

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

September 4, 1996

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

FROM: DIVISION OF WATER & WASTEWATER (MCCASKILL) *GM*
DIVISION OF AUDITING & FINANCIAL ANALYSIS (CAUSSEUX) *GM*
DIVISION OF LEGAL SERVICES (JAEGER) *GM*

RE: DOCKET NO. 960397-WS - REVIEW OF THE COMMISSION'S POLICY
CONCERNING THE COLLECTION AND REFUND OF CIAC GROSS-UP

AGENDA: SEPTEMBER 16, 1996 - REGULAR AGENDA - PROPOSED AGENCY
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\960397WS.RCM

CASE BACKGROUND

The Passage of the Tax Reform Act of 1986 (Act), effective January 1, 1987, made Contributions-in-Aid-of-Construction (CIAC) taxable income. To address this change, the Commission issued several orders. In PAA Order No. 16971, issued on December 18, 1986, the Commission granted the Florida Waterworks Association's (FWWA's) application for emergency approval of amended service availability policies with modifications. That order, among other things, allowed utilities to collect from contributors an amount equal to the tax impact of CIAC, set forth a gross-up formula, required filing of annual CIAC tax impact reports, and required a refund of excess monies collected.

By PAA Order No. 21266, issued May 22, 1989, this Commission proposed to establish guidelines to control the collection of the gross-up. However, on June 12, 1989, Order No. 21266 was protested by FWWA and 14 water/wastewater utilities. Also, by PAA Order No. 21436, the Commission proposed to require a number of utilities to refund amounts of the gross-up collected or make adjustments to their depreciation reserves. This order was also protested.

Those protests were combined and a formal hearing was held on April 27 and 30, 1990. As a result of that formal hearing, the Commission issued Order No. 23541 on October 1, 1990.

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In the ordering paragraphs, the Order stated:

Ordered that any gross-up amounts collected in excess of a utility's actual tax liability resulting from its collection of CIAC, as set forth in the body of this Order shall be refunded on a pro rata basis to the contributors of those amounts.

In the body of the Order, the Commission recognized that above-the-line Net Operating Losses (NOLs) and Investment Tax Credits (ITCs) shall be used to calculate the actual tax liability. In order after order after that, the authorization to continue gross-up of CIAC was made contingent upon compliance with Orders Nos. 16971, issued December 18, 1986, and 23541 issued October 1, 1990, and all matters discussed in those orders were expressly incorporated therein by reference.

Staff believed that applications for gross-up authority and refund calculations were being processed in accordance with the provisions of Orders Nos. 23541 and PSC-92-0961-FOF-WS. However, at the agenda conference on May 18, 1995, in the refund case of Canal Utilities, Inc., Docket No. 941083-WS, the utility raised the question of whether or not staff's method of calculating refunds was contrary to the requirements of Order No. 23541 and the Commission's previous practice. Specifically at issue was the treatment of depreciation of CIAC after the first year; i.e., whether subsequent years' depreciation should be included above-the-line or below-the-line. Staff had included subsequent years' depreciation on CIAC above-the-line; however, the utility contended that in previous CIAC gross-up refund dockets, subsequent years' depreciation had been included below-the-line. Thus, the utility contended that staff's refund calculation was contrary to the provisions of Order No. 23541 and the Commission's previous practice. Also at issue was the appropriate level of review necessary to grant authority or process a refund, offsetting of above-the-line NOLs and ITCs with CIAC income, the requirement of refunds of excess collections of CIAC gross-up, and the differing interpretations given to past decisions of the Commission. As a result of these issues, among others, staff was directed to hold workshops to discuss the current practices of the Commission employed in dealing with the taxability of CIAC and to discuss viable alternatives. Staff was also directed to consider the need, if any, to change the Commission's current policy.

A workshop was held on August 30, 1995, with staff, industry representatives and other interested parties. Staff compiled a list of relevant questions for discussion at the workshop and solicited responses from the industry. A subsequent workshop was

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held on November 29, 1995, before the full Commission, in which the responses received in the first workshop were presented and discussed. Also provided at that workshop was a summary of the responses and positions taken at the August 30, 1995, workshop. While most participants tended to agree that a gross-up of CIAC was necessary, opinions differed as to its application. Further, at the Commission Workshop on November 29, 1995, the utilities proposed an alternate plan for the treatment of CIAC Gross-up.

As a result of the workshops, staff prepared a recommendation for the April 30, 1996, agenda conference recommending that the Commission's policy concerning the collection and refund of CIAC gross-up should be revisited to determine what change, if any, should be made to accomplish the intended purpose of CIAC gross-up as established in Orders Nos. 16971 and 23541. By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, staff was directed to make a recommendation to the Commission concerning whether the current policy regarding the collection and refund of CIAC gross-up should be changed upon staff's completion of its review of the proposals and comments offered by the workshop participants. In addition, staff was directed to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up.

Order No. PSC-96-0686-FOF-WS further provided that until the Commission indicated its change in policy, the requirements of Orders No. 16971 and 23541 should be met in the collection of CIAC gross-up and the ordering of refunds. It also provided that any such change would be made prospectively; therefore, all pending CIAC gross-up cases, and any such cases filed prior to any change in policy, if there was any, would continue to be processed pursuant to Orders Nos. 16971 and 23541.

On August 20, 1996, The Small Business Job Protection Act of 1996 (the Act) passed Congress and was signed by President Clinton on August 20, 1996. The Act provides for CIAC collected by water and wastewater utilities to become non-taxable on a retroactive basis effective for amounts received after June 12, 1996. On September 3, 1996, this Commission voted to revoke the utilities' authority to collect gross-up and cancel the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance.

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DISCUSSION OF ISSUES

ISSUE 1: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed. (JAEGER)

STAFF ANALYSIS: By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, staff was directed to review the Commission's policy on CIAC to determine what changes, if any, should be made to accomplish the intended purpose of CIAC gross-up as established in Orders No. 16971 and 23541. Further, that order provided that any such change would be made prospectively only.

On August 20, 1996, The Small Business Job Protection Act of 1996 (the Act) passed Congress and was signed by President Clinton on August 20, 1996. With the passage of the Act, CIAC received after June 12, 1996, was returned to its former non-taxable status. Since Order No. PSC-96-0686-FOF-WS provided that any change in policy would be made prospectively only, there is no longer a need to review the Commission's policy to determine any changes, as the gross-up of CIAC will no longer be needed by the utilities. Therefore, this docket should be closed.

As established in Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases will be processed pursuant to Orders No. 16971 and 23541.