



Public Service Commission

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RECORDS AND REPORTING

DATE: NOVEMBER 4, 1999

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

FROM: DIVISION OF WATER AND WASTEWATER (MCCASKILL, AUSTIN) *CM* *SA* *AD* *PL*
DIVISION OF LEGAL SERVICES (JAEGER) *PS*

RE: DOCKET NO. 980943-WS - DISPOSITION OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION (CIAC) GROSS-UP FUNDS COLLECTED BY GULF UTILITY COMPANY IN LEE COUNTY.
COUNTY: LEE

AGENDA: 11/16/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\980943.RCM

CASE 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-construction (CIAC) became gross income and were depreciable for federal tax purposes. Therefore, by Order No. 16971, issued December 18, 1986, the Commission 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.

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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. Moreover, these orders 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, by Order No. PSC-95-0508-FOF-WS, issued April 25, 1995. By Order No. PSC-98-1626-FOF-WS, issued December 7, 1998, in this docket, the Commission required refunds for the years 1992-1994. However, no refunds were required for 1995 and 1996. The utility was ordered to complete the refunds within six months of the effective date of the order and provide verification that the refunds had been made. Further, the utility was to provide a list of unclaimed refunds detailing the contributor and the amount, and an explanation of the efforts made to make the refunds.

Based on the information provided by the utility, there are some unclaimed refunds. Normally, when there are unclaimed refunds, the utility treats the unclaimed refunds as cash contributions-in-aid-of-construction in accordance with Rule 25-30.360(8), Florida Administrative Code. However, this utility was sold to Gulf Environmental Services, Inc. on June 30, 1998. The transfer was acknowledged in Docket No. 980767-WS, by Order No. PSC-98-1642-FOF-WS, issued December 7, 1998. Therefore, the purpose of this recommendation is to address the disposition of the unclaimed refunds.

DISCUSSION OF ISSUES

ISSUE 1: Should Gulf Utility Company be ordered to remit unclaimed gross-up refunds of \$6,575.54 to the State of Florida Comptroller's Office as abandoned property?

RECOMMENDATION: Yes. The utility should be ordered to remit unclaimed gross-up refunds, in the amount of \$6,575.54, to the State of Florida Comptroller's Office as abandoned property. (MCCASKILL, AUSTIN)

STAFF ANALYSIS: As stated in the case background, by Order No. PSC-98-1626-FOF-WS, issued December 7, 1998, the Commission ordered Gulf to refund \$5,724 for 1992, \$11,643 for 1993 and \$23,102 for 1994, for a total of \$40,469 of excess gross-up funds collected. Upon completion of the refund, the utility was to provide a list of unclaimed refunds detailing the contributor and the amount, and an explanation of the efforts made to make the refunds. The utility has completed the refunds and reported that it had a total of \$6,575.54 of unclaimed refunds. Of this total, 60 checks totaling \$5,786.11 remain outstanding and have not been cashed. An additional 25 checks totaling \$789.43 were returned by the postal service as "undeliverable". The utility stated that it checked with the Post Office, in the telephone directory, and with directory assistance and has no further leads as to the whereabouts of these contributors.

In accordance with Rule 25-30.360(8), Florida Administrative Code, any unclaimed refunds shall be treated as cash contributions-in-aid-of-construction. However, in this instance, the utility has been transferred to a nonjurisdictional entity. Therefore, staff recommends that the unclaimed refunds should be remitted to the State of Florida Comptroller's Office as abandoned property. By reporting the unclaimed refunds to the State of Florida Comptroller's Office, it would assure that the customers that have subsequently moved from the utility system's service area, and therefore, did not receive a refund check, have ample opportunities to claim any refunds. The Comptroller's Office publishes the name, address, and the amount in newspapers throughout Florida.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, the order should become final and effective upon the issuance of a consummating order. The docket should remain open pending verification that the unclaimed refunds have been delivered to the State of Florida Comptroller's Office as abandoned property. Staff should be granted administrative authority to close the docket upon receiving such verification. (JAEGER)

STAFF ANALYSIS: No, upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, the order should become final and effective upon the issuance of a consummating order. The utility should be required to provide proof that the unclaimed refunds have been delivered to the State of Florida Comptroller's Office as abandoned property. The docket should remain open pending verification that the unclaimed refunds have been delivered to the State of Florida Comptroller's Office. Staff should be granted administrative authority to close the docket upon receiving the verification.