

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of
contribution-in-aid-of-
construction (CIAC) gross-up
funds collected by Gulf Utility
Company in Lee County.

DOCKET NO. 980943-WS
ORDER NO. PSC-98-1626-FOF-WS
ISSUED: December 7, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION ORDER
REQUIRING REFUNDS FOR THE YEARS 1992 THROUGH 1994,
BUT NO REFUNDS FOR THE YEARS 1995 AND 1996

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

BACKGROUND

Gulf Utility Company (Gulf or utility), is a Class A utility
providing service to approximately 7,282 water and 2,584 wastewater
customers in Lee County. According to its 1997 annual report, the
utility reported gross operating revenues of \$2,068,756 and
\$1,556,271 for water and wastewater, respectively, and net
operating income of \$108,751 for water and net operating income of
\$278,885 for wastewater.

As a result of the repeal of Section 118(b) of the Internal
Revenue Code, effective January 1, 1987, contributions-in-aid-of-

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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construction (CIAC) became gross income and were depreciable for federal tax purposes. Therefore, by 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, 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 liability directly attributable to the CIAC. The information would also determine whether refunds of gross-up would be appropriate. These orders also required that all gross-up collections for a tax year, which are in excess of a utility's actual tax liability for the same year, should be refunded on a pro rata basis to those persons who contributed the taxes. However, the Small Business Job Protection Act of 1996 (The Act), which became law on August 20, 1996, provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996.

The disposition of gross-up funds collected by the utility for 1987-1991 was handled in Docket No. 930216-WS, Order No. PSC-95-0508-FOF-WS, issued April 25, 1995. The purpose of this Order is to address the disposition of gross-up funds collected by the utility for 1992-1996.

REFUND REQUIREMENT

In compliance with Orders Nos. 16971 and 23541, Gulf filed its 1992-1996 annual CIAC reports regarding its collection of gross-up. By letter dated October 6, 1998, our staff submitted preliminary refund calculation numbers to the utility. On October 21, 1998, the utility filed a response indicating that it agreed with our staff's preliminary calculations, and that a refund of \$40,469 was appropriate for 1992-1996.

We have calculated the gross-up required to pay the tax liability resulting from the collection of taxable CIAC by grossing-up the net taxable CIAC amount, in accordance with the method adopted in Order No. PSC-92-0961-FOF-WS. Our calculations, taken from the information provided by the utility in its gross-up report, are reflected on the schedule attached to this Order. A summary of the 1992 through 1996 refund calculation follows.

1992

The utility's 1992 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$528,301 in taxable CIAC was received, with \$4,886 being deducted for the first year's depreciation. Using the 37.63 percent combined marginal federal and state tax rate as provided in the 1992 CIAC Report, and applying this rate to the net \$523,415, we calculate an income tax effect of \$196,961. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$315,794. The utility collected \$321,518 of gross-up monies; therefore, a refund of \$5,724 is required. This amount does not include accrued interest which must be refunded from December 31, 1992 through the date of the refund.

1993

The utility's 1993 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$957,765 in taxable CIAC was received, with \$18,803 being deducted for the first year's depreciation. Using the 37.63 percent combined marginal federal and state tax rate as provided in the 1993 CIAC Report, and applying this rate to the net \$938,962, we calculate an income tax effect of \$353,331. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$566,508. The utility collected \$578,151 of gross-up monies; therefore, a refund of \$11,643 is required. This amount does not include accrued interest which must be refunded from December 31, 1993 through the date of the refund.

1994

The utility's 1994 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$1,469,031 in taxable CIAC was received, with \$38,301 being deducted for the first year's depreciation. Using the 37.63 percent combined marginal federal and state tax rate as provided in the 1994 CIAC Report, and applying this rate to the net \$1,430,730, we calculate an income tax effect of \$538,384. When this amount is

multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$863,210. The utility collected \$886,312 of gross-up monies; therefore, a refund of \$23,102 is required. This amount does not include accrued interest which must be refunded from December 31, 1994 through the date of the refund.

The refunds, for the years 1992-1994 shall be completed within 6 months of the effective date of this Order. Within 30 days from the date of the refund, the utility shall submit copies of canceled checks, credits applied to monthly bills or other evidence that verifies that the utility has made the refunds. Within 30 days from the date of the refund, the utility shall also provide a list of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refund.

1995

The utility's 1995 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$1,110,304 in taxable CIAC was received, with \$35,635 being deducted for the first year's depreciation. Using the 37.63 percent combined marginal federal and state tax rate as provided in the 1995 CIAC Report, and applying this rate to the net \$1,074,669, we calculate an income tax effect of \$404,398. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$648,385. The utility collected \$617,226 of gross-up monies; therefore, no refund is required for 1995.

1996

The utility's 1996 CIAC report indicates that the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$546,906 in taxable CIAC (through June 12, 1996) was received, with \$8,235 being deducted for the first year's depreciation. Using the 37.63 percent combined marginal federal and state tax rate as provided in the 1996 CIAC Report, and applying this rate to the net \$538,671, we calculate an income tax effect of \$202,702. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$324,999. The utility collected \$320,647 of gross-up monies; therefore, no refund is required for 1996.

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CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall remain open pending completion and verification of the refunds. The docket may be administratively closed upon our staff's verification that the refunds have been made, and there are no unclaimed refunds.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Gulf Utility Company shall refund excess gross-up of contributions-in-aid-of-construction in the amounts of \$5,724 for 1992, \$11,643 for 1993, and \$23,102 for 1994. It is further

ORDERED that no refunds are required for 1995 and 1996. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that the schedule attached to this Order is incorporated into and made a part of this Order. It is further

ORDERED that the refunds shall be carried out as set forth in the body of this Order. It is further

ORDERED that Gulf Utility Company shall refund accrued interest from December 31, 1992, for the 1992 refund, from December 31, 1993, for the 1993 refund, and from December 31, 1994, for the 1994 refund, through the date of refund, for gross-up of contributions-in-aid-of-construction collected in excess of the tax liability. It is further

ORDERED that, pursuant to Orders Nos. 16971 and 23541, all refund amounts shall be refunded on a pro rata basis to those persons who contributed the funds. It is further

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ORDERED that the refunds required herein shall be completed within six months of the effective date of this Order, and that Gulf Utility Company shall submit copies of canceled checks, credits applied to monthly bills or other evidence verifying that the refunds have been made within 30 days of completion of the refund. It is further

ORDERED that within 30 days of completion of the refund, Gulf Utility Company shall provide a list of unclaimed refunds detailing the contributor and the amount, and an explanation of the efforts made to make the refunds. It is further

ORDERED that the docket shall be administratively closed upon expiration of the protest period, if no timely protest is filed by a substantially affected person, and upon our staff's verification that the refunds have been made, and there are no unclaimed refunds.

By ORDER of the Florida Public Service Commission this 7th day of December, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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

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should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 28, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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 substantially 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.

SCHEDULE NO. 1

COMMISSION CALCULATED GROSS-UP

Gulf Utility Company
 SOURCE: (Line references are from CIAC Reports)

	1992	1993	1994	1995	1996
1 Form 1120, Line 30 (Line 15)	\$ 992,548	\$ 1,678,566	\$ 2,503,601	\$ 1,742,258	\$ 921,854
2 Less CIAC (Line 7)	(528,301)	(957,765)	(1,469,031)	(1,110,304)	(546,906)
3 Less Gross-up Collected (Line 10)	(321,518)	(578,151)	(886,312)	(617,226)	(320,647)
4 Add First Year's Depr on CIAC (Line 8)	4,886	18,803	38,301	35,635	8,235
5 Add/Less Other Effects (Lines 20 & 21)	(2,347)	(4,984)	(4,348)	(2,650)	(1,645)
6	-	-	-	-	-
7 Adjusted Income Before CIAC and Gross-up	\$ 145,268	\$ 156,469	\$ 182,211	\$ 47,713	\$ 60,891
8	-	-	-	-	-
9 Taxable CIAC (Line 7)	\$ 528,301	\$ 957,765	\$ 1,469,031	\$ 1,110,304	\$ 546,906
10 Less first years depr. (Line 8)	\$ (4,886)	\$ (18,803)	\$ (38,301)	\$ (35,635)	\$ (8,235)
11	-	-	-	-	-
12 Adjusted Income After CIAC	\$ 668,683	\$ 1,095,431	\$ 1,612,941	\$ 1,122,382	\$ 599,562
13 Less: NOL Carry Forward	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
14	-	-	-	-	-
15 Net Taxable CIAC	\$ 523,415	\$ 938,962	\$ 1,430,730	\$ 1,074,669	\$ 538,671
16 Combined Marginal state & federal tax rates	37.63%	37.63%	37.63%	37.63%	37.63%
17	-	-	-	-	-
18 Net Income tax on CIAC	\$ 196,961	\$ 353,331	\$ 538,384	\$ 404,398	\$ 202,702
19 Less ITC Realized	0	0	0	0	0
20	-	-	-	-	-
21 Net Income Tax	\$ 196,961	\$ 353,331	\$ 538,384	\$ 404,398	\$ 202,702
22 Expansion Factor for gross-up taxes	1.6033349366682	1.6033349366682	1.6033349366682	1.6033349366682	1.6033349366682
23	-	-	-	-	-
24 Gross-up Required to pay tax effect	\$ 315,794	\$ 566,508	\$ 863,210	\$ 648,385	\$ 324,999
25 Less CIAC Gross-up collected (Line 19)	(321,518)	(578,151)	(886,312)	(617,226)	(320,647)
26	-	-	-	-	-
27 (OVER) OR UNDER COLLECTION	\$ (5,724)	\$ (11,643)	\$ (23,102)	\$ 31,159	\$ 4,352
28	=	=	=	=	=
29 TOTAL YEARLY REFUND	\$ (5,724)	\$ (11,643)	\$ (23,102)	\$ 0	\$ 0
30	-----	-----	-----	-----	-----
31 REFUND (excluding interest)	\$ (40,469)	\$	\$	\$	\$
32	==				