contact the Florida Public

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FPSC-RECORDS/REPORTING

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