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RECORDS AND REPORTING

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DATE: NOVEMBER 4, 1999

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

FROM: DIVISION OF WATER AND WASTEWATER (IWENJIORA)
DIVISION OF LEGAL SERVICES (JAEGER)
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (C. ROMIG)

RE: DOCKET NO. 980954-WS - JJ'S MOBILE HOMES, INC.'S DISPOSITION OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION (CIAC) GROSS-UP FUNDS COLLECTED DURING THE YEARS 12/31/92 THROUGH 12/31/96.
COUNTY: LAKE

AGENDA: NOVEMBER 16, 1999 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\980954WS.RCM

CASE BACKGROUND

JJ's Mobile Homes, Inc. (JJ's or utility), was a Class C utility located in Lake County, Florida. JJ's provided water and wastewater service to approximately 278 water and wastewater customers in the City of Mt. Dora, Florida (City). Its 1995 annual report reflected gross operating revenues of $136,790 and $138,025 for water and wastewater, respectively, and net operating losses of $60,567 and $45,929 for water and wastewater, respectively.

On July 9, 1996, the utility and City filed a joint application for transfer of the utility to a governmental authority, pursuant to Section 367.071(4)(a), Florida Statutes. The contract for the sale between JJ's and the City was made on June 21, 1996, with closing and transfer of all water and wastewater assets effective July 3, 1996. By Order No. PSC-96-1245-FOF-WS, issued October 7, 1996, in Docket No. 921237-WS, the Commission acknowledged the transfer of the water and wastewater assets of JJ's to the City and canceled Certificates Nos. 298-W and 248-S.

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FPSC-RECORDS/REPORTING

The disposition of contributions-in-aid-of-construction (CIAC) gross-up collections was not addressed in the above-mentioned docket. However, the Commission has jurisdiction to address the disposition of CIAC gross-up collections even though the facilities have been sold to the City. See Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1st DCA 1995) determining that the Commission had jurisdiction over a rate dispute between a county and a water utility involving alleged overcharges to the county for water service occurring before transfer of the utility's water facility to the city. Therefore, Docket No. 980954-WS was opened on July 28, 1998 to address the disposition of excess CIAC gross-up collections for the years 1992 through 1996.

As a result of the repeal of Section 118(b) of the Internal Revenue Code, effective January 1, 1987, CIAC became gross income and was depreciable for federal tax purposes. Therefore, by Order No. 16971, issued December 18, 1986, in Docket No. 860184-PU, the Commission authorized corporate water and wastewater utilities to collect the gross-up on CIAC in order to meet the tax impact resulting from the inclusion of CIAC as gross income.

On January 7, 1992, pursuant to Order No. 23541, issued October 1, 1990, in Docket No. 860184-PU, JJ's filed for authority to gross-up CIAC for the related tax impact. On February 17, 1992, the developer, George Wimpey of Florida, d/b/a Morrison Homes (Morrison Homes or Developer), filed a Petition to Intervene. Subsequently, the Developer withdrew its intervention in that docket. By Order No. PSC-92-0777-FOF-WS, issued August 10, 1992, in Docket No. 920032-WS, JJ's was granted authority to gross-up using the full gross-up formula. As a result, JJ's gross-up tariff authority became effective on September 1, 1992.

Orders Nos. 16971 and 23541 require that utilities annually file information to be used to determine the actual state and federal income tax liability directly attributable to the CIAC. The information determines whether refunds of gross-up are appropriate. These orders also require that all gross-up collections for a tax year, which are in excess of a utility's actual tax liability for the same year, be refunded on a pro rata basis to those persons who contributed the taxes.

However, the Small Business Job Protection Act of 1996, 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. Therefore, the purpose of this recommendation is to address the disposition of gross-up funds collected by the utility for the years 1992 through 1996.

This recommendation was originally set to be heard by the Commission at the October 5, 1999 Agenda Conference. However, subsequent to the filing of the recommendation but prior to the October 5, 1999 Agenda Conference, the utility's accounting firm provided additional information to Staff. Although the additional information did not change Staff's original recommendation, the additional information did change Staff's analysis of Adjustment (b) in Issue 1. Consequently, Staff requested that this item be deferred from the October 5, 1999 Agenda Conference, so that the modification could be clearly presented in the recommendation.

DISCUSSION OF ISSUES

ISSUE 1: Should JJ's Mobile Homes, Inc. be required to refund excess CIAC gross-up collections for the years 1992 through 1996?

RECOMMENDATION: Yes. If the Commission approves Staff's recommendation, the utility should be required to refund $3,387 for 1992; $1,559 for 1993; $6,070 for 1994 and $448 for 1995 for a total of $11,464 plus accrued interest through the date of the refund, for gross-up collected in excess of the tax liability resulting from the collection of taxable CIAC.

In addition, the utility should refund $6,353 for 1994 and $6,918 for 1995 for a total of $13,271 plus accrued interest through the date of the refund, for the unauthorized collection of gross-up on meter fees.

In accordance with Orders Nos. 16971 and 23541, all amounts should be refunded on a pro rata basis to those persons who contributed the taxes. Since there is only one developer that contributed gross-up for the years 1992 through 1995 and one additional gross-up contributor in 1996, the refund should be completed within two months of the effective date of this Order. The utility should submit copies of canceled checks, or other evidence which verifies that the refunds have been made, within 30 days from the date of refund. The utility should also provide a list of any unclaimed refunds detailing the amounts, and an explanation of the efforts made to make the refunds. Further, the utility should deliver any unclaimed refunds to the State of Florida Comptroller's Office as abandoned property. The unclaimed refunds should be delivered to the Comptroller's Office following Staff's written notification to the utility that the refunds have been made in accordance with the Commission Order. (IWENJIORA, C. ROMIG)

STAFF ANALYSIS: JJ's Mobile Homes, Inc. sold its water and wastewater facilities to the City of Mount Dora on July 3, 1996. The utility was an operating division of JJ's Mobile Homes, Inc. JJ's Mobile Homes, Inc. was also in the business of selling mobile home units and mobile home lots within the Dora Pines Subdivision, as well as repairing and maintaining the common areas. The utility is currently in the process of winding up its business affairs. The CIAC tax gross-up monies were not transferred to the City. The utility maintained all rights and obligations to the gross-up monies upon the sale. Therefore, in compliance with Order No. 16971, JJ's timely filed its 1992 through 1996 annual CIAC reports regarding its collection of CIAC and gross-up and by letter dated December 22, 1997, Staff submitted its preliminary refund calculation to the utility and requested additional information to finalize its review. On February 13, 1998, the utility responded that it did not agree with Staff's preliminary refund calculation.

Based on the utility's initial gross-up filing, Staff and the utility had numerous differences to resolve because the information that was on file at the Commission was in conflict with some of the information contained in the gross-up report. Most of the differences related to the filing of incorrect annual reports and inadequate record-keeping. Staff adjusted the amounts in the gross-up reports to reconcile them to the amounts that were supported by the annual reports and other information on file at the Commission. Staff then prepared refund calculations and submitted them to the utility. In response to Staff's refund calculations, on August 11, 1999, the utility provided a revised gross-up refund proposal in which it agreed to and/or accepted all but three of Staff's adjustments. Two of the adjustments, adjustments (b) and (c), have been previously considered by the Commission; however, the utility presented one new adjustment. The adjustments are (a) what is the treatment required for the 1993 capitalization of a 1992 Operation and Maintenance expense; (b) whether the benefit of first year's depreciation should be given to the contributor; and (c) whether fifty percent (50%) of legal and accounting fees should be offset against the gross-up refund. These adjustments are discussed below.

STAFF ADJUSTMENTS

In our review and analysis, Staff made several adjustments to the utility's above-the-line computation. These adjustments are discussed below:

(a) **1993 Capitalization of 1992 O&M Expense** - In 1993, the utility realized that $7,695 of construction cost was erroneously expensed in 1992. The utility adjusted its 1993 books and tax return to reflect the reclassification of this amount to plant in service. Although the adjustment for this reclassification had the effect of increasing retained earnings, the utility did not file an amended tax return to reflect the effect on taxable income, for 1992.

Staff notes that the total company showed a loss of $221,939 on its tax return for 1992. The deduction of $7,695 was included in the loss. This loss was carried forward in its entirety to 1993 to offset total company taxable income of $321,862 for 1993. In addition, it appears that the $7,695 was included in depreciable plant on the books and tax return for 1993, and is being depreciated. Therefore, it appears that the utility realized the benefit of both the deduction and the depreciation for book and tax purposes.

Further, Staff notes that through price indexing, the utility received the benefit of these expenses being classified above-the-line. The utility filed for and implemented a 1993 price index rate increase based on its 1992 O&M expenses which included the $7,695. Furthermore, the subsequent 1994 through 1996 price index rate increases compounded this error by adding index increases onto the 1993 indexed rates.

Staff recommends that the $7,695 expense be included as an above-the-line O&M expense for 1992 because the utility has received the benefit of that expense in subsequent price index rate increases and in the NOL carryforward, as well as the benefit of the depreciation when the expense was capitalized in 1993.

(b) First Year's Depreciation on CIAC - For each year under consideration, the utility did not deduct first year's depreciation on CIAC in its refund calculation. In support of its position, the utility states that:

1. The utility did not receive any tax benefits on CIAC, since all depreciation was recaptured in the tax on the gain on sale of the utility in 1996. Thus, any tax benefit realized by the Company prior to 1996 was repaid in the computation of the gain;

2. The Commission has recognized that elimination of the first year's depreciation benefit is appropriate where the utility's assets have been sold and depreciation has been recaptured. The Commission recognized this in the case of Sunbelt Utilities, Inc., by Order No. PSC-97-0147-FOF-WS, issued February 11, 1997, in Docket No. 940076-WS, and possibly other cases.

In further support of its position, the utility enclosed a copy of its 1996 Form 4797, Sales of Business Property, attempting to demonstrate that, "$299,440 of depreciation was added back to the gross sales price (recaptured) in determining the taxable amount of the gain." The utility's accounting firm also provided information which supplemented its 1996 Federal Income Tax return in support of its position. Staff, therefore, believes that the information provided by the utility does support that all depreciation was recaptured in the tax on gain on the sale of the utility.

Nevertheless, Staff believes that it is correct to give the benefit of first year's depreciation on CIAC to the contributors for several reasons.

First, Staff's treatment is in accordance with the standard refund calculation appended to Order No. PSC-92-0961A-FOF-WS.

Second, the final order of Florida Cities Water Company's CIAC Disposition proceeding, which went to hearing (Order No. PSC-94-0213-FOF-WS, issued February 23, 1994, in Docket No. 921240-WS), states,

> Depreciation is and has been an element used in determining the actual tax liability of the utility. The determination of a utility's actual tax liability has been referenced in both Orders Nos. 16971 and 23541, and therefore, should be included in calculating each year's refund of excess gross-up collections. The utility's arguments ignore completely the basic fact that depreciation is an integral part of the calculation of the utility's actual tax liability.
>
> Further, that,
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> The Orders clearly indicate that the intent of the Commission has always been to determine that amount of gross-up to be retained based upon the utility's actual tax liability, which would include a deduction to CIAC revenue for depreciation.

Therefore, Staff believes that the Commission clearly intended that the benefit of first year's depreciation go to the contributor, rather than the utility. This treatment recognizes that the utility may pay taxes, **net of depreciation**, on contributed property in the year of receipt. Therefore, since the utility's tax liability on CIAC is net of depreciation, Staff believes that the benefit should be passed back to the contributors, the parties who originally paid the gross-up.

Third, at least six prior proposed agency action Commission decisions, which were not protested, have given the benefit of first year's depreciation to the contributor in calculating a gross-up refund for a utility that was sold during the collection and disposition period, which are:

1. Mid-Clay Service Corp., Order No. PSC-95-0357-FOF-WS, issued 3/14/95 in Docket No. 940096-WS;

2. Canal Utilities, Inc., Order No. PSC-95-0781-FOF-WS, issued 6/28/95 in Docket No. 941083-WS;

3. Orange-Osceola Utilities, Inc., Order No. PSC-96-0986-FOF-WS, issued 8/5/96 in Docket No. 950317-WS;

4. Martin Downs Utilities, Inc., Order No. PSC-97-1147-FOF-WS, issued 9/30/97 in Docket No. 931065-WS;

5. Clay Utility Company, Order No. PSC-97-1364-FOF-WS, issued 10/28/97 in Docket No. 940097-WS;

6. Gulf Utility Company, Order No. PSC-98-1626-FOF-WS, issued 12/7/98 in Docket No. 980943-WS.

Fourth, Staff does not believe that the tax consequences of the sale of a utility should be considered in the gross-up refund calculation. The financial events and their tax consequences prior to the sale of a utility should be considered by the Commission, including the refund of excess gross-up funds collected up until the date of sale. However, the tax consequences of the gains and losses from the sale of a utility should not be considered by the Commission. The gains and losses from the sale of a water and wastewater utility are not "flowed back to" or "collected from" the ratepayer. Therefore, because the tax consequences are attached to the gains and losses, it follows that the tax consequences should not be considered by the Commission in the gross-up refund calculation.

However, based on the utility's representation, Staff studied the Commission's decision in Sunbelt Utilities, Inc., Docket No. 940076-WS. While the Commission allowed Sunbelt to exclude first year's depreciation on CIAC from the gross-up refund calculation in that case based on the utility's recapture of its depreciation in the year the utility was sold, this is the only case Staff has discovered in which that treatment has been allowed.

It should be noted that water and wastewater utilities are routinely sold while under this Commission's jurisdiction. When gross-up policy was being established and the gross-up formulae were being constructed, no provision was made to distinguish between utilities sold during the gross-up refund process, utilities sold following completion of the gross-up refund process or utilities that remained under the same ownership.

Therefore, based on the above analysis and precedent, Staff recommends that the Commission deduct first year's depreciation from CIAC in its calculation of the CIAC gross-up refund in this case.

(c) <u>Legal and Accounting</u> - Consistent with prior Commission decisions, the utility requested that it be allowed to offset fifty percent (50%) of legal and accounting costs incurred in preparing the gross-up refund reports against the contributors' refunds. The utility provided documentation requesting legal and accounting fees of $9,028 for 1992, $13,307 for 1993, $6,076 for 1994, $5,442 for 1995 and $6,703 for 1996, for a total of $40,556.

Staff reviewed these costs and believes the cost incurred to revise the gross-up reports because of the reporting errors which required amendments to the tax return should not be borne by the contributor. Staff recommends disallowing fifty percent (50%) of the cost associated with gross-up report preparation that was a result of the filing of amended tax returns in 1993. Staff believes that filing tax returns is a normal cost of operations, therefore, this cost should not be passed directly to the contributors of the gross-up.

In addition, several revisions of the utility's refund calculations were required to correct erroneous information contained in the utility's CIAC gross-up filings. The utility also spent a substantial amount of time preparing a reconciliation of the amounts reported in the 1992 and 1993 annual reports to the amounts reported in the tax returns and gross-up reports for those years. It appears that the discrepancies in these amounts were due primarily to inadequate record-keeping. Further, it should be noted that an audit of the utility's books and records in 1994 indicated that prior to the utility's engagement of Cronin, Jackson, Nixon and Wilson to prepare its general ledger and accompanying financial statements, the books and records were not maintained in substantial compliance with NARUC Water and Wastewater, Class "C", Accounting Instruction II, A and B. Accounting Instruction IIA reads, "The books of accounts of all water utilities shall be kept by the double entry method, on an accrual basis. Each utility shall keep its accounts monthly and shall close its books at the end of each calendar year." Further, Accounting Instruction IIB reads, "All books of accounts, together with records and memoranda supporting the entries therein, shall be kept in such a manner as to support fully the facts pertaining to such entries. The books and records referred to herein include not only the accounting records in a limited technical sense, but also all other records, reports, correspondence, invoices, memoranda and information useful in determining the facts regarding a transaction."

Since most of the utility's revised reporting was due to correcting erroneous information filed in its annual reports and/or providing information that was omitted from the reports, Staff believes that only one-half of the cost of filing the revised CIAC gross-up reports and schedules should be allowed. Staff believes that reducing the contributors' refunds by the total cost incurred would penalize the contributors, although the contributors of the gross-up did not have any control over the utility's inadequate record-keeping, erroneous annual report filings, and the resultant reconciliations necessary to correct the utility's gross-up filing. However, because the revised CIAC gross-up reports and schedules were filed to satisfy regulatory requirements, Staff recommends that one-half of the cost of revising the CIAC gross-up filings should be disallowed.

Further, some of the legal and accounting costs requested related to other dockets and/or cases and unsupported costs. As a result, Staff recommends excluding the associated legal and accounting costs in determining the allowable legal and accounting cost.

Based upon the adjustments above, Staff recommends that $30,510 of the $40,556 legal and accounting fees requested by the utility for preparing the required gross-up reports and calculating the tax effect and the proposed refunds be considered. The legal and accounting expenses for each year are $6,458 for 1992; $7,425 for 1993; $4,800 for 1994; $4,167 for 1995; and $7,660 for 1996. Fifty percent (50%) of these amounts are $3,229 for 1992, $3,713 for 1993, $2,400 for 1994, $2,084 for 1995 and $3,830 for 1996.

Staff notes that the Commission has considered on several occasions, the question of whether an offset should be allowed against CIAC gross-up refunds. (See Order No. PSC-97-0647-FOF-SU, issued June 7, 1997, in Docket No. 961077-SU; Order No. PSC-97-0657-AS-WS, issued June 9, 1997, in Docket No. 961076-WS; and Order No. PSC-97-0816-FOF-WS, issued July 7, 1997, in Docket No. 970275-WS.) In these orders, the Commission accepted the utilities' settlement proposals that fifty percent (50%) of the legal and accounting costs be offset against the refund amount. However, it should be noted that Orders Nos. 16971 and 23541 do not provide for the netting of costs incurred with filing gross-up refund reports against the refund of excess gross-up collections. Those orders specifically state, "That all gross-up amounts in excess of a utility's actual tax liability resulting from its collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes."

Therefore, Staff believes that once the contributors have paid the gross-up taxes on the CIAC, the contributors have fulfilled their obligation under Orders Nos. 16971 and 23541. Further, since those orders also provide that gross-up in excess of the utility's actual tax liability be refunded on a pro rata basis to those persons who contributed the taxes, Staff believes that once the tax liability is determined, it is the responsibility of the Commission to ensure that excess payments of CIAC taxes are refunded in compliance with those orders. Therefore, Staff does not believe that a reduction in the amount of refund a contributor is entitled to receive as a result of his overpayment of gross-up taxes is appropriate. Staff acknowledges that those costs were incurred to satisfy regulatory requirements; however, Staff does not believe that the contributors should be held responsible for the legal and accounting costs incurred to determine whether they are entitled to a refund. Staff views those costs as a necessary cost of doing business, and as such, Staff believes it is appropriate for the utility to seek recovery of those amounts in a rate proceeding. Finally, Staff believes that this situation is similar to when a utility files for an increase in service availability charges. The costs of processing the utility's service availability case are borne by the general body of ratepayers, although the charges are set for future customers only.

However, as in the other cases referenced above, Staff recognizes in this case that acceptance of the utility's request would avoid the substantial cost associated with a hearing, which may in fact exceed the amount of the legal and accounting costs to be recovered. Staff further notes that the actual costs associated with making the refunds have not been included in these calculations and will be absorbed by the utility. Moreover, Staff believes that the utility's request is a reasonable "middle ground." Therefore, Staff recommends that the Commission accept JJ's request that it be allowed to offset fifty percent (50%) of the adjusted legal and accounting fees against the refund.

Staff's refund calculations are based on the method adopted in Order No. PSC-92-0961-FOF-WS. The adjustments were based on the August 11, 1999 Revised Gross-up Refund Proposal, on information provided by the utility in its gross-up reports, other information on file at the Commission, supplemental information from the utility, federal income tax returns on file, annual reports and recent Commission decisions. The adjustments have been explained in the body of this recommendation and are reflected on Schedule No. 1. A summary of each year's refund calculation follows.

ANNUAL GROSS-UP REFUND AMOUNTS

1992

The utility proposes no refund in 1992. Staff calculates an over collection of gross-up of $6,616. If the Commission votes to offset the over collection by fifty percent (50%) of the legal and accounting costs, Staff calculates a refund of $3,387 for 1992.

JJ's revised refund proposal calculates the above-the-line loss at $6,907, before the inclusion and effect of taxable CIAC. However, as a result of the adjustments discussed above, Staff calculates an above-the-line loss of $14,602 before the inclusion and effect of taxable CIAC. The utility's CIAC gross-up report indicates that a total of $17,160 in taxable CIAC was received; however, in calculating the appropriate refund, Staff deducted $4,290 of taxable CIAC that was collected from the Dora Pines Mobile Homes Park (related party) because it was not grossed-up. Therefore, CIAC on which gross-up was collected totaled $12,870.

Order No. 23541, issued October 1, 1990, requires that CIAC income be netted against the above-the-line losses and that first year's depreciation on contributed assets be netted against taxable CIAC. The utility had an above-the-line loss of $14,602. However, since only $12,870 of the $17,160 of taxable CIAC collected was grossed-up, only $12,870 of this CIAC is being used in Staff's calculation of CIAC. Therefore, Staff has allocated the above-the-line loss of $14,602 pro rata between CIAC that was grossed-up and CIAC that was not grossed-up. As a result, only $10,952 of the above-the-line loss is netted against the taxable CIAC of $12,870. When the taxable CIAC of $12,870 is reduced by $14 for the first year's depreciation, the resulting taxable CIAC is $12,856. When this amount is netted against Staff's above-the-line loss of $10,952 (loss related to CIAC that was grossed-up), the amount of taxable CIAC resulting in a tax liability is $1,904. Staff used the 37.63% combined marginal federal and state tax rates as provided in the CIAC gross-up report to calculate the tax effect of $716. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be $1,149. The utility collected $7,765 of gross-up monies; therefore, Staff calculates an over collection of $6,616 before the offset of fifty percent (50%) of the allowable legal and accounting fees. When this amount is offset by $3,229 (fifty percent (50%) of the allowable legal and accounting fees) the resulting refund is calculated to be $3,387

1993

The utility proposes no refund for 1993. Staff calculates an over collection of gross-up of $5,272. If the Commission votes to offset the over collection by fifty percent (50%) of the legal and accounting costs, Staff calculates a refund of $1,559.

The utility and Staff calculate that the above-the-line income is $48,839, before the inclusion and effect of taxable CIAC. The utility's revised CIAC gross-up report indicates that a total of $196,610 in taxable CIAC was received. First year's depreciation of $8,502 was deducted from the taxable CIAC of $196,610, resulting in taxable CIAC of $188,108. Staff used the 37.63% combined federal and state tax rate as provided in the CIAC gross-up report to calculate the tax effect of $70,785. 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 $113,492. The utility's revised CIAC gross-up report indicates gross-up collections of $118,764. Therefore, Staff calculates an over collection of $5,272 before the offset of fifty percent (50%) of the allowable legal and accounting fees. When this amount is offset by $3,713 (fifty percent (50%) of the allowable legal and accounting fees) the resulting refund is calculated to be $1,559 for 1993.

1994

The utility proposes no refund in 1994. Staff calculates an over collection of $8,470. If the Commission votes to offset the over collection by fifty percent (50%) of the legal and accounting costs, Staff calculates a refund of $6,070.

The utility and Staff calculate that the above-the-line income is $19,370, before the inclusion and effect of taxable CIAC. The utility's revised CIAC gross-up report indicates that a total of $344,915 in taxable CIAC was received. First year's depreciation of $14,028 was deducted from the taxable CIAC of $344,915, resulting in taxable CIAC of $330,887. Staff used the 37.63% combined federal and state tax rate as provided in the CIAC gross-up report to calculate the tax effect of $124,513. 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 $199,635. The utility's revised gross-up report indicates gross-up collections of $208,105. Therefore, Staff calculates an over collection of $8,470 before the offset of the allowable legal and accounting fees. When this amount is offset by $2,400 (fifty percent (50%) of the allowable legal and accounting fees) the resulting refund is calculated to be $6,070 for 1994.

1995

The utility proposes no refund for 1995. Staff calculates an over collection of $2,532. If the Commission votes to offset the over collection by fifty percent (50%) of the legal and accounting costs, Staff calculates a refund of $448.

The utility and Staff calculate that the above-the-line income is $101,602, before the inclusion and effect of taxable CIAC. The utility's revised CIAC gross-up report indicates that a total of $317,745 in taxable CIAC was received. First year's depreciation of $4,188 was deducted from the eligible CIAC of $317,745, resulting in taxable CIAC of $313,557. Staff used the 37.63% combined federal and state tax rate as provided in the CIAC gross-up report to calculate the tax effect of $117,991. 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 $189,179. The utility's revised CIAC gross-up report indicates gross-up collections of $191,711. Therefore, Staff calculates an over collection of $2,532 before the offset of the allowable legal and accounting fees. When this amount is offset by $2,084 (fifty percent (50%) of the allowable legal and accounting fees)the resulting refund is calculated to be $448 for 1995.

1996

The utility proposes no refund for 1996. Staff calculates an over collection of $943. If the Commission votes to offset the over collection by fifty percent (50%) of the legal and accounting costs, Staff concurs that no refund would be required.

The utility and Staff calculate that the above-the-line income is $1,846 before the inclusion and effect of taxable CIAC. The utility's revised CIAC gross-up report indicates that a total of $29,288 in taxable CIAC was received. First year's depreciation was not deducted because the utility was sold in 1996 and the first year's depreciation benefit was not recognized in that year. Staff used the 37.63% combined federal and state tax rate as provided in the CIAC gross-up report to calculate the tax effect of $11,021. 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 $17,670. The utility's revised gross-up report indicates gross-up collections of $18,613. Therefore, Staff calculates an over collection of $943 before the offset of fifty percent (50%) of the legal and accounting fees. Fifty percent (50%) of the allowable legal and accounting fees is $3,830. When the over collection of $943 is offset with the allowable legal and accounting fees of $943, no refund is required for 1996.

<u>Gross-up Refund on Meter fees</u>

Furthermore, JJ's collected gross-up on meter fees, which was not authorized by the Commission. Therefore all gross-up monies collected on meter fees in 1994 and 1995 should be refunded. The utility should refund $6,353 for 1994 and $6,918 for 1995 for a total of $13,271 plus accrued interest through the date of the refund, for gross-up collected on meter fees.

Therefore if the Commission accepts Staff's recommendations , the utility should refund $3,387 for 1992; $1,559 for 1993; $6,070 for 1994; and $448 for 1995 for a total of $11,464 plus accrued interest through the date of refund. In addition, the utility should be required to refund $6,953 for 1994 and $6,918 for 1995 for a total of $13,271 plus accrued interest through the date of the refund, for the unauthorized collection of gross-up on meter fees.

The refunds should be completed within two months of the effective date of this Order. The utility should submit copies of canceled checks, or other evidence which verifies that the refunds have been made, within 30 days from the date of refund. The utility should also provide a list of any unclaimed refunds detailing the amounts, and an explanation of the efforts made to make the refunds. Further, the utility should deliver any unclaimed refunds to the State of Florida Comptroller's Office as abandoned property. The unclaimed refunds should be delivered to the Comptroller's Office following Staff's written notification to the utility that the refunds have been made in accordance with the Commission Order.

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 of the refund and that any 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 verification that the refunds have been made in accordance with the Commission Order. (JAEGER, IWENJIORA)

STAFF ANALYSIS: 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 of the refund and the delivery of any unclaimed refunds to the State of Florida Comptroller's Office as abandoned property. Staff should be granted administrative authority to close the docket upon verification that the refunds have been made.

JJ'S MOBILE HOMES , INC. SCHEDULE NO. 1

STAFF CALCULATED GROSS-UP REFUND

		1992	1993	1994	1995	1996
1	A-T-L TAXABLE INCOME PER UTILITY BEFORE CIAC	($6,907)	$48,839	19,370	101,602	1,846
	Plus taxable CIAC	$17,160	$196,610	344,915	317,745	29,288
	Plus taxable Gross-up	7,765	118,764	208,105	191,711	18,613
2	CIAC gross-up interest	0	0	0	0	0
3	A-T-L TAXABLE INCOME PER UTILITY	$18,018	$364,213	572,390	611,058	49,747
4						
5	STAFF ADJUSTMENTS:					
6	(a) Adjust O&M expenses to amounts on A/R and or FIT returns	(7,695)	0	0	0	0
7	(b) First year's depreciation on contributed assets	(19)	(8,502)	(14,028)	(4,188)	0
8	TOTAL STAFF ADJUSTMENTS	(7,714)	(8,502)	(14,028)	(4,188)	0
9						
10	A-T-L TAXABLE INCOME PER STAFF	$10,304	$355,711	$558,362	$606,870	$49,747
11	Less CIAC	(17,160)	(196,610)	(344,915)	(317,745)	(29,288)
12	Less Gross-up	(7,765)	(118,764)	(208,105)	(191,711)	(18,613)
13	Plus first year's depreciation on CIAC	19	8,502	14,028	4,188	0
14						
15	A-T-L TAXABLE INCOME PER STAFF BEFORE CIAC	($14,602)	$48,839	$19,370	$101,602	$1,846
16						
17	Current Yr. Loss Related to CIAC Not Grossed-up	$3,650	$0	$0	$0	$0
18						
19	Adjusted Taxable Income Before CIAC	($10,952)	$48,839	$19,370	$101,602	$1,846
20						
21	Post 1986 CIAC eligible for gross-up refund	12,870	196,610	344,915	317,745	29,288
22	Less first year's depreciation on CIAC	(14)	(8,502)	(14,028)	(4,188)	0
23						
24	Net Taxable CIAC	12,856	188,108	330,887	313,557	29,288
25	Less Current Yr. Pro Rata Loss	(10,952)	0	0	0	0
26						
27	Taxable CIAC resulting in a Tax Liability	$1,904	$188,108	$330,887	$313,557	$29,288
28	Combined Marg. Fed. & State Tax Rate	37.63%	37.63%	37.63%	37.63%	37.63%
29						
30	Net income tax on CIAC	$716	$70,785	$124,513	$117,991	$11,021
31	Less ITC realized	0	0	0	0	0
32						
33	Net income tax	$716	$70,785	$124,513	$117,991	$11,021
34	Expansion factor to gross up taxes	1.60333	1.60333	1.60333	1.60333	1.60333
35						
36	Gross-up required to pay tax effect	$1,149	$113,492	$199,635	$189,179	$17,670
37	Gross-up collected to pay tax effect	(7,765)	(118,764)	(208,105)	(191,711)	(18,613)
38						
39	(OVER) OR UNDER COLLECTION	($6,616)	($5,272)	($8,470)	($2,532)	($943)
40						
41	Less 50 percent of legal and accounting fees	3,229	3,713	2,400	2,084	943
42						
43	Refund required with offset of legal & Accounting costs	(3,387)	(1,559)	(6,070)	(448)	0
44						
45						
46	Refund gross-up on meter fees			(6,353)	(6,918)	
47						
48						
49						
50	TOTAL YEARLY REFUND	($3,387)	($1,559)	($12,423)	($7,366)	$0
51						
52						
53	PROPOSED REFUND (excluding interest)	$24,735				