

1                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
2                   NORTH FORT MYERS UTILITY, INC.

3                   DOCKET NO. 971179-SU

4                   DIRECT TESTIMONY OF ROBERT C. NIXON, C.P.A.

ORIGINAL

5 Q.     Please state your name and professional address.

6 A.     I am Robert C. Nixon, C.P.A., a partner in the accounting  
7         firm of Cronin, Jackson, Nixon & Wilson, P.A., 2560 Gulf-  
8         To-Bay Boulevard, Suite 200, Clearwater, Florida 33765.

9 Q.     Have you been retained by North Fort Myers Utility, Inc.  
10        to provide testimony and exhibits in this proceeding?

11 A.     Yes.

12 Q.     Will you please provide a brief resume of your training  
13         and experience as it relates to this proceeding?

14 A.     Attached as the last four pages of this testimony is a  
15         brief resume of my education and training, as well as a  
16         list of companies I have represented in rate and other  
17         proceedings before the Florida Public Service Commission  
18         (PSC). I have also listed the proceedings I have been  
19         involved in related specifically to gross-up and gross-up  
20         refunds.

21 Q.     Mr. Nixon, would you agree that taxation of Contributions  
22         in Aid of Construction (CIAC) is a complex issue?

23 A.     Yes.     Not only are the issues complex, but the  
24         Commission's policy and practices have changed  
25         dramatically over the past 13 years, since CIAC first

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1 became taxable. In addition, few of the Commissioners and  
2 Staff members are still around who dealt directly with  
3 this issue as it evolved through Order No. 23541  
4 (02/18/91) and its interpretation as evidenced through  
5 gross-up refund orders issued through 1995.

6 Q. How would you like to proceed?

7 A. As one who was involved in this issue from the beginning,  
8 I believe it is necessary to trace the history of the  
9 Commission's policy and practices regarding taxation of  
10 CIAC, gross-up, and gross-up refunds, before addressing  
11 the specific issues in dispute in this case.

12 Q. Are you an expert in this area of taxation?

13 A. Yes. Although my practice specialty is not in the  
14 specific area of tax, I have dealt with the issue of  
15 taxation of CIAC since 1981. My firm prepares the tax  
16 returns for many utilities. I review the tax treatment of  
17 CIAC on each return before it is released to the utility  
18 client and have done so since the early 1980s.

19 Q. When did CIAC most recently become subject to state and  
20 federal income taxes?

21 A. On January 1, 1987, as a result of the repeal of Section  
22 118(b), Internal Revenue Code (IRC). This section of the  
23 Code was repealed as one of the provisions in the Tax  
24 Reform Act of 1986.

25 Q. Please describe your involvement in the issue of taxation

1 on CIAC and gross-up.

2 A. I have been actively involved in this issue since 1986. At  
3 that time, I was on the Board of Directors of the Florida  
4 Waterworks Association (FWWA) and was actively involved in  
5 the Association's planning and actions to come up with a  
6 plan for regulatory relief of the burdens imposed by  
7 taxation of CIAC. Also during this period, I was working  
8 with our clients to develop strategies for coping with  
9 taxes on CIAC.

10 Q. What action did the FWWA take?

11 A. The Association filed a request with the Commission to  
12 allow utilities to collect from developers and other  
13 contributors of CIAC an amount equal to the tax impact. A  
14 formula to calculate the tax impact was proposed, which  
15 came to be known as the gross-up formula. The proposal  
16 also provided that the amounts collected be deposited into  
17 an interest bearing escrow account. Withdrawals could be  
18 made periodically for the purpose of paying estimated  
19 state and federal income tax deposits. The request  
20 proposed that gross-up was subject to refund with interest  
21 on a prorata basis, based on a statement to be filed as  
22 part of a utility's Annual Report.

23 In response to FWWA's request, the Commission opened  
24 Docket No. 860184-PU. Order No. 16971 granted the  
25 Association's request and allowed any utility desiring to

1 gross-up to obtain authority simply by filing an  
2 appropriate tariff. This Order was issued on December 12,  
3 1986, less than three weeks before CIAC became taxable.

4 Q. Did the FWWA's request or Order No. 16971 contain any  
5 detailed finding concerning how refunds would be  
6 calculated?

7 A. No. At that time, the immediate and urgent consideration  
8 was obtaining approval to start collecting tax impact  
9 charges beginning on January 1, 1987. That is why the  
10 Order is described as "application for emergency approval  
11 of amended service availability policies." At that time,  
12 no one had given much thought to how refunds would be  
13 calculated or other matters, such as who would ultimately  
14 receive the depreciation benefits associated with the  
15 collection of CIAC. In fact, the Order directed that the  
16 original Docket would remain open to handle any generic  
17 problems that might arise in accounting for CIAC and the  
18 related tax impact. I have enclosed a copy of this Order  
19 as Exhibit RCN-1.

20 Q. When did you first become aware that there were problems  
21 associated with implementation of the refund requirements  
22 of Order No. 16971?

23 A. I first started looking at this matter in early May, 1988.  
24 This would have been shortly after the first 1987 income  
25 tax returns were prepared for our clients who had elected



1 to gross-up.

2 Q. What problems did you foresee at that time?

3 A. One of the immediate problems I encountered related to the  
4 tax benefits of depreciation on CIAC property. Based on  
5 a literal interpretation of Order No. 16971, a contributor  
6 paying gross-up in year one (1) would receive a much  
7 smaller refund than a developer making an identical  
8 contribution five (5) years later. Also, once the  
9 Commission Staff suggested the possibility of passing on  
10 the depreciation benefits of contributed property to the  
11 contributors of CIAC, I was concerned about the burden of  
12 keeping elaborate records in order to make a refund to a  
13 developer/contributor over the 20-year tax life of the  
14 contribution. I have enclosed a copy of a letter I wrote  
15 to Robert M.C. Rose, Esq. on May 19, 1988, which outlined  
16 my concerns at that time, as Exhibit RCN-2.

17 Q. Did the Commission provide any guidance concerning the  
18 form of the reports required by Order No. 16971 or any  
19 instructions concerning how gross-up refunds were to be  
20 calculated?

21 A. No specific instructions were made. The Order required  
22 the filing of tax returns, workpapers showing the  
23 treatment of CIAC on the tax returns, and a report of  
24 escrow account activity. The Order was silent as to how  
25 these items would be used. However, sometime in 1988,

1 utility companies were sent a blank CIAC report form. I  
2 have enclosed a copy of this form as Exhibit RCN-3.

3 Q. Was this form helpful in calculating gross-up refunds?

4 A. No. As you will note, the form does not result in a  
5 calculation of a refund amount. Also, there was no  
6 guidance as to the meaning of "jurisdictional" versus  
7 "non-jurisdictional" or what should be included in Line  
8 17, "Other CIAC effects of TRA '86" (attached). In  
9 addition, no instructions concerning Lines 13 and 14 (net  
10 operating loss carryforwards and special deductions) were  
11 provided. By the time my clients received these forms, it  
12 was clear that there were many unanswered and unresolved  
13 issues surrounding gross-up refunds mentioned in Order No.  
14 16971.

15 Q. Prior to this, were there any subsequent clarifying Orders  
16 issued by the Commission related to the gross-up issue?

17 A. Yes. Order No. 18266, issued October 8, 1987, specified  
18 that Subchapter-S Corporations, Partnerships, and Sole  
19 Proprietorships should not be allowed to gross-up.  
20 Further, connection fees, meter fees, installation fees,  
21 and other fees that were taxable prior to the 1986 repeal  
22 of Section 118(b) IRC, were not eligible for gross-up.  
23 These provisions were Commission policy throughout the  
24 period CIAC was taxable.

25 Q. At what point did these unanswered and unresolved

1 questions related to gross-up refund calculations start  
2 impacting your clients and other utilities?

3 A. During 1988, several utility companies, including five of  
4 my clients, filed the information required by Order No.  
5 16971 for refund of gross-up collected during 1987. On  
6 May 25, 1989, Staff issued a Memorandum which recommended  
7 refunds substantially in excess of those proposed by the  
8 utilities for consideration by the Commission at its June  
9 6, 1989, Agenda Conference. Actually, there were two  
10 Recommendations in the Staff Memorandum. The primary  
11 Recommendation was sponsored by the Division of Auditing  
12 & Financial Analysis (AFAD) and was the one requiring  
13 substantial refunds.

14 The alternative Recommendation was made by the  
15 Division of Water & Sewer, which agreed with the amount of  
16 refunds proposed by the utilities. I have enclosed a copy  
17 of that Staff Memorandum as Exhibit RCN-4.

18 AFAD's position versus that of the utility companies  
19 and the Division of Water & Sewer represented a  
20 fundamental difference, which continues to this day, in  
21 spite of a partial resolution resulting from the  
22 requirements of Order No. 23451, issued October 1, 1990.

23 Q. Please explain these two differences in position which  
24 resulted in the two dramatically different refund  
25 recommendations.

1 A. The differences originate in the unclear language in Order  
2 No. 16971 (RCN-1). Page 3, paragraph (c) of that Order  
3 reads, in part, as follows:

4 "Annually, following the preparation and filing  
5 of the utility's annual Federal and State income  
6 tax returns, a determination should be made as  
7 to the actual Federal and State income tax  
8 expense that is directly attributable to the  
9 inclusion of CIAC in taxable income for the  
10 year. CIAC tax impact monies received during  
11 the tax year that are in excess of the actual  
12 amount of tax expense that is attributable to  
13 the receipt of CIAC . . . . must be refunded  
14 on a prorata basis to the parties which made the  
15 contribution and paid the tax impact amounts  
16 during the tax year." (Emphasis supplied)

17 The issue at hand was what is meant by the "actual  
18 amount of tax expense that is attributable to the receipt  
19 of CIAC?" Two interpretations are possible. The first,  
20 AFAD's position, is that this language means actual tax  
21 liability, that is, actual taxes paid. The second  
22 interpretation is that this language means the tax effect  
23 of the collection of CIAC which is not necessarily  
24 measured by the actual payment of dollars in tax  
25 liability. This second interpretation was the one

1           advocated by the utilities and the Division of Water &  
2           Sewer Staff in their alternate Recommendation.

3   Q.   What difference do these two interpretations have on the  
4           calculation of gross-up refunds?

5   A.   The AFAD position had the effect of transferring the tax  
6           benefits of a utility's net operating losses (NOLs), NOL  
7           carryforwards (which are funded by a utility's  
8           stockholders) and, in a few instances, Investment Tax  
9           Credits (ITCs) to the CIAC contributor, thus causing or  
10          increasing the refunds. The existence and use of these  
11          tax assets for the benefit of a contributor of CIAC, who  
12          had nothing to do with their generation, is the  
13          fundamental difference between the AFAD position and that  
14          of the utilities and Staff of the Division of Water &  
15          Sewer.

16   Q.   What were some of the reasons the Division of Water &  
17          Sewer did not believe that NOLs should be used to the  
18          benefit of a developer or other contributor of CIAC?

19   A.   Page 7 of the Memorandum (RCN-4) summarizes the  
20          alternative Staff analysis. These reasons are as follows:

21           1.    A developer/Contributor had nothing to do with  
22           their generation.

23           2.    Potential discrimination - one developer pays  
24           gross-up, but another does not, simply because of the  
25           existence and use of utility NOLs.

1           3.     In rate cases, it has been Commission practice  
2     to pass the benefit of NOLs to the rate payers.

3           4.     NOLs are normally generated because of non-used  
4     and useful plant and, therefore, funded by the  
5     stockholders.

6           5.     NOLs can be generated due to artificially low  
7     rates where revenues are less than expenses.

8           6.     The rate payers have not generated any of the  
9     NOLs either.

10    Q.    I assume that you and your clients agreed with the  
11    alternative Staff analysis.

12    A.    Absolutely. This was also the position of FWWA. The  
13    bottom line to the alternative Staff analysis was that  
14    contributors and customers do not pay for any NOLs because  
15    they are funded by a utility's stockholders and are,  
16    therefore, property of the stockholders. This has been  
17    the position of the utility industry for the past 13  
18    years.

19    Q.    For purposes of calculating gross-up refunds, how would  
20    net operating losses not funded by contributors or rate  
21    payers be treated?

22    A.    They would be treated as below the line losses, since  
23    operating revenues were not sufficient to fund the  
24    operating expenses causing the losses. The excess of  
25    expenses over revenues were funded solely by the

1 stockholders of a utility.

2 Q. What was the outcome of the recommendations in the May 25<sup>th</sup>  
3 Staff Memorandum?

4 A. The Recommendations were considered by the Commission on  
5 June 6, 1989. The Commission voted to accept the primary  
6 Staff Recommendation as proposed by AFAD, with  
7 Commissioners Betty Easley and Gerald Gunter dissenting.  
8 The vote resulted in Proposed Agency Action Order No.  
9 21436, issued June 26, 1989.

10 On July 17, 1989, all of the affected utilities, as  
11 well as the FWWA, filed a protest of that Order.

12 Q. I notice on page 9 of the Staff Memorandum (Exhibit RCN-4)  
13 and pages 2 and 3 of the PAA Order (Exhibit RCN-5) that  
14 there were 11 utility companies subject to gross-up  
15 refunds, as you have just discussed. For the record,  
16 which of those companies did you represent?

17 A. I represented 6 out of the 11: Aloha Utilities, Inc.,  
18 Clay Utility Company, Eagle Ridge Utilities, Inc., Martin  
19 Downs Utilities, Inc., St. Johns Service Company, and  
20 Kingsley Service Company.

21 Q. Order No. 21436 and the underlying Staff Recommendation  
22 you have just discussed dealt solely with gross-up refund  
23 calculations and NOLs. Did any other issues and  
24 controversies related to gross-up arise at about this same  
25 time period, mid-1988?

1 A. Yes. By mid-1988, approximately 44 utility companies had  
2 elected to collect gross-up and had approved tariffs to do  
3 so, utilizing the formula and tariff filing requirements  
4 of Order No. 16971. AFAD believed that not all of the  
5 companies collecting gross-up actually needed to do so.  
6 This was based on the belief that utility companies could  
7 borrow funds to pay the tax impact of CIAC. As a result,  
8 a Staff Memorandum dated June 23, 1988, was prepared for  
9 consideration by the Commission at its July 5, 1988,  
10 Agenda Conference. I have enclosed the first three pages  
11 of this Memorandum as Exhibit RCN-6. The Recommendation  
12 proposed that "only those utilities unable to secure funds  
13 for the taxes from other sources or whose rate payers  
14 would suffer unduly if utilities obtain the funds with  
15 which to pay the taxes" be allowed to gross-up. In  
16 addition, it was recommended that utilities with approved  
17 tariffs should be required to submit evidence to justify  
18 continued approval to collect gross-up. The  
19 recommendation did not specify what was to be submitted.

20 This item was deferred indefinitely to give the water  
21 and sewer industry time to discuss their concerns with  
22 Staff. Several meetings were held with Staff subsequent  
23 to June 23, 1988.

24 Q. Did you participate in any of these meetings?

25 A. I participated in one and possibly more, representing my



1 clients and the FWWA. Due to the passage of time, I  
2 cannot pinpoint the exact number of meetings I attended.

3 Q. Please continue.

4 A. The Memorandum was revised on December 8, 1988,  
5 culminating in Order No. 21266, issued May 22, 1989. I  
6 have enclosed copies of the Revised Memorandum as Exhibit  
7 RCN-7 and Order No. 21266 as Exhibit RCN-8.

8 Q. How was the Memorandum of December 8<sup>th</sup> different from the  
9 Memorandum of June 23<sup>rd</sup>?

10 A. The AFAD Staff position concerning who should be allowed  
11 to gross-up remained as noted above. However, specific  
12 filing criteria to demonstrate continued need to gross-up  
13 were proposed. New to the Memorandum was an alternate  
14 recommendation on this issue proposed by the Division of  
15 Water & Sewer Staff.

16 Q. Please summarize the revised AFAD Recommendation.

17 A. The primary recommendation of AFAD was that gross-up  
18 should be retained as a limited option and that all  
19 utilities, whether currently authorized to gross-up or  
20 not, should file a request for new authority. The filing  
21 would consist of the following:

22 1. Demonstration of an actual tax liability  
23 associated with the collection of CIAC.

24 2. A demonstration that existing cash flow is  
25 inadequate.

1           3.     A statement of the gross-up alternatives  
2 considered and that gross-up is the most cost effective  
3 alternative.

4           4.     A calculation of interest coverage and revised  
5 tariff pages.

6           For those companies qualifying for continued authority  
7 to gross-up, a full gross-up was recommended with an  
8 option for present value gross-up. The Recommendation  
9 modified the gross-up formula contained in Order No. 16971  
10 to reduce the amount of gross-up for first year's  
11 depreciation on CIAC. In addition, AFAD recommended a  
12 system of accounting for full gross-up. Also, the  
13 recommendation was made that for utilities not grossing  
14 up, the taxes paid on CIAC would be recognized as a rate  
15 base investment.

16 Q.    What was the Water & Sewer Division's alternate  
17 recommendation on who should be allowed to gross-up?

18 A.    The alternate recommendation essentially left things as  
19 they were in Order No. 16971. That is, the choice to  
20 gross-up or not would be based on a utility's particular  
21 circumstances as determined by management. The alternate  
22 Staff analysis noted that the primary recommendation was  
23 continuing the Commission on a course of over regulation  
24 of the water and sewer industry. Further, the suggestion  
25 of AFAD that water and sewer utility companies could

1 borrow funds to pay taxes on CIAC demonstrated a lack of  
2 understanding of the realities of the industry.

3 In any event, one can see that there were many  
4 unresolved issues surrounding gross-up.

5 Q. What was the outcome of this Recommendation?

6 A. On May 22, 1989, the Commission issued Order No. 21266,  
7 which retained full gross-up as an option, but required  
8 utilities to file a request for new authority to gross-up  
9 within 60 days, utilizing the criteria in the Staff  
10 Recommendation as discussed above. The modified gross-up  
11 formula was not adopted nor was the proposed method of  
12 accounting.

13 On June 12, 1989, Order No. 21266 was protested by the  
14 FWWA and 14 water and wastewater utilities.

15 Q. You mentioned earlier that several of your clients had  
16 protested Order No. 21436. How was that protest handled  
17 by the Commission?

18 A. The protests of Orders No. 21436 and 21266 were combined  
19 and a hearing was conducted on April 27 and April 30,  
20 1990.

21 Q. Did you participate in that hearing?

22 A. Yes, I provided testimony on behalf of 16 private utility  
23 companies.

24 Q. In general terms, what was the purpose of the hearing?

25 A. In general terms, I believe that my clients, the industry,

1 and the Commission Staff sought resolution of the various  
2 problems and issues that had arisen subsequent to the  
3 issuance of Order No. 16971.

4 Q. As it relates to this case, what specific issues were in  
5 dispute?

6 A. As I mentioned above, Order No. 21266 required the pre-  
7 approval of the Commission to gross-up based on certain  
8 criteria, which I covered above. One of the criteria was  
9 a "demonstration of the existence of an actual tax  
10 liability resulting from the utility's collection of  
11 CIAC." Based on the Commission's action in Order No.  
12 21436, my clients and the industry were concerned that  
13 this language would be interpreted to require all  
14 utilities with operating losses, operating loss  
15 carryforwards, or tax credits to utilize those tax  
16 benefits to the benefit of CIAC contributors before they  
17 would be allowed to gross-up. Thus, we were concerned  
18 that the existence of such tax assets would prevent a  
19 utility from obtaining approval to gross-up.

20 Closely associated with this concern was the treatment  
21 of NOLs, NOL carryforwards, and ITCs in the gross-up  
22 refund calculations. My position and that of my clients  
23 and the industry is and always has been that these items  
24 arise as the result of the subsidization of a utility by  
25 its owners. As such, these assets are property of those

1 owners and should not be utilized to benefit contributors  
2 of CIAC to a utility.

3 Q. Just for background, what were some of the other issues in  
4 dispute at the hearing?

5 A. Some of the other issues considered were who should get  
6 the benefit of depreciation on CIAC; who should bear the  
7 burden of tax on CIAC; how investment in taxes on CIAC  
8 should be treated for companies that do not gross-up; and  
9 whether or not normalized accounting should be followed.

10 Q. As it relates to this case, what was the outcome of the  
11 hearing?

12 A. The hearing resulted in Order No. 23541, issued October 1,  
13 1990. I have enclosed a copy of this Order as Exhibit  
14 RCN-9.

15 As it relates to this case, private utilities and the  
16 industry gained an important victory concerning NOLs, NOL  
17 carryforwards, and ITCs. First, the long standing dispute  
18 over interpretation of the language in Order No. 16971 was  
19 resolved to mean "an actual tax liability on a regulated  
20 above the line basis" (page 11, last paragraph, emphasis  
21 supplied). This meant that the liability would not  
22 necessarily be the actual taxes paid, but a tax expense  
23 calculated on a regulated above the line basis. This  
24 official clarification meant that virtually all utility  
25 companies could demonstrate the existence of an actual tax

1 liability arising from the collection of CIAC.

2 Second, the Commission recognized that not all NOLs,  
3 NOL carryforwards, or ITCs should be used to offset the  
4 tax impact of CIAC to the benefit of the contributor. As  
5 mentioned above, Order 21436 had originally proposed that  
6 all such tax assets be used to the benefit of a  
7 contributor.

8 Q. What is the exact language in the Order?

9 A. Beginning at the bottom of page 18, the Order reads as  
10 follows:

11 "Notwithstanding the above, we believe that a  
12 utility should only have to offset  
13 jurisdictional, above the line NOLs and not  
14 below the line NOLs. This is consistent with  
15 our policy of calculating taxes on a stand alone  
16 basis. Below the line items would include, but  
17 not be limited to, the impact of disallowed  
18 expenses, non-used and useful plant  
19 depreciation, other expenses associated with  
20 non-used and useful plant, revenues associated  
21 with non-used and useful plant, and interest  
22 associated with debt not included in the capital  
23 structure." (Emphasis supplied)

24 Page 20, the end of the second paragraph, reads as  
25 follows:

1           "As with our decision regarding NOLs, we believe  
2           that only above the line ITCs should be used as  
3           an offset."

4 Q.   Is there specific language related to the refunds for your  
5       clients in Order No. 21436 which was protested?

6 A.   Yes.   Page 24, about the middle of the page reads as  
7       follows:

8           "Notwithstanding the above, it appears from the  
9           record that some of the NOLs and ITCs used to  
10          offset taxes by Order No. 21436 were below the  
11          line items.  These amounts were taken from the  
12          CIAC gross-up reports required by Order No.  
13          16971.  Accordingly, to the extent these  
14          utilities can demonstrate that their losses or  
15          ITCs were below the line items, they should not  
16          be used to offset CIAC income.  These utilities  
17          should, therefore, file amended reports to  
18          reflect only above the line NOLs and ITCs, with  
19          a reconciliation to the amounts originally  
20          filed.  This suggestion would also hold true for  
21          1988 and 1989 gross-up reports that have been  
22          filed."

23           And again, the seventh ordering paragraph on page 26  
24       reads as follows:

25           "ORDERED that all utilities that had below the

1           line losses or ITCs for 1987, 1988, or 1989  
2           shall file amended gross-up reports to reflect  
3           only above the line NOLs and ITCs, with a  
4           reconciliation to the amounts originally filed."  
5 Q.   Was "jurisdictional above the line NOLs or below the line  
6       NOLs" specifically defined beyond the examples given on  
7       page 19 that you quoted above?  
8 A.   No.    It was my understanding and I believe the  
9       understanding of the Staff that processed gross-up  
10      applications and gross-up refunds subsequent to the Order  
11      that it was necessary to define these items on a cost of  
12      service basis.  
13 Q.   What do you mean by cost of service basis?  
14 A.   By that, I mean that revenue and expenses would be  
15      recognized on the same basis that was utilized in the  
16      company's last rate case proceeding.  
17 Q.   Why would this approach be necessary?  
18 A.   Because the taxable revenue included on the tax return is  
19      based on the expenses embedded in the determination of  
20      rates.  
21 Q.   How do you define below the line expenses for gross-up  
22      refund purposes?  
23 A.   In general, these would be expenses not considered in a  
24      company's last rate proceeding and, therefore, not  
25      embedded in the rates.   Examples would be disallowed



1 expenses or new types of necessary operating expenses  
2 which were not provided for in the company's existing  
3 rates. Below the line would also include any expenses  
4 related to non-used and useful operations or those which  
5 on their face would not be allowed in a rate proceeding.

6 Q. What is the objective of the approach you have outlined  
7 above?

8 A. The objective of an analysis based on this approach is to  
9 determine how much of the expenses reported on the tax  
10 return are being paid for by the customers through rates  
11 and how much are being funded by the stockholders. This  
12 approach is consistent with all of the testimony and  
13 language in Order No. 23541.

14 Q. Under your approach, would there ever be an above the line  
15 operating loss?

16 A. Yes. Recognized categories of expenses in a company's  
17 last rate proceeding could have increased faster than  
18 customer growth or consumption, thus causing losses.  
19 Also, used and useful book/tax timing differences, such as  
20 depreciation, could cause above the line losses. While it  
21 is true that the customers or contributors of CIAC did not  
22 pay for these losses, the findings in Order No. 23541 give  
23 the tax benefits of these losses to the contributors of  
24 CIAC in the refund calculations.

25 Q. Did you use this approach in the filings for approval to

1           gross-up and gross-up refunds subsequent to issuance of  
2           this Order?

3    A.    Yes.  I have consistently used this approach to determine  
4           above and below the line revenues and expenses in all  
5           gross-up filings with the Commission.

6    Q.    Did the Staff and Commission agree with your approach to  
7           above and below the line?

8    A.    Yes.  This is evidenced by the Orders issued for my  
9           clients from the date of Order No. 23541 up through early  
10           1995.  These Orders utilized my definitions of above and  
11           below the line in Dockets for continued authority to  
12           gross-up and gross-up refunds.  As such, I believe this  
13           methodology constituted Commission policy.  I will discuss  
14           these Orders and related Exhibits in further detail below.

15   Q.    What happened beginning in early 1995?

16   A.    In 1995, Staff processing of gross-up refunds pretty much  
17           came to a halt.  In addition, applications for authority  
18           to gross-up became drawn out and difficult.  These  
19           problems came to a head at the Agenda Conference on May  
20           18, 1995, in the gross-up refund case of Canal Utilities,  
21           Inc. (Docket No. 941083-WS).  Staff's above the line  
22           computations included first year's depreciation on CIAC,  
23           as well as all subsequent depreciation on CIAC collected  
24           in prior years.  This was contrary to all of the gross-up  
25           refund cases I had been involved in where only first

1 year's depreciation on CIAC was classified above the line.  
2 The impact of Staff's new treatment of CIAC depreciation  
3 was to give the contributor the benefit of prior years'  
4 depreciation, which created a large refund. This is the  
5 problem illustrated in my letter of May 19, 1988, to Bob  
6 Rose, Esq. and previously discussed as Exhibit RCN-2.  
7 Also, this treatment was contrary to Order No. 23541,  
8 which determined that a contributor would only receive the  
9 benefit of first year's depreciation on CIAC. Benefits  
10 from subsequent years were to go to the rate payers.

11 Also, Staff began to question the appropriate level of  
12 review necessary to grant gross-up authority or process a  
13 refund; conflicting interpretations as to what was above  
14 the line and below the line in refund computations; and  
15 differing interpretations as to past Orders issued by the  
16 Commission.

17 Based on these problems, Staff was directed to hold  
18 workshops to readdress the entire issue of taxation of  
19 CIAC, gross-up, Commission policy, and to discuss viable  
20 alternatives with the view towards changing the  
21 Commission's shifting policy.

22 Q. In your opinion, why did these problems arise?

23 A. In my opinion, these problems were due to failure of the  
24 Commission to enact rules based on Order No. 23541.

25 Q. Were any workshops held?

1 A. Yes. On August 4, 1995, the Commission issued a Notice of  
2 Staff Workshop to be held on August 30, 1995. I have  
3 enclosed a copy of that Notice as Exhibit RCN-10. I have  
4 enclosed the Notice as an Exhibit because it sets forth  
5 several pages of questions which, in effect, address the  
6 entire spectrum of unresolved gross-up questions.

7 Q. As it relates to this case, what questions were addressed  
8 in the Workshop Notice (RCN-10)?

9 A. The issues related to this Docket are as follows:

10 1. II.C.3.a. - How should the Commission define above  
11 and below the line (page 2)?

12 2. II.C.3.c. - If liability is calculated on an above  
13 the line basis, how should the information on the actual  
14 tax return, that is i.e., revenues, expenses, tax losses  
15 (current, carrybacks and carryforwards) and credits  
16 against the income tax, be allocated to above the line  
17 operations (page 3)?

18 3. IV.A. - Is there ever excess gross-up (page 5)?

19 4. IV.B. - How should excess gross-up be measured?

20 That is:

21 1. Should the excess be determined on an above  
22 the line basis? If not, how should it be  
23 determined (page 5)?

24 5. IV.B.2. - Should the excess be measured by what is  
25 on the actual tax return for the year (page 6)?

1           6. IV.B.2.b. - What effect, if any, should NOLs  
2 (current, carryback and carryforward) have (page 6)?

3           7. IV.B.3. - How should what is on the tax return be  
4 allocated to above and below the line operations (page 6)?

5           8. IV.3.C.e. - Is the level of expense set in the  
6 utility's last rate case relevant (page 7)?

7           9. IV.B.3.f. - Is the disallowance of an expense in  
8 the utility's last rate case relevant (page 7)?

9           As one can see, almost all of the items at issue in  
10 this case were considered at that workshop.

11 Q. Did you participate in that workshop?

12 A. Yes. I appeared on behalf of the FWWA and several of my  
13 clients. I have enclosed my answers to the questions in  
14 the August 4<sup>th</sup> Workshop Notice as Exhibit RCN-11. My  
15 answers to the issues directly related to this case, as  
16 noted above, are included.

17 Q. Would you please look at page 8 of Exhibit RCN-11?

18 A. Yes.

19 Q. Please summarize this page.

20 A. This page outlines the principles I have always used to  
21 determine what is above the line and below the line to  
22 determine jurisdictional net operating losses. Each of  
23 the five principles set forth are consistent with the  
24 definitions of above the line and below the line revenue  
25 and expenses that I have previously set forth above.

- 1 Q. Briefly describe the information on pages 9, 10, and 11 of  
2 Exhibit RCN-11.
- 3 A. This information was originally an exhibit prepared for  
4 the Canal Utilities, Inc. case I referred to above. The  
5 information shows that under the Staff proposal for CIAC  
6 depreciation, a contributor in year one would receive a  
7 refund of approximately \$11,000, while a contributor in  
8 year seven would receive a refund of approximately  
9 \$90,000. The schedule also shows that under the previous  
10 Commission practice of including only first year  
11 depreciation above the line, each contributor gets an  
12 equal refund.
- 13 Q. What came out of the workshop which was held on August 30,  
14 1995?
- 15 A. Basically, all parties agreed that the current system and  
16 procedures were broken and needed to be fixed. We left  
17 the workshop promising the Staff that we would present a  
18 new proposal, which would greatly simplify the entire  
19 question of gross-up and give 100 percent of the tax  
20 benefits of CIAC depreciation to the rate payer. This  
21 proposal would be presented by the Staff to the Commission  
22 Workshop, which was to be held on November 29, 1995.
- 23 Q. Was such a proposal developed and, if so, would you  
24 briefly summarize it?
- 25 A. Yes. I developed a proposal in cooperation with other

1 members of the FWWA. That proposal would have eliminated  
2 gross-up refunds and required regulatory above the line  
3 amortization of all gross-up funds received. This would  
4 give 100 percent of the tax benefits of CIAC to the  
5 customers of a utility. Further, the deferred tax  
6 liability associated with CIAC depreciation timing  
7 differences would be included in the capital structure at  
8 zero cost. Over the amortized life of gross-up, there  
9 would be no impact on rate base, the balance sheet, or  
10 income statement.

11 Q. How did this Docket (No. 960397-WS) turn out?

12 A. On April 18, 1996, the Staff issued a Memorandum for  
13 consideration by the Commission at its April 30, 1996,  
14 Agenda Conference. Staff recommended that the  
15 Commission's policy concerning collection and refund of  
16 CIAC gross-up be revisited, but that pending a change in  
17 policy, CIAC gross-up cases would continue to be processed  
18 under Staff's understanding of the provisions of Orders  
19 Nos. 16971 and 23541. I have enclosed a copy of that  
20 Recommendation, which was approved by the Commission,  
21 because it contains good background analysis and confirms  
22 my testimony concerning the difficulty and lack of uniform  
23 gross-up refund procedures.

24 Q. So, the Commission decided to continue processing gross-up  
25 refund applications under an admittedly flawed process?

1 A. Yes. I believe this was a serious mistake based on the  
2 comments of Staff about what was wrong with the process at  
3 the August 30<sup>th</sup> Staff Workshop. However, neither the FWWA  
4 nor any of my clients had the necessary resources to  
5 protest that decision.

6 Q. Was any new policy ever adopted?

7 A. No. The Small Business Job Protection Act of 1996  
8 provided for the non-taxability of CIAC, effective June  
9 12, 1996. Thus, there was no need for a change in policy.  
10 However, as established in Order No. PSC-96-0686-FOF-WS,  
11 all pending CIAC gross-up refund cases would continue to  
12 be processed, pursuant to Orders Nos. 16971 and 23541.

13 Q. Mr. Nixon, I believe you mentioned earlier that up until  
14 early 1995, the Commission Staff and the Commission  
15 generally followed your definition of how above and below  
16 the line revenue and expenses should be determined. Is  
17 that correct?

18 A. Yes.

19 Q. When did that change occur?

20 A. I cannot pinpoint an exact date. However, it was sometime  
21 during late 1995, after the Staff and Commission workshops  
22 held to address the problems associated with the  
23 Commission's policy and practices.

24 Q. Specifically, what changed?

25 A. Staff changed its policy of determining what was above the



1 line and below the line in gross-up refund computations.  
2 Specifically, the decision was made to use above the line  
3 expenses reported in the Annual Reports as a substitute  
4 for above the line expenses on the income tax returns and  
5 in gross-up reports.

6 Q. What was the impact of that change in policy?

7 A. The impact was to produce large above the line NOLs, which  
8 were then used to the benefit of the contributor.

9 Q. Why was Staff's new approach wrong?

10 A. Due to changing conditions, many utilities incur various  
11 legitimate and necessary operating expenses subsequent to  
12 the establishment of rates in their last rate cases.  
13 Thus, not all necessary and prudent expenses are being  
14 recovered in the service rates established for a utility.  
15 As a result, utility stockholders are subsidizing the  
16 utility and are entitled to any tax benefits associated  
17 with these losses. Therefore, failure to do a careful  
18 analysis and to account for this subsidization violates  
19 the intent of Order No. 23541 and the Commission's prior  
20 Orders which used this approach.

21 Q. What you're saying, then, is that the objective of  
22 regulatory reporting in Annual Reports is different than  
23 the objective of gross-up calculations?

24 A. Yes. For Annual Reporting purposes, a utility is  
25 reporting all of its legitimate and necessary expenses to

1 provide service, regardless of whether they are being  
2 recovered in existing service rates or not. In contrast,  
3 the objective of gross-up analysis is to determine, as  
4 nearly as possible, who has paid for the NOLs and should  
5 get the tax benefit of the losses.

6 Q. In general, how is the gross-up analysis performed?

7 A. Through use of the matching principle, taxable operating  
8 revenues are matched to tax expense deductions, based on  
9 the expenses embedded in utility rates. This approach is  
10 used since the rates determine the operating revenue  
11 reported on the tax return and the rates are the sum of  
12 expenses and operating income set in a company's last rate  
13 case.

14 Q. Could you give us an example of an expense which would be  
15 appropriately reported above the line in an Annual Report,  
16 but properly classified below the line for gross-up  
17 computations?

18 A. Yes. One example would be the cost of a new type of  
19 chemical required for water or wastewater treatment which  
20 was not in use at the time of a company's last rate case  
21 and is, therefore, not currently embedded in the utility's  
22 rates. This expense would definitely be reported as an  
23 above the line expense in the Annual Report. However,  
24 since this expense is not being recovered in the utility's  
25 rates and, thus, is not included in the revenue shown on

1 the tax return, it must be reported in the gross-up  
2 computations as a below the line expense.

3 Almost any type of expense not embedded in a company's  
4 rates could be treated differently for Annual Report and  
5 gross-up refund computations.

6 Q. Have you prepared an Exhibit which shows the change in  
7 Staff policy?

8 A. Yes. I have enclosed Exhibit RCN-13, which is an analysis  
9 of above the line and below the line treatment of  
10 operating expenses in gross-up reports before and after  
11 the 1995 Staff change in policy.

12 Q. Please explain this Exhibit.

13 A. Page 1 of this Exhibit demonstrates the change in policy.  
14 In the far left hand column, I have listed several utility  
15 companies and the gross-up reporting years dealt with by  
16 the Commission. The information to the center left of the  
17 schedule entitled "Before Staff Change in Policy - Pre-  
18 1996" begins with a column showing the dollar amounts of  
19 below the line items contained in the gross-up reports  
20 filed with the Commission. Going right, the next column  
21 indicates whether the expense was treated as an above the  
22 line expense in the company's Annual Reports. The next  
23 column indicates whether the Commission included these  
24 expenses below the line in its Order disposing of gross-up  
25 collections. The next column gives the PSC Order and date

1 of issue. The next column is an Exhibit reference for  
2 each company listed. Each Exhibit (attached) contains a  
3 copy of the PSC Order and a copy of the above and below  
4 the line allocations for the years indicated. In each  
5 instance, the amount of refund per the Orders agrees  
6 materially with the refund proposed by the utility.

7 The right side of the schedule shows the same  
8 information for the same companies after 1995. As you  
9 will note, beginning in 1996, expenses that were  
10 previously approved by the Commission for below the line  
11 treatment in the gross-up reports were classified above  
12 the line in the PSC Orders. This was due to Staff's  
13 decision to use Annual Report above the line expenses as  
14 a substitute for above the line amounts in the gross-up  
15 refund reports.

16 Q. Did Aloha Utilities, Inc., Eagle Ridge Utilities, Inc., or  
17 Forest Utilities, Inc. protest the new allocation  
18 procedures reflected in the PAA Orders referenced on  
19 Exhibit RCN-13?

20 A. No. The companies expressed strong disagreement with this  
21 change, but the amounts in dispute were not significant as  
22 to justify the cost of a hearing.

23 Q. Has the Commission ever formally dealt with the allocation  
24 issue?

25 A. No. In all cases prior to this one where gross-up

1 allocations were an issue, they were settled without a  
2 finding by the Commission.

3 Q. I notice that this change in Staff policy was inconsistent  
4 for Gulf Utility Company. Please comment.

5 A. In the case of Gulf, the 1998 refund Order contained a  
6 number of below the line expenses for the gross-up  
7 computation which were classified above the line in the  
8 Annual Reports as late as December 7, 1998. So, yes,  
9 there was an inconsistency there.

10 Q. How about North Fort Myers Utility, Inc.?

11 A. For gross-up purposes, the Commission and Staff have  
12 always accepted below the line treatment for certain  
13 expenses reported above the line in the company's Annual  
14 Reports. This was true even after the 1996 change in  
15 policy. This is documented by PSC Order No. PSC-97-0062-  
16 FOF-SU, issued as late as January 17, 1997.

17 Q. I notice that except for Gulf Utility Company, none of the  
18 gross-up reporting years is earlier than 1990. Why is  
19 this and how did the Commission handle above and below the  
20 line gross-up allocations for those years?

21 A. We destroyed a lot of our records of completed cases for  
22 the years 1987 through 1989. This was true for companies  
23 such as Eagle Ridge Utilities, Inc. and Martin Downs  
24 Utilities, Inc., who were sold and no longer clients of  
25 ours.

1           However, the Commission's policy for these early  
2 years, going back to 1987, was exactly the same. This is  
3 illustrated by the fact that the refunds in dispute in  
4 Order No. 21436 were ultimately approved as we had filed  
5 them. In addition, the methodology we used prior to 1996  
6 was also utilized by the Staff and Commission in the  
7 applications for continued authority to gross-up CIAC  
8 required by Order No. 23541.

9 Q. I believe this completes the background information on  
10 gross-up. Is there anything else you would like to  
11 mention before we move on to the specifics of the gross-up  
12 refunds for North Fort Myers Utility, Inc.?

13 A. Yes. I would like to address the lack of rule making  
14 related to the whole issue of gross-up and gross-up  
15 refunds. I want to go back to Exhibit RCN-12 to pages 6  
16 and 7 of that Exhibit. On page 6, about the middle of the  
17 page, Staff noted the following:

18           "The Commission does not have a rule on the  
19 appropriate method to calculate gross-up of  
20 CIAC, a rule on how to determine if gross-up  
21 authority is warranted, nor a rule to determine  
22 how refund of gross-up should be calculated.  
23 The Commission has, however, developed incipient  
24 policy for all of these determinations by the  
25 issuance of the above-referenced Orders."

1           It is my opinion that the incipient policy for gross-  
2 up refund calculations was the policy in effect prior to  
3 1996, as illustrated in Exhibit RCN-13.

4           The last paragraph on page 6 indicates that rule  
5 making may not be feasible and practicable if an agency,  
6 such as the PSC, has not had sufficient time to acquire  
7 the knowledge and experience reasonably necessary to  
8 address a statement by rule making, or where matters are  
9 not sufficiently resolved. The last sentence on the  
10 bottom of page 6 and continuing on the top of page 7 reads  
11 as follows:

12           "From the Case Background and the additional  
13 history set out in Issue 1 above, the Commission  
14 has shown, through the issuance of Orders Nos.  
15 16971 (issued December 18, 1986), 23541 (issued  
16 October 1, 1990), and PSC-92-0961-FOF-WS (issued  
17 September 9, 1992), and many other Orders and  
18 also, through its workshops held on August 30,  
19 1995 (a Staff workshop), and November 29, 1995  
20 (a full Commission workshop), that matters were  
21 neither sufficiently resolved nor had the  
22 Commission gathered sufficient knowledge and  
23 experience to address the issue of CIAC in  
24 gross-up in rule making. Staff now believes  
25 that the Commission has gathered such knowledge

1           and experience." (Emphasis supplied)

2           As a result, I believe the Commission should have  
3           adopted rules for disposing of pending gross-up refund  
4           cases rather than continuing on a haphazard approach  
5           without rules. This is particularly unfair to North Fort  
6           Myers Utility, Inc. in that the Commission changed its  
7           policy and procedures for the 1995 and 1996 gross-up  
8           refund years. This change contradicts the policy and  
9           procedures used by the Commission in its gross-up refund  
10          Orders for the years 1987 through 1994. As I mentioned  
11          previously, the policy used to determine gross-up refunds  
12          for North Fort Myers has been consistent since 1987 and  
13          was utilized by the Commission as late as January 17,  
14          1997. A change in policy for the last two gross-up years  
15          without rule making is neither fair nor just.

16 Q.    Mr. Nixon, I would now like to turn to the gross-up  
17          refunds for North Fort Myers Utility, Inc. Did you  
18          prepare schedules and documentary information for the  
19          company's proposed gross-up refunds based on the fiscal  
20          tax years ended May 31, 1995 and 1996?

21 A.    Yes.

22 Q.    Please describe the information you prepared for the  
23          fiscal year ended May 31, 1995.

24 A.    Our original report of proposed refunds was dated June 18,  
25          1996. That report proposed a refund of approximately



1           \$13,000. As a result of answering some questions posed by  
2           Staff, I revised the report slightly on January 9, 1997,  
3           to reclassify \$9,175 of miscellaneous income from below  
4           the line to above the line. This income related to  
5           miscellaneous service charges from reconnect fees. In  
6           addition, we proposed that the refund be offset by legal  
7           and accounting fees incurred as of that date. Based on  
8           these changes, a refund of approximately \$8,000 was  
9           proposed.

10           On February 4, 1998, the revised filing of January 9,  
11           1997, was amended to include \$28,865 of CIAC and \$17,414  
12           of gross-up as additional taxable income associated with  
13           installment contracts of CIAC and gross-up receivable.  
14           The effect of these adjustments was to propose a refund of  
15           approximately \$3,700 after an offset for 50 percent of  
16           incurred and estimated legal and accounting fees. Each of  
17           these 1995 refund reports are contained in Exhibit RCN-14.

18   Q.   Were there any other changes to what was filed for 1995?

19   A.   Yes. After a meeting with Staff and OPC on May 19, 1998,  
20           we submitted a revised gross-up proposal for the fiscal  
21           years ended 1995 and 1996. This revised proposal is  
22           enclosed as Exhibit RCN-16 and contains a proposed 1995  
23           refund of \$73,367.

24   Q.   What did you prepare and file for the year ended May 31,  
25           1996?

1 A. Our original report was dated April 4, 1997. In that  
2 report, no refund was proposed. On February 4, 1998, the  
3 original report was amended to include \$616,295 of CIAC  
4 and \$143,374 of gross-up as additional taxable income  
5 related to amounts financed by installment contracts.  
6 Also, 50 percent of legal and accounting fees were  
7 proposed as an offset. As with the original report, no  
8 refund was proposed.

9 Both the original and amended reports are enclosed  
10 with this testimony as Exhibit RCN-15.

11 Q. Were there any other changes made to what was filed for  
12 1996?

13 A. Yes. As noted above, the company submitted revised refund  
14 proposals, subsequent to the meeting with the Staff and  
15 OPC referred to above. A refund of \$51,131 for 1996 was  
16 proposed, as shown on Exhibit RCN-16.

17 Q. What are the appropriate gross-up refunds proposed by the  
18 utility in this proceeding?

19 A. The appropriate refunds before consideration of the costs  
20 of this proceeding are those shown on Exhibit RCN-16. A  
21 \$73,367 refund for the tax year ended May 31, 1995, and  
22 \$51,131 for the tax year ended May 31, 1996, are  
23 appropriate. After reductions for the actual and  
24 estimated costs of this proceeding, no refunds are  
25 proposed for either tax year.

1 Q. Please summarize the two primary issues which are in  
2 dispute in this case.

3 A. The two major issues are as follows:

4 1. Was it appropriate for the utility to file amended  
5 tax returns recognizing additional taxable CIAC and gross-  
6 up income for the outstanding balances of the amounts  
7 financed under installment contracts?

8 2. Is it appropriate to classify certain operating  
9 expenses reported above the line for Annual Report  
10 purposes as below the line expenses for gross-up purposes?

11 Q. Please address the amended return issue.

12 A. North Fort Myers Utility, Inc. is an accrual based  
13 taxpayer. As a result, it is required to report revenues  
14 and expenses on an accrual basis for tax purposes. I  
15 believed that the company was at risk for additional tax,  
16 penalties, and interest for understating income related to  
17 CIAC and gross-up because the installment contracts had  
18 been entered into prior to June 12, 1996, the effective  
19 date of the repeal of tax on CIAC. I believed that  
20 failure to report receipts of cash collected after June  
21 12, 1996, related to these contracts could be interpreted  
22 as a scheme to avoid income taxes under Internal Revenue  
23 Notice 87-82.

24 This Notice dealt with Code Section 118 and the  
25 taxability of CIAC. I have enclosed a copy of this Notice

1 as Exhibit RCN-17.

2 On page 3 of Exhibit RCN-17, paragraph III addresses  
3 fair market value of CIACs. The first sentence of that  
4 section reads as follows:

5 "A utility shall include in income the amount of  
6 any cash received as CIAC and the fair market  
7 value of all property received as a CIAC."

8 Section IV, on that same page, begins as follows:

9 "A transaction will be treated as a CIAC if such  
10 treatment is in accordance with the substance of  
11 the transaction, regardless of the form in which  
12 such transaction is conducted."

13 The second paragraph under Section IV begins as  
14 follows:

15 "In addition, a transaction will be treated as a  
16 CIAC if the utility effectively obtains the  
17 burdens and benefits of ownership with respect  
18 to property . . ."

19 Page 2 of Exhibit RCN-13 addresses relocation of  
20 utility facilities under paragraph II. However, the first  
21 several paragraphs include a recap of definitions of what  
22 was CIAC by reference to the legislative history of what  
23 is taxable CIAC. Paragraph II on page 2 reads as follows:

24 "The legislative history to Section 824 of the  
25 Act indicates that Congress viewed the receipt

1 by utilities of CIACs as a prepayment for future  
2 services that the utilities would provide to  
3 their customers."

4 And, again, in the middle of the second paragraph:  
5 "Congress viewed the exclusion of these amounts  
6 from income as inappropriate and, accordingly,  
7 required that a utility

8 "report as an item of gross income the  
9 value of any property, including money,  
10 that it receives to provide or  
11 encourage . . . the provision of  
12 services to or for the benefit of a  
13 person transferring the property. A  
14 utility is considered as having  
15 received property to encourage the  
16 provision of services if the receipt of  
17 the property is a prerequisite to the  
18 provision of services . . . "

19 I believe these excerpts from Notice 87-82 clearly  
20 establish that the CIAC and gross-up received from  
21 customers via installment contracts were fully taxable.  
22 Payment of CIAC and gross-up, whether in cash or through  
23 a note, was a precondition to the provision of wastewater  
24 collection and treatment services. In exchange, the  
25 utility effectively obtained the burden and benefits of

1 ownership since it owned the lines and wastewater  
2 treatment facilities through which it was able to provide  
3 service and receive revenues. Since North Fort Myers  
4 Utility, Inc. is an accrual taxpayer, it is my opinion,  
5 and the opinion of my partner who specializes in the area  
6 of federal income taxation, that all of the CIAC and  
7 gross-up received via installment notes was fully taxable  
8 in the year the notes were received.

9 Q. What if North Fort Myers had been a cash basis taxpayer?

10 A. It is my opinion, and that of my tax partner, that all  
11 collections of CIAC and gross-up under the installment  
12 contracts would be taxable when received, even amounts  
13 received after June 12, 1996. This is because the  
14 contracts and respective burdens and benefits associated  
15 with the contracts were entered into prior to the repeal  
16 of tax on CIAC. According to my understanding of IRS  
17 Notice 87-82, as discussed above, and general tax law,  
18 those contracts represent income in the year entered into.

19 Q. Please address the above the line-below the line issue.

20 A. It was entirely appropriate to classify certain operating  
21 expenses below the line for gross-up refund purposes and  
22 above the line for regulatory reporting purposes in the  
23 Annual Reports. In Annual Reports, North Fort Myers  
24 reports its regulatory revenue, expenses, operating income  
25 or loss without regard to an analysis of the source of

1 funding of expenses or who should receive the tax benefits  
2 of losses caused by subsidization of utility operations by  
3 the Company's stockholders. Thus, any necessary operating  
4 expenses incurred to provide service are appropriately  
5 reported above the line.

6 In contrast, the gross-up refund reports are primarily  
7 an analysis of the source of funding of expenses to  
8 determine who should receive the tax benefits of losses  
9 caused by stockholder subsidization of utility operations.  
10 Thus, an expense identified as one subsidized by  
11 stockholders is appropriately classified below the line  
12 for gross-up purposes, in order that the stockholders get  
13 the benefit of the tax assets arising from such  
14 subsidization.

15 Q. What were these expenses you classified below the line?

16 A. They were expenses incurred by North Fort Myers Utility,  
17 Inc. which were necessary to provide service, but which  
18 have never been recognized in the rates of the utility.

19 The company's last general rate case was in 1982,  
20 based on the test year ended December 31, 1981. At that  
21 time, the company operated a couple of package treatment  
22 plants and provided service primarily to Old Bridge Park,  
23 a mobile home community.

24 During the test year, no officers' salaries,  
25 engineering, or legal fees were included in test year

1 expenses. No proforma adjustments were requested for  
2 these items, either.

3 Since that rate case, the Company retired its on-site  
4 package treatment plants and constructed an off-site  
5 regional facility of municipal quality and began  
6 aggressively expanding its service territory and customer  
7 base. The old treatment plants were retired and the net  
8 book value treated as a deferred charge. This amount has  
9 been amortized using a 40-year life. As with the other  
10 expenses mentioned above, this expense has legitimately  
11 been classified above the line for Annual Report purposes,  
12 but has never been recognized in rates.

13 Q. If none of these types of expenses are embedded in the  
14 utility's rates, who has been paying them?

15 A. The stockholders of North Fort Myers Utility, Inc. For  
16 this reason, they are appropriately classified below the  
17 line for gross-up purposes, so the stockholders will get  
18 the tax benefits of the losses created by these expenses  
19 as they should, since their cost has been paid for by  
20 them. The contributors of CIAC and gross-up have had  
21 absolutely nothing to do with the creation or payment of  
22 these expenses and the associated tax losses. They should  
23 not unjustly benefit from them through above the line  
24 classification on the gross-up reports.

25 Q. Why has North Fort Myers Utility, Inc. not filed a rate



1 case to seek recovery of these expenses?

2 A. Management has chosen to keep the rates artificially low  
3 in order to expand the utility system. This is the  
4 situation cited by the Staff on page 9 of this testimony,  
5 Lines 22 and 23. The customers have received a tremendous  
6 benefit through the years due to the fact that rates have  
7 been lower than they should have been to produce a fair  
8 rate of return.

9 Q. I notice that on Exhibit RCN-16 you propose that the  
10 "testing" portion of the "engineering & testing" expense  
11 on the tax return be classified above the line. Also, I  
12 notice that the proposal was made to classify 40 percent  
13 of the general manager's salary above the line. Please  
14 explain these adjustments.

15 A. On May 19, 1998, Mr. Deterding and I met with the Staff  
16 and OPC to see if there was a way to settle this case.  
17 Based on additional investigation, I determined that the  
18 line item in cost of goods sold on the tax return labeled  
19 "engineering & testing" in reality was the general  
20 manager's salary, DEP testing, and plant supplies. Since  
21 I believe that some testing expense and plant supplies  
22 were included in the rates established in the last rate  
23 case, these amounts should properly have been classified  
24 above the line.

25 Although little of the general manager's salary was

1 embedded in the utility's rates, I proposed that 40  
2 percent be classified above the line in an effort to  
3 resolve this case.

4 Q. Page 2 of Exhibit RCN-16 is a schedule showing the impact  
5 of revising the Annual Reports to conform to the same  
6 above the line/below the line classification used in the  
7 gross-up refund reports. Why was this presented?

8 A. At our meeting on May 19th, Staff continued to insist that  
9 those expenses classified as above the line expenses on  
10 the Annual Reports should be used as a substitute for  
11 above the line expenses on the tax return and in the  
12 gross-up refund reports. This schedule was submitted to  
13 Staff to show that even had the expenses in the Annual  
14 Report been classified as below the line expenses, the  
15 company would still be earning far less than its  
16 authorized rate of return.

17 Q. What accounts for the differences between the amounts of  
18 above the line expenses on pages 1 and 2 of Exhibit RCN-  
19 16?

20 A. Page 1 is information from the tax return based on the  
21 fiscal years ended May 31, 1995 and 1996. The information  
22 on page 2 is based on the calendar years ended December  
23 31, 1994 and 1995. Naturally, there would be differences.

24 Q. Was the information contained on page 2 of Exhibit RCN-16  
25 requested by Staff during the meeting of May 19, 1998?

1 A. Yes. We had offered to amend the Annual Reports, if  
2 necessary, but Staff did not feel like the additional  
3 expense was justified at that time.

4 Q. What happened after Staff reviewed the information in  
5 Exhibit RCN-16?

6 A. Staff informed Mr. Deterding that if above the line  
7 expenses for Annual Report purposes were classified below  
8 the line for gross-up purposes, then they should receive  
9 the same treatment for indexing purposes.

10 Q. Does the utility agree with this notion?

11 A. Absolutely not. As I have stated repeatedly, the above  
12 the line expenses in the Annual Report were necessary to  
13 provide utility service and were, therefore, legitimately  
14 classified above the line. The fact that these expenses  
15 had not been recognized in the company's last rate case,  
16 going back to 1981, did not and does not mean that such  
17 expenses are ineligible for indexing. At least through  
18 indexing, some small portion of these expenses can be  
19 recovered.

20 Q. Is that why you classified 40 percent of the general  
21 manager's salary above the line on page 1 of Exhibit RCN-  
22 16?

23 A. Yes. I believe that although none of Mr. Reeves' salary  
24 has ever been considered in the rates established for the  
25 utility, such above the line recognition would account for

1 any officers' salaries or other expenses that had been  
2 indexed and, therefore, partially included in rates.

3 Q. Then you believe that the company appropriately indexed  
4 expenses shown above the line in its Annual Reports?

5 A. Absolutely. There is no way to know for sure what  
6 adjustments the Commission might make in an imagined rate  
7 proceeding. Certainly, the amount of general manager's  
8 salary, officers' salaries, and other expenses which were  
9 indexed and now included in rates represent fairly minor  
10 amounts.

11 As I have stated many times during this testimony,  
12 there is no relationship between above the line for  
13 regulatory reporting purposes and above the line on the  
14 tax return for gross-up purposes. The objectives of each  
15 are totally different.

16 Q. Is a refund of any indexed revenue appropriate?

17 A. No. Indexing did not cause the utility to exceed the  
18 range of its authorized rate of return, even after the  
19 Annual Reports were revised to reclassify certain expenses  
20 below the line for gross-up purposes. In addition, the  
21 expenses indexed appropriately qualified for indexing.

22 Q. Did the utility attempt to address Staff's concerns about  
23 indexing?

24 A. Yes. The company proposed an informal settlement  
25 agreement which addressed this issue. The settlement

1           proposal is accurately set forth on page 12 of Order No.  
2           PSC-99-1068-PAA-SU.

3    Q.    Does the Company still propose that settlement agreement?

4    A.    No.    Since the Company has been required to go to hearing,  
5           that settlement offer is now off the table.    This would  
6           not preclude negotiations with OPC and Staff prior to  
7           hearing to settle this case, if possible.

8    Q.    When were the Annual Reports amended?

9    A.    Not until February 15, 1999.    This was after all attempts  
10           to convince the Staff that its position concerning above  
11           the line treatment for tax and gross-up and Annual  
12           Reporting purposes was incorrect.

13   Q.    Mr. Nixon, is there anything else you would like to  
14           address at this time?

15   A.    Not at this time.    No doubt, additional issues will arise  
16           which will require rebuttal testimony.    In addition, this  
17           case has cost the utility a tremendous amount of money.  
18           The company will be seeking recovery of these costs as an  
19           offset to any gross-up refunds which are ultimately  
20           required or from the rate payers.    I have attached as  
21           Exhibit RCN-18 a summary of the most recent calculations  
22           of these costs (\$220,048).    An updated version of the  
23           actual and estimated expenses for this Docket will be  
24           filed as an Exhibit with the rebuttal testimony of the  
25           utility or as a late filed post-hearing Exhibit.



	<u>Name of Company</u>	<u>Order No.</u>	<u>Date</u>
1			
2	Clay Utility Company	14305	04/22/85
3	Twin County Utility Company	14380	05/17/85
4	Sanlando Utilities Corp.	15887	03/25/86
5	Park Manor Waterworks, Inc.	15831	03/12/86
6	Forest Utilities, Inc.	14557	07/10/85
7	Eagle Ridge Utilities, Inc.	14133	02/17/85
8	Martin Downs Utilities, Inc.	17269	03/10/87
9	Ocean Reef Utility Co.	17532	05/08/87
10	Rolling Oaks Utilities, Inc.	17760	06/06/87
11	St. Johns Service Company	18551	12/15/87
12	Limited investigation into		
13	rate settling procedures		
14	and alternatives for water		
15	and sewer companies	21202	05/08/89
16	Radnor Plantation DBA		
17	Plantation Utilities	21415	06/20/89
18	Hydratech Utilities, Inc.	22226	11/27/89
19	Martin Downs Utilities, Inc.	22869	04/27/90
20	Southern States Utilities	24715	06/26/91
21	FFEC-Six, Ltd.	24733	07/01/91
22	East Central Florida Services	PSC-92-0104-FOF	03/27/92
23	Aloha Utilities, Inc.	PSC-92-0578-FOF-SU	06/29/93
24	Mad Hatter Utility, Inc.	PSC-93-0295-FOF-WS	02/24/93
25	Lehigh Utilities, Inc.	PSC-93-0301-FOF-WS	02/25/93

	<u>Name of Company</u>	<u>Order No.</u>	<u>Date</u>
1			
2	Jasmine Lakes Utilities Corp.	PSC-93-1675-FOF-WS	11/18/93
3	Key Haven Utility Company	PSC-94-1557-S-SU	12/13/94
4	JJ's Mobile Homes, Inc.	PSC-95-1319-FOF-WS	10/30/95
5	Little Sumter Utility	PSC-96-1132-FOF-WS	09/11/96
6	Aloha Utilities, Inc.	PSC-97-0280-FOF-WS	03/12/97
7	Gulf Utility Company	PSC-97-0847-FOF-WS	10/22/97
8	Lindrick Service Corporation	PSC-97-1501-FOF-WS	11/25/97
9	<u>Gross-up cases:</u>		
10	Request by FWWA for investi-		
11	gation of proposed repeal		
12	of Section 118(b) IRC (CIAC)	21436	06/26/89
13	Same as above	21266	05/22/89
14	Same as above	23541	10/01/90
15	Clay Utility Company	25205	10/11/91
16	Martin Downs Utilities, Inc.	25360	11/19/91
17	Hydratech Utilities, Inc.	25515	12/30/91
18	JJ's Mobile Homes, Inc.	92-0039	03/10/92
19	Hudson Utilities, Inc.	93-0206	02/09/93
20	East Central Florida Services	93-0238	02/15/93
21	Hudson Utilities, Inc.	93-0962	06/28/93
22	Gulf Utility Company	93-1207	08/18/93
23	Parkland Utilities, Inc.	94-0653	05/31/94
24	Order revising full gross-up		
25	formula	94-1265	10/12/94



	<u>Name of Company</u>	<u>Order No.</u>	<u>Date</u>
1			
2	Forest Utilities, Inc.	25299	11/05/91
3	Martin Downs Utilities, Inc.	25388	11/25/91
4	Eagle Ridge Utilities, Inc.	25436	12/04/91
5	Fountain Lakes Sewer Corp.	25500	12/17/91
6	Aloha Utilities, Inc.	25526	12/24/91
7	North Ft. Myers Utility, Inc.	25533	12/24/91
8	North Ft. Myers Utility, Inc.	92-0251	04/27/92
9	Gulf Utility Company	93-0871	06/09/93
10	North Ft. Myers Utility, Inc.	94-0443	04/13/94
11	Eagle Ridge Utilities, Inc.	94-0448	04/13/94
12	Aloha Utilities, Inc.	94-0444	04/13/94
13	Gulf Utility Company	95-0508	04/25/95
14	Hydratech Utilities, Inc.	PSC-96-1352-FOF-WS	11/18/96
15	Sunbelt Utilities, Inc.	PSC-97-0147-FOF-WS	02/11/97
16	Hydratech Utilities, Inc.	PSC-97-0657-AS-WS	06/09/97
17	Aloha Utilities, Inc.	PSC-98-0319-AS-WS	02/23/98
18	Parkland Utilities	PSC-98-0445-AS-WS	03/30/98
19	Gulf Utility Company	PSC-98-1626-FOF-WS	12/07/98
20	Fountain Lakes Sewer Corp.	PSC-99-1748-PAA-SU	09/07/99
21	JJ's Mobile Homes, Inc.	Pending Docket No.	Agenda Conf.
22		980954-WS	11/18/99

**EXHIBIT RCN-1**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request by FLORIDA WATERWORKS ) DOCKET NO. 860184-PU  
ASSOCIATION for investigation of )  
proposed repeal of Section 118(b), ) ORDER NO. 16971  
Internal Revenue Code )  
(Contributions in Aid of ) ISSUED: 12-18-86  
Construction). )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

GERALD L. GUNTER  
JOHN T. HERNDON  
KATIE NICHOLS  
MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER GRANTING FLORIDA WATERWORKS  
ASSOCIATION'S "APPLICATION FOR EMERGENCY  
APPROVAL OF AMENDED SERVICE AVAILABILITY  
POLICIES" WITH MODIFICATIONS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission of its intent to grant, pursuant to Sections 367.011, 367.0822, 367.101, and 367.121, Florida Statutes, and Rule 25-30.565, Florida Administrative Code, approval of the Florida Waterworks Association's request that water and sewer utilities subject to this Commission's jurisdiction be allowed to amend their service availability policies to meet the tax impact on Contributions in Aid of Construction (CIAC) resulting from the amendment of Section 118(b) of the Internal Revenue Code.

BACKGROUND

Congress has passed and the President has signed the Tax Reform Act of 1986 (Act), which amends, effective January 1, 1987, Section 118(b) of the Internal Revenue Code.

Section 118 is entitled, "Contributions to the capital of a corporation". Section 118(a) states, "In the case of a corporation, gross income does not include any contribution to the capital of the taxpayer." Prior to the passage of the Act, Section 118(b)(1), entitled "Contributions in aid of construction", stated,

Contributions in aid of Construction. (1) General Rule. For purposes of this section, the term "contribution to the capital of the taxpayer" includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility which provides electric energy, gas (through a local distribution system or transportation by pipeline), water, or sewerage disposal services if--

(A) such amount is a contribution in aid of construction,

ORDER NO. 16971  
DOCKET NO. 860184-PU  
PAGE 2

(B) where the contribution is in property which is other than electric energy, gas, steam, water, or sewage disposal facilities, such amount meets the requirements of the expenditure rule of paragraph (2), and

(C) such amounts (or any property acquired or constructed with such amounts) are not included in the taxpayer's rate base for rate-making purposes.

Section 118(b) now reads:

(b) CONTRIBUTIONS IN AID OF CONSTRUCTION ETC.--For purposes of subsection (a), the term "contribution to the capital of the taxpayer" does not include any contribution in aid of construction or any other contribution as a customer or potential customer. (Emphasis supplied).

Thus CIAC paid to a utility by developers and other customers may be treated as gross income to the utility and may be subject to taxation.

REQUEST OF FLORIDA WATERWORKS ASSOCIATION

In response to the change in the tax law, the Florida Waterworks Association has requested that this Commission enter an order which provides as follows:

a) On and after January 1, 1987, the effective date of the repeal of Section 118(b) of the Internal Revenue Code, utilities may collect from developers and others who transfer property and amounts to a utility as CIAC, which transfers had been excluded from taxable income pursuant to Section 118(b) of the Internal Revenue Code an amount equal to the tax impact.

b) The tax impact amount to be collected shall be determined using the formula

$$\text{TAX IMPACT} = \frac{R}{1.0-R} \times (F + P)$$

1) R = Applicable marginal rate of Federal and State Corporate Income Tax if one is payable on the value of contributions which must be included in taxable income of the utility.

2) R shall be determined as follows:

$$R = ST + FT (1-ST)$$

ST = Applicable marginal rate of State Corporate Income Tax

FT = Applicable marginal rate of Federal Income Tax, either corporate or individual.

3) F = Dollar Amount of charges paid to a utility as contributions in aid of construction which must be included in taxable income of the utility, and which had been excluded in taxable income pursuant to Section 118(b) of the Internal Revenue Code.

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Page 2 of 6

ORDER NO. 16971  
DOCKET NO. 860184-PU  
PAGE 3

4) P = Dollar amount of property conveyed to utility which must be included in taxable income of the utility, and which had been excluded from taxable income pursuant to Section 118(b) of the Internal Revenue Code.

c) The CIAC tax impact amounts, as determined in Paragraph (b), shall be deposited as received into a fully funded interest bearing escrow account, hereinafter referred to as the "CIAC Tax Impact Account". Monies in the CIAC Tax Impact Account may be withdrawn periodically for the purpose of paying that portion of the estimated Federal and State income tax expense which can be shown to be directly attributable to the repeal of Section 118(b) of the Internal Revenue Code and the inclusion of CIAC in taxable income. Annually, following the preparation and filing of the utility's annual Federal and State income tax returns, a determination shall be made as to the actual Federal and State income tax expense that is directly attributable to the inclusion of CIAC in taxable income for the tax year. CIAC tax impact monies received during the tax year that are in excess of the actual amount of tax expense that is attributable to the receipt of CIAC, together with interest earned on such excess monies held in the CIAC Tax Impact Account must be refunded on a pro rata basis to the parties which made the contribution and paid the tax impact amounts during the tax year. The utility is required to maintain adequate records to account for the receipt, deposit, and withdrawal of monies in the CIAC Tax Impact escrow account. A detailed statement of the CIAC Tax Impact Account, including the annual determination of actual tax expense attributable to the repeal of Section 118(b) of the Internal Revenue Code shall be submitted as a part of the utility's annual report.

d) The amount of CIAC Tax Impact collected by a utility shall not be treated as CIAC for ratemaking purposes.

We shall grant Florida Waterworks Association's request subject to the following modifications:

1. All net savings in tax expense resulting from passage of the Act related to jurisdictional operations shall be offset against any increases in tax expense due to taxation of CIAC before monies are withdrawn from the escrow account.

2. Annually, following the preparation and filing of the utility's annual Federal and State income tax returns, the utility shall file with the Commission the following information which will receive confidential treatment:

a. Signed copies of said Federal and State Income tax returns.

b. Workpapers, related to said returns, which show the treatment of CIAC on said returns.

c. Workpapers showing the calculation of any tax savings resulting from the Act and related to jurisdictional operations.

Exhibit RCN-1  
Page 3 of 6

ORDER NO. 16971  
DOCKET NO. 860184-PU  
PAGE 4

3. In the event that excess monies are determined to have been withdrawn from the escrow account, the utility shall repay said monies to the account together with any earnings on the account lost because of the withdrawal.

4. The report of the escrow account activity shall include a record of interest earned and refunded as well as a calculation of tax savings.

In the event that a utility does not wish to furnish its tax return, a substitute reporting format acceptable to staff may be provided with assurance that signed copies of the tax return are available to staff upon request for review and audit.

REQUEST FOR LETTER RULING  
FROM INTERNAL REVENUE SERVICE

It is possible to interpret the language of the amended Section 118(b) in such a manner that CIAC received from developers and CIAC received from future ratepayers can be segregated so that only CIAC receipts from future ratepayers would be subject to taxation. As there would appear to be some support for this position in prior litigation in the area, this idea is worth pursuing. Also, some items of taxation may be avoided if title does not pass. This possibility should also be pursued.

Consequently, we will require the Florida Waterworks Association to have one of its members request from the Internal Revenue Service a letter ruling to clarify the meaning of the new Section 118(b).

This Commission shall participate fully in the letter ruling process. This includes the drafting and approval of the request and all subsequent meetings on the issue with the Internal Revenue Service. All contacts with the Internal Revenue Service by any party shall be reported.

In view of the emergency nature of this matter, the time period for protesting this PAA order shall expire on December 31, 1986.

In consideration of the above, it is

ORDERED by the Florida Public Service Commission that the request of the Florida Waterworks Association, as set forth and modified in the body of this order, is granted. It is further

ORDERED that the Florida Waterworks Association shall, within a reasonable time, have one of its members request from the Internal Revenue Service a letter ruling clarifying the meaning of the new Section 118(b) of the Internal Revenue Code, with respect to the matters raised herein. It is further

ORDERED that this Commission shall fully participate in the letter ruling process. It is further

ORDERED that this Docket shall remain open to handle any generic problems that arise in accounting for CIAC (including gas and electric CIAC) and the related tax expenses. It is further


ORDERED that the provisions of this order, issued as proposed agency action, shall become final unless an appropriate petition in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director of

Exhibit RCL-1  
Page 4 of 6

ORDER NO. 16971  
DOCKET NO. 860184-PU  
PAGE 5

Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 31, 1986.

By ORDER of the Florida Public Service Commission, this 18th day of DECEMBER, 1986.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

WJB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), to notify parties of any administrative hearing or judicial review of Commission orders that may be available, as well as the procedures and time limits that apply to such further proceedings. This notice should not be construed as an endorsement by the Florida Public Service Commission of any request nor should it be construed as an indication that such request will be granted.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 31, 1986. In the absence of such a petition, this order shall become effective January 1, 1987, as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

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 January 1, 1987, any party adversely affected may request judicial review by the Florida Supreme Court by the filing of a notice of appeal with the Director, Division of Records and Reporting and the filing of a copy of the notice and filing fee with the Supreme Court. This filing must be completed within 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.

Exhibit RW-1  
Page 5 of 6

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by FLORIDA WATERWORKS	)	DOCKET NO. 860184-PU
ASSOCIATION for Investigation of	)	ORDER NO. 17058
Proposed Repeal of Section 118(b),	)	ISSUED: 1-6-87
Internal Revenue Code (Contributions	)	
in Aid of Construction.	)	

CONSUMMATING ORDER

BY THE COMMISSION:

On December 18, 1986, this Commission issued Order No. 16971 as Proposed Agency Action in the above-noted docket. The finality of that order was made dependent on the absence of an appropriate petition being filed with the Commission by the close of business on December 31, 1986. That date has passed and an appropriate petition and request for hearing has not been received. Therefore, the provisions of Order No. 16971 have become final.

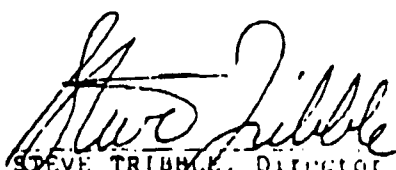
It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. 16971 is a final order. It is further

ORDERED that each utility, which plans to use the optional "gross up", shall submit the appropriate tariff sheets for Commission approval prior to implementation, pursuant to Rule 25-30.135, Florida Administrative Code. In addition, pursuant to Rule 25-30.550, a copy of each developer's agreement, which includes the "gross up" provision, shall be filed with the Commission. It is further

ORDERED that Docket No. 860184-PU shall remain open to handle any generic problems that arise in accounting for CIAC (including gas and electric CIAC) and the related tax expenses.

By ORDER of the Florida Public Service Commission, this 6th day of JANUARY, 1987.

  
 STEVE TRIBBLE, Director  
 Division of Records and Reporting

( S E A L )

WJB

Exhibit RCL-1  
Page 6 of 6



**EXHIBIT RCN-2**

*Cronin, Jackson, Nixon & Wilson*

*CERTIFIED PUBLIC ACCOUNTANTS, P.A.*

*JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
STACY H. ROBBINS, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
JAMES L. WILSON, C.P.A.  
DIANE S. WOLFRATH, C.P.A.*

2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 34625-4411  
(813) 791-4020

May 19, 1988

Robert M. C. Rose, Esq.  
Rose, Sundstrom & Bentley  
2544 Blairstone Pines Drive  
Tallahassee, Florida 32301

RE: CIAC - Refunds of Tax in Escrow

Dear Bob:

A couple of days ago, we discussed the effect of making refunds to developers of tax escrow money, based on my understanding of the requirements of Order No. 16971, issued December 18, 1986.

In order to explain this better, I have enclosed a schedule, which I believe illustrates what we were talking about.

In my illustration, I have assumed that the only taxable revenue and deductible expense are those related to developer contributions. Further, I have assumed that the utility company receives a \$100,000 contribution each year for five years from different developers.

As you will note, taxable revenue is \$160,000 each year. However, depreciation expense increases each year since the utility is now allowed to take as a deduction, depreciation on CIAC. As a result, the tax benefits related to depreciation on CIAC accrue to a developer making a contribution in future years. The developer making a contribution in year one only receives a \$1,673 refund, while a developer making an identical contribution five years down the road receives a refund of \$9,200.

My concern is not the unfairness of this situation, but rather that the PSC would require a utility to keep elaborate records, in order to make an annual refund to a developer over the twenty year tax life of the contribution.

Exhibit RCN-2  
Page 1 of 3

May 19, 1988

I would appreciate your advising me if my understanding of what is required by Order No. 16971 is incorrect, or if you spot a "glitch" in my illustration. We need to start preparing the appropriate schedules for filing with the Commission for several of our clients as required in Order No. 16971.

Very truly yours,

CRONIN, JACKSON, NIXON & WILSON



Robert C. Nixon

RCN:ver  
Enclosures

cc: M. Deterding

Exhibit RCN-2  
Page 2 of 3

Illustration of  
Refunds of Tax Impact Amounts  
Collected From Developers on CIAC

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Developer contribution	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
Tax impact (60%)	60,000	60,000	60,000	60,000	60,000
Taxable revenue	160,000	160,000	160,000	160,000	160,000
Depreciation expense @ 5% of contribution (20 year tax depreciation life)	(5,000)	(10,000)	(15,000)	(20,000)	(25,000)
Taxable income	155,000	150,000	145,000	140,000	135,000
State and Federal tax rate	.3763	.3763	.3763	.3763	.3763
Income tax payable	58,327	56,445	54,564	52,682	50,800
Tax collected from developer	60,000	60,000	60,000	60,000	60,000
Developer refund	<u>\$ 1,673</u>	<u>\$ 3,555</u>	<u>\$ 5,436</u>	<u>\$ 7,318</u>	<u>\$ 9,200</u>

**EXHIBIT RCN-3**

# CIAC REPORT

FOR TAX RETURN YEAR ENDED \_\_\_\_\_, 19\_\_\_\_

COMPANY: \_\_\_\_\_

	<u>TOTAL</u> <u>COMPANY</u>	<u>NON</u> <u>JURISDICTIONAL</u>	<u>JURISDICTIONAL</u>
1. Total CIAC	\$	\$	\$
2. Total Connection Fees	( )	( )	( )
3. Total Installation Fees	( )	( )	( )
4. Total Prepaid Connection Fees (not in (2))	( )	( )	( )
5. Total Tap-in Fees	( )	( )	( )
6. Total Jack & Bore Fees	( )	( )	( )
7. CIAC Taxable Because of Amendment to Section 118	\$	\$	\$
8. Depreciation on (7)	( )	( )	( )
9. Taxable Income Effect of (7)	<u>\$</u>	<u>\$</u>	<u>\$</u>
10. Form 1120, Line 11	\$	\$	\$
11. LESS: Form 1120, Line 27	( )	( )	( )
12. Form 1120, Line 28	\$	\$	\$
13. LESS: Form 1120, Line 29a	( )	( )	( )
14. LESS: Form 1120, Line 29b	( )	( )	( )
15. Form 1120, Line 30	\$	\$	\$
16. LESS: Net CIAC Taxable Because of TRA '86 (from Line (9))	( )	( )	( )
17. PLUS(LESS): Other CIAC Effects of TRA '86 (attached)	_____	_____	_____
18. Adjusted Form 1120, Line 30	<u>\$</u>	<u>\$</u>	<u>\$</u>
Current Combined Federal & State Tax Rate _____ %			
19. CIAC Gross-up Collections	\$	\$	\$
20. CIAC Gross-up Refunds	( )	( )	( )
21. Interest on gross-up collections, net of tax	_____	_____	_____
22. Net CIAC Gross-up To Be Applied To Line (9)	<u>\$</u>	<u>\$</u>	<u>\$</u>
CIAC Gross-up Rate Used _____ %			

Exhibit RCN-3  
Page 1 of 1

**EXHIBIT RCN-4**

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

May 25, 1989

TO: DIRECTOR OF RECORDS AND REPORTING

FROM: DIVISION OF AUDITING AND FINANCIAL ANALYSIS (DEVLIN, A. CAUSSEAU) *df*  
DIVISION OF LEGAL SERVICES (PIERSON) *apc*  
DIVISION OF WATER AND SEWER (HILL, LOWE, SHAFER, WILLIS) *10x*

RE: DOCKET NO. 860184-PU -- REQUEST BY FLORIDA WATERWORKS ASSOCIATION FOR INVESTIGATION OF PROPOSED REPEAL OF SECTION 118 (b) INTERNAL REVENUE CODE (CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION)

AGENDA: JUNE 6, 1989 -- CONTROVERSIAL -- PAA -- AFFECTED PARTIES MAY SPEAK

PANEL: FULL

CRITICAL DATES: NONE

---

ISSUE AND RECOMMENDATION SUMMARY

ISSUE 1: Should Aloha Utilities, Inc. (Aloha), Canal Utilities, Inc. (Canal), Clay Utility Company (Clay), Eagle Ridge Utilities, Inc. (Eagle Ridge), El Agua Corporation (El Agua), Martin Downs Utilities, Inc. (Martin Downs), Meadowbrook Utility Systems, Inc. (Meadowbrook), Palm Coast Utilities Corporation (Palm Coast), and St. Johns Service Company (St. Johns) be required to refund all contributed taxes in excess of those actually paid to the Internal Revenue Service (IRS) because of the collection of CIAC?

DOCUMENT NUMBER-DATE

05243 MAY 25 1989

FPSC-RECORDS/REPORTING

Exhibit RCN-4  
Page 1 of 9



RECOMMENDATION: Yes, these utilities should be required to refund, with interest earned, all contributed taxes in excess of those actually paid to the IRS because of the collection of CIAC. See attachment A for amounts.  
(DEVLIN, A. CAUSSEAU)

ALTERNATIVE RECOMMENDATION: No, these utilities should be allowed to reduce any refund of contributed taxes collected by any Net Operating Loss (NOL's) used to offset any tax liability owed to the IRS. This would allow the benefit of the NOL's to be given to the utility instead of the developer.  
(HILL, LOWE, WILLIS, SHAFER)

ISSUE 2: Should Duval Utility Company (Duval) and Kingsley Service Company (Kingsley), be required to make adjustments to their depreciation reserves in lieu of making refunds?

RECOMMENDATION: Yes, Duval and Kingsley should be required to make adjustments to their depreciation reserves in lieu of making refunds. The adjustments should total the amount of refund plus interest earned. See Attachment A for amounts. (DEVLIN, A. CAUSSEAU)

CASE BACKGROUND

In response to a request by the Florida Waterworks Association, Docket Number 860184-PU was opened to investigate the effect of amendment of section 118 of the Internal Revenue Code (Code). By Order Number 16971, issued December 18, 1986, utilities were allowed the option of grossing up contributions in aid of construction (CIAC) for the effect of taxation. Consummating Order Number 17058 in this docket was issued January 6, 1987. Other orders have been issued subsequent to the issuance of Order Number 17059, supra. One of those, Order Number 17396, issued April 14, 1987, made it abundantly clear that the gross-up provision applied only to utilities organized as C corporations and not to those items called CIAC for regulatory purposes but formerly taxed under section 118 of the Code -- connection fees, meter connection fees, tap fees, and turn-off, turn-on charges.

Approximately forty five utilities filed tariff sheets that would allow them to gross-up CIAC -- collect contributed taxes. Of these, two appear to have grossed-up the wrong fees; two did not collect any taxable CIAC; a third appears not to have collected taxable CIAC; two have made full refunds because there was no tax liability; two others appear to be in that same situation; and two were not C corporations so their tariffs were cancelled. Staff is of the opinion that the proposals contained in some of the reports that have been filed by those utilities can not be handled administratively because they require Commission action. They are, therefore, being brought before you at this time.

ISSUE 1: Should Aloha Utilities, Inc. (Aloha), Canal Utilities, Inc. (Canal), Clay Utility Company (Clay), Eagle Ridge Utilities, Inc. (Eagle Ridge), El Agua Corporation (El Agua), Martin Downs Utilities, Inc. (Martin Downs), Meadowbrook Utility Systems, Inc. (Meadowbrook), Palm Coast Utilities Corporation (Palm Coast), and St. Johns Service Company (St. Johns) be required to refund all contributed taxes in excess of those actually paid to the Internal Revenue Service (IRS) because of the collection of CIAC?

RECOMMENDATION: Yes, these utilities should be required to refund, with interest earned, all contributed taxes in excess of those actually paid to the IRS because of the collection of CIAC. See attachment A for amounts.  
(DEVLIN, A. CAUSSEAU)

ALTERNATIVE RECOMMENDATION: No, these utilities should be allowed to reduce any refund of contributed taxes collected by any Net Operating Loss (NOL's) used to offset any tax liability owed to the IRS. This would allow the benefit of the NOL's to be given to the utility instead of the developer.  
(HILL, LOWE, WILLIS, SHAFER)

STAFF ANALYSIS: Order Number 16971, supra, was issued in response to an expressed need by the utilities for enhanced cash flow to meet the tax liability caused by the receipt of CIAC. The body of the order states:

"Annually, following the preparation and filing of the utility's annual Federal and State income tax returns, a determination shall be made as to the actual Federal and State income tax expense that is directly attributable to the inclusion of CIAC in taxable income for the tax year. CIAC tax impact monies received during the tax year that are in excess of the actual amount of tax expense that is attributable to the receipt of CIAC, together with interest earned on such excess monies held in the CIAC Tax Impact Account must be refunded on a pro rata basis to the parties which made the contribution and paid the tax impact amounts during the tax year. The utility is required to maintain

adequate records to account for the receipt, deposit, and withdrawal of monies in the CIAC Tax Impact escrow account. A detailed statement of the CIAC Tax Impact Account, including the annual determination of ACTUAL TAX EXPENSE attributable to the repeal of Section 118(b) of the Internal Revenue Code shall be submitted as a part of the utility's annual report. (Emphasis supplied.)

The question at hand is, what is the "actual tax expense attributable to the repeal of Section 118(b) of the Internal Revenue Code"? Two possibilities come readily to mind: one, the actual liability -- taxes actually payable -- directly resulting from the collection of CIAC; or two, the tax effect of the collection of CIAC -- not necessarily measured by the actual payment of dollars in tax liability. There are variations of these two possibilities. The basic principle can be illustrated as follows:

Taxable income(loss) before CIAC	500000	500000	( 500000)	( 500000)	( 500000)
CIAC	500000	500000	1500000	500000	250000
Depreciation on CIAC	( 21875)	( 21875)	( 65625)	( 21875)	( 10938)
-----					
Taxable income(loss) after CIAC	978125	978125	934375	( 21875)	( 260938)
Net operating loss carryforward	-	( 500000)	(1000000)	-	( 500000)
-----					
Taxable income(loss)	978125	478125	( 65625)	( 21875)	( 760938)
Tax rate*	.3763	.3763	.3763	.3763	.3763
-----					
Tax effect -- total	368068	183305	( 24695)	( 8232)	( 286341)
-----					
Tax effect -- CIAC	179918	179918	539755	179918	89959
-----					
Current tax expense -- total	368068	183305	**	**	**
-----					
Actual tax liability (refund) -- total	368068	183305	**	**	**
-----					

\* This could vary from 15% to 37.63% depending on the marginal rates of the utility. The assumption here is that the marginal state rate is 5.5% and the marginal federal rate is 34%. Losses would be used to offset taxable income at the highest rate applicable.

\*\* Depending on the circumstances of the utility, this could range from the entire negative amount to zero (0).

When CIAC is viewed in a vacuum, there will be a tax effect. There may or may not be a tax liability or refund. There may or may not be an income tax expense. Effect, liability and expense are not the same.

Staff believes that the intent of Order Number 16971, supra, was to address cash flow problems and, therefore, actual tax liabilities resulting in the payment of taxes. Therefore, any taxes collected in excess of the actual tax liability should be refunded pro rata to those who paid the contributed taxes. However, the order does address "expense" rather than "liability" so another interpretation is possible.

Staff does not believe that the tax effects attributable to the collection of CIAC should be treated differently from the tax effects of any other element of taxable income or loss deriving from utility operations. This does have the effect of transferring the benefit of tax net operating loss carryforwards equal to the amount of the contribution, less the first year's tax depreciation, to developers rather than preserving them for the benefit of future ratepayers. However, future ratepayers will receive a benefit from the future tax depreciation to be taken on the contributed property. That benefit will be equal to the foregone net operating loss carryforward so that there does seem to be a justifiable and reasonable trade-off.

Staff does not believe that the stockholders should realize the benefit of the tax depreciation unless they initially paid the taxes related to the receipt of CIAC.

See Attachment A for amounts to be refunded.

ALTERNATIVE STAFF ANALYSIS: The Division of Water and Sewer only disagrees with the main recommendation for those cases where a utility had net operating losses that were used to offset any tax liability owed to the Internal Revenue Service. If the main staff recommendation is adopted, it would have the effect of giving the benefit of the utilities net operating losses to the developer who had nothing to do with their generation. We can easily see a developer screaming discrimination if he all of a sudden gets hit with a gross-up when the prior developer did not (because the prior developer used up the utilities NOL's and therefore was not required to pay any contributed taxes). Regardless, we believe that the developer should not be allowed to benefit because a utility has NOL's.

In a rate case, it has normally been the Commission's practice to pass the benefit of the NOL's to the ratepayers when calculating a tax liability based on normal operations. The NOL's are normally generated because of the nonused and useful plant that the stockholders are required to fund because of its exclusion from rate base. The NOL's can in some cases be generated due to the fact that the utility had artificially low rates due to the developers' desire to sell homes. This happens when a utility's parent happens to be the developer. In reality, the ratepayers have not generated any of the NOL's either. Our alternative recommendation will allow the Commission to determine who the NOL benefit should flow to. If the Commission desires the benefit to flow to the general body of ratepayers, then the Commission should adopt the alternate recommendation with the modification that the utility should be required to credit the amount of contributed taxes not refunded to Account 271 - Contributions In Aid of Construction. If the Commission believes that the utility should be allowed to receive the benefit, then the Commission need only vote to adopt the staff's alternate recommendation.

ISSUE 2: Should Duval Utility Company (Duval) and Kingsley Service Company (Kingsley), be required to make adjustments to their depreciation reserves in lieu of making refunds?

RECOMMENDATION: Yes, Duval and Kingsley should be required to make adjustments to their depreciation reserves in lieu of making refunds. The adjustments should total the amount of refund plus interest earned. See Attachment A for amounts. (DEVLIN, A. CAUSSEAU)

STAFF ANALYSIS: Under normal circumstances, both utilities would have been required to make a refund because the collected contributed taxes in excess of their need. However, the amount of the excess in these cases is far too small to warrant the expense of a refund. The stockholders of the utility should not, however, benefit from the unneeded, zero cost monies in whatever amount. Therefore, staff recommends that a one time adjustment be made to the depreciation reserves of each utility in the amount of the refund plus interest those monies earned in the escrow account for the entire period of time they should have been there. See Attachment A for the refund amounts.

<u>RECOMMENDED AMOUNTS</u>	
<u>PRIMARY</u>	<u>ALTERNATE</u>

ISSUE 1: Should the utilities listed be required to refund all contributed taxes in excess of those actually paid to the IRS because of the collection of CIAC?

Aloha Utilities, Inc. ....	\$ 79,600	\$ 55,282
Canal Utilities, Inc. ....	135,736	135,736
Clay Utility Company .....	136,514	75,611
Eagle Ridge Utilities, Inc. ....	20,294	11,435
El Agua Corporation .....	24,070	19,813
Martin Downs Utilities, Inc. ....	6,175	-0-
Meadowbrook Utility Systems, Inc. ....	30,140	-0-
Palm Coast Utilities Corporation .....	269,160	268,358
St. Johns Service Company .....	261,944	18,961

ISSUE 2: Should Duval Utility System and Kingsley Service Company be required to make one-time adjustments to their depreciation reserves in lieu of making refunds?

<u>\$ 963,633</u>	<u>\$ 585,196</u>
-------------------	-------------------

Duval Utility System .....	\$ 282	\$ 282
Kingsley Service Company .....	325	325



**EXHIBIT RCN-5**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request by FLORIDA WATERWORKS ) DOCKET NO. 860184-PU  
ASSOCIATION for investigation of )  
proposed repeal of Section 118(b), ) ORDER NO. 21436  
Internal Revenue Code (Contributions- )  
in-aid-of-Construction ) ISSUED: 6-26-89

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman  
THOMAS M. BEARD  
BETTY EASLEY  
GERALD L. GUNTER  
JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION

ORDER REQUIRING REFUND OF CONTRIBUTED  
TAXES AND REQUIRING ADJUSTMENTS  
TO DEPRECIATION RESERVES

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are 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

By Order No. 16971, issued December 18, 1986, this Commission authorized corporate water and sewer utilities to elect to "gross-up" contributions-in-aid-of-construction (CIAC), in order to meet their potential tax liabilities resulting from the repeal of the exclusion of CIAC from gross income. In addition, pursuant to the provisions of Order No. 16971, these contributed taxes were to be collected subject to a pro rata refund, with interest, of all amounts collected in excess of the actual amount of tax expense attributable to the receipt of CIAC.

REFUNDS OF CONTRIBUTED TAXES

A number of utilities have collected contributed taxes and need to make refunds thereof. The problem is that there are at least two possible interpretations of the refund requirement language of Order No. 16971. The first interpretation is that these utilities should refund all contributed taxes in excess of taxes actually paid as a result of their collection of CIAC. The other interpretation is that these utilities should refund all contributed taxes in excess of the tax effect resulting from their collection of CIAC. The difference between these two interpretations is that, under the second interpretation, the tax effect would not necessarily be measured by the actual amount of taxes paid on CIAC.

ORDER NO. 21436  
DOCKET NO. 860184-PU  
PAGE 2

We believe that the correct interpretation of the refund requirement is that the utilities should refund all contributed taxes in excess of taxes actually paid as a result of their collection of CIAC. We do not believe that the tax effects attributable to the collection of CIAC should be treated differently from the tax effects of any other element of taxable income or loss deriving from utility operations. Our interpretation will have the effect of transferring the benefits of net operating loss carryforwards, less the first year's tax depreciation, to those who have contributed taxes on CIAC, rather than preserving them for the future benefit of the ratepayers. However, the ratepayers will receive a benefit from the future tax depreciation to be taken on the contributed property equal to the foregone net operating loss carryforward.

Based upon the discussion above, we find it appropriate to require the utilities listed below to refund the following amounts, on a pro rata basis, to those who have paid contributed taxes on CIAC:

Aloha Utilities, Inc.	\$ 79,600
Canal Utilities, Inc.	135,736
Clay Utility Company	136,514
Eagle Ridge Utilities, Inc.	20,294
El Agua Corporation	24,070
Martin Downs Utilities, Inc.	6,175
Meadowbrook Utility Systems, Inc.	30,140
Palm Coast Utilities Corporation	268,358
St. Johns Service Company	261,944

#### ADJUSTMENTS TO DEPRECIATION RESERVES

In addition to the utilities listed above, Duval Utility Company and Kingsley Service Company also collected taxes on CIAC in excess of the actual amount of tax expense attributable to their collection of CIAC. However, the excess amounts for these two utilities are far too small to warrant the expense of a refund. Nevertheless, we do not believe that the utilities' shareholders should benefit from these unneeded, zero-cost monies. Accordingly, we find that these utilities should make one-time adjustments to their depreciation reserves in the amounts of \$262 for Duval Utility Company and \$325 for Kingsley Service Company, plus interest earned on those amounts.

Upon consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the provisions of this Order are issued as proposed agency action and will become final, unless an appropriate petition is received by the Director of the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida, 32399-0870, by the close of business on July 17, 1989. It is further

ORDERED that Aloha Utilities, Inc., Canal Utilities, Inc., Clay Utility Company, Eagle Ridge Utilities, Inc., El Agua Corporation, Martin Downs Utilities, Inc., Meadowbrook Utility Systems, Inc., Palm Coast Utilities Corporation and St. Johns Service Company shall refund to those entities from which it has collected contributed taxes, on a pro rata basis, the amounts listed in the body of this Order. It is further

Exhibit RCW-5  
Page 2 of 4

ORDER NO. 21436  
DOCKET NO. 860184-PU  
PAGE 3

ORDERED that Duval Utility Company shall make a one-time adjustment to its depreciation reserve, in the amount of \$282, plus interest earned on that amount. It is further

ORDERED that Kingsley Service Company shall make a one-time adjustment to its depreciation reserve, in the amount of \$325, plus interest earned on that amount. It is further

ORDERED that, after July 17, 1989, this Commission shall issue either a notice of further proceedings or an order indicating that the provisions of this Order have become final and effective.

By ORDER of the Florida Public Service Commission  
this 26th day of JUNE, 1989.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

RJP

Commissioners Betty Easley and Gerald L. Gunter dissented from the Commission's decision regarding refunds of contributed taxes.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on July 17, 1989. In the absence of such a petition, this order shall become effective July 18, 1989 as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Exhibit RCN-5  
Page 3 of 4

ORDER NO. 21436  
DOCKET NO. 860184-PU  
PAGE 4

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 July 18, 1989, any party adversely 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 sewer 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.

Exhibit RCN-5  
Page 4 of 4

**EXHIBIT RCN-6**

Bob's copy

33

*Rec. Obtained See 12/8/88  
Revision*

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

RECEIVE

JUN 28 1988

MEMORANDUM

JUNE 23, 1988

=====

TO: DIRECTOR OF RECORDS AND REPORTING

FROM: DIVISION OF AUDITING AND FINANCIAL ANALYSIS (A. CAUSSEUX) *df*  
 DIVISION OF LEGAL SERVICES (PIERSON) *pc*  
 DIVISION OF WATER AND SEWER (LOWE, WILLIAMS, WILLIS) *df*

RE: DOCKET NO. 860184-PU - REQUEST BY FLORIDA WATERWORKS ASSOCIATION FOR INVESTIGATION OF PROPOSED REPEAL OF SECTION 118(b). INTERNAL REVENUE CODE (CONTRIBUTIONS IN AID OF CONSTRUCTION)

AGENDA: JULY 5, 1988 - CONTROVERSIAL - PROPOSED AGENCY ACTION - AFFECTED PARTIES MAY SPEAK

PANEL: FULL COMMISSION

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: 1. PLACE BEFORE THE RECOMMENDATION IN THIS DOCKET ON JACKSONVILLE SUBURBAN.  
 2. SEND TO THOSE LISTED ON ATTACHMENT A

ISSUE AND RECOMMENDATION SUMMARY

ISSUE 1: Who should be allowed to collect, from developers and ratepayers, the taxes related to the receipt of contributions in aid of construction (CIAC)?

RECOMMENDATION: Only those utilities who prove unable to secure funds for the taxes from other sources or whose ratepayers would suffer unduly if the utilities obtain the funds with which to pay the taxes. Utilities now collecting taxes on contributions should be required to meet the same standards in order to continue the practice. This recommendation is more restrictive than current practice. (A. Causseaux, page 8) (*Emphasized by RMC*)

cc: FMD  
6-28-88

DOCUMENT NUMBER 0105

Exhibit RCN-6  
Page 1 of 3

DOCKET NO. 860184-PU  
JUNE 23, 1988  
(7420F)

ISSUE 2: How much of the taxes should the utilities be allowed to collect?

RECOMMENDATION: The utilities should be allowed to collect all of the taxes required to yield net after-tax CIAC equal to the stated level of CIAC collected; that is, if the CIAC to be collected is \$100,000, then the net after tax CIAC should be the full \$100,000. Formulae are provided on Attachment B. Utilities using different formulae should be required to change, on a prospective basis, to these formulae. This is more restrictive than present practice. (A. Causseaux, page 11)

ISSUE 3: Should utilities, allowed to collect the taxes associated with the receipt of CIAC, collect them subject to refund with interest in accordance with Rule 25-30.360, Florida Administrative Code?

RECOMMENDATION: Yes, collections should be subject to refund with interest in accordance with Rule 25-30.360, Florida Administrative Code, pending proof of entitlement. This is in accordance with present practice. (A. Causseaux, page 13)

ISSUE 4: How should utilities account for the taxes?

RECOMMENDATION: Utilities should account for the taxes in accordance with Attachments C and D. Current formulae are predicated on straight line tax depreciation. These provide for either straight line or rapid tax depreciation and recognize the depreciation to be taken in the first year. A present value formula is not recommended but is provided as an additional alternative if this Commission desires that that option be available. These formulae represent changes to present practice. (A. Causseaux, page 14).



DOCKET NO. 860184-PU  
JUNE 23, 1988  
(7420F)

ISSUE 5: How should this change in policy on the approval of collection of taxes on contributions be implemented?

RECOMMENDATION: The utilities that have had tariffs approved to allow them to collect the taxes on CIAC should be required to submit evidence to justify the continued approval within 60 days of the effective date of the order. Each utility's justification will be evaluated by staff and brought to the Commission for specific approval on an individual basis. (Williams, page 15)

**EXHIBIT RCN-7**

REVISED DECEMBER 8, 1988

41  
JE  
31

*Recomm for 21266*

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

JUNE 23, 1988

TO: DIRECTOR OF RECORDS AND REPORTING

FROM: DIVISION OF AUDITING AND FINANCIAL ANALYSIS (A. CAUSSEUX) *apc*  
 DIVISION OF LEGAL SERVICES (PIERSON) *R. Pierson*  
 DIVISION OF WATER AND SEWER (HILL, LOWE, WILLIAMS, WILLIS) *Lowell*

RE: DOCKET NO. 860184-PU - REQUEST BY FLORIDA WATERWORKS ASSOCIATION FOR INVESTIGATION OF PROPOSED REPEAL OF SECTION 118(b). INTERNAL REVENUE CODE (CONTRIBUTIONS IN AID OF CONSTRUCTION)

AGENDA: JULY 5, 1988 - CONTROVERSIAL - PROPOSED AGENCY ACTION - AFFECTED PARTIES MAY SPEAK

PANEL: FULL COMMISSION

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: 1. PLACE BEFORE THE RECOMMENDATION IN THIS DOCKET ON JACKSONVILLE SUBURBAN.  
 2. PLACE BEFORE THE RECOMMENDATION IN DOCKET NO. 881412-WS, APPLICATION BY MARTIN DOWNS UTILITIES, INC. FOR TARIFF AMENDMENT TO ELIMINATE THE GROSS-UP PREVIOUSLY APPROVED ON CONTRIBUTED PROPERTY IN MARTIN COUNTY  
 3. SEND TO THOSE LISTED ON ATTACHMENT A

ISSUE AND RECOMMENDATION SUMMARY

ISSUE 1: Who should be allowed to collect, from developers and ratepayers, the taxes related to the receipt of contributions in aid of construction (CIAC)?

RECOMMENDATION: Only those utilities who prove unable to secure funds for the

*Exhibit RCW-7  
Page 1 of 41*

1988 JUN 23 10 11 AM  
101 EAST GAINES STREET  
TALLAHASSEE, FLORIDA 32399-0850  
REC-RECORDS/REPORTING

DOCKET NO. 860184-PU  
JUNE 23, 1988  
(7420F)

REVISED DECEMBER 8, 1988

taxes from other sources or whose ratepayers would suffer unduly if the utilities obtain the funds with which to pay the taxes. Utilities now collecting taxes on contributions should be required to meet the same standards in order to continue the practice. This recommendation is more restrictive than current practice. (A. Causseaux)

ALTERNATE RECOMMENDATION: The utilities should be required to specifically choose whether to gross-up or not based upon their particular circumstances by either filing tariffs for the gross-up or a letter stating they do not intend to gross-up with the Commission by February 28, 1989. This recommendation is more restrictive than current practice. (Hill, Lowe, Willis)

ISSUE 2: How much of the taxes should the utilities be allowed to collect?

RECOMMENDATION: The utilities should be allowed to collect all of the taxes required to yield net after-tax CIAC equal to the stated level of CIAC collected; that is, if the CIAC to be collected is \$100,000, then the net after tax CIAC should be the full \$100,000. Formulae are provided on Attachment B. Alternative formulae are provided should the Commission wish to provide flexibility for the utilities and allow gross-up under the present value method. Current formulae are predicated on straight line tax depreciation. The formulae on Attachments C and D provide for either straight line or rapid tax depreciation and recognize the depreciation to be taken in the first year. These formulae represent changes to present practice. Utilities using different formulae should be required to change, on a

DOCKET NO. 860184-PU  
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prospective basis, to these formulae. This is more restrictive than present practice. (A. Causseaux)

ISSUE 3: Should utilities, allowed to collect the taxes associated with the receipt of CIAC, collect them subject to refund with interest in accordance with Rule 25-30.360, Florida Administrative Code?

RECOMMENDATION: Yes, collections should be subject to refund with interest in accordance with Rule 25-30.360, Florida Administrative Code, pending proof of entitlement. This is in accordance with present practice. (A. Causseaux, Lowe, Williams, Willis)

ISSUE 4: How should utilities account for the taxes?

RECOMMENDATION: Utilities should account for the taxes in accordance with Attachments C and D. (A. Causseaux).

ISSUE 5: How should this change in policy on the approval of collection of taxes on contributions be implemented?

RECOMMENDATION: If the Commission adopts the primary recommendation, the utilities that have had tariffs approved allowing them to collect the taxes on CIAC should be required to submit evidence justifying the continued approval

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within sixty (60) days of the effective date of the order. Each utility's justification will be evaluated by staff and brought to the Commission for specific approval on an individual basis. This is a change in current practice. (Williams)

ALTERNATIVE STAFF ANALYSIS: Utilities should file a letter stating their intentions in regard to the gross-up of CIAC by February 28, 1989. This is a change in current practice. (Hill, Lowe, Willis)

#### CASE BACKGROUND

Contributions in aid of construction (CIAC) can be in the form of cash or property. Cash contributions are collected for one of three purposes: 1) to repay the utility for its existing investment in utility plant in service; 2) to pay for the current construction or acquisition of utility plant; or 3) to pay for the future construction or acquisition of utility plant. Most cash contributions accomplish all three purposes at the same time. When cash contributions are collected, cash is available to pay the taxes but the amount remaining after the payment of the taxes will not be adequate to meet the need for which the CIAC was collected. When property CIAC is collected, there is no cash collected from which the taxes may be paid. Even before the change in the tax law, a cash contribution might not have been used for the purpose for which it was collected. This Commission has no rules requiring that CIAC collected be spent for the purpose for which

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it was collected.

There is a widely held belief that the financial status of some utilities may be such that they are unable to readily secure funds with which to pay the taxes. Further, it is widely believed that even if the utilities are able to secure the funds, the cost of the funds may be so high that ratepayers are adversely affected by the change in the utilities' cost of capital. Experience over calendar year 1987 indicates that less than fifty (50) utilities requested permission to gross-up. Some of those that did gross-up have either refund or asked to refund some or all of the gross-up collected.

CIAC may be collected from developers or individual ratepayers. CIAC that is collected from developers will usually be added to the developer's basis in the land being developed. When this occurs, the charge will ultimately find its way into the developer's cost of goods sold and affect the amount of gain or loss the developer recognizes on the sale of the property for both book and tax purposes. At other times, the developer will capitalize the CIAC paid and either amortize the CIAC to income for book and tax purposes or recognize it for book and tax purposes at a later time. Staff is of the opinion that it is not the responsibility of this Commission to insure that the developer is able to recover, from his customers, the CIAC he must pay. Neither does staff believe that it is the responsibility of this Commission to insure that the CIAC paid by the developer is not over recovered from his customers by the developer through the price he charges the customer for the house.

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CIAC paid by an individual residential ratepayer will be capitalized by the individual residential ratepayer as part of the individual's investment in the residence. Thus, that CIAC will ultimately affect the gain or loss recognized on the sale of the residence. Staff is of the opinion that it is not the responsibility of this Commission to insure that the residential customer recovers the CIAC he has paid through the future sales price of his home.

If the individual ratepayer is a businessman, the CIAC paid by him will be capitalized and amortized according to whether or not the businessman is expected to replace the contributed property at the end of its useful life by making another contribution. It is not the responsibility of this Commission to insure that the businessman recovers the CIAC he has paid from his customers.

Under case law, before the enactment of section 118(b) of the Internal Revenue Code (IRC), one requirement for a determination that monies received were contributions was that the monies became a permanent part of the utility's working capital. That they should will become apparent in later examples discussed in this recommendation.

The provisions of sections 118(b) and (c) of the IRC allowed most utilities to receive CIAC without incurring a tax liability. However, the utilities could not depreciate, on their tax returns, either the contributed assets or the assets acquired with the contributed monies. Now, CIAC is taxable on receipt and the contributed assets may be depreciated on the



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utilities' tax returns. Because of this, there is rarely an actual increase in the taxes of the utilities over time. If the utilities are allowed to collect their first year's tax liability from the developers or the individual ratepayers, there will be a real increase in the tax liability or reduction of the tax loss of the utility. This occurs because the contributed taxes are not deductible or depreciable on the tax returns. There will occasionally be a real increase in tax liability because of the interaction between the age of the utility, the tax status of the utility, and the level of CIAC of the utility. This occurs because federal tax law allows for the carryback of losses but Florida tax law does not. Carryforwards are restricted to fifteen years. The following example illustrates the tax consequences when the utilities do not collect the tax effect of the CIAC from others. The effects of carryforwards are not recognized in these examples.

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Taxable income before CIAC	\$ -	\$ -	\$ -	\$ -	\$ -
+Taxable CIAC	100,000	-	-	-	-
-Depreciation on CIAC	25,000	37,500	15,000	15,000	7,500
= Taxable income(loss)	\$ 75,000	\$(37,500)	\$(15,000)	\$(15,000)	\$( 7,500)
xTax rate	37.63%	37.63%	37.63%	37.36%	37.63%
= Liability(benefit)	\$ 28,223	\$(14,111)	\$( 5,645)	\$( 5,645)	\$( 2,822)
+(-)Federal carryback	(22,950)	12,750	5,100	5,100	-
= Net liability (benefit)	<u>\$ 5,273</u>	<u>\$( 1,361)</u>	<u>\$( 545)</u>	<u>\$( 545)</u>	<u>\$( 2,822)</u>

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If the utility in the above example is allowed to collect the taxes from a developer or ratepayer, that \$28,223 becomes taxable.

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Taxable income before CIAC	\$ -	\$ -	\$ -	\$ -	\$ -
+Taxable CIAC	100,000				
+Taxes on CIAC	28,223				
-Depreciation on CIAC	<u>25,000</u>	<u>37,500</u>	<u>15,000</u>	<u>15,000</u>	<u>7,500</u>
= Taxable income(loss)	\$103,223	\$(37,500)	\$(15,000)	\$(15,000)	\$(7,500)
x Tax rate	<u>37.63%</u>	<u>37.63%</u>	<u>37.63%</u>	<u>37.63%</u>	<u>37.63%</u>
= Liability(benefit)	\$ 38,843	\$(14,111)	\$(5,644)	\$(5,645)	\$(2,822)
+(-)Federal carryback	<u>(22,950)</u>	<u>12,750</u>	<u>5,100</u>	<u>5,100</u>	<u>-</u>
= Net liability(benefit)	\$ <u>15,893</u>	\$ <u>(1,361)</u>	\$ <u>(545)</u>	\$ <u>(545)</u>	\$ <u>(2,822)</u>

Because the utility has been allowed to collect the \$28,223, there has been a real increase of \$10,620 (\$15,893 - \$5,273) in the tax liability that cannot be recovered through depreciation on the tax return. The collection of the \$28,233 leaves the utility \$10,620 short of the full amount of taxes required in the first year. Only if the utility collects more than the \$28,223 tax effect of the CIAC will it remain whole in relation to the first year's tax increase due to the collection of CIAC. How much more must be collected depends on the individual case.

The Florida Waterworks Association requested that utilities be allowed to collect the taxes related to the receipt of CIAC. Order No. 16971, Docket No. 860184-PU, Request by Florida Waterworks Association for Investigation of Proposed Repeal of Section 118(b) Internal Revenue Code (Contributions in Aid of Construction), issued December 18, 1986, expressed this Commission's "intent to grant...approval of the Florida Waterworks

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Association's request that water and sewer utilities subject to this Commission's jurisdiction be allowed to amend their service availability policies to meet the tax impact on Contributions in Aid of Construction..."(Emphasis supplied.) The order provided a formula with which to calculate the taxes to be collected, placed various restrictions on the collection of the taxes, and required that a ruling request be filed with the Internal Revenue Service (IRS). Consummating Order No. 17058, Docket No. 860184-PU, issued January 6, 1987, provided that "...each utility, which plans to use the optional gross-up shall submit the appropriate tariff sheets for Commission approval prior to implementation...". (Emphasis supplied.) Various orders have been issued since Order No. 17058, <sup>17598?</sup> supra, requiring and approving refunds in some cases, approving a modification of the formula for the calculation of the taxes, amending the modified formula and approving the letter ruling request submitted to the IRS. Pending before the Commission is a request from Jacksonville Suburban Utilities for approval of a proposed accounting treatment for taxes that it will pay. Also pending is a request from Martin Downs Utility, Docket No. 881412-WS, to eliminate the gross-up on ~~only certain~~ <sup>all</sup> property contributions. Those requests follow this item and should be decided after the general policy questions raised in this recommendation are decided. Thus far, only the water and sewer utilities listed below have availed themselves of the option of collecting taxes related to the receipt of CIAC.

- Aloha Utilities, Inc.
- Atlantic Utilities of Jax, Inc.
- Avatar Utilities Inc. of Florida
- Beauclerc Utilities Company
- Canal Utilities, Inc.
- Central Florida Utilities, Inc.
- Clay Utility Company
- Duval Utility Company
- Eagle Ridge Utilities, Inc.
- El Agua Corporation
- Florida Cities Water Company
- Florida Water Service
- Forest Utilities, Inc.
- Gulf Aire Properties, Inc.
- Gulf Utility
- Intercoastal Utilities, Inc.
- Kingsley Service Company
- Marathon U.S. Realties, Inc.
- Martin Downs Utilities, Inc.
- Meadowbrook Utility Systems, Inc.
- Miles Grant Water and Sewer Co.
- Neighborhood Utilities, Inc.
- North Fort Myers Utilities, Inc.
- North Naples Utilities, Inc.
- Orange-Osceola Utilities, Inc.
- Ortega Utility Company
- Palm Coast Utilities Corporation (Palm Coast)
- Parkland Utilities, Inc.
- Poinciana Utilities, Inc.
- Ponte Vedra Utilities, Inc.
- Regency Utilities, Inc.
- Reserve Utility Corporation
- Rolling Oaks Utilities, Inc.
- Sanlando Utilities Corporation
- Seacoast Utilities, Inc.
- Southern States Utilities, Inc.
- Southside Utilities, Inc.
- St. Johns Bluff Utility Company, Inc.
- St. Johns Service Company
- Sugar Mill Utility Company
- Sunbelt Utilities, Inc.
- Utilities, Inc.

All except Palm Coast are using a full gross-up method. Palm Coast is using a present value method. No electric, gas, or telecommunications companies have done so. The electric utilities do not intend to do so and the telecommunications companies were not affected by the repeal of sections 118(b) and (c) of the IRC.

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DISCUSSION OF ISSUES

ISSUE 1: Who should be allowed to collect, from developers and ratepayers, the taxes related to the receipt of contributions in aid of construction (CIAC)?

RECOMMENDATION: Only those utilities who prove unable to secure funds for the taxes from other sources or whose ratepayers would suffer unduly if the utilities obtain the funds with which to pay the taxes. Utilities now collecting taxes on contributions should be required to meet the same standards in order to continue the practice. This recommendation is more restrictive than current practice. (A. Causseaux)

ALTERNATE RECOMMENDATION: The utilities should be required to specifically choose whether to gross-up or not based upon their particular circumstances by either filing tariffs for the gross-up or a letter stating they do not intend to gross-up with the Commission by February 28, 1989. (Hill, Lowe, Willis)

STAFF ANALYSIS: The report on CIAC prepared by the Division of Research indicates that it is possible for the utilities to secure funds in lieu of CIAC. The report also indicates that in the eyes of financial institutions, small water and sewer utilities are no different from other small businesses in their ability to finance themselves. If this is so and the funds are available in lieu of CIAC, they should also be available for the tax effect of CIAC. Contributed assets may be mortgaged while the investment in taxes can be neither mortgaged nor bonded.

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The funds do appear to be available in most cases, but often at quite an additional cost. Few utilities have requested to gross-up. Therefore, staff is of the opinion that it is advisable to have available an option that will allow for the collection of the taxes when the utility can show that to be necessary. The utility should show that it is unable to secure the funds from another source or that the cost of the funds would increase required net operating income unreasonably. Inability to secure the funds might be illustrated by a showing that the utility borrows because it can neither bond nor mortgage the prepaid taxes. It might also be illustrated by showing that the utility cannot borrow without the personal guarantee of the owner.

A primary issue for the utility is the availability of cash in the year CIAC is received. A utility can show that it should be allowed to gross-up by showing that it has a poor cash position. The cash position of a utility is shown by a cash budget or statement showing cash sources and uses for a period. A statement similar to that required under the Statement of Financial Accounting Standards Number 97 could be used. The level of a utility's earnings and allowed tax expense do not show the level of cash available to the utility.

In the year that CIAC is received, the utility will experience a real tax effect that can be seen on its tax return. There will be an increase in an actual tax liability or a reduction in an actual tax loss. If a liability is increased, cash must be available to meet the increase. If a loss is reduced, that loss is no longer available to offset past or future taxable

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income from operations. If the utility is not repaid for the use of the loss when the loss is used, it will look to the general body of ratepayers for repayment when the loss has been fully consumed. It is possible that a utility will cease to exist without ever incurring an actual tax liability. However, that should be an unusual event. That it is not, in the water and sewer industry, is hardly the fault of the ratepayer or unrelated developer who must forego the use of his money for at least a year if the utility ultimately makes a refund. Absent persuasive evidence to the contrary, utilities are treated as going concerns.

The issue for the general body of ratepayers is the return on and return of capital that they must pay the utility as a result of the receipt of CIAC. The utility should receive no return on or return of the capital used to pay the taxes if either a developer or individual ratepayer contributes the cash the utility uses to pay the taxes. The contributed money should not be available to the stockholders for dividends. It should become a permanent part of the utility's working capital. If the utility pays the taxes, there should be a return on the utility's investment in the taxes paid. If the return on the monies borrowed to pay the taxes is so high that it raises the required net operating income unreasonably, the taxes should be contributed. Only if the utility pays the taxes and a real, nonrefundable tax increase occurs should there be a return of investment from the ratepayers. That return of investment should be addressed through cost of service as an increase in the income tax expense. That increase could be recognized in the year it becomes known or it could be spread to all future ratepayers who will

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receive service from the contributed assets causing the increase.

Developers are aware that for some of the utilities, the payment of the taxes is a temporary thing. The developers are aware that the utilities will be able to recover some, if not all, of the taxes as the contributed assets are depreciated on the utilities' tax returns. The developers, therefore, desire that the utilities return the benefit of the depreciation to them as the assets are depreciated. The utilities object and believe that the benefit should be available to them on an unrestricted basis. The utilities are of the opinion that the benefit may not be realized and that, if it is not realized, they will be unjustly penalized by being twice deprived of the benefit: first, because it was not realized and, second, because it was returned to the developers. Staff sees no reason for the benefit to be returned to the developers. The developers will have recognized the CIAC paid through expense or as an asset. The CIAC will probably have been recovered from the developers own customers. Staff does not believe that the utility should have the benefit of the funds it has not invested. Staff does believe that the utility is entitled to reduce the amount of zero cost capital recognized in connection with the acquisition of contributed taxes when, and if, an actual tax liability is incurred. This could happen because the utility was unable to obtain benefit from the depreciation. For example, a carryback or carryforward of the tax reduction due to the depreciation might expire unused. Having eliminated both the developer and the utility, the ratepayer is left as the beneficiary of the depreciation. This seems



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equitable in that the ratepayer will probably have paid the CIAC indirectly through the cost of his house, business, or lease.

Many of the assets for which the taxes will be contributed are very long lived, forty years in some cases. It would be a monumental task to track the developers over the lives of the assets so as to return to them the tax benefit of the depreciation. Tracking the effect of the depreciation itself should not be an additional burden once the requirements for scheduling required by Statement of Financial Accounting Standards Number 96 are effective.

With perfect information, the total actual tax liability of a utility would be known from its birth to its death. If the total actual tax liability was known, it would be a matter of allocating that liability to the appropriate segments of the utility's activities and to the appropriate time periods of operations. Thus, each ratepayer and shareholder would bear the correct tax burden or receive the appropriate tax benefit. Absent perfect information, the goal is to reflect in cost of service the tax effect of only those utility revenues and utility expenses that have actually affected or that will actually affect the tax returns of the utility. A further goal is to reflect those actual tax consequences in the cost of service of the appropriate ratepayer. There are times when that is not possible because the actual effect is not known until later. Tax credit and tax loss carryforwards may expire without affecting the returns. Therefore, they are recognized only when they affect the tax return or can reasonably be expected to affect a tax

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return during the period of time for which rates are being set. This is not unlike the practice of making refunds to customers of record as of a certain date rather than seeking out customers for a prior period.

After the Recommendation of June 23, 1988, was released and the item was deferred from the July 5, 1988, Agenda; some of the water and sewer utilities met with staff to discuss their concerns. During that meeting it became apparent that cash flow is not their only concern. The utilities are concerned that the taxes on CIAC are not an asset that is bondable. They also believe that these taxes are a nonused and useful asset and that, therefore, the utility would be sharing the expense of development. The utilities are concerned that after paying the tax, they would have no guaranteed revenue related to the investment in taxes and would be unable to borrow money on the taxes paid. They are also concerned that sporadic growth might produce an unusually large contribution which could not be grossed-up because no tariff was in place. The utilities have also expressed a concern that a failure to gross-up would be viewed during a subsequent proceeding, by Office of Public Counsel as an imprudent decision; a view in which the Commission might concur.

Ultimately, the utilities believe that the circumstances are so diverse from utility-to-utility that each must be considered separately.

After the meeting, one proposal for the accounting treatment of the taxes was received. That proposal would initially treat both the CIAC and related taxes as CIAC. Recognition would be made of the escrow restrictions placed on the tax funds collected. The state and federal tax liability would

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be recognized and the satisfaction of that liability would be recognized. The entries deal with the effects of only one year and do not recognize the effect of the depreciation taken for tax purposes in that year. There is no effort made to address the effect of the depreciation taken for tax purposes in subsequent years. Staff does not concur with the proffered accounting treatment because of the deficiencies noted.

Two additional examples of accounting treatments have been subsequently proffered for the consideration of this Commission.

Staff believes that the problems raised by the utilities should be specifically addressed by this Commission.

Staff also believes that the taxes would not be bondable. However, the receipt of contributed taxes should not adversely affect a utility's ability to borrow other funds because documents furnished to the financial institutions with the loan applications should indicate that there is a source of funds to cover a major use of funds.

If some or all of the related contributed plant was considered used and useful, then a pro rata portion of the taxes should be considered used and useful. The nonused and useful portion of the taxes should be included in the rate base upon which the utility recovers a return through either guaranteed revenues or an allowance for funds prudently invested.

Very large collections of CIAC that the utility had not anticipated and for which there was no tariff in place, could be handled on an emergency basis at the next scheduled agenda. The utility could be allowed to collect

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the gross-up, subject to refund, pending later proof of its entitlement to the funds.

As to the concerns that failure to gross-up would be an issue in subsequent cases, that is now the case with most of the utilities subject to the jurisdiction of this Commission. Very few have chosen to gross-up even though this Commission has granted them the right to do so at their discretion. The prudence of the decision to gross-up is also subject to review in subsequent rate cases.

Staff views the primary recommendation as simply changing the time at which a utility must prove it has a need to gross-up. Under present practice, the utility collects, proves its need in the subsequent year and keeps or refunds the contributed taxes. That would not change under the alternative recommendation. Under the primary recommendation, the utility proves its need, collects, and keeps the contributed taxes. Under either the primary or alternative recommendation, the Office of Public Counsel can raise an issue as to the appropriateness of the utility's actions in subsequent rate cases.

ALTERNATE STAFF ANALYSIS: The overall thrust of this docket and the primary recommendation for Issue 1 is continuing this Commission on a course of over-regulation of the water and sewer industry. Parts of the Research Division's report on CIAC and the primary recommendation demonstrate a lack of understanding of the realities of the industry.

The Research Division's report on CIAC states that it is possible for the utilities to secure funds in lieu of CIAC and that, in the eyes of

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financial institutions, small water and sewer companies are no different from other small businesses. This is incorrect. In fact, for the majority of small utilities, CIAC is the primary source of funding. Other sources are not available without putting their homes up for security. Also, based upon our discussions with financial institutions that actually have loaned money to small utilities, they are not viewed as any other small business. A sewer treatment plant is not a building and property that can be turned into a Denny's or a Barnaby's if the current business fails. It is and always will be a sewer treatment plant and nothing else. Also, a bank cannot foreclose, shut down the business, and sell the property. The financial institution becomes a regulated utility when they foreclose.

The primary recommendation is based upon the Research Division's report on CIAC. The last sentence of the first paragraph states "If this is so and the funds are available in lieu of CIAC, they should also be available for the tax effect of CIAC." The recommendation goes on to say that "It is possible that a utility will cease to exist without ever incurring an actual tax liability. However, that should be an unusual event. Absent persuasive evidence to the contrary, utilities are treated as going concerns." In the past month alone, three utilities have ceased to exist without incurring an actual tax liability. This type of thing is not an unusual event.

This industry is not like the other industries and is not made up of a homogenous group. The utilities within the industry are as different from one another as the industry is from the other regulated monopolies.

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The primary recommendation requires utilities to "prove" that they are unable to secure funds in order to gross-up. We believe this places an undue burden on the utilities and creates unnecessary regulatory expense. The manner in which this docket is structured requires gross-up monies to be held subject to refund based upon a true-up. Utilities that gross-up and have a tax liability have the money to pay it. Utilities that gross-up and do not have a tax liability refund the money. Utilities that do not gross-up and do not have a tax liability are unaffected. Utilities that do not gross-up and have a tax liability may recover the expense from their general body of rate payers. This recovery is due to the investment that the utility has made in the tax liability on the contributions received. This last method is appropriate because of the CIAC requirements of the Commission. This Commission requires utilities to have a given level of CIAC because the general body benefits from it. The true "cost causer" is the Commission on behalf of the customers. It follows from this that the general body of ratepayers should pay the tax effect of the CIAC. In summary, we recommend that the Commission require the utilities to specifically choose whether to gross up CIAC or not based upon their particular circumstances.

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ISSUE 2: How much of the taxes should the utilities be allowed to collect?

RECOMMENDATION: The utilities should be allowed to collect all of the taxes required to yield net after-tax CIAC equal to the stated level of CIAC collected; that is, if the CIAC to be collected is \$100,000, then the net after tax CIAC should be the full \$100,000. Formulae are provided on Attachment B. Utilities using different formulae should be required to change, on a prospective basis, to these formulae. This is more restrictive than present practice. (A. Causseaux)

STAFF ANALYSIS: Because staff is recommending that the gross-up option be applied in limited circumstances, staff is of the opinion that the full gross-up should be permitted. The utility that is unable to obtain funds for the taxes related to the CIAC would be presumed to be unable to obtain funds for even a portion of the total CIAC tax liability. The ratepayer adversely affected by the utility's obtaining funds from the financial market to pay all of the tax would be presumed to be adversely affected by the utility obtaining even a portion of the taxes.

The collection of CIAC will generally cause a tax liability at some point in time. It will either be in the year of receipt or a later year. If there are losses, credits and other benefits in the year of receipt; these will be consumed so they are not available to offset future taxable income from operations. Because of this, future ratepayers may be required to pay the taxes if the losses, credits and other benefits are allowed to benefit the developers or individual ratepayers paying the CIAC. To avoid this problem,

staff recommends that the developer or individual ratepayer pay the full tax effect of his contribution. Because the payment will become a permanent part of the utility's working capital and will be accounted for as such, it cannot be used for the benefit of the shareholders or to meet operating expenses. The payment should not be returned to developer or individual ratepayer as the contributed asset is depreciated on the utility's tax return. The payment will usually reduce the taxes of the developer directly or through a tax loss carryback or carryforward.

Tax savings, if any, due to enactment of the Tax Reform Act of 1986 should go to the general body of ratepayers. Initially, staff recommended that these tax savings benefit the developers or individual ratepayers. Order No. 16917, supra, reflects that position. Other excesses or deficiencies in the allowed tax expense related to changes in revenues and expenses would be addressed in earnings reviews or rate cases.

The cash paid by the utility in conformity with the provisions of the Internal Revenue Code and the requirements of this Commission is not a utility asset used and useful in providing service. It is nonetheless an investment made by the utility in the satisfaction of a liability. As such, it should earn a return. The question then becomes from whom should the return be collected. If the related asset is in rate base, the return should come from the general body of ratepayers. If the asset is accruing allowance for funds prudently invested (AFPI) or an allowance for funds used during construction (AFUDC), the return should come from those future customers who will pay the AFPI or return on the AFUDC when it is included in rate base. If the asset is earning a return through guaranteed revenue contracts, the return should be paid by those paying the guaranteed revenues. However, the recommended



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accounting treatment would treat the investment in taxes as a capital structure contra or an item affecting the calculation of working capital. It does not contemplate treating this item in an unique manner or subjecting it to used and useful considerations for simplicity sake. It is staff's understanding, at this point in time, that the amount of the charges cannot be traced to a specific asset nor can collections be traced to specific assets, especially assets serving specific customers.

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ISSUE 3: Should utilities, allowed to collect the taxes associated with the receipt of CIAC, collect them subject to refund with interest in accordance with Rule 25-30.360, Florida Administrative Code?

RECOMMENDATION: Yes, collections should be subject to refund with interest in accordance with Rule 25-30.360, Florida Administrative Code, pending proof of entitlement. This is in accordance with present practice. (A. Causseaux)

STAFF ANALYSIS: Because the alternative staff recommendation is that the gross-up option to the utilities before proving their need to do so, staff is of the opinion that the protection supplied by the refund with interest provision is required to protect the interest of the contributors under either recommendation.

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ISSUE 4: How should utilities account for the taxes?

RECOMMENDATION: Utilities should account for the taxes in accordance with Attachments C and D. Current formulae are predicated on straight line tax depreciation. These provide for either straight line or rapid tax depreciation and recognize the depreciation to be taken in the first year. A present value formula is not recommended but is provided as an additional alternative if this Commission desires that that option be available. These formulae represent changes to present practice. (A. Causseaux).

STAFF ANALYSIS: The schedules attached cover the situation where the utility collects all of the tax and the situation where the utility collects none of the tax. The resolution of several subissues is contained within staff's recommendation: treatment of the contributed taxes, treatment of the taxes that will be paid and returned, and treatment of tax depreciation. Staff has assumed that contributed taxes will be treated as a subaccount of CIAC and a portion will be amortized to cost of service, that taxes to be paid and recovered through depreciation will be added to rate base (this is contrary to staff's recommendation for Jacksonville Suburban Utilities where staff recommended the debit balance deferred taxes offset credit balance deferred taxes before being added to rate base), and that tax depreciation will not affect the general body of ratepayers. Where an equity return is used in the examples, it is the maximum return that can be calculated by use of the leverage graph approved in Order No. 16975, Docket No. 860006-WS, issued December 18, 1986 and later reaffirmed by this Commission.

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ISSUE 5: How should this change in policy on the approval of collection of taxes on contributions be implemented?

RECOMMENDATION: The utilities that have had tariffs approved to allow them to collect the taxes on CIAC should be required to submit evidence to justify the continued approval within 60 days of the effective date of the order. Each utility's justification will be evaluated by staff and brought to the Commission for specific approval on an individual basis. (Williams)

STAFF ANALYSIS: Order No. 16971 allowed all of the water and sewer utilities regulated by the Commission to elect to amend their service availability policies to meet the tax impact on CIAC. A further order directed each utility that planned to use the optional gross up to file revised tariffs. To date, forty two utilities listed in the case background of this recommendation have had the gross up formula approved in their tariffs. In order to implement the new, more restrictive policy recommended in issue 1, each of the utilities that have the gross up formula approved in their tariffs should be required to submit evidence to justify the continued approval to collect the tax on CIAC. We believe that 60 days from the effective date is adequate time to allow the utilities to gather the evidence necessary to justify the continued approval.

Once the data is received by the Commission, staff will evaluate the data and bring a recommendation to the Commission on each utility on a case by case basis since the circumstances for each utility will be different. The questions of effective date and approval of the tariffs will be addressed for each utility in staff's recommendation for the agenda conference.

DOCKET NO. 860184-PU  
JUNE 23, 1988  
(7420F)

Attachment A  
Page 1 of 2

REVISED DECEMBER 8, 1988

Florida Associated General Contractors Council  
1363 East Lafayette Street  
Tallahassee, FL 32301

Florida Contractors  
1940 Buford Boulevard  
Tallahassee, FL 32308

Florida Home Builders Association  
201 West Park Avenue  
Tallahassee, FL 32301

Florida Waterworks Association  
c/o B. Kenneth Gatlin, Esq.  
Gatlin, Woods, Carlson & Cowdery  
1709-D Mahan Drive  
Tallahassee, Florida 32308

North Florida Associated Builders & Contractors, Incorporated  
1230 North Adams  
Tallahassee, FL 32303

Southeast Builders Conference, Incorporated  
110 North Magnolia  
Tallahassee, FL 32301

Lawson, McWhirter, Grandoff & Reeves  
201 E. Kennedy Boulevard  
Suite 800  
P. O. Box 3350  
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R.M.C. Rose, Esq.  
Rose, Sundstrom & Bently  
2544 Blairstone Pines Drive  
Tallahassee, Florida 32301

Pat Wiggins, Esquire  
325 East Park Avenue  
Tallahassee, FL 32301

Bruce W. Renard, Esquire  
Messer, Vickers, Caparello, French & Madsen Attorneys  
215 South Monroe  
Tallahassee, FL 32301

DOCKET NO. 860184-PU  
JUNE 23, 1988  
(7420F)

Attachment A  
Page 2 of 2

Ray Avery  
Midclay Service Corporation  
767 Blanding Boulevard  
Suite 106  
Orange Park, FL 32065

Byron Traynor  
Vice President - Finance  
Thomas J. White Development Corporation  
2500 Midport Road  
Port St. Lucie, FL 34952

::

GROSS-UP FORMULAS

I. CONTRIBUTED PLANT AND CASH CONVERTED INTO CONTRIBUTED PLANT

$(CTR/(1-CTR))(C-FYTD)$

CTR is the combined federal and state corporate income tax rate  $(SR+FR(1-SR))$

SR is the state corporate income tax rate

FR is the federal corporate income tax rate

C is the contributed plant or cash converted into contributed assets

FYTD is the first year's tax depreciation

200% declining balance depreciation  $((C)(1/TL)(2)(.5))$

TL is the tax life of the contributed asset

150% declining balance depreciation  $((C)(1/TL)(1.5)(.5))$

Straight line depreciation  $((C)(1/TL)(.5))$

II. LAND AND CASH NOT CONVERTED INTO PLANT

$(CTR/(1-CTR))(C)$

ALTERNATIVE: PRESENT VALUE

NOTE: These formulas are not to be applied to:

1. connections received by S corporations, sole proprietorships, and partnerships;
2. connection fees;
3. connect/disconnect/reconnect charges;
4. contributions received after December 31, 1986, to which the legal right of receipt occurred in 1986 through the use of accrual accounting or the doctrine of constructive receipt;
5. contributions that have become taxable because the utility depreciated them for tax purposes prior to January 1, 1987;
6. contributions taxable because the utility took investment tax credits on them prior to January 1, 1987; or
7. contributions taxable because they were included in rate base.

FULL TAXES COLLECTED  
YEAR 1

A.	131.10	Cash	58071	
	271.20	Contributed taxes		58071
		To record the receipt of contributed taxes.		
B.	409.10	Federal income taxes, utility operating income	49583	-
	409.11	State income taxes, utility operating income	8488	
	236.10	Accrued income taxes, utility operating income		58071
		To record the tax effect of CIAC.		
C.	271.21	Accumulated amortization of contributed taxes	21852	
	407.40	Amortization of contributed taxes		21852
		To remove the real increase in the tax effect caused by the receipt of the contributed taxes.		
D.	190.10	Accumulated deferred federal income taxes	30925	
	190.20	Accumulated deferred state income taxes	5294	
	410.10	Deferred federal income taxes		30925
	410.11	Deferred state income taxes		5294
		To recognize the tax effect of future depreciation.		
E.	236.10	Accrued income taxes, utility operating income	58071	
	131.10	Cash		58071
		To record the payment of the tax liability.		



FULL TAXES COLLECTED  
YEAR 1

- A. Entry A. has no effect on the general body of ratepayers. By recording both the receipt of the cash and the source of the cash, the entry insures that the cash has entered into the permanent working capital of the utility. This insures that the utility will not earn on the money it did not invest.
- B. Entry B records the actual effect of the contributed taxes on the tax status of the utility. If no other entries were made, this entry would increase cost of service and reduce working capital. Neither effect is acceptable. The general body of ratepayers should not bear the tax expense that has been met by a developer or individual ratepayer. Rate base has been reduced once because of the contributed taxes and should not be reduced a second time.
- C. Entry C increases rate base and decreases cost of service. This entry is made because the tax expense and liability that occur as a result of collecting the contributed taxes will not reverse through depreciation or deduction. The expense and liability have been met by either a developer or an individual ratepayer and so should not affect the cost of service to the general body of ratepayers or the working capital calculation of the utility. This entry prevents that from occurring by offsetting the appropriate portions of Entries A and B.
- D. This entry increases rate base and reduces cost of service. It insures that the general body of ratepayers--present and future--are not affected by the receipt of the contributed taxes.
- E. This entry may not occur in year one if there is no actual payment to the IRS. It will occur at some future point. This entry might be reflected as adjustments to intercompany receivables or payables.

FULL TAXES COLLECTED  
YEAR 1

RATE BASE

Contributed taxes	-58071
Accumulated amortization of contributed taxes	21852
Accumulated deferred federal income taxes	30925
Accumulated deferred state income taxes	5294

RATE BASE

-----  
0  
=====

COST OF SERVICE

Federal income taxes, utility operating income	49583
State income taxes, utility operating income	8488
Amortization of contributed taxes	-21852
Deferred federal income taxes	-30925
Deferred state income taxes	-5294

NET OPERATING INCOME

-----  
0  
=====

FULL TAXES COLLECTED  
YEAR 2

A. No entries in year two.

B.	236.10	Accrued taxes, utility operating income	2717	-
	409.10	Federal income taxes, utility operating income		2319
	409.11	State income taxes, utility operating income		397

To record the actual tax return effect of the second year's depreciation.

C. No entries in year two.

D.	411.10	Provision for deferred income taxes - credit, utility operating income	2717	
	190.10	Accumulated deferred federal income taxes		2319
	190.20	Accumulated deferred state income taxes		397

To record the effect of the second year's depreciation.

E.	131.10	Cash on hand	2717	
	236.10	Accrued taxes, utility operating income		2717

To record receipt of refund.

NOTE: Entries in years 3-21 will be to the same accounts. The amounts will differ as the tax depreciation changes from year-to-year if an accelerated method of tax depreciation is used. There will be no entries after the last year in which depreciation is taken on the tax return.

FULL TAXES COLLECTED  
YEAR 2

- A. There is no further receipt due to the year one contributions. Therefore, there is no additional entry to these accounts.
- B. This entry decreases cost of service and increases working capital because it records the actual tax return effect of the depreciation taken on the contributed assets. Because neither the utility nor the general body of ratepayers have paid for the assets, neither should benefit or be harmed by the depreciation of the assets on the tax return. Therefore, additional entries are required to offset this effect.
- C. No further amortization occurs to contributed taxes. This is necessary so that the general body of ratepayers will not pay a return on the contributed portion of working capital. This ensures that the utility can not earn on the contributed working capital and that the contributed working capital can not be used for the payment of dividends or operating expenses.
- D. This entry decreases cost of service and increases working capital. It is required in order to completely offset Entry B.
- E. This entry will probably not actually occur. However, its effect will be actually reflected in the amount of taxes paid or the changes in intercompany accounts. It is this entry--or the lack of this entry--that can result in an actual increase of tax liability because of loss carryback and carryforward provisions and other conditions.

FULL TAXES COLLECTED  
YEAR 2

RATE BASE	
Contributed taxes	-58071
Accumulated amortization of contributed taxes	24569
Accumulated deferred federal income taxes	28606
Accumulated deferred state income taxes	4897
	-----
RATE BASE	1 *
	=====
COST OF SERVICE	
Federal income taxes, utility operating income	-2319
State income taxes, utility operating income	-397
Amortization of contributed taxes	0
Deferred federal income taxes	2319
Deferred state income taxes	397
	-----
NET OPERATING INCOME	0
	=====

\* Rounding

NO TAXES COLLECTED  
YEAR 1

A.	131.10	Cash on hand	36219	
	201.00	Common stock		36219
		To record issuance of stock and receipt of cash.		
B.	409.10	Federal income taxes, utility operating income	30925	
	409.11	State income taxes, utility operating income	5294	
	236.10	Accrued taxes, utility operating income		36219
		To record actual tax return effect of collecting CIAC.		
C.		No. entries.		
D.	190.10	Accumulated deferred federal income taxes	30925	
	190.20	Accumulated deferred state income taxes	5294	
	410.10	Deferred federal income taxes		30295
	410.11	Deferred state income taxes		5294
		To record future tax benefit of depreciation to be taken on CIAC on the tax return		
E.	236.10	Accrued taxes, utility operating income	36219	
	131.10	Cash on hand		36219
		To record payment of tax liability.		

NO TAXES COLLECTED  
YEAR 1

A. This entry might as easily be completed with a credit to account number:

1. 135.00 Temporary cash investments,
2. 221.00 Bonds,
3. 223.00 Advances from associated companies,
4. 232.00 Notes,
5. 233.00 Accounts payable to associated companies, or
6. 234.00 Notes payable to associated companies.

It might be completed by credits to several of the sources. The entry might not total the entire amount of the increase in the tax liability because there would be enough cash on hand to cover all or part of the tax liability. It might not be until a later year because of the tax position of the utility. In this case, it has been made to equity so that a "worst-case" example can be given.

B. This entry records the actual effect on the tax position of the utility caused by the receipt of the CIAC.

The initial cost to the developer or individual ratepayer is reduced. However, the general body of ratepayers will pay return on the unrecovered balance of the utility's investment. That return will be less than the return that they would have paid if the developer or individual ratepayer had not made the contribution. In year one, using a year end rate base, the investment would be \$98,750 without CIAC. With CIAC and no contribution of taxes, the investment would be \$36,219. That assumes a 20-year tax life with 150% declining balance depreciation and a combined tax rate of 37.63%. If there had been no CIAC, there would also have been a return of investment paid by the general body of ratepayers.

Early drafts of the report being prepared by the Division of Research, have indicated that investor sources of funds should be retired with CIAC collected as repayments of prior utility investment.

C. No entries are required because no taxes were contributed.

D. This entry offsets Entry B in its entirety. If this entry is not made, the utility receives its investment back from the general body of ratepayers in year 1 and from the IRS over the tax life of the asset. This entry ensures that that does not happen. The general body of ratepayers does not pay the depreciation expense and so should not receive the tax benefit from it.

E. This entry records the payment of the tax. The same comments that were made on Entry E previously apply.

NO TAXES COLLECTED  
YEAR 1

RATE BASE

Accumulated deferred federal income taxes	30295
Accumulated deferred state income taxes	5294
	-----
RATE BASE	35589
	=====

COST OF CAPITAL

Common stock	63219 100.00%	14.25%	0.1425
	-----		-----
TOTAL	63219 100.00%		0.1425
	=====		=====

COST OF SERVICE

Revenue	0	8130	8130
	-----	-----	-----
Federal income taxes, utility operating income	30295	2612	32907
State income taxes, utility operating income	5294	447	5741
Deferred federal income taxes	-30295	0	-30295
Deferred state income taxes	-5294	0	-5294
	-----	-----	-----
NET OPERATING INCOME	0	5071	5071
	=====	=====	=====

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NO TAXES COLLECTED  
YEAR 2

A. No entries in year two.

B.	236.10	Accrued taxes, utility operating income	2717	
	409.10	Federal income taxes, utility operating income		2319
	409.11	State income taxes, utility operating income		397

To record the actual tax return effect of the second year's depreciation.

C. No entries in year two.

D.	411.10	Provision for deferred income taxes - credit, utility operating income	2717	
	190.10	Accumulated deferred federal income taxes		2319
	190.20	Accumulated deferred state income taxes		397

To record the effect of the second year's depreciation.

E.	131.10	Cash on hand	2717	
	236.10	Accrued taxes, utility operating income		2717

To record receipt of refund.

NOTE: Entries in years 3-21 will be to the same accounts. The amounts will differ as the tax depreciation changes from year-to-year if an accelerated method of tax depreciation is used. There will be no entries after the last year in which depreciation is taken on the tax return.

- A. There is no receipt due to year one contributions.
- B. This entry decrease cost of service and increases working capital because it records the actual tax return effect of the depreciation taken on the contributed assets. Because neither the utility nor the general body of ratepayers have paid for the assets, neither should benefit or be harmed by the depreciation of the assets on the tax return. Therefore, additional entries are required to offset this effect.
- C. No entry required.
- D. This entry decreases cost of service and increases working capital. It is required in order to completely offset Entry B. Return of capital is from the IRS because of depreciation taken on the tax return.
- E. This entry will probably not actually occur. However, its effect will be actually reflected in the amount of taxes paid or the changes in intercompany accounts. It is this entry--or the lack of this entry--that can result in an actual increase of tax liability because of loss carryback and carryforward provisions and other conditions.

NO TAXES COLLECTED  
YEAR 2

RATE BASE

Cash				2717 *
Accumulated deferred federal income taxes				27976
Accumulated deferred state income taxes				4897
				-----
RATE BASE				35590 **
				=====

COST OF CAPITAL

Common stock	35590 **	100%	14.25%	14.25%
	-----			-----
TOTAL	35590 **	100%		14.25%
	=====			=====

COST OF SERVICE

Revenue		0	8132	8132
			-----	-----
Federal income taxes, utility operating income		-2319	2613	294
State income taxes, utility operating income		-397	447	50
Provision for deferred income taxes-credit, utility operating income		2717	0	2717
			-----	-----
NET OPERATING INCOME		1**	5072	5073**
			=====	=====

\*If the recommendation made in early drafts of the report from the Research Division was followed, this would be used to reduce the common equity. That would have the effect of reducing revenue requirements.

\*\*The \$1 increase over year 1 is due to rounding.

\*\*\*Rounding.

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**EXHIBIT RCN-8**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request by FLORIDA WATERWORKS ) DOCKET NO. 860184-PU  
ASSOCIATION for investigation of )  
proposed repeal of Section 118(b), ) ORDER NO. 21266  
Internal Revenue Code (Contributions- )  
in-aid-of-Construction) ISSUED: 5-22-89

The following Commissioners participated in the disposition of this matter:

- MICHAEL MCK. WILSON, CHAIRMAN
- THOMAS M. BEARD
- BETTY EASLEY
- GERALD L. GUNTER
- JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION

ORDER ESTABLISHING GUIDELINES  
REGARDING COLLECTION OF TAXES  
ON CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION

BY THE COMMISSION:

NOTICE IS HEREDY GIVEN by the Florida Public Service Commission that the actions discussed herein are 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

On February 13, 1986, the Florida Waterworks Association requested that we investigate a proposed repeal of Section 118(b), Internal Revenue Code, under which certain contributions to the capital of a corporation were excluded from gross income. Section 118(b), Internal Revenue Code, was, ultimately, repealed by the Federal Tax Reform Act of 1986 (Act) and, effective January 1, 1987, contributions-in-aid-of-construction (CIAC) became includable in a utility's gross income. Also under the Act, contributed assets became depreciable for federal tax purposes.

Prior to the effectiveness of the Act, the general perception by the water and sewer industry was that the inclusion of CIAC in gross income would cause certain utilities to experience cash flow problems. Therefore, on December 18, 1986, we issued Order No. 16971 on an emergency basis to allow corporate water and sewer utilities to elect whether to "gross-up" CIAC in order to meet the tax impact. Thus far, only forty-four water and/or sewer utilities have elected to gross-up. No electric utilities have elected to gross-up, although several gas utilities have expressed an interest in the gross-up. The repeal of Section 118(b) did not affect telecommunications utilities.

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Page 1 of 5

DOCKET NO. 860184-PU  
ORDER NO. 21266  
PAGE 2

Since Order No. 16971 was issued on an expedited, emergency basis, we instructed the staff of this Commission to continue to investigate the necessity and appropriateness of the gross-up.

CIAC AS GROSS INCOME

CIAC can be in the form of property or cash. Generally, property CIAC includes water distribution and sewage collection systems which are donated to a utility. Property CIAC is usually donated by developers and it is assumed that these costs are either included in the purchase price of a lot or home, expensed on the developer's tax return, or both. Either way, these costs are ultimately borne by the home buyer. Cash CIAC is generally collected to reimburse investment in existing plant or to defray the costs of present or future plant expansion. Although it is not uncommon for developers to make cash contributions, cash CIAC is typically collected from individual customers.

Collection of CIAC without Gross-up

The inclusion of CIAC in a utility's gross income may have a severe impact on a utility's tax liability during the year of collection, which, if the utility does not also collect the taxes on the CIAC, may result in a cash flow problem. This is especially true if the CIAC collected is property, since with cash CIAC, the utility could at least use some of the cash collected to meet the tax liability. However, since contributed property is now depreciable, the utility will rarely experience any actual increase in taxes over the long run. The cash flow problem results because the full tax liability occurs in the year in which the contribution is received and is recovered over the life of the asset through depreciation.

Collection of CIAC With Gross-Up

If, in addition to CIAC, a utility collects the taxes on that CIAC, it will subject itself to a real increase in its tax liability or decrease in its tax loss. This occurs because contributed taxes become gross income and are, therefore, subject to being taxed. In addition, the amount of the grossed-up CIAC charge may be enough to place a utility at a competitive disadvantage with utilities which do not gross-up. A developer may, therefore, choose to either connect to a utility which does not gross-up or find some other way to avoid the gross-up, such as installing septic tanks, in order to save itself a considerable amount of money. In addition, as with CIAC, it is reasonable to assume that, regardless of the immediate source of the CIAC and the taxes, the costs will ultimately be borne by the home buyer. Adding the gross-up to the cost of a home may be enough to discourage an individual purchaser.

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Page 2 of 5

DOCKET NO. 860184-PU  
ORDER NO. 21266  
PAGE 3

RETENTION OF OPTIONAL GROSS-UP

In spite of the problems associated with the gross-up, we find it appropriate to retain the gross-up as a limited option. In addition, we find it appropriate to require any utility that wishes to gross-up, whether or not it is currently authorized to gross-up, to file a request for authority to gross-up. Each such request shall demonstrate the existence of an actual tax liability resulting from the utility's collection of CIAC. In addition, each such request shall demonstrate that the utility's existing cash flow is inadequate to meet the tax liability resulting from its collection of CIAC. Finally, each such request should include a statement of gross-up alternatives considered and a certification that the gross-up is the most cost effective alternative, a calculation of interest coverage both with and without utilizing the gross-up ((Net income + current gross interest + total taxes - allowance for funds used during construction)/current gross interest) and revised tariff pages.

AMOUNT OF GROSS-UP

If a utility meets the criteria described above to qualify for the gross-up, we believe that it is reasonable to assume that the utility would find it difficult to cover even a portion of its CIAC tax liability. Accordingly, we find it appropriate to retain the full gross-up formula in all such cases, in order to allow the utility to remain whole. For utilities that have not previously had an approved gross-up, the optional gross-up shall be effective for CIAC collected on or after the stamped approval date on the gross-up tariff pages. The tariff pages will be approved upon verification that the utility qualifies for the gross-up as specified in this Order. Any utility that currently has the gross-up in place may continue to collect the gross-up, pending their filing and our approval of a request for the gross-up, as described above, which shall include revised tariff pages. The revised gross-up tariff pages will be approved upon verification that the utility qualifies for the gross-up as specified in this Order.

Prior to its implementation of the gross-up, each utility shall submit a proposed escrow agreement for this Commission's approval. The gross-up amounts shall be placed in an interest bearing escrow account, subject to refund, pending a true-up in the year following collection.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the provisions of this Order are issued as proposed agency action and will become final unless an appropriate petition is filed with the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32300-0850, by the close of business on June 12, 1989. It is further

ORDERED that the optional gross-up of CIAC shall be retained, subject to certain modifications, as set forth in the body of this Order. It is further

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DOCKET NO. 860184-PU  
 ORDER NO. 21266  
 PAGE 4

ORDERED that each utility that wishes to utilize the gross-up, whether or not it is currently authorized to gross-up, shall file a request for authority to gross-up no later than sixty (60) days following the effective date of this Order. It is further

ORDERED that each request to gross-up shall include the information set forth in the body of this Order. It is further

ORDERED that all collections of CIAC gross-up amounts shall be placed in a Commission approved escrow account held subject to refund, with interest, in accordance with Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that, prior to any utility's implementation of the gross-up, it shall submit a proposed escrow agreement and either original or revised gross-up tariff pages. The tariff pages shall be approved upon verification that the utility qualifies for the gross-up as set forth in the body of this Order. It is further

ORDERED that, after June 12, 1989, this Commission will issue either an order indicating that the provisions of this Order have become final or a notice of further proceedings.

By ORDER of the Florida Public Service Commission this 22nd day of MAY, 1989.

  
 STEVE TRIBBLE, Director  
 DIVISION OF RECORDS AND REPORTING

( S E A L )

RJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida

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 Page 4 of 5



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PAGE 5

Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 12, 1989. In the absence of such a petition, this order shall become effective June 13, 1989 as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

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 June 13, 1989, any party adversely 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 sewer 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.

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**EXHIBIT RCN-9**

RCN

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by FLORIDA WATERWORKS	)	DOCKET NO. 860184-PU
ASSOCIATION for investigation of	)	ORDER NO. 23541
proposed repeal of Section 118(b),	)	ISSUED: 10-1-90
Internal Revenue Code [Contributions-	)	
in-aid-of-construction]	)	
	)	

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman  
BETTY EASLEY  
GERALD L. GUNTER

APPEARANCES: B. KENNETH GATLIN, Esquire, Gatlin, Woods, Carlson & Cowdery, 1709-D Mahan Drive, Tallahassee, Florida 32308  
On behalf of the Florida Waterworks Association

ROBERT M. C. ROSE, Esquire, Rose, Sundstrom & Bentley, 2548 Blair Stone Pines Drive, Tallahassee, Florida 32301  
On behalf of Aloha Utilities, Inc., Canal Utilities, Inc., Clay Utility Company, Eagle Ridge Utilities, Inc., El Agua Corporation, and Martin Downs Utilities, Inc.

F. MARSHALL DETERDING, Esquire, Rose, Sunstrom & Bentley, 2548 Blair Stone Pines Drive, Tallahassee, Florida 32301  
On Behalf of Alafaya Utilities, Inc., Aloha Utilities, Inc., Canal Utilities, Inc., Clay Utility Company, Eagle Ridge Utilities, Inc., El Agua Corporation, Kingsley Service Company, Lehigh Utilities, Inc., Martin Downs Utilities, Inc., Neighborhood Utilities, Inc., North Fort Myers Utility, Inc., Rolling Oaks Utilities, Inc, Royal Utility Company, and Southside Utilities, Inc.

PATRICK K. WIGGINS, Esquire, Wiggins & Villacorta, P. A., 501 East Tennessee Street, P. O. Drawer 1657, Tallahassee, Florida 32302  
On behalf of Southwest Florida Capital Corporation and the Florida Home Builders Association

DOCUMENT NUMBER-DATE

08737 OCT-1 1990

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FPC-RECORDS/REPORTING Page 1 of 27

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PAGE 2

ROBERT J. PIERSON, Esquire, Florida Public Service  
Commission, 101 East Gaines Street, Tallahassee,  
Florida 32399-0863  
On behalf of the Commission Staff

PRENTICE P. PRUITT, Esquire, Florida Public Service  
Commission, 101 East Gaines Street, Tallahassee,  
Florida 32399-0862  
Counsel to the Commission

ORDER AUTHORIZING CONTINUED USE OF THE GROSS-UP  
OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION,  
SUBJECT TO PRIOR COMMISSION APPROVAL,  
PRESCRIBING ACCOUNTING AND REGULATORY  
TREATMENTS FOR THE GROSS-UP, AND REQUIRING  
REFUNDS OF CERTAIN GROSS-UP AMOUNTS COLLECTED

BY THE COMMISSION:

CASE BACKGROUND

On February 13, 1986, the Florida Waterworks Association (FWWA) requested that we investigate a proposed repeal of Section 118(b), Internal Revenue Code (I.R.C.), under which certain contributions to the capital of a corporation were excludable from gross income. Ultimately, Section 118(b), I.R.C., was repealed by the Tax Reform Act of 1986 (ACT) and, effective January 1, 1987, contributions-in-aid-of-construction (CIAC) became both gross income and depreciable for federal tax purposes.

By Order No. 16971, issued December 18, 1986, on an emergency basis, this Commission authorized corporate utilities subject to our jurisdiction to amend their service availability policies to gross-up CIAC in order to meet the tax impact resulting from the inclusion of CIAC as gross income. Since then, 44 water and/or wastewater utilities have elected to implement that gross-up. Of these, only 37 remain subject to our jurisdiction.

By Order No. 21266, issued May 22, 1989, this Commission proposed to establish certain guidelines to control the collection

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of the gross-up. On June 12, 1989, Order No. 21266 was protested by FWWA and 14 water/wastewater utilities.

On June 13, 1989, South Florida Capital Corporation (SFCC), under the misnomer of Florida Home Development Corporation, purported to file a petition protest to Order No. 21266. The protest was, however, untimely; accordingly, we treated it as a petition to intervene and granted SFCC intervenor status by Order No. 21921, issued September 19, 1989. On April 5, 1990, the Florida Home Builders Association (FHBA) petitioned to intervene in this proceeding. Its petition was granted by Order No. 22859, issued April 26, 1990.

By Order No. 21436, issued June 26, 1989, we also proposed to require a number of utilities to refund amounts of the gross-up collected or make adjustments to their depreciation reserves. On or about July 17, 1989, Order No. 21436 was protested by six water/wastewater utilities.

Based upon the protests of Orders Nos. 21266 and 21436, we conducted a hearing on April 27, 1990. We were not able to complete all of the testimony on that date, however, and the hearing was, accordingly, continued on April 30, 1990.

#### FINDINGS OF FACT, LAW, AND POLICY

Having heard the evidence presented at hearing, and having reviewed the briefs of the parties and the recommendations of Staff, we enter our findings of fact, law, and policy as follows.

#### RETENTION OF GROSS-UP

##### Purpose of Gross-up

Some of the Petitioners expressed concern that there is language in Order No. 21266 that implies that Order No. 16971, which originally authorized the gross-up, was issued solely for the purpose of alleviating cash flow problems. Although Order No. 21266 has been protested and is, therefore, a legal nullity, we note that neither FWWA's original petition nor Order No. 16971 specifically mention cash flow as a consideration. Order No. 16971 merely discusses the change in Section 118(b), I.R.C., FWWA's proposal, and our modifications to its proposal. It does not state that the gross-up was allowed solely for the purpose of alleviating

cash flow problems nor, for that matter, any other reason. Although we believe that cash flow is a consideration in the overall gross-up picture, it is only one of many.

Avoidance of Taxes on CIAC

The first question that should be addressed is whether there is any way for utilities to avoid taxes on CIAC. The IRS issued Notice 87-82 to provide guidance to taxpayers regarding the application of the tax accounting rules related to CIAC. Notice 87-82 states, in part, that "a transaction will be treated as CIAC if such treatment is in accordance with the substance of the transaction, regardless of the form in which such transaction is conducted".

Witness Elliott testified that, since the IRS generally considers any contribution of funds received by a utility related to its future provision of service to be CIAC, it is clear that if the transaction is CIAC in substance, it will be treated as CIAC for tax purposes. Witnesses Elliott and Martin also testified that they and other experts in the areas of taxation, utility law, and accounting had made diligent searches to determine whether there are any methods of avoidance of taxation on CIAC. Witness Martin's conclusion was that the Tax Reform Act of 1986 closed all loopholes to exempt CIAC from taxable income and that only new legislation from Congress could alter that position. Witness Elliott testified that he was not aware of any methods of avoiding the taxation of CIAC. However, he did not preclude the possibility of such a method.

Witness Causseaux testified that General Development Utilities, Inc. (GDU) had managed to avoid taxes on CIAC. However, she admitted that GDU's method was quite complicated, and that it probably would not be within the reach of those utilities that are most in need of the gross-up.

Although GDU's plan probably would not be within the reach of those utilities who would be most in need of the gross-up, it does indicate that there are ways to avoid taxes on CIAC. Accordingly, we hereby encourage the water and wastewater industry to continue to search for viable methods.

Who Should Bear the Burden?

If the taxation of CIAC is not generally avoidable, the next question is who should be responsible for the taxes? In their brief, SFCC and FHBA argue that the utility (i.e., the general body of ratepayers) should be responsible for paying the taxes irrespective of the source of income. They argue that to do otherwise would misidentify the contributor as the cost causer.

Witnesses Elliott and Nixon believe that the contributor is the cost causer. However, under cross-examination, Mr. Elliott agreed that measuring the extent to which any contributor is the cost causer is a very subjective determination. Mr. Elliott further stated that the decision whether to collect the taxes from the contributor should be up to each utility, based upon its particular facts and circumstances.

Witness Nixon testified that, if utilities do not gross-up, their payment of taxes on CIAC will, eventually, result in increased revenue requirements. Witnesses Martin, Elliott and Causseaux agreed. Witnesses Martin and Nixon testified that the required revenue increases may be significant, especially in high growth areas. Mr. Nixon also testified that utilities making regular and significant investments in taxes on CIAC may require regular and significant rate relief. He also argued that, due to "regulatory lag", a utility may never be able to actually earn its authorized rate of return.

Under cross-examination, however, Witness Nixon admitted that, depending upon a utility's particular circumstances, its investment in taxes on CIAC could result in either no increase or a very minimal increase in rates. Witness Causseaux also testified that a utility with prior tax losses may use them to offset current taxable income. It might, therefore, not feel the impact of the tax on CIAC for years.

We agree that high growth could result in increased revenue requirements. However, such growth would probably cause the utility to file a rate increase anyway, due to factors such as increased rate base and operating and maintenance expenses. Accordingly, we do not believe that this particular piece of the regulatory puzzle should be viewed in isolation. We believe that all of the facts and circumstances of the utility should go into determining who should bear the responsibility of paying the tax

impact of CIAC. Depending upon its particular facts and circumstances, it may be appropriate for the utility to collect the taxes from the contributor or invest in them itself.

Debt Financing for CIAC Taxes

If a utility pays the taxes associated with CIAC itself, it must obtain the cash to pay those taxes. Witnesses Martin, Nixon, and O'Steen testified that it would be difficult to obtain debt financing for the tax liability associated with the receipt of CIAC. Witness O'Steen argued that it is not a sound practice to finance a tax paid annually over a longer period of time. In fact, he argued that it may not even be possible due to the inability to collateralize such loans and the fact that the period during which the utility would recover the taxes through depreciation would be much longer than the term of the loan.

Witness O'Steen also testified that, over the long-run, investing in taxes can "damage the soundness of a utility's capital structure, thereby making it much more difficult for a utility to obtain needed funds for plant construction, renovation, and major maintenance when those funds are needed." He believes that, as utilities borrow more and more to pay such taxes, they will appear more risky to lenders, which will further restrict the availability of funds, and make those funds that are available more costly. Upon cross-examination, however, Witness O'Steen agreed that lenders place great reliance on cash flow projections.

Witness Nixon testified that most of the companies he deals with generally provide for plant expansion through debt. He argued that anything that would decrease a utility's ability to borrow funds jeopardizes its ability to serve its customers.

Witness Martin argued that the water and wastewater industry is already highly leveraged, and he expressed concern over these utilities increasing their levels of debt. He was also concerned whether funds would be available with reasonable terms and cost rates for the payment of taxes or for other purposes. He expressed particular concern about utilities that are experiencing significant growth and would have to make substantial investment in taxes every year. On cross-examination, however, Witness Martin agreed that a well-managed utility should be able to foresee and plan for such growth and increased taxes. He also agreed that a utility can petition for increased rates to improve its debt



service capability or for the gross-up if it foresees substantial growth coming.

Finally, we note that utilities do not always borrow funds for specific purposes. For instance, a company can often secure a line of credit by merely demonstrating a cash flow and paying a small fee or percentage at the front end. These funds can be used to finance anything from plant expansion to operating expenses, including the payment of taxes.

Based upon the evidence of record and the discussion above, we find that debt financing may be available for the payment of taxes related to CIAC. However, we also find that a utility's payment of taxes on CIAC may lessen its cash flow, which may, in turn, impair its ability to borrow funds for the payment of taxes or for other purposes.

#### Use of Cash CIAC to Pay Taxes

In her testimony, Witness Causseaux suggested that a utility in a strong cash position could use a portion of the cash CIAC to pay the taxes associated with the receipt of CIAC. However, she also stated that using cash CIAC for such a purpose will mean that there is less cash available for current or future construction or to repay the utility for its past investment in plant.

Witness Nixon testified that it would be imprudent for most utilities to use cash CIAC to meet their tax liabilities. He also stated that it defeats the very purpose for collecting CIAC, under general regulatory theory, because CIAC is primarily a financing vehicle used to construct new plant or repay debt or equity invested to construct plant. In his opinion, it should be used only for the above-mentioned purposes since CIAC must be deducted from rate base, which reduces the return available for funding debt or equity costs.

Witness Nixon also testified that many utilities' loan agreements require them to assign or pledge cash CIAC to service debt and, for that reason, cash CIAC is unavailable to meet the tax liability. Witness Deterding expressed many of the same concerns in his testimony.

Based upon the evidence of record, we find that a utility can use cash CIAC for any purpose that it deems appropriate. However,

this may mean that the cash will not be available for its intended use. Further, in a rate proceeding, all CIAC will be considered in the reduction of the utility's rate base.

Cash Versus Property CIAC

In Order No. 21266, we made the assertion that property CIAC was typically collected from developers, while cash CIAC was typically collected from individuals. In his testimony, Witness Nixon stated that cash CIAC is generally paid by developers and homebuilders. He stated that cash CIAC is less often collected directly from individual homebuyers.

Mr. Nixon also prepared an exhibit to demonstrate that the donation of cash CIAC varies between utilities. According to Mr. Nixon's exhibit, during 1987, Rolling Oaks Utilities, Inc. received \$327,324 in cash contributions from individual homeowners and no cash from developers. Clay Utility Company, on the other hand, received no cash from individual homeowners and \$886,745 in cash from developers. This same situation can be observed between other utilities during 1988.

In her testimony, Witness Causseaux stated that she had no knowledge of any utilities that typically collected cash CIAC from individuals as opposed to developers.

Based upon the evidence of record, we find that a utility's collection of CIAC can vary between cash and property depending upon that utility's particular facts and circumstances.

Gross-up cause Competitive Disadvantage?

This issue addresses whether implementing the gross-up of CIAC may place a utility at a competitive disadvantage with utilities that do not gross-up, or convince developers to utilize septic tanks instead of connecting to the utility's system. During the hearing, Jacksonville Suburban Utility Corporation was the only company specifically mentioned that chose not to gross-up because of competitive pressures.

Witness Nixon testified that he was not aware of any case in which a utility had chosen to gross-up but was later forced to stop due to competitive pressures. However, during cross examination,

he did admit that competition was one reason that he did not urge a mandatory gross-up.

Witness Elliott, on the other hand, testified that the water and wastewater industry in Florida is subject to competitive pressures due to the large number of both municipal and investor-owned water and wastewater utilities. He also stated that a significant difference in rates or CIAC charges can cause growth to shift into a lower-cost utility's service areas.

As for the suggestion that the gross-up may force developers to begin utilizing septic tanks, Witness Causseaux stated that she had no personal knowledge of any utilities that have had a developer switch to use of septic tanks because of gross-up costs. Although SFCC and FHBA stated that they have actual knowledge of projects utilizing septic tanks because of the CIAC gross-up cost, their position is not supported by the record. Further, Witness Nixon provided the results of a questionnaire sent to all utilities utilizing the gross-up. All of the utilities that responded stated that they were not aware of any cases in which septic tanks had been utilized or utilities had found themselves at a competitive disadvantage because of the gross-up.

Based on the evidence discussed above, we find that, although the use of the gross-up may place a utility at a competitive disadvantage, it is not a widespread problem in Florida.

Retention of Gross-up/Requirement of Pre-approval

All parties and the Staff of this Commission (Staff) agreed that the gross-up should be retained. The only real point of contention appears to be whether the gross-up should be allowed solely at the discretion of the utilities or only upon the prior approval of this Commission. All of the utility witnesses believe that whether to gross-up should be a management decision. According to witness Elliott, "management has the experience and knowledge of the facts and circumstances of the utility..." and is, therefore, in the best position to determine the needs of the utility."

We do not agree. Generally, we do not insert ourselves into the day-to-day decision-making processes of a utility. In fact, we normally do not review the management decisions of a utility unless it has applied for a rate increase or we have initiated an

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overearnings investigation. In the case of the gross-up, however, the dollar amounts are quite large and there are other persons involved, such as developers and home purchasers. If we wait until a utility's next rate proceeding to review its decision whether to gross-up, it may be too late to undo what has already been done.

In addition to the above, we believe that requiring pre-approval of the gross-up is reasonable for a number of other reasons. First, out of the approximately 700 water and wastewater utilities regulated by this Commission, only 44 have ever requested to gross-up. Although a number of the utilities that we regulate are partnerships and sole proprietorships, the fact that so few have elected to implement the gross-up indicates that the vast majority of water and wastewater utilities do not need the gross-up.

The evidence also indicates that some of the utilities that are collecting the gross-up may not actually need it. For instance, Witness Nixon stated that one company, Southern States Utilities, Inc., appears to have enough resources to cover the tax impact of CIAC, and that it intends to discontinue the gross-up. Witness Nixon stated that Florida Cities Water Company is another company that "will not fight for continued authority to gross-up."

Second, the use of a gross-up creates a new tax, and expense, that did not previously exist. This is what has been referred to as the "tax-on-tax." A tax-on-tax is created when taxes are contributed. The contributed taxes are considered gross income which are, in turn, taxable. Because of this tax-on-tax effect, the gross-up can be as high as 60.3 percent, as compared to a maximum combined federal and state tax rate of 37.63 percent, if the utility pays the tax on CIAC itself.

Witness Elliott stated that this "tax-on-tax" effect does not only exist in the case of a gross-up. He stated that, when a utility does not gross-up, it must use equity to invest in the CIAC-related taxes. Since the equity component is grossed-up for taxes, he argues that there is a "tax-on-tax." Although a portion of the CIAC tax investment would be supported by equity, we do not believe that Witness Elliott's analysis considers that we generally do pro rata reconciliations, assuming that funds cannot be traced. Witness Elliott's analysis also assumes that equity would be the only source available for financing. Although funds cannot be specifically traced, we believe that there are other sources for

these funds, such as operating revenues, debt, and deferred taxes.

Witness Causseaux argued that the tax on CIAC is a cost of doing business. Witness Elliott agreed. He also stated his belief that "the change in the tax laws have imposed a new cost on the utilities associated with CIAC." An observation was also made at the hearing that, if Congress had wanted to tax the contributor, it would have done so. Over the long-run, however, it is probably the homeowner/ratepayer who bears the burden anyway.

Upon consideration of the above, we believe that the gross-up should be retained, but that it should only be allowed upon the prior approval of this Commission.

#### Determination of Need

We believe that the need for a gross-up should be determined on a case-by-case basis, based upon the facts and circumstances peculiar to each utility. According to Witness Elliott, utility management is in the best position to evaluate all of these facts and circumstances, and to determine whether a gross-up is needed and, if so, what methodology to use. If that is the case, once management determines that a gross-up is necessary, it should be able to provide the same information that it relied upon to make such a determination in a petition to this Commission. Accordingly, we find it appropriate to require all utilities that wish to collect the gross-up to file a petition for approval to collect the gross-up with this Commission. Any utility that is already collecting the gross-up may continue to do so pending our approval of its petition, provided that it files such a petition on or before October 29, 1990.

There is, of course, no need determination policy that will cover the entire water and wastewater industry. Our requirements must, therefore, remain flexible. However, at a minimum, each utility should be able to demonstrate that a tax liability exists and that sources of funds are not available at a reasonable cost. Generally speaking, a utility may demonstrate such need by filing the following information:

Demonstration of Actual Tax Liability - As a threshold, a utility should be able to demonstrate the existence of an actual tax liability on a regulated, above-the-line basis. Unless there ✓

is a stand-alone tax liability, there is no need for additional funds to pay for the tax on CIAC.

Cash Flow Statement - All Class A and B utilities ought to be able to provide a cash flow statement. Witness O'Steen stated that a prudent utility would have cash flow statements for a number of years. He also stated that in his experience as a banker he "zeroed in on the cash flow." A cash flow statement would show whether liquid funds are available to pay taxes on CIAC. We will not require cash flow statements from Class C utilities, however, due to the expense associated with them.

Statement of Interest Coverage - The utility should also provide a statement of its times interest earned (TIE) ratio. The TIE ratio indicates the number of times a utility is able to cover its interest. The ratio is an indicator of the relative protection of the bondholders. It is also indicative of a utility's ability to go into the financial market to borrow money or issue stock at a reasonable rate. A utility should demonstrate that its TIE ratio is no more than 2x. We have selected a TIE ratio of 2x because the testimony indicates that it is a conservative ratio that maintains a utility's financial integrity without unduly burdening the ratepayers. We also note that 2x is within the range of Moody's Baa guidelines. Witness Elliott testified that 2x was too low; however, he did not present an alternative. Although we believe that a TIE ratio of 2x should be used as a benchmark, it should not be viewed in isolation. A utility may be able to show adequate interest coverage, but not have enough cash on hand.

Statement of Alternative Financing - A utility should also be able to demonstrate that it does not have an alternative source of financing available at a reasonable rate. As discussed above, some utilities may not be able to obtain financing at a reasonable rate to pay for taxes on CIAC. However, certain situations may exist where an alternative source is available at a reasonable rate. For instance, under cross-examination, Witness Elliott admitted that, given the choice between giving or lending the funds to pay taxes on CIAC, there was a strong incentive for a contributor to lend them.

Justification for Gross-up - The utility should also provide a statement regarding why it needs the gross-up, including the particular facts and circumstances that led to that conclusion. As stated by Witness Causseaux, "the utility is intimately aware of

its own unique circumstances ... [and] should be able to articulate its reasons for requesting a gross-up."

Gross-up Method Selected - The utility should also indicate the gross-up method selected and the reasons why. As discussed below, there are two methods of calculating the gross-up, each with its own advantages and disadvantages. Since the utility knows its unique circumstances leading to the decision to request the gross-up, it should also determine which gross-up method is better in its situation.

Proposed Tariffs - Finally, the utility should submit proposed tariffs for the gross-up in its filing.

Frequency of Demonstration of Need

One of the concerns of the utilities is whether the gross-up need determination will be one-time or periodic. In his testimony, Witness Nixon argued that an annual review of the need for the gross-up could cost anywhere between \$5,000 to \$8,000 a year for accounting services alone. He believes that it would be an unwarranted additional expense to pass on to the ratepayers. Mr. Nixon also stated that any fluctuations in need from year to year could result in discriminatory rates being applied to new connections. Upon cross-examination, however, he agreed that, once a utility has an approved gross-up, it should be simple for it to advise this Commission on an annual basis whether its circumstances had changed.

Witness Martin also argued that an annual determination of need would be expensive. He also testified that it will be difficult for utilities to forecast their cash flow for ten or 15 years if they face the prospect of losing the gross-up each and every year. Mr. Martin stated that this "unstabilizing event" could be looked upon unfavorably by lenders, bond buyers, or bond rating agencies. He also argued that a change in the gross-up for any future year could cause changes in the utility's debt service coverage and could harm the utility's ability to obtain low-cost, long-term financing.

Witness Elliott testified that it would be appropriate for us to require utilities to file a periodic statement whether any circumstances surrounding their need for the gross-up have changed. He believes that utilities should periodically review their needs

anyway, particularly if the facts and circumstances attending their decision to request the gross-up have changed. Mr. Elliott cautioned, however, that frequent changes in any annual filing requirements could be detrimental.

We agree with Mr. Elliott. We believe that a prudent utility should monitor its need for the gross-up and periodically determine if it is still warranted under that utility's particular circumstances. If circumstances have changed, it should be the utility's responsibility to notify this Commission. Accordingly, we find it appropriate to require those utilities that have received approval to use the gross-up to file a sworn statement with their annual reports stating whether circumstances have changed and whether the gross-up is still required. If it is later discovered that the circumstances are not as reported by the utility, we can address the matter in a rate case or a separate investigation.

CALCULATION OF GROSS-UP

There are basically two methods of grossing-up, the full gross-up and the net present value (NPV) gross-up. The formulae for these methods are as follows:

Full Gross-up:

$$\begin{aligned} & \text{Depreciable Plant } (CP - (CP * (1/TL) * AR * .5)) \\ & \quad \quad \quad * (1 / (1 - CTR)) \\ & \text{Land } (CL * (1 / (1 - CTR))) \end{aligned}$$

NPV Gross-up:

$$\begin{aligned} \text{All CIAC } & (CTR / (1 - CTR)) * ((C + CP + CL) - \\ & (((C + CP) / TL) * (1 - (1 + ROR) - t1)) / ROR) * \\ & (CTR_i / CTR) \end{aligned}$$

Where:

- CP = Contributed plant
- TL = Tax life for contributed plant
- AR = Accelerated tax rate
- CTR = Combined federal and state income tax rate
- C = Contributed cash
- CL = Contributed land
- ROR = Utility's last allowed rate of return

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-tl = Negative exponent of the tax life of the  
contributed asset  
CTRI = Tax rate expected to be in effect when the  
depreciation is taken on the tax return

The full gross-up allows a utility to collect the full tax impact associated with CIAC, including the "tax-on-tax." The NPV gross-up allows a utility to collect the taxes associated with the gross-up less the present value of the tax depreciation that will be received in the future. By the very nature of the calculations, the full gross-up will provide more cash flow than the NPV method.

Both methods have advantages and disadvantages. The full gross-up would provide a ready source of cash to pay the maximum tax liability that would be associated with CIAC. However, the full gross-up method fails to take into account future depreciation that will be taken on the contributed assets. The NPV method takes into account the benefit of the future tax depreciation, but may not provide enough relief for a utility in a poor cash position. The NPV formula is also considered bulky, cumbersome, not easily understood, and subject to error.

We note that the formula for the full gross-up of depreciable plant takes into account the first year's tax depreciation using a half-year convention. We agree with Witness Elliott that, for purposes of the NPV gross-up, it should be assumed that utilities would utilize the most liberal method of tax depreciation allowed by the tax law and that, if they choose to use a method less favorable, it's simply to their detriment.

Based upon the evidence of record and the discussion above, we believe that both methods should be available to the utilities. However, we note that, out of the 44 utilities that requested the gross-up, only one implemented a NPV gross-up.

#### ACCOUNTING/REGULATORY TREATMENT - NO GROSS-UP

##### Taxes as Investment

All of the witnesses who addressed this issue agreed that, when a utility pays taxes associated with its collection of CIAC, it has, essentially, made an investment in such taxes. Witnesses

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Elliott and Nixon testified that, if a utility does not gross-up, but pays the taxes related to its receipt of CIAC itself, we should include the full amount of its investment in such taxes in rate base, without regard to any used and useful considerations. Mr. Nixon also argued that any utility that is not authorized to gross-up is required to invest in taxes on CIAC. Accordingly, he argued that this places the utility and its customers at risk for the success of the development. Upon cross-examination, however, Mr. Nixon admitted that tax benefits follow the asset.

As mentioned above, there are certain tax benefits that flow from a utility's investment in taxes related to CIAC. Further, as discussed by Witness Elliott under cross examination, there are methods under which a utility may recover its carrying costs and earn a return on nonused and useful property, such as guaranteed revenue and allowance for funds prudently invested charges. Accordingly, we do not find it appropriate to allow utilities to earn a return on taxes related to nonused and useful CIAC.

Finally, we note Witness Nixon's concern that the debit-deferred balance will not be recognized in rate base, since we are moving to the formula (one-eighth of operating and maintenance expenses) method of calculating working capital. Accordingly, due to the long-lived nature of the assets involved, we find that debit-deferred taxes should be recognized separately from the working capital calculation.

#### Normalization

All witnesses who testified in this regard agreed that, if a utility does not gross-up, the tax effects of its collection of CIAC should be normalized. By normalizing, the tax effects are recognized over the lives of the assets acquired.

Witness Causseaux testified that there are different methods to normalize. She recommends the method required by the IRS pursuant to Notice 87-82. Under Notice 87-82, debit deferred taxes should be treated as the regulatory body usually treats deferred taxes. In Florida, the norm is to offset debit deferred taxes against credit deferred taxes in the capital structure. If the net of the credit and debit deferred tax amounts is a debit, the amount is included in rate base.

Notwithstanding the above, Witness Causseaux stated that a more simplistic approach would be to recognize the full debit deferred tax balance in rate base. Witness Elliott, however, argued that the accounting treatment should follow the regulatory treatment, and not vice-versa. We agree. Although the proposed rate base treatment would be easier to administer, we believe that the appropriate method of normalization is the capital structure method. This would keep the treatment in total compliance with Notice 87-82.

ACCOUNTING/REGULATORY TREATMENT WITH GROSS-UP

All witnesses who testified regarding this issue also agreed that normalization accounting should be followed when a utility does gross-up. The IRS has no normalization requirements associated with CIAC that is grossed-up. However, we still believe that full normalization accounting should be utilized. This would result in consistent treatment between utilities that are not grossing-up and those that are. In addition, those utilities that switch from grossing-up to not grossing-up will maintain the same normalization methodology.

As discussed above, normalization involves offsetting debit-deferred taxes against credit-deferred taxes in the capital structure with any net debit-deferred balance included in rate base. Under the full gross-up method, the debit-deferred taxes would be fully offset by the contributed taxes. Under the NPV gross-up method, however, the utility would have an investment in the present value of the future tax depreciation.

Under either method of gross-up, a tax-on-tax will exist. Witnesses Elliott and Causseaux disagreed on how this should be treated. Witness Causseaux contended that the tax-on-tax is a permanent difference. As a permanent difference, it would flow through tax expense the year it is received. Witness Elliott, however, argued that the tax-on-tax is not a permanent difference. He argued that the tax-on-tax reverses over the useful life of the plant and that it reduces future tax expense.

We do not believe that it is important whether the tax-on-tax is a permanent difference or a timing difference by definition; what is important is who should receive the benefits. Based upon the evidence of record, we believe that the benefits should be passed back to the ratepayers over the lives of the related assets,

consistent with the theory of normalization. However, in order to identify the different contributions and to properly normalize, utilities will have to, and we find it appropriate to require them to, record the gross-up in a separate subaccount.

Offset of CIAC Income Against Net Operating Losses (NOLs)

By Order No. 21436, we proposed to require utilities to offset the tax impact of their collection of CIAC by their NOLs. Without exception, the utility witnesses argued that NOLs should not be used to offset the tax impact of CIAC.

The utilities argue that the collection of CIAC cannot create NOLs and that we should not, therefore, require them to offset CIAC-related taxes with losses generated by activities unrelated to their collection of CIAC. The utilities also argue that the NOLs should be reserved for those who bore the cost when the NOL was generated. Witness Deterding further argued that, since this Commission does not recognize NOLs as an investment, it should not recognize the tax benefits of NOLs either.

Witness Causseaux, on the other hand, argued that current tax expense is based upon jurisdictional operations and that, if a utility has NOLs, it will have no tax liability, regardless of the elements of revenues or expenses considered. Witness Elliott agreed that CIAC is not considered in isolation, but with all other transactions that occur. He also agreed that, no matter what our decision is in this docket, utilities will use their NOLs on their tax returns. In fact, according to Witness Deterding, when a gross-up is allowed, NOLs are or will be consumed more rapidly.

Based upon the evidence of record, we find it appropriate to require utilities to offset CIAC income against their NOLs. The purpose of this docket is to determine the treatment of the additional tax burden caused by the change in tax laws regarding CIAC. Until a tax liability is incurred, there is no additional tax burden. By requiring utilities to offset CIAC income with NOLs, we are only recognizing what they are actually doing on their tax returns. Further, such treatment is in keeping with the entire "tax picture", without isolating one piece - the taxation of CIAC.

Notwithstanding the above, we believe that a utility should only have to offset jurisdictional, above-the-line NOLs, and not below-the-line NOLs. This is consistent with our policy of

calculating taxes on a stand-alone basis. Below-the-line items would include, but not be limited to, the impact of disallowed expenses, nonused and useful plant depreciation, other expenses associated with nonused and useful plant, revenues associated with nonused and useful plant and interest associated with debt not included in the capital structure.

In addition to the above, the utilities also argue that, to the extent that their NOLs result from below-the-line losses, any required offset would be in violation of Section 367.081, Florida Statutes. Under Section 367.081(2)(a), Florida Statutes, in setting rates for utility service, "the commission shall consider the value and quality of the service and the cost of providing the service, which shall include, but not be limited to ... a fair return on the investment of the utility in property used and useful in the public service." (Emphasis added) Based upon the language just quoted, we believe that, although generally only above-the-line losses should be used to offset income from above-the-line operations, if an occasional below-the-line loss crept into the equation, we would not be in violation of Section 367.081, Florida Statutes.

Offset of CIAC Income Against Investment Tax Credits (ITCs)

The utility witnesses also do not believe that the tax liability resulting from the gross-up should be offset by ITCs. Witness Elliott argued that ITCs are economic assets, that ITC carry-forwards represent contingent receivables to the utility from the U.S. Treasury, and that it would, therefore, be inappropriate for us to deprive utilities of their use.

Witness Elliott also argued that the utility's collection of CIAC could not have given rise to the ITCs. Mr. Elliott explained that, prior to the tax law change, CIAC could not generate an ITC. Along with the changes in the tax laws, ITCs have effectively been eliminated. Mr. Elliott further argued that, to assign the benefit of an ITC carry-forward to the contributor creates an inequitable mismatch by giving the benefit to a party clearly not responsible for such benefit.

According to Witness Causseaux, however, utilities will use their ITCs to reduce taxable income from any source, including the receipt of CIAC or contributed taxes, without regard to the outcome of this docket, in order to minimize their actual tax liabilities.

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As we have already stated, until there is an actual tax liability, we do not believe that there is any tax burden created by the collection of CIAC or contributed taxes. Our treatment will simply recognize what is actually transpiring.

Based upon the evidence of record, we find it appropriate to recognize, for regulatory purposes, the treatment afforded by the utilities themselves, by requiring them to offset CIAC income against ITCs. However, as with our decision regarding NOLs, we believe that only above-the-line ITCs should be used as an offset.

#### Offset of NOLs and ITCs a Normalization Violation?

Witnesses Bowen, Deterding, Jackson and Wintz each testified that I.R.C. normalization requirements would be violated if the tax liability related to CIAC or the gross-up was offset by NOLs or ITCs. Witness Causseaux, however, did not believe that the requirements of Sections 46, 167, or 168, I.R.C., would be violated if NOLs and ITCs were used as an offset, so long as the appropriate normalization procedures are followed.

Witness Elliott testified that he did not believe that a refund of gross-up amounts due to the existence of NOLs or ITCs would violate the I.R.C. or the related regulations. In fact, he stated that, "[a]lthough the normalization requirements of the IRS are subject to the IRS' interpretation, I concur with Ms. Causseaux that refunding previously contributed taxes based upon the utilization of an NOL or ITC carry-forward would not represent a normalization violation if the investment in taxes is properly handled in the regulatory process."

Based upon the testimony of regulatory tax experts Causseaux and Elliott, we find that the normalization requirements of the I.R.C. and related regulations will not be violated by offsetting the tax liability associated with CIAC by regulatory NOLs and ITCs, if the utility properly records the transaction.

#### Tax Depreciation Benefits

Witnesses Elliott, Nixon, and Deterding each testified that, theoretically, the benefits of tax depreciation on CIAC should be passed back to the contributors of CIAC. These witnesses further testified, however, that because of practical considerations, such as prohibitive recordkeeping requirements, the benefits cannot be

returned to the contributors and must, therefore, be passed back to the general body of ratepayers. Although they did not sponsor any witnesses to support their position, SFCC and FHBA argued in their brief that, to the extent that a contributor pays the tax, the depreciation benefits should be passed back to him.

In her testimony, Witness Causseaux suggested that CIAC and the related taxes are ultimately borne by the homebuyer. Witness Elliott also testified to his belief that most developers treat CIAC costs as a cost of development, which is included in the total cost of the project. Witness Nixon does not agree.

Mr. Nixon testified that the prices which developers charge for homes are dictated by such factors as competition, area growth, interest rates and the resale market. He argued that, although developers presumably attempt to recover their costs and a profit through the purchase price, due to market conditions, the payment of CIAC-related taxes may actually reduce their profit margins. In support of this argument, he pointed out that a number of developers have objected to or complained about the gross-up.

We do not agree. Although market conditions may determine the selling price of a home, we believe that any time a developer has made a profit, it has recovered the costs of CIAC and the related taxes. Further, if the costs are passed on to the ultimate ratepayer, the contributor and the ratepayer are one and the same.

Since the practical considerations militate against passing the tax depreciation benefits back to developers and, since we believe that developers generally recover their costs, we find that the tax depreciation benefits should be passed back to the utility ratepayer. However, we note that, to the extent that utilities use the NPV method of grossing-up, they are passing the tax depreciation benefits of the gross-up back to developers, since the effect of that method is to offset the current taxes by the net present value of the future depreciation.

#### REFUND OF GROSS-UP AMOUNTS

The utilities do not believe that it would be fair and reasonable for this Commission to require refunds of the gross-up occasioned by the consumption of NOLs and ITCs. Witness Elliott

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listed five reasons why he believes that this would be inappropriate.

First, Mr. Elliott argued that NOLs and ITCs are, for tax purposes, more or less equivalent to cash. Accordingly, he argues that it would be arbitrary for this Commission to treat them differently than it treats other economic assets.

We do not agree. The offset against NOLs and ITCs is merely a reflection of the way that the utilities will treat them for tax purposes. What Petitioners really object to here is that requiring them to refund all gross-up amounts collected in excess of their actual tax liabilities will deny them the opportunity to turn NOLs and ITCs into cash on hand.

Second, Mr. Elliott argues that the receipt of CIAC cannot create an NOL or ITC and that, to require refunds will assign such benefits to CIAC contributors, resulting in an inappropriate mismatch. We do not agree that the refund will assign the benefits to the contributors. The tax benefits are being used by the utilities to offset income. Again, what the utilities object to is the loss of the opportunity to cash-in on their NOLs and ITCs.

Third, Mr. Elliott argues that normalization must be followed when there is no gross-up or when excess amounts must be refunded, and that the refund of previously contributed taxes will result in increased revenue requirements. In fact, whenever NOLs or ITCs are consumed normalization will occur, whether or not there is a refund requirement. In addition, a refund requirement will only result in increased revenue requirements to the extent that a utility is earning below its last authorized rate of return.

Fourth, Mr. Elliott argues that a refund would be a windfall to those receiving it, at the expense of increased revenue requirements. We believe that, in fact, it is more likely a windfall to the utilities if they are not required to refund excess gross-up amounts, since they will receive cash now and the benefit of increased cash flow through depreciation over the lives of the assets. Further, we do not believe that it would be a windfall to the contributors if the refund is required, since both the utilities and the contributors were put on notice that a refund would be required by Order No. 16971, as follows:



Monies in the CIAC Tax Impact Account may be withdrawn periodically for the purpose of paying that portion of the estimated Federal and State income tax expense which can be shown to be directly attributable to the repeal of Section 118(b) of the Internal Revenue Code and the inclusion of CIAC in taxable income. Annually, following the preparation and filing of the utility's annual, Federal and State income tax returns, a determination shall be made as to the actual Federal and State income tax expense that is directly attributable to the inclusion of CIAC in taxable income for the tax year. CIAC tax impact monies received during the tax year that are in excess of the actual amount of tax expense that is attributable to the receipt of CIAC, together with interest earned on such excess monies held in the CIAC Tax Impact Account must be refunded on a pro rata basis to the parties which made the contribution and paid the tax impact amounts during the tax year. (Order No. 16971, at page 3.)

This could be interpreted to mean that we will look at the receipt of CIAC as an isolated tax event, or that a tax liability must be incurred on the overall jurisdictional return. However, since the taxation of CIAC in isolation can only produce a tax liability, the former interpretation makes no sense because there is no way that a refund could occur. Accordingly, we believe that the intent was to consider the entire tax picture.

Fifth, Mr. Elliott argued that the application of a refund policy could become discriminatory due to potential fluctuations in CIAC collections from year to year. We agree that the potential for such "discrimination" exists. However, we do not find that any such discrepancies are either likely or likely to be "unfairly discriminatory," especially since any refunds will be based upon a rational and measurable basis - the utility's tax liability.

Finally, we note that the testimony of Mr. Charles deMenzes in this regard. Mr. deMenzes is the owner of Tradewinds Utilities, Inc. (Tradewinds), a small utility with NOLs that collects the gross-up. It appears from Mr. deMenzes' testimony that Tradewinds has a large percentage of nonused and useful plant and is having difficulty borrowing from banks. Mr. deMenzes was unequivocal about his desire to retain the gross-up as a trade-off for

Tradewinds' NOLs, in order to pay for operating expenses and expansion. Although we are sympathetic to Mr. deMenzes' plight, the gross-up does have a specific purpose - payment of the tax liability associated with the collection of CIAC. There are other mechanisms available from this Commission to allow utilities in poor financial condition to earn a fair rate of return.

Based upon the evidence of record and our discussion above, we find 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. Since a number of the utilities referred to in Order No. 21436 had NOLs and/or ITCs to offset CIAC-related income for 1987, they must refund gross-up amounts collected for 1987.

Notwithstanding the above, it appears from the record that some of the NOLs and ITCs used to offset taxes by Order No. 21436 were below-the-line items. These amounts were taken from the CIAC gross up reports required by Order No. 16971. Accordingly, to the extent these utilities can demonstrate that their losses or ITCs were below the line items, they should not be used to offset CIAC income. These utilities should, therefore, file amended reports to reflect only above-the-line NOLs and ITCs, with a reconciliation to the amounts originally filed. This suggestion would also hold true for 1988 and 1989 gross-up reports that have been filed. We also grant Staff administrative authority to process refunds of the gross-up based upon NOLs and ITCs for those years.

As for El Agua Corporation, Petitioners argue that its tax losses resulted from book/tax timing differences and that, to require it to refund contributed taxes would transfer the benefits of these book/tax timing differences from the ratepayers to the contributor. We do not agree. The book/tax timing difference would be accounted for through deferred tax accounting, regardless of whether or not a refund was required. Accordingly, it is not the book/tax timing difference, but the immediate benefit of converting the loss into cash that is actually being transferred from the utility back to those who contributed the cash.

With regard to Canal Utilities, Inc., Petitioners argue that its tax credits derive from ITC carry-forwards and that requiring it to offset CIAC-related taxes against the ITCs would transfer the benefits of the ITCs from the ratepayers to the contributors. This argument belies the fact that, as with the book/tax timing

differences discussed above, the ITCs would be normalized, for regulatory purposes, regardless of whether the refund is required or not. Again, the only benefit being transferred is the ability to convert ITCs into cash on hand.

#### Confiscation Without Due Process?

Finally, Petitioners argue that Order No. 21436 confiscates their property without due process of law. In this regard, we first point out that Order No. 21436 was protested and that the matter was considered at a Section 120.57(1), Florida Statutes, hearing. Since Order No. 21436 was protested, it became a legal nullity and cannot confiscate Petitioners' property. In addition, since it was considered in the context of an evidentiary hearing, Petitioners' due process rights have been protected.

Further, in a broader sense, offsetting CIAC income by NOLs and/or ITCs does not confiscate Petitioners' property. Petitioners will use these tax benefits on their tax returns regardless of the Commission's treatment. All we are doing by requiring a refund is recognizing this fact.

As already discussed, we believe that Petitioners really object to the fact that, by recognizing the actual tax transaction, they will be denied the opportunity to convert their losses and ITCs into cash on hand. Although our treatment will result in the consumption of these tax benefits for regulatory purposes, since contributions are now depreciable in any event, these benefits will be returned to the utilities as increased cash flow through depreciation over time. This would be recognized in ratemaking through deferred taxes. Accordingly, we do not believe that requiring the offset of NOLs and ITCs confiscates Petitioners' property in any sense of the term.

#### CONCLUSIONS OF LAW

1. This Commission is vested with jurisdiction over the gross-up of CIAC by the provisions of Sections 367.081, .091, .101, and .121, Florida Statutes.
2. The gross-up charges and conditions established herein are just and reasonable.

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3. The requirements that utilities offset CIAC income against above-the-line NOLs and ITCs, and refund all amounts of gross-up collected in excess of their actual, jurisdictional tax liabilities resulting from their collection of CIAC, do not confiscate their property without just or fair compensation or violate their rights to due process.

Upon consideration of the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that each of the findings contained in the body of this Order are approved in every respect. It is further

ORDERED that all matters discussed in the body of this Order are expressly incorporated herein by reference. It is further

ORDERED that no utility may gross-up CIAC without first obtaining the approval of this Commission. It is further

ORDERED that any utility that is currently grossing-up CIAC shall file a petition, in accordance with the provisions of this Order, for continued authority to gross-up no later than October 29, 1990. It is further

ORDERED that utilities shall follow the accounting procedures prescribed in the body of this Order whether they gross-up or not. It is further

ORDERED that utilities that do gross-up shall record the gross-up in a separate subaccount. It is further

ORDERED that all utilities that had below-the-line losses or ITCs for 1987, 1988, or 1989 shall file amended gross-up reports to reflect only above-the-line NOLs and ITCs, with a reconciliation to the amounts originally filed. It is further

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. It is further

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PAGE 27

ORDERED that Staff is hereby granted administrative authority to process refunds of the gross-up related to NOLs and ITCs for the years 1987, 1988, and 1989.

By ORDER of the Florida Public Service Commission, this 1st day of OCTOBER, 1990.



STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

RJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer 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 after the issuance 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.

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**EXHIBIT RCN-10**

RECEIVED

AUG 7 1995

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF STAFF WORKSHOP

TO WATER AND WASTEWATER UTILITIES

AND

ALL INTERESTED PERSONS

RE: UNDOCKETED

WORKSHOP ON GROSS-UP OF  
CONTRIBUTIONS IN AID OF CONSTRUCTION

Issued: August 4, 1995

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

August 30, 1995, 9:30 a.m.  
Room 171  
Betty Essley Conference Center  
4075 Esplanade Way  
Tallahassee, FL 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.

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 August 23, 1995, specifically referencing "Undocketed CIAC Gross Up Workshop."

Any person requiring accommodation at this workshop due to a physical impairment should call the Division of Records and Reporting at (904) 413-6770 at least five calendar days prior to the workshop. Persons who are hearing or speech impaired should contact the Florida Public Service Commission using the Florida Relay Service, which can be reached at (800) 955-8771 (TDD).

DOCUMENT NUMBER-DATE

07442 AUG-4 88

FPSC-RECORDS/REPORTING

NOTICE OF WORKSHOP  
UNDOCKETED  
PAGE 2

Rose, Sundstrom & Bentley

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?

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- b. Should the liability be measured on a total company basis or an above the line basis?
- 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?
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?
      - i. 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 be 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?

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

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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?

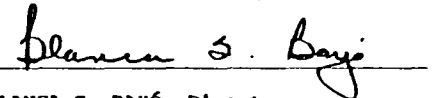
VIII. ALTERNATIVES TO GROSS-UP

- 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, 25-9 and 25-30, Florida Administrative Code.

By DIRECTION of the Florida Public Service Commission, this 4th day of August, 1995.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

LAJ

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**EXHIBIT RCN-11**

Commission CIAC Gross-up Workshop  
Position on New Issues Raised in the  
Workshop Notice of August 4, 1995

<u>Notice/ Issue Reference</u>	<u>Position</u>
II,C,3(a)	Above and below the line should be defined in the same manner used by the Commission in rate case cost of service proceedings. In other words, above the line taxable income for CIAC gross-up purposes should be identical to taxable income calculated in a cost of service proceeding.
II,C,3(c)	Above the line allocation would be as follows: <ol style="list-style-type: none"><li>1. Revenues would consist of those operating revenues recognized on an above the line basis for rate case proceedings.</li><li>2. Above the line expenses would consist of those expenses recognized in the company's last rate case and embedded in the revenue requirement. Disallowed expenses, non-used and useful expenses, or expenses which, on their face, would not be allowed in a rate case proceeding should be classified below the line.</li><li>3. Tax losses would be based on an analysis of the above the line or below the line expenses causing such losses.</li><li>4. As known, the only credit available against income tax would be any investment tax credits which have been carried forward from 1986. The 1986 Tax Act eliminated Investment Tax Credits (ITC) and provided for their phase out. To the extent any such credits still exist, they should be allocated above and below the line based on the used and useful percentages existing in the tax year such credits are used. This makes sense because the ITC originated as a percentage of the cost of plant constructed.</li></ol>
II,C,3(c),(i)	Amended returns should have no effect on previous year's CIAC gross-up refund reports, unless the amended return is to correct errors in revenue or expenses as originally filed. We propose that in such cases, the effect be recognized to contributors in the year of the return amendment, but only if material. Returns amended for carrybacks of losses should have no effect on previous years gross-up refunds.
II,C,3(d),(ii)	A parent or affiliate which can afford the CIAC tax should not be forced to gross-up. The Commission has no jurisdiction over a parent or affiliate and must look at the financial situation of a utility on a stand-alone basis.

Notice/ Issue Reference	Position
II,C,3(d),(ii) (cont.)	Also, if a parent or affiliate funded the tax on CIAC, the rate payers would be forced to pay higher rates to cover a return on the investment in taxes.
II,E	In general, the application to gross-up should be based on historic data, along with a reasonable projection of expected CIAC and related tax effect. It is very costly and time consuming to project future above and below the line income. Such projections are not necessary to evaluate the need to gross-up. Rather, the impact of actual tax return information experienced in the future can be handled in the annual gross-up reports filed with the Commission. ,
II,E,1	No specific requirement should be imposed. As noted above, the company should provide historic data plus an estimate of future CIAC and the tax effect. Any additional information should be provided at the option of the utility in order to make its case for the need to gross-up.
III,A,1(a)	No. Project specific gross-up would lead to charges of discrimination between developers and individual customers paying gross-up.
III,A,1(b)	No. As known, there are only approximately 21 or 22 utilities in the state which have authority to gross-up. Almost all of them are "pure" utilities and the number of companies with developer affiliates is probably very small. To avoid discrimination among contributors, all CIAC transactions with affiliates and non-affiliates should be treated the same.
III,A,1(b),(i)	They should not be treated differently.
III,A,1(c)	Possibly. It would depend on the financial condition of the company and the cumulative amount of small contributions collected each year.
III,A,1(c),(i)	On a case by case basis. If the cumulative amount of CIAC contributed by individuals is small, in relation to the total amount collected each year, it may be appropriate to waive gross-up on individual contributions.
III,A,(2)	Yes, with the approval of the Commission.
III,A,2(a)	Only if Staff and the utility are in agreement.
III,A,2(b)	Yes. However, we are aware of only one utility in the state that is using present value gross-up. All of the other companies are using the full gross-up method and would have no basis on which to increase gross-up. Therefore, this issue appears to have very limited applicability.

Notice/ Issue Reference	Position
III,B,2	First year's depreciation should be based on the new depreciation shown on the tax return on Form 4562, which is related to property contributions or property paid for with CIAC.
III,B,2,(i)	For consistency, whatever convention has been used on the previous years tax returns should be used.
III,B,2,(ii)	No. Again, the principal of consistency with the previous practices of the utility should be followed.
IV,B,2	Yes. This is the only basis on which the tax benefit of depreciation can be based. Any other treatment would produce a "phantom" tax benefit, which does not exist.
IV,B,2(a)	See position on Issue II,C,3(c),(i).
IV,B,2(b)	Current above the line NOL's and carryforwards should be used to reduce taxable CIAC, as is current practice. Carrybacks will have no effect, since they are either below the line or have already been used to the contributor's benefit in reducing taxable CIAC in the refund calculation.
IV,B,3	See position on Issue II,C,3(c) and Exhibit A.
IV,B,3(b)	Used and useful depreciation on invested property should be classified above the line. Non-used and useful depreciation on invested property, as well as prior year's depreciation on contributed property, should be classified below the line. To do otherwise will flow-through all the tax depreciation benefits on CIAC property to the contributor and result in discrimination. See Exhibit B.
IV,B,3(b),(i)	First year's depreciation on contributed property or assets constructed with contributed cash should be used to reduce taxable CIAC and the amount of gross-up required. This treatment gives the tax benefit of first year's depreciation to the contributor, in accordance with the findings of the Commission in Order No. 23541.
IV,B,3(b),(ii)	Subsequent year's depreciation on contributed assets should be classified below the line. Such treatment results in non-discriminatory treatment among contributors and preserves the benefits of such depreciation for the rate payers. See Exhibit B for an illustrative example.
IV,B,3(b),(iii)	The tax return is the primary source of this information. However, Staff also needs to look to the company's financing practices. For example, property contributions almost always show up on the tax return, if they are in service by the end of the tax year. However, cash CIAC is often used to service debt and is not converted to assets. The Annual

Notice/ Issue Reference	Position
IV,B,3(b),(iii) (cont.)	Report is the least reliable source of information, since it is frequently different from the depreciation schedule used to prepare the tax return.
IV,B,3,C	This issue is puzzling. All differences between book and tax are shown on Schedule M-1 of the return. Generally, these timing differences relate to depreciation and amortization of CIAC, meter fees, and CIAC as revenue. The book treatment is not relevant, since we are dealing with an analysis of the tax return and a determination of the tax effects applicable to CIAC and gross-up.
IV,B,3(c),(i)	This cost should be treated as a below the line expense, consistent with the treatment of this expense in cost of service proceedings.
IV,B,3(c),(iii)	The state emergency excise tax should be classified as a below the line item, consistent with rate making treatment in cost of service proceedings. To our knowledge, state emergency excise taxes have never been allowed in the cost of service tax provision, since they are based on accelerated depreciation.
IV,B,3(d)	Meter fees, guaranteed revenues, AFPI, and non-utility revenues should be classified below the line. This is consistent with the treatment of such revenue in cost of service proceedings.
IV,B,3(e)	Yes. See Exhibit A.
IV,B,3(f)	Yes. See Exhibit A.
IV,B,3(g)	When the utility is sold to a governmental entity, the gain or loss should be classified as a below the line item, consistent with the Commission's lack of jurisdiction on such sales. We assume that this issue relates to the sale of a utility to a governmental entity and that the utility ceases to be regulated. In those extremely infrequent instances where a utility sells an operating system and continues to be regulated by the Commission, the treatment of the gain or loss in a cost of service proceeding should be followed. We are not aware of any instance where this is applicable to any of the companies currently grossing-up.
IV,B,3(g),(i)	The gain or loss should be net of tax and, in almost all cases, will be below the line for the reasons set forth above in response to Issue IV,B,3(g).
IV,C,1	Yes, but a specific amount cannot be specified. Any decision needs to be case-specific and based on the circumstances. For example, a \$500 refund is generally inappropriate. However, if that \$500 refund only goes to 2 contributors, then it would be hard to justify not making a refund.



Notice/ Issue Reference	Position
IV,C,2	Uneconomic cash refunds should be credited to CIAC, in accordance with past Commission practice in gross-up refund and rate case proceedings.
IV,F	Refunds should not normally be made to rate payers. The refunds belong to the original contributor. In the case of a defunct developer, in which there is no successor in interest, a refund to the home buyers/rate payers may be appropriate.
IV,G	The Commission should verify refunds in a cost efficient and expeditious manner. This can be accomplished through a desk audit of the information filed by a utility concerning the refund. Such information would consist of a list of all persons receiving a refund, the amount of refund and interest refunded, computation of interest, and copies of the checks sent to each contributor. We see no need to provide copies of the front and back of cleared checks to verify that a refund was made. If, for some reason, Staff desires to see cleared checks, this should be done on sample basis only.
IV,H and IV,H,1	Unclaimed gross-up refunds should be treated as all other unclaimed refunds. As known, rate case refunds which remain unclaimed are not turned over to the State as abandoned property, but are credited to CIAC.
IV,I	The refund of CIAC gross-up should have no effect on the calculation of subsequent refunds. Such refund amounts should be treated as a below the line expense which would not effect subsequent refund calculations.
V,A,1	Yes. Such costs normally are bank charges which are part of the cost of maintaining an escrow account. Such charges are usually immaterial in relationship to the total escrow account balance.
V,A,2	No. Currently, companies may withdraw escrow account funds to make quarterly estimated tax deposits without Commission approval. The only other withdrawals that are made are transfers to the operating account upon issuance of a Commission Refund Order. We see no reason to obtain pre-approval of the Commission to withdraw funds to make quarterly tax deposits or comply with a Refund Order.
V,C	Companies should be required to keep bank statements of the escrow account and to be able to show the amount of deposits, interest, withdrawals, and ending balance each year.
V,C,1	We have no objection to providing the Commission with documentation that an interest-bearing escrow account has been opened.

Notice/ Issue Reference	Position
V,D and V,E	The information relating to the escrow account is currently a requirement of the report on gross-up collections and proposed refunds filed annually with the Commission. Presumably, the Commission has the right to audit the escrow account at any time.
V,F	The utility is responsible for making the refunds determined by the Commission, regardless of where the funds will come from. In the unlikely event that there is a shortage in the escrow account, for refund purposes, the company's other cash resources must be used to make the refund.
VI,C	Under the normalization method of accounting prescribed by the Commission for gross-up, three balance sheet accounts are created. First, a deferred tax asset is created to recognize the tax effect of CIAC treated as income on the tax returns. The second account is contributed taxes which represents the net unamortized balance of all gross-up collected. In a rate case, the deferred tax asset and contributed tax account will offset each other and have no effect on cost of service.  The third account arising from gross-up is a deferred tax liability which recognizes the tax effect of accelerated and CIAC depreciation on the tax return. In a rate case, this balance will be recognized as zero cost capital in the capital structure.  An alternative to treating the deferred tax liability as cost-free capital is available which also gives the benefit of gross-up collections to the rate payer. As mentioned above, the contributed tax account reflects all gross-up collected, net of any refunds ordered by the Commission. This account, like CIAC, will not self-amortize. If this account is amortized over the life of utility assets, the resulting income could be classified above the line, thus reducing the revenue requirement.  In summary, we believe that in rate cases, the effect of gross-up should either be recognized as zero cost capital, or the amortization of contributed taxes should be treated as above the line income for the benefit of the rate payer.
VI,C,1	Only above the line NOL's should be used to reduce taxable CIAC, thus benefitting the contributor. NOL's in past rate cases have never received any rate case recognition. To the extent a company has had NOL's which would cause a utility not to pay any income tax, no provision for income tax has been included in cost of service. We do not understand the reference to past rate cases in this issue.
VII,A	See Exhibit C.
VII,A,1	See Exhibit C.

Notice/ Issue Reference	Position
VII,A,2	See Exhibit C.
VII,A,3	See Exhibit C.
VII,B	Yes. Non-grossed-up CIAC should be identifiable in the company's books and records.
VIII,C	The gross-up should not be combined with service availability charges to result in one charge. Such treatment would unduly complicate accounting for gross-up, since it would need to be separated for potential refund purposes and accounting under the normalization method.
VIII,D	Yes. It would make sense to look at refunds every three to five years. However, a contributor, in any given year, may not want to wait this long to receive a potential refund.

Commission Workshop on CIAC Gross-up  
Basic Principles Used to Determine Above and Below the Line  
Treatment of Revenue and Expense on a Utility's Tax Return

Since 1987, my firm has used the principles set forth below to determine above and below the line taxable income or loss in the preparation of gross-up refund reports for our clients. The Commission has generally accepted these principles in the refund orders issued for our gross-up clients. I believe these principles are in accordance with the intent of Order No. 23451, dealing with jurisdictional net operating losses.

1. The aim of above the line and below the line classification is to compute, as close as is practical, net taxable income or loss on a regulated basis, consistent with a utility's last rate case and Commission policy and practices used to determine cost of service on a jurisdictional basis.
2. Above the line items are those types of revenues and expenses reported on the tax return which have been recognized by the Commission in a company's previous cost of service (rate) proceeding and, thus, are imbedded in a utility's service rates. This treatment is necessary since the taxable operating revenues realized through such rates provides recovery only of those previously approved expenses. To do otherwise would violate the basic accounting principle of the "matching concept."
3. The amount of expenses qualifying for above the line classification should reasonably relate to the amounts allowed in a company's last rate case, or amounts which would reasonably be expected to be approved in service rates, if a utility were in a current rate proceeding before the Commission.
4. Below the line items are those revenues and expenses which have not been recognized in a previous cost of service proceeding in kind or amount, and are not imbedded in the company's rates. Thus, the taxable revenue realized is not providing recovery of such expenses.
5. The amount of expenses qualifying for below the line classification consists of actual expenditures for items not considered or disallowed in a company's last rate case. Also, expenses unreasonably in excess of previously allowed expenses would qualify for below the line treatment, if such excess expenses would reasonably be expected to be disallowed in a current rate proceeding before the Commission.

Exhibit A  
R. C. Nixon  
Cronin, Jackson, Nixon & Wilson, CPA's

Comparison of Gross-up Refund Computations  
Current Staff Proposal vs. Existing Practice per Order No. 23541

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
<b>Current Staff proposal</b>							
Above the line taxable income before CIAC and tax depreciation on CIAC	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000
<b>Depreciation on taxable CIAC:</b>							
Year 1	18,750	36,095	33,385	30,885	28,565	26,425	24,400
Year 2		18,750	36,095	33,385	30,885	28,565	26,425
Year 3			18,750	36,095	33,385	30,885	28,565
Year 4				18,750	36,095	33,385	30,885
Year 5					18,750	36,095	33,385
Year 6						18,750	36,095
Year 7							18,750
	<u>18,750</u>	<u>54,845</u>	<u>88,230</u>	<u>119,115</u>	<u>147,680</u>	<u>174,105</u>	<u>198,505</u>
Adjusted taxable income (loss) before CIAC	31,250	(4,845)	(38,230)	(69,115)	(97,680)	(124,105)	(148,505)
Taxable CIAC	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>
Adjusted above the line taxable income	<u>\$ 531,250</u>	<u>\$ 495,155</u>	<u>\$ 461,770</u>	<u>\$ 430,885</u>	<u>\$ 402,320</u>	<u>\$ 375,895</u>	<u>\$ 351,495</u>
Net taxable CIAC	<u>\$ 481,250</u>	<u>\$ 481,250</u>	<u>\$ 461,770</u>	<u>\$ 430,885</u>	<u>\$ 402,320</u>	<u>\$ 375,895</u>	<u>\$ 351,495</u>
Marginal tax rate	<u>0.3763</u>	<u>0.3763</u>	<u>0.3763</u>	<u>0.3763</u>	<u>0.3763</u>	<u>0.3763</u>	<u>0.3763</u>
Tax on CIAC	<u>181,094</u>	<u>181,094</u>	<u>173,764</u>	<u>162,142</u>	<u>151,393</u>	<u>141,449</u>	<u>132,268</u>
Factor for gross-up	<u>1.6033</u>	<u>1.6033</u>	<u>1.6033</u>	<u>1.6033</u>	<u>1.6033</u>	<u>1.6033</u>	<u>1.6033</u>
Gross-up required for tax effect	290,349	290,349	278,596	259,962	242,728	226,786	212,065
Actual gross-up collected (\$500,000 x .6033)	<u>301,650</u>	<u>301,650</u>	<u>301,650</u>	<u>301,650</u>	<u>301,650</u>	<u>301,650</u>	<u>301,650</u>
Refund required per Staff	<u>\$ 11,301</u>	<u>\$ 11,301</u>	<u>\$ 23,054</u>	<u>\$ 41,688</u>	<u>\$ 58,922</u>	<u>\$ 74,864</u>	<u>\$ 89,585</u>
<b>Existing practice</b>							
Taxable CIAC	<u>\$ 500,000</u>	<u>\$ 500,000</u>	<u>\$ 500,000</u>	<u>\$ 500,000</u>	<u>\$ 500,000</u>	<u>\$ 500,000</u>	<u>\$ 500,000</u>
First year depreciation on CIAC	<u>(18,750)</u>	<u>(18,750)</u>	<u>(18,750)</u>	<u>(18,750)</u>	<u>(18,750)</u>	<u>(18,750)</u>	<u>(18,750)</u>
Net taxable CIAC	481,250	481,250	481,250	481,250	481,250	481,250	481,250
Marginal tax rate	<u>0.3763</u>	<u>0.3763</u>	<u>0.3763</u>	<u>0.3763</u>	<u>0.3763</u>	<u>0.3763</u>	<u>0.3763</u>
Tax on CIAC	<u>181,094</u>	<u>181,094</u>	<u>181,094</u>	<u>181,094</u>	<u>181,094</u>	<u>181,094</u>	<u>181,094</u>
Factor for gross-up	<u>1.6033</u>	<u>1.6033</u>	<u>1.6033</u>	<u>1.6033</u>	<u>1.6033</u>	<u>1.6033</u>	<u>1.6033</u>
Gross-up required for tax effect	290,349	290,349	290,349	290,349	290,349	290,349	290,349
Actual gross-up collected	<u>301,650</u>	<u>301,650</u>	<u>301,650</u>	<u>301,650</u>	<u>301,650</u>	<u>301,650</u>	<u>301,650</u>
Refund required	<u>\$ 11,301</u>	<u>\$ 11,301</u>	<u>\$ 11,301</u>	<u>\$ 11,301</u>	<u>\$ 11,301</u>	<u>\$ 11,301</u>	<u>\$ 11,301</u>

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Exhibit B  
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Exhibit B  
R. C. Nixon  
Cronin, Jackson, Nixon & Wilson, CPA's

Comparison of Gross-up Refund Computations  
Current Staff Proposal vs. Existing Practice per Order No. 23541

I. Assumptions

1. Company has average above the line taxable income of \$50,000 before depreciation on taxable CIAC.
2. Company receives \$500,000 of depreciable CIAC in each of the next seven years.
3. CIAC is depreciated using MACRS 20-year rate with half-year convention.
4. Marginal tax rate is 37.63 percent.

II. Observations and Conclusions

1. Staff proposal is a flow-through method. Not only first year's tax depreciation on CIAC, but all depreciation benefits on CIAC are utilized in the same way (above the line) to benefit contributors of CIAC rather than rate payers.
2. Contributors in Year 1 receive a refund of \$11,301, while those in Year 7 receive a refund of \$89,585, due solely to the flow-through of the tax benefits of depreciation on prior years' CIAC. The Staff proposal is clearly discriminatory between contributors and between years.
3. Giving the contributors the tax benefits of depreciation through increased gross-up refunds would invalidate the normalization process which returns such tax benefits (exclusive of those on first year depreciation) to the rate payor. See accompanying journal entries for accounting for full gross-up (Exhibit C).
4. Contributor receives a windfall under Staff proposal. First, contributor (developer) recovers CIAC and gross-up in the price of homes sold and a tax deduction (benefit) on his return. This conclusion was reached on Page 21 of Order No. 23541 and is reiterated on Page 18 of Commission Order No. PSC-93-1207-FOF-WS in the Gulf Utility Company case and on Page 28 of the Commission's Appellate Brief in that case currently pending before the First District Court of Appeal. Second, the Developer recovers depreciation benefits on his contribution and on the contributions of contributors from previous years.
5. Under the current Staff proposal, the contributors, in the long run, get the tax benefit twice. Once in the write-off of the price of the homes sold, and secondly, through the refund of those gross-up monies as depreciation accrues. Since there is only one tax benefit

Exhibit B  
R. C. Nixon  
Cronin, Jackson, Nixon & Wilson, CPA's

Comparison of Gross-up Refund Computations  
Initial Staff Proposal vs. Existing Practice per Order No. 23541

available to be passed on, either through the flow through to the contributors or normalization to the general body of rate payers, the general body of rate payers effectively pay twice. Once in the price of their homes, and again through the failure to obtain the normalized depreciation benefits. The benefit can go either to the rate payers, as required in Commission Order No. 23541, or to the contributors, but not to both groups.

6. The existing normalization practice required by Order No. 23541 is non-discriminatory. All contributors are treated equally year-in and year-out.

Exhibit B  
R. C. Nixon  
Cronin, Jackson, Nixon & Wilson, CPA's

Accounting Entries for Full Gross-up  
In Accordance with Order No. 23541 and FASB 109

Assumptions:

1. \$100,000 of depreciable CIAC received.
2. \$60,333 of gross-up received, marginal state and federal rate of 37.63 percent.
3. The \$60,333 of gross-up represents the following:

State and federal tax on CIAC (\$100,000 x .3763)	\$37,630
Tax on tax effect of gross-up (\$60,333 x .3763)	<u>22,703</u>
 Total gross-up	 <u>\$60,333</u>
4. Twenty-year ACRS, half-year convention, tax depreciation rate.
5. Forty-year straight line book depreciation and amortization rate for CIAC.
6. No CIAC or other income received in Year 2 or subsequent years.

Journal entries:

<u>Year 1</u>	<u>Debit</u>	<u>Credit</u>
1. Cash (CIAC tax escrow)	\$ 60,333	
Contributed plant	100,000	
CIAC		\$100,000
Contributed taxes		60,333
To record receipt of CIAC and gross-up		
2. Deferred tax asset (tax on CIAC and gross-up)	60,333	
Deferred tax expense (current benefit)		60,333
To record deferred tax on CIAC and gross-up		
3. Contributed taxes	22,703	
Deferred tax asset		22,703
To adjust tax on tax effect in current year		
4. Income tax expense (\$60,333 - \$2,262)	58,071	
Contributed taxes (\$100,000 x .0375 x .3763)	1,411	
Deferred tax expense (current provision)		
(\$2,262 x .3763)	851	
Income tax payable		58,071
Contributor refund payable		2,262
To record current expense and refund due to contributor		

Exhibit C  
R. C. Nixon  
Cronin, Jackson, Nixon & Wilson, CPA's



Accounting Entries for Full Gross-up  
In Accordance with Order No. 23541 and FASB 109

Journal entries:

<u>Year 1</u>	<u>Debit</u>	<u>Credit</u>
5. Deferred tax expense (current provision) Deferred tax asset To record current year reversal of deferred tax asset (\$100,000 x 2.5% x .3763)	\$ 940	\$ 940
6. Deferred tax expense (current provision) Deferred tax liability (\$1,411 - \$940) To record tax effect of book/tax timing difference - depreciation	471	471
7. Contributed taxes (\$36,219/40) Amortization of contributed taxes To record amortization of contributed taxes to income over the life of contributed asset	905	905
8. Income tax payable Contributor refund payable Cash (CIAC tax escrow) To record payment of taxes and contributor refund	58,071 2,262	60,333

Year 1 Tax Provision

Income tax expense	\$ 58,071	Current payable
Deferred tax expense (benefit)	(59,482)	Tax on CIAC and gross-up
Deferred tax expense	940	Tax effect of
		amortization of CIAC
Deferred tax expense	471	Tax effect of book/tax
	<hr/>	depreciation difference
Net tax provision	\$ -	
Year 1 benefit to rate payor	<u>\$ 905</u>	Above the line income - amortization of contributed taxes (Note 1)

Exhibit C  
R. C. Nixon  
Cronin, Jackson, Nixon & Wilson, CPA's

Accounting Entries for Full Gross-up  
In Accordance with Order No. 23541 and FASB 109

Journal entries:

<u>Year 2</u>	<u>Debit</u>	<u>Credit</u>
1. Income tax refund receivable (\$100,000 x .07219 x .3763) Income tax expense (benefit) To record current tax expense (benefit)	\$ 2,717	\$ 2,717
2. Deferred tax expense (current provision) Deferred tax asset To record second year reversal of deferred tax asset (\$100,000 x 2.5% x .3763)	940	940
3. Deferred tax expense (current provision) Deferred tax liability (\$2,717 - 940) To record second year tax effect of book/tax timing difference - depreciation	1,777	1,777
4. Contributed taxes (\$36,219/40) Amortization of contributed taxes To record second year amortization of contributed taxes to income	905	905
5. Cash Income tax refund receivable To record receipt of tax refund Note: Assuming no other income, the Company could only carryback losses for three years	2,717	2,717

Year 2 Tax Provision

Income tax expense (benefit)	\$ (2,717)	Refund receivable
Deferred tax expense	940	Tax effect of CIAC amortization
Deferred tax expense	1,777	Tax effect of book/tax depreciation difference
<b>Net tax provision</b>	<b>\$ -</b>	
<b>Year 2 benefit to rate payor</b>	<b>\$ 905</b>	Above the line income - amortization of contributed taxes (Note 1)

Note (1): Under this method of normalization, receipt of taxable CIAC has no impact on the jurisdictional book tax provision. Cost of service is reduced by above the line amortization of contributed taxes or a net deferred tax liability, which would be recognized as zero cost capital in a rate proceeding.

Exhibit C  
R. C. Nixon  
Cronin, Jackson, Nixon & Wilson, CPA's

**EXHIBIT RCN-12**

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

M E M O R A N D U M

April 18, 1996

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

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

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

AGENDA: APRIL 30, 1996 - REGULAR AGENDA - PROPOSED AGENCY ACTION  
 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\960397.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 10, 1990.

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 Page 1 of 9  
 FPSC-RECORDS/REPORTING

DOCKET NO. 960397-WS  
DATE: APRIL 18, 1996

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. Then 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.

For the last year, several applications for gross-up authority and refund calculations have been held up pending the outcome of the Commission Workshop on CIAC Gross-up. Staff is now seeking guidance on how to proceed on those pending applications.

At the Commission Workshop on November 29, 1995, the utilities proposed an alternate plan for the treatment of CIAC Gross-up and staff is considering this plan. If staff does agree to recommend a change, the issue to be addressed is how does the change affect all gross-up to date. Specifically, may the pending refunds be calculated or handled by using this new methodology.

DOCKET NO. 960397-WS

DATE: APRIL 18, 1996

### DISCUSSION OF ISSUES

ISSUE 1: Should the Commission's policy concerning the collection and refund of CIAC gross-up be revisited?

RECOMMENDATION: Yes, the Commission's policy concerning the collection and refund of CIAC gross-up should be revisited. (MCCASKILL, CAUSSEAU)

STAFF ANALYSIS: By Order No. 16971, issued December 18, 1986, the Commission granted approval for water and wastewater utilities to amend their service availability policies to meet the tax impact on contributions-in-aid-of-construction (CIAC) resulting from the amendment of Section 118(b) of the Internal Revenue Code. This order also contained a gross-up formula. Order No. 23541, issued October 1, 1990, after a formal hearing, ordered utilities currently grossing-up CIAC to file a petition for continued authority to gross-up and also ordered that no utility may gross-up CIAC without first obtaining the approval of this Commission. The order stated that at a minimum, each utility should be able to demonstrate that a tax liability existed and that sources of funds were not available at a reasonable cost. Further, the order stated that a utility may demonstrate such need by filing the following information: (1) Demonstration of an actual tax liability on a regulated, above-the-line basis, (2) Cash flow statement, (3) Statement of Interest Coverage, (4) Statement of Alternative Financing, (5) Justification for Gross-up, (6) Gross-up Method Selected (full gross-up or net present value) and (7) Proposed Tariffs. Order No. 23541 also modified the gross-up formula contained in Order No. 16971. Both orders prescribed the accounting and regulatory treatments for the gross-up and ordered that CIAC tax impact monies received during the tax year that were in excess of the actual amount of tax expense that was attributable to the receipt of the CIAC, together with interest earned on such excess monies held in the CIAC Tax Impact Account, must be refunded on a pro rata basis to the parties which made the contribution and paid the tax impact amounts during the tax year. In addition, Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, clarified the provisions in Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of contributions-in-aid-of-construction.

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

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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. Processing of CIAC gross-up dockets have been held in abeyance pending resolution of these issues.

The first 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 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 tend to agree that a gross-up of CIAC is necessary, opinions differed as to its application.

Mr. Paul Freeman of Southwest Florida Capital Corporation, a developer, believes that if a gross-up is allowed, the net present value method should be used because the ratepayer is whole and the developer is paying the actual cost of the contribution. Mr. Robert Nixon, on behalf of the Florida Waterworks Association and several utilities currently utilizing or interested in the Commission's policy on gross-up of CIAC submitted a proposal in which the full gross-up method is used. This proposal is currently under review by staff.

Under this proposal, refunds to contributors, annual reporting, and the gross-up escrow account (all of which are required by Order No. 23541) are eliminated. In addition, it is proposed that applications to gross-up should be liberally granted;

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that 100% of gross-up is returned to the general body of ratepayers; and that a method of accounting be adopted which does the following: (1) Contributed taxes are amortized to above-the-line income as a direct benefit to ratepayers. (Contributed tax amortization increases operating income and decreases revenues); (2) Has no impact on rate base, balance sheet, or income statement over the useful life of contributed assets; (3) The tax benefits to the utility are equal to the benefits given back to the ratepayers and (4) The deferred tax liability is treated as zero cost capital.

Staff believes that consistent with the purpose of Orders Nos. 16971 and 23541, any gross-up method employed should enable utilities to meet the tax impact resulting from the inclusion of CIAC in gross income. The majority of the workshop participants believe that while each utility should make its own decision on whether to gross-up and the method to use (full gross-up, Net present value gross-up, or no gross-up), full gross-up would best enable utilities to meet the tax impact of CIAC. However, because of differing interpretations of Orders Nos. 16971 and 23541 and their application, staff believes that if a gross-up is allowed, one of the major issues to be resolved is what accounting and regulatory treatment for the gross-up would achieve the purpose of Orders Nos. 16971 and 23541. More importantly, staff believes that if a tax liability is created, it should be determined what adjustments are made to income to calculate the tax liability (offsetting of above-the-line NOLs and ITCs with CIAC income) and also, it should be determined if refunds of excess collections of gross-up should be required.

Based on the above, staff recommends that the Commission's policy concerning the collection and refund of CIAC gross-up should be revisited to determine what changes, if any, should be made to accomplish the intended purpose of CIAC gross-up as established in Orders Nos. 16971 and 23541. In addition, staff will consider ways to simplify the process and viable alternatives to the gross-up. Upon staff's completion of its review of the proposals and comments offered by the workshop participants, staff will make a recommendation to the Commission concerning whether the Commission's current policy regarding the collection and refund of CIAC gross-up should be changed.



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ISSUE 2: Pending a change in policy, if any, should all CIAC gross-up cases continue to be processed under the provisions of Orders Nos. 16791 and 23541?

RECOMMENDATION: Yes, based on the principle of administrative finality, any change to the policy set out in those orders should be made prospectively. Therefore, any current CIAC gross-up cases, or any CIAC gross-up cases filed prior to any change in policy, should be processed under the provisions of Orders Nos. 16791 and 23541. (JAEGER)

STAFF ANALYSIS: Order No. 23541 was issued October 1, 1990, after a formal hearing. That order concluded that gross-up amounts collected in excess of a utility's actual tax liability resulting from its collection of contributions-in-aid-of-construction (CIAC) shall be refunded on a pro rata basis to the contributors of those amounts. In the body of the order, actual tax liability was to be calculated using above-the-line net operating losses (NOLs) and investment tax credits (ITCs). All orders granting the authorization for gross-up appear to expressly refer to Orders Nos. 16971 (this order referred to actual tax amount of tax expense) and 23541, and all matters in these two orders were expressly incorporated therein in any orders granting gross-up authority.

|| The Commission does not have a rule on the appropriate method to calculate gross-up of CIAC, a rule on how to determine if gross-up authority is warranted, nor a rule to determine how refund of gross-up should be calculated. The Commission has, however, developed incipient policy for all of these determinations by the issuance of the above-referenced orders. In Southern Bell Telephone and Telegraph Co. v. Florida Public Service Commission, 443 So. 2d 92 (Fla. 1983), the Florida Supreme Court considered the emerging policy of the Commission as to whether to allow charitable contributions as expenses and noted that there was some inconsistency between 1977 and 1981. However, the Court concluded that although rulemaking might have been better, the Commission is not required to institute a rulemaking proceeding every time a new policy is developed, and that the change in policy did not amount to an arbitrary or capricious act.

Also, Subsections 120.535(1)(a)1. and 2., Florida Statutes, recognize that where the agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking, or where matters are not sufficiently resolved to enable the agency to address a statement by rulemaking, then rulemaking may not be "feasible and practicable." From the Case Background and the additional history set out in Issue 1 above, the Commission has shown, through the

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issuance of Orders Nos. 16971 (issued December 18, 1986), 23541 (issued October 1, 1990), and PSC-92-0961-FOF-WS (issued September 9, 1992), and many other orders, and, also, through its workshops held on August 30, 1995 (a staff workshop), and November 29, 1995 (a full Commission workshop), that matters were neither sufficiently resolved, nor had the Commission gathered sufficient knowledge and experience to address the issue of CIAC gross-up in rulemaking. Staff now believes that the Commission has gathered such knowledge and experience.

However, pending the final outcome of any rulemaking process, staff faces the question of how to process the current CIAC gross-up cases that are either already filed or will be filed prior to the issuance of any rule. For the collection of any gross-up of CIAC to date, Orders Nos. 16971 and 23541 were and still are in effect, and specifically require that all gross-up in excess of the liability related to the collection of CIAC be refunded. Pursuant to the principle of administrative finality, orders of administrative agencies, like the courts, must eventually pass out of the agency's control and become final and no longer subject to modification. However, the courts have recognized that administrative agencies do have inherent power to reconsider final orders which are still under their control, but such inherent authority to modify is a limited one. See, Peoples Gas System v. Mason, 187 So. 2d 335, (Fla. 1966). The Florida courts do recognize that administrative agencies decide issues according to a public interest that often changes with time and so do allow the agencies a very limited ability to modify based on this public interest. However, Orders Nos. 16971 and 23541 were issued over five years ago, and have long since passed from this Commission's control (in Peoples Gas, four years was too long).

Also, while rules may be given retroactive effect in some circumstances, it is generally allowed only where the rule embodies previously established policy. See, Upjohn Healthcare Services, Inc. v. Dept. of Health and Rehabilitation Services, 496 So. 2d 147 (Fla. 1st DCA 1986); and, Jordan v. Dept. of Professional Regulation, 422 S. 2d 450 (Fla. 1st DCA 1988). In the case at hand, the Commission has stated that the funds collected over and above the actual tax liability shall be refunded. Therefore, until the policy is established otherwise, any new rule should be applied prospectively only.

Although the Commission may change its policy, staff recommends that any change from the procedures set out in Order No. 23541 should be prospective only. To now change the policies, and allow the utility to keep all of the CIAC gross-up without regard to the effect of the above-the-line NCLs and ITCs would go against

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Order No. 23541. When the contributors made their contributions, Order No. 23541 was in effect and any payment or contribution of gross-up was made with those restrictions and requirements validly in place. Therefore, it would not appear to make any difference whether the order requiring refunds for any particular utility has already been issued. Orders Nos. 16971 and 23541 affect all those that have applied (and will continue to affect any future applications) until the policy of offsetting the tax effect with above-the-line NOLs and ITCs is officially changed - whether by order or adoption of a rule.

Based on all of the above, staff recommends that, until the Commission indicates its change in policy, the requirements of Orders Nos. 16971 and 23541 should be met in the collection of CIAC gross-up and the ordering of refunds. Although the Commission may change this policy, staff believes that any such change should be made prospectively only. Therefore, staff recommends that all pending CIAC gross-up cases, and any such cases filed prior to any change in policy, if there is a change, should continue to be processed pursuant to Orders Nos. 16971 and 23541. Any change, if and when finally approved, should be effective for cases filed from that point forward.

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DATE: APRIL 18, 1996

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open pending a final determination on a change in policy, if any. (JAEGER)

STAFF ANALYSIS: Staff is currently reviewing the Commission's policy on the collection and refund of CIAC gross-up in conjunction with proposals and comments received at the Commission workshops. Upon completion of its review, staff will make a recommendation concerning a change in policy, if any. Therefore, this docket should remain open pending a final determination in this matter.

**EXHIBIT RCN-13**

North Ft. Myers Utility, Inc.  
 Analysis of Above the Line (ATL) and Below the Line (BTL) Treatment of Operating Expenses in Gross-up Reports  
 Before and After Staff Change in Policy in 1996 (1)

Gross-up Reporting Year	Company/Expenses	Before Staff Change in Policy - Pre-1996					After Staff Change in Policy - Post-1995				
		Amount BTL in Co. Gross-up Report	ATL in Company Annual Report	BTL in PSC Order	PSC Order No.	Exhibit Reference	Amount BTL in Co. Gross-up Report	ATL in Company Annual Report	BTL in PSC Order	PSC Order No.	Exhibit Reference
<b>Dec. 31,</b>											
	<b>Eagle Ridge Utilities, Inc.</b>										
1992	Engineering, Mgmt. fees, Loss on retirement	\$ 38,114	Yes	Yes	PSC-94-0448-FOF-SU 04/13/94	A					
1993	Management fees						\$ 15,000	Yes	No (2)	PSC-96-1394-FOF-SU	B
1994	Management fees						15,000	Yes	No (2)	11/20/96	
	<b>Forest Utilities, Inc.</b>										
1990	Office salaries						4,800	Yes	No (3)	PSC-97-0007-FOF-SU	C
1991	Office salaries						9,675	Yes	No (3)	01/02/97	
1992	Office salaries						28,241	Yes	No (3)	-	
	<b>Aloha Utilities, Inc.</b>										
1990	Officers' salaries	112,338	Yes	Yes	PSC-94-0444-FOF-WS	D					
1991	Officers' salaries	78,838	Yes	Yes	01/12/95						
1992	Officers' salaries	82,498	Yes	Yes	-						
1993	Officers' salaries						35,847	Yes	No	PSC-98-0319-AS-WS	E
1994	Officers' salaries						35,847	Yes	No	02/23/98	
1995	Officers' salaries, Pension						78,380	Yes	No	-	
	<b>Gulf Utility Company</b>										
1987	Pension, Director's fees, Misc., Trans.	44,642	Yes	Yes	PSC-93-0871-FOF-WS	F					
1988	Pension, Director's fees, Misc., Trans.	51,849	Yes	Yes	06/09/93						
1989	Transportation, Miscellaneous	25,028	Yes	Yes	-						
1990	Salaries, Contract Svcs., Trans., Misc.	49,665	Yes	Yes	-						
1991	Salaries, Contract Svcs., Trans., Misc.	39,476	Yes	Yes	-						
1992	Miscellaneous, Engineering						24,688	Yes	Yes	PSC-96-1626-FOF-WS	G
1993	Engineering, Meals, Amortization						14,058	Yes	Yes	12/07/98 (Note 4)	
1994	Amortization, Meals & Entertainment						10,988	Yes	Yes	-	
1995	Amortization, Meals & Entertainment						11,299	Yes	Yes	-	
1996	Officer's salary, Amortization, Meals & Entertainment, Chemicals						119,208	Yes	Yes	-	
<b>May 31,</b>											
	<b>North Ft. Myers Utility, Inc.</b>										
1991	Engineering, Testing, Officer's salary, Prof. fees, Travel, Amortization	526,459	Yes	Yes	PSC-94-0443-FOF-SU	H					
1992	Engineering, Testing, Security, Acctg., Legal, Travel, Officer's salary, Amort.	613,141	Yes	Yes	04/13/94						
1993	Engineering, Testing, Officer's salary, Accounting, Legal, Travel, Amort.						475,123	Yes	Yes	PSC-97-0062-FOF-SU	I
1994	Engineering, Testing, Officer's salary, Accounting, Legal, Travel, Amort.						578,392	Yes	Yes	01/17/97 (Note 5)	

Exhibit RN-12

North Ft. Myers Utility, Inc.  
Analysis of Above the Line (ATL) and Below the Line (BTL) Treatment of Operating Expenses in Gross-up Reports  
Before and After Staff Change in Policy in 1996 (1)

Notes: (1) Prior to 1996, Staff and Commission policy, as reflected in Orders disposing of gross-up, was to allocate operating expenses ATL or BTL on a cost of service basis. This was consistent with Order No. 23451, to determine, as nearly as possible, the jurisdictional net operating losses (NOLs) on the tax returns, on a stand alone basis.

This procedure was complicated and unwieldy, since each gross-up refund filing amounted to a "mini" rate case. This difficulty was recognized in Docket No. 960397-WS in the Notice of Workshop issued August 4, 1995. Although two workshops were held, no official decisions were made and the Docket was closed in 1996. At about the same time, Staff began a new policy which greatly simplified their analysis of NOLs for gross-up purposes. Under this policy, all expenses reported in the Annual Reports ATL were used as a substitute for determining ATL expenses on the tax returns for gross-up purposes.

The purpose of this schedule and supporting information is to demonstrate that a change in policy and practice actually occurred.

(2) Eagle Ridge first learned of the change in Staff policy in a letter dated February 15, 1996, showing Staff's calculation of refunds.

(3) Staff's original calculation of refund was in accordance with policy prior to 1996. See letter and calculation (Exhibit C) from Ms. Jena Price dated February 28, 1994. However, no action on these refunds was taken until 1996, when refunds for 1993 to 1995 were also considered. By a letter dated October 22, 1996 (Exhibit C), the new Staff policy is stated for the first time for Forest Utilities, Inc.

(4) Even though policy changed for most gross-up reports processed after 1995, Gulf's Order contained a number of BTL expenses which were classified above the line for Annual Report purposes.

(5) Every gross-up refund Order issued to date for North Ft. Myers Utility has reflected the ATL-BTL policy in effect for all companies prior to 1996.

Exhibit RCN-13  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORDER NO. PSC-94-0448-FOF-SU  
DOCKET NO. 940157-SU  
PAGE 2

In Re: Disposition of contribution-in-aid-of-construction (CIAC) gross-up funds collected by EAGLE RIDGE UTILITIES, INC. in Lee County. ) DOCKET NO. 940157-SU ) ORDER NO. PSC-94-0448-FOF-SU ) ISSUED: April 13, 1994 )

The following Commissioners participated in the disposition of this matter:

- J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER FINDING REFUND NOT REQUIRED

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

The repeal of Section 118(b) of the Internal Revenue Code resulted in making contributions-in-aid-of-construction (CIAC) gross income and depreciable for federal tax purposes. In 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.

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, and whether a refund of the gross-up is appropriate for any given year for which gross-up was in effect. 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 resulting from its

collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes.

In Order No. 23541, the Commission determined that any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue collecting the gross-up, had to file a petition for approval with the Commission on or before October 29, 1990. Eagle Ridge Utilities, Inc. (Eagle Ridge or utility) filed for authority to continue to gross-up on December 11, 1990. By Order No. 25436, issued December 4, 1991, this Commission granted Eagle Ridge authority to continue to gross-up using the full gross-up formula.

On September 9, 1992, we issued Proposed Agency Action Order No. PSC-92-0961-FOF-WS, which clarified the provisions of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992, we issued Order No. PSC-92-0961A-FOF-WS. That Order included the generic calculation form.

In compliance with Order No. 16971, Eagle Ridge filed its 1990, 1991 and 1992 annual CIAC reports regarding its collection of gross-up for each year. By letter dated January 14, 1994, our Commission Staff submitted its preliminary refund calculation numbers to Eagle Ridge.

By letter dated February 2, 1994, Eagle Ridge responded that it agreed with Staff's preliminary calculations. In addition, Eagle Ridge stated that it anticipated that the cost to refund the excess gross-up collected, which was minimal, would probably exceed the amount to be refunded; so, Eagle Ridge requested that for 1990 and 1992, it be allowed to book the refund monies to CIAC rather than making individual refunds. Using the method adopted in Order No. PSC-92-0961-FOF-WS, 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. Our decisions regarding Eagle Ridge's refunds are addressed below.

ANNUAL GROSS-UP REFUND AMOUNTS

Our calculations, taken from the information provided by Eagle Ridge in its annual gross-up reports, are reflected in Schedule No. 1, attached hereto. A summary of each year's refund calculation follows.

1990

Eagle Ridge's 1990 CIAC report indicates that it had been in a taxable position on an above-the-line basis prior to the

DOCUMENT NUMBER-DATE

03461 APR 13 94

FPSC-RECORDS/REPORTING

EXHIBIT RCN-1
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inclusion of taxable CIAC and gross-up. Therefore, all taxable CIAC received would be taxed. The report indicates that a total of \$160,401 of gross-up collections has been received, with the first year's depreciation of \$2,292 associated with \$267,198 in taxable CIAC. We used the 37.63% combined marginal federal and state tax rates, which represent the maximum combined tax rates, to calculate the tax impact. Based on the above, we calculate a refund of \$574 for 1990.

Eagle Ridge originally stated that no refund would be appropriate in its 1990 gross-up report. However, after reviewing our calculations, Eagle Ridge has agreed that a refund of \$574 is appropriate.

Eagle Ridge collected gross-up funds from 21 separate individuals or entities during 1990. We agree that the administrative costs will exceed the individual refund amounts, and we find it appropriate to allow Eagle Ridge to credit its CIAC account for the excess collections.

#### 1991

Eagle Ridge asserts that no refund for 1991 is appropriate. We agree that a refund of gross-up collections for 1991 is not appropriate. The 1991 CIAC report indicates that Eagle Ridge was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore, all taxable CIAC received would be taxed. The report also indicates that a total of \$53,950 gross-up collections has been received. No first year's depreciation was deducted because no depreciable assets were added in 1991. Taxable CIAC of \$89,960 was received. We used the 37.63% combined marginal federal and state tax rates as provided in the 1991 CIAC report to calculate the tax effect. Based on the above, we calculate that Eagle Ridge required more in gross-up to pay the tax impact than it has collected. Therefore, we find that no refund for 1991 is necessary.

#### 1992

Initially, Eagle Ridge stated that a refund of \$328 for 1992 was appropriate. Now, however, Eagle Ridge has proposed crediting CIAC for this amount since the administrative costs of making the refund will exceed the refund amount.

We have calculated a refund of gross-up collections for 1992 of \$323, excluding interest. The 1992 CIAC report indicates that Eagle Ridge was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC and gross-up. Therefore,

all taxable CIAC received would be taxed. The report indicates that a total of \$31,713 of gross-up collections has been received, with the first year's depreciation of \$564 associated with \$52,592 in taxable CIAC. We used the 37.63% combined marginal federal and state tax rates as provided in the 1992 CIAC report to calculate the tax effect. Based on the above, we calculate that Eagle Ridge has collected \$323 more in gross-up than was required to pay the tax impact.

Eagle Ridge collected the gross-up funds from 8 separate individuals or entities during 1992. We agree that the administrative costs will exceed the individual refund amounts, and we find it appropriate to allow Eagle Ridge to credit CIAC for the excess collections.

According to its 1992 annual report, Eagle Ridge is 87.23% contributed, which is in excess of the 75% maximum amount of contribution level established by Rule 25-30.580(1)(a), Florida Administrative Code. After a credit to CIAC of \$897, Eagle Ridge will be 87.27% contributed. While Eagle Ridge appears to be over contributed, we do not find that the .04% increase is material.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that Eagle Ridge Utilities, Inc., in lieu of making refunds, shall credit its contributions-in-aid-of-construction account by \$897 to reflect the total excess gross-up collections for 1990 and 1992. It is further

ORDERED the provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that, in the event no timely protest is received, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 13th day of April, 1994.

BLANCA S. BAYO, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

EMIB + RCME  
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 4, 1994.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 adversely 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.

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EAGLE RIDGE UTILITIES, INC.

CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1990	1991	1992	1993
1 Form 1120, Line 30 (Line 15)	\$ 453,125	\$ 151,885	\$ 91,798	\$ 0
2 Less CIAC (Line 7)	(267,198)	(89,960)	(52,592)	0
3 Less Gross-up collected (Line 19)	(160,401)	(53,950)	(31,713)	0
4 Add First Year's Depr on CIAC (Line 8)	2,292	0	564	0
5 Add/Less Other Effects (Lines 20 & 21)	(3,017)	(1,932)	(582)	0
6				
7 Adjusted Income Before CIAC and Gross-up	\$ 24,801	\$ 6,043	\$ 7,475	\$ 0
8				
9 Taxable CIAC (Line 7)	\$ 267,198	\$ 89,960	\$ 52,592	\$ 0
10				
11 Taxable CIAC Resulting in a Tax Liability	\$ 267,198	\$ 89,960	\$ 52,592	\$ 0
12 Less first years depr. (Line 8)	(2,292)	0	(564)	0
13				
14 Net Taxable CIAC	\$ 264,906	\$ 89,960	\$ 52,028	\$ 0
15 Combined marginal state and federal tax rate	37.63%	37.63%	37.63%	37.63%
16				
17 Net Income tax on CIAC	\$ 99,684	\$ 33,852	\$ 19,578	\$ 0
18 Less ITC Realized	0	0	0	0
19				
20 Net Income Tax	\$ 99,684	\$ 33,852	\$ 19,578	\$ 0
21 Expansion Factor for gross-up taxes	1.603334936	1.603334936	1.603334936	1.603334936
22				
23 Gross-up Required to pay tax effect	\$ 159,827	\$ 54,276	\$ 31,390	\$ 0
24 Less CIAC Gross-up collected (Line 19)	(160,401)	(53,950)	(31,713)	0
25				
26 REFUND (excluding interest)	\$ (574)	\$ 0	\$ (323)	\$ 0
27				
28				
29 TOTAL REFUND	\$ (897)			
30				

Exhibit RCW-13  
Page 6 of 124

*Cronin, Jackson, Nixon & Wilson*  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
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(813) 797-3602

September 24, 1993

Officers and Directors  
Eagle Ridge Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Eagle Ridge Utilities, Inc., consisting of Schedules No. 1 through No. 3. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended December 31, 1992, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

Exhibit RCN-13  
Page 7 of 124

Eagle Ridge Utilities, Inc.  
 Above and Below the Line Taxable Income (Loss)  
 For the Taxable Year Ended December 31, 1992  
 (Unaudited)

Line  
No.

1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (line 1c)	<u>\$ 266,814</u>
3	Deductions:	
4	Bad debts (line 15)	838
5	Taxes (line 17)	14,940
6	Depreciation (Schedule No. 3)	31,289
7	Other deductions (line 26)	<u>212,836</u>
8		<u>259,903</u>
9	Taxable income before CIAC	<u>6,911</u>
10	CIAC:	
11	Taxable CIAC (line 10)	52,592
12	Gross-up (line 10)	31,713
13	Interest on gross-up (line 5)	<u>582</u>
14		<u>84,887</u>
15	Above the line taxable income	<u>91,798</u>
16	<u>Below the line taxable income</u>	
17	Interest (line 5)	1,675
18	Other income (line 10)	<u>7,248</u>
19		<u>8,923</u>
20	Deductions:	
21	Depreciation (Schedule No. 3)	70,693
22	Other deductions (line 26):	
23	CIAC refunds	16,667
24	Contract services - engineering	21,074
25	Contract services - management fees	15,000
26	Net loss on disposition of property (line 9)	2,040
27	Interest (line 18)	<u>7,693</u>
28		<u>133,167</u>
29	Below the line taxable loss	<u>(124,244)</u>
30	Total taxable loss (line 30)	<u>\$ (32,446)</u>

31 Note: All line references are to Form 1120, Page 1, attached to this  
 32 report.

Exhibit RCN-13  
 Page 8 of 124  
 Schedule No. 2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of gross-up ) DOCKET NO. 961077-SU  
funds collected by Eagle Ridge ) ORDER NO. PSC-96-1394-FOF-SU  
Utilities, Inc. in Lee County. ) ISSUED: November 20, 1996

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION  
ORDER REQUIRING REFUNDS

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

BACKGROUND

The repeal of Section 118(b) of the Internal Revenue Code (IRC) resulted in making contributions-in-aid-of-construction (CIAC) gross income, and depreciable, for federal tax purposes. By Order No. 16971, issued December 18, 1986, this Commission authorized corporate utilities to collect a CIAC tax gross-up in order for those utilities to pay the tax liability resulting from their receipt of CIAC.

In Order No. 23541, we determined that any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue collecting the gross-up, had to file a petition for approval with the Commission on or before October 29, 1990. Eagle Ridge Utilities, Inc. (Eagle Ridge or utility), filed for authority to continue to gross-up on December 11, 1990. By Order No. 25436, issued December 4, 1991, Eagle Ridge was granted authority to continue to gross-up using the full gross-up formula.

By Orders Nos. 16971 and 23541, we required utilities which gross-up to file annually the information needed for: (1) a determination of the utility's state and federal income tax

liability directly attributable to receipt of CIAC for that year; and (2) a determination of whether a refund of gross-up charges collected during that year is appropriate. These orders required that a utility refund on a pro rata basis the gross-up charges collected each year which exceeded the utility's actual above-the-line tax liability attributable to CIAC for the same year.

By Proposed Agency Action (PAA) Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, as amended by Order No. PSC-92-0961A-FOF-WS, issued September 14, 1992, we clarified the refund calculation provisions of Orders Nos. 16971 and 23541. No protest to that PAA Order was filed, and the action taken therein became final.

On March 29, 1996, Docket No. 960397-WS was opened to review the Commission's policy concerning the collection and refund of CIAC gross-up. Workshops were held and comments and proposals were received from the industry and other interested parties. By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, we directed our staff to continue processing CIAC gross-up and refund cases pursuant to Orders Nos. 16971 and 23541; however, we also directed our staff to make a recommendation to the Commission concerning whether the Commission's policy regarding the collection and refund of CIAC should be changed upon our staff's completion of its review of the proposals and comments offered by the workshop participants.

However, on August 1, 1996, Congress passed The Small Business Job Protection Act of 1996 (The Act) and the President signed The Act on August 20, 1996. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, in Docket No. 960965-WS, Order No. PSC-96-1180-FOF-WS was issued to revoke the authority of utilities to collect gross-up of CIAC and to cancel the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Based on the above, there was no longer a need to review our policy to determine any changes and on September 16, 1996, we voted to close Docket No. 960397-WS. However, as established in Order No. PSC-0686-FOF-WS, all pending CIAC gross-up refund cases are still being processed pursuant to Orders Nos. 16971 and 23541.

Eagle Ridge is a Class B wastewater utility providing service to 606 customers in Lee County. According to its 1995 annual report, the utility reported operating revenues of \$338,486 and a net operating loss of \$53,052.

REFUND CALCULATIONS FOR YEARS 1993 AND 1994

In compliance with Orders Nos. 16971 and 23541, Eagle Ridge filed its 1993 and 1994 annual CIAC reports regarding its collection of gross-up for each year. By letter dated June 18, 1996, our staff submitted preliminary refund calculation numbers to the utility. By letter dated July 22, 1996, the utility responded that it did not agree with our staff's preliminary calculations.

Specifically, the utility disagreed with staff's classifying the entire amount of its management fees as above-the-line expense. Also, the utility believes that \$16,104, the costs associated with preparing the utility's gross-up reports should be deducted from the refund due to the contributors. We find that the contributor should not be held responsible for the legal and accounting charges incurred by the utility in determining whether he is entitled to a refund. Although these costs are incurred to satisfy regulatory requirements, the request for a reduction to the contributor's refund amount is not the appropriate place to seek recovery of these fees. The utility may seek recovery of these expenses in a rate case proceeding.

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 Orders Nos. PSC-92-0961-FOF-WS and PSC-96-0961A-FOF-WS. Using Eagle Ridge's annual gross-up reports, we have made a refund calculation for each of the years Eagle Ridge collected CIAC and the gross-up, 1993-1994, and we find that refunds are due. Our calculations are reflected on Schedule No. 1, which is attached hereto and by reference incorporated herein. A summary of each year's calculation follows.

1993

The utility proposes that no refund is appropriate for 1993. However, we find that a refund of \$14,589 is appropriate.

In its filing, the utility classified \$30,135 of its management fees as above-the-line expense and \$26,459 as below-the-line expense. We have classified the entire \$56,594 as above-the-line expense. The utility explains that rates for the utility were originally set in 1985, and that we approved only an annual expense of \$7,500 for management and administrative services by Order No. 14133, issued February 27, 1985. Adjusting the \$7,500 figure to reflect customer growth and to reflect the change in the Consumer



ORDER NO. PSC-96-1394-FOF-SU  
DOCKET NO. 961077-SU  
PAGE 4

Price Index (CPI), the utility calculated an above-the-line management fee of only \$30,135. Also, the utility noted that it had an operating loss of \$62,373 in 1993.

In response to what the utility has stated above, we note that the utility's annual report for 1993 shows management fees to be \$56,594. In reviewing the utility's annual report to determine whether it was overearning, the entire amount of \$56,594 was considered to be utility related and used and useful. For annual report review purposes, this expense was included and considered when determining the utility's net income; therefore, we find that the \$56,594 management fee should be included as an above-the-line expense in calculating the utility's taxable income.

Further, the utility states that it had an operating loss of \$67,593 in 1993. We find that the utility's operating loss should not determine whether the management fees should be classified as an above or below-the-line expense. The utility had the option of filing for a rate case, but chose not to do so.

Based on the above, we have adjusted management fees to reflect \$56,594 as above-the-line expense. This adjustment to management fees changed the utility's reported above-the-line taxable income of \$3,440 to an above-the-line loss of \$23,019. Order No. 23541 requires that CIAC income be netted against the above-the-line loss; therefore, not all of the CIAC collected would create a tax liability. The utility's CIAC report indicates a total of \$158,366 in taxable CIAC was received, with \$5,195 being deducted for the first year's depreciation, resulting in CIAC of \$151,371. When this amount is netted against the above-the-line loss of \$23,019, the amount of taxable CIAC resulting in a tax liability is \$130,152, instead of the \$153,171 as calculated by the utility. Using the 37.63% combined marginal federal and state tax rate as provided in the 1993 CIAC Report, we calculated the tax effect to be \$78,525. The utility collected \$93,114 of gross-up monies; therefore, a refund of \$14,589 is required for 1993.

#### 1994

The utility proposes that no refund is appropriate for 1994. However, we find that a refund of \$5,655 is appropriate.

In its filing, the utility classified \$26,214 of its management fees as above-the-line expense and \$23,786 as below-the-line expense. Based on the same reasoning as stated above, we have classified the entire \$50,000 of management fees as above-the-line expense. This adjustment to management fees changes the utility's reported above-the-line taxable income of \$15,516 to an above-the-

Exhibit RCN-13  
Page 12 of 124

ORDER NO. PSC-96-1394-FOF-SU  
DOCKET NO. 961077-SU  
PAGE 5

line taxable loss of \$8,019. Order No. 23541 requires that CIAC income be netted against the above-the-line loss; therefore, not all of the CIAC collected would create a tax liability. The utility's CIAC report indicates a total of \$127,684 in taxable CIAC was received, with \$3,407 being deducted for the first year's depreciation, resulting in CIAC of \$124,277. When this amount is netted against the above-the-line-taxable loss of \$8,019, the amount of taxable CIAC resulting in a tax liability is \$116,007, instead of the \$124,277 as calculated by the utility. Using the 37.63% combined marginal federal and state tax rate as provided in the 1994 CIAC Report, we calculated the tax effect to be \$69,990. The utility collected \$75,645 of gross-up monies; therefore, a refund of \$5,655 is required.

The refunds for both the years 1993 and 1994 shall be completed within 6 months of the effective date of the 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 the contributor and the amount, and an explanation of the efforts made to make the refunds.

Upon expiration of the protest period, the docket shall remain open pending completion and verification of the refunds. Our staff shall be given administrative authority to close the docket upon verification that the refunds have been made.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Eagle Ridge Utilities, Inc., shall refund contributions-in-aid-of-construction gross-up funds in the amount of \$14,589 for 1993, and in the amount of \$5,655 for 1994. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of the 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" below. It is further

ORDERED that all matters contained in the schedule attached hereto are by reference incorporated herein. It is further

Exhibit RCW-12  
Page 13 of 124

ORDER NO. PSC-96-1394-FOF-SU  
DOCKET NO. 961077-SU  
PAGE 6

ORDERED that the refunds required herein must be completed within six months of the date of this Order and that Eagle Ridge Utilities, Inc., 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, Eagle Ridge Utilities, Inc., 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 closed upon expiration of the protest period, if no timely protest is filed, and upon our staff's verification that the refunds have been made.

By ORDER of the Florida Public Service Commission, this 20th day of November, 1996.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.

( S E A L )

SOME (OR ALL) ATTACHMENT PAGES ARE NOT ON ELECTRONIC DOCUMENT.

RRJ

Commissioner Deason dissented on the issue of allowing the utility to offset the administrative costs of the refunds and the costs of the gross-up reports against the actual amount refunded.

Exhibit RCW-13  
page 14 of 124

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), 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 11, 1996.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

ORDER NO. PSC-96-1394-FOF-SU  
 DOCKET NO. 961077-SU  
 PAGE 8

SCHEDULE NO. 1

COMMISSION CALCULATED GROSS-UP REFUND

Eagle Ridge Utilities, Inc.  
 SOURCE: (Line references are from CIAC Reports)

	1993	1994
1 Form 1120, Line 30 (Line 15)	\$ 224,074	\$ 192,633
2 Less CIAC (Line 7)	(158,366)	(127,684)
8 Less Gross-up collected (Line 19)	(93,114)	(75,645)
4 Add First Year's Depr on CIAC (Line 8)	5,195	8,407
5 Add/Less Other Effects (Lines 20 & 21)	(808)	(981)
6		
7 Adjusted Income Before CIAC and Gross-up	\$ (23,019)	\$ (8,270)
8		
9 Taxable CIAC (Line 7)	\$ 158,366	\$ 127,684
10 Less first years depr. (Line 8)	\$ (5,195)	\$ (3,407)
11		
12 Adjusted Income After CIAC	\$ 130,152	\$ 116,007
13 Less: NOL Carry Forward	\$ 0	\$ 0
14		
15 Net Taxable CIAC	\$ 130,152	\$ 116,007
16 Combined Marginal state & federal tax rates	37.63%	37.63%
17		
18 Net Income tax on CIAC	\$ 48,976	\$ 43,653
19 Less ITC Realized	0	0
20		
21 Net Income Tax	\$ 48,976	\$ 43,653
22 Expansion Factor for gross-up taxes	1.6033349	1.6033349
23		
24 Gross-up Required to pay tax effect	\$ 78,525	\$ 69,990
25 Less CIAC Gross-up collected (Line 19)	(93,114)	(75,645)
26		
27 (OVER) OR UNDER COLLECTION	\$ (14,589)	\$ (5,655)
28		
29		
30 TOTAL YEARLY REFUND	\$ (14,589)	\$ (5,655)
31		
32		
33 PROPOSED REFUND (excluding interest)	(20,244)	
34		

Exhibit RCN-15  
 Page 16 of 124

*Cronin, Jackson, Nixon & Wilson*  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

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July 29, 1994

Officers and Directors  
Eagle Ridge Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Eagle Ridge Utilities, Inc., consisting of Schedules No. 1 through No. 4. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended December 31, 1993, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

Eagle Ridge Utilities, Inc.  
 Above and Below the Line Taxable Income (Loss)  
 For the Taxable Year Ended December 31, 1993  
 (Unaudited)

Line  
No.

1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (Line 1)	<u>\$ 281,627</u>
3	Deductions:	
4	Bad debts (Line 15)	1,185
5	Depreciation (Schedule No. 3)	22,306
6	Taxes and licenses (Line 17)	15,795
7	Other deductions (Line 26)	<u>250,360</u>
8		
9		<u>289,646</u>
10	Above the line loss before CIAC	<u>(8,019)</u>
11	Taxable CIAC (Line 10)	158,366
12	Gross-up (Line 10)	93,114
13	Interest on gross-up (Line 15)	<u>808</u>
14		
15		<u>252,288</u>
16	Above the line taxable income	<u>244,269</u>
17	<u>Below the line taxable income</u>	
18	Income:	
19	Interest (Line 5)	2,438
20	Other income (Line 10)	<u>9,990</u>
21		
22		<u>12,428</u>
23	Deductions:	
24	Depreciation (Schedule No. 3)	76,534
25	Other deductions (Line 26):	
26	Contract services - management fee	15,000
27	Interest (Line 18)	1,083
28	State income taxes (Line 17)	<u>6,723</u>
29		<u>99,340</u>
30	Below the line loss	<u>(86,912)</u>
31	Total taxable income	<u>\$ 157,357</u>

Exhibit RCN-13  
Page 18 of 124

# *Cronin, Jackson, Nixon & Wilson*

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

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June 30, 1995

Officers and Directors  
Eagle Ridge Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Eagle Ridge Utilities, Inc., consisting of Schedules No. 1 through No. 3. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended December 31, 1994, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

EXHIBIT RAH-13  
page 19 of 24



Eagle Ridge Utilities, Inc.  
Above and Below the Line Taxable Income (Loss)  
For the Taxable Year Ended December 31, 1994  
(Unaudited)

Line  
No.

1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (Line 1)	\$ 326,460
3	Deductions:	
4	Bad debts (Line 15)	164
5	Taxes and licenses (Line 17)	17,815
6	Depreciation (Schedule No. 3)	21,047
7	Other deductions (Line 26)	<u>280,704</u>
8		
9		<u>319,730</u>
10	Above the line income before CIAC	<u>6,730</u>
11	Taxable CIAC (Line 10)	127,684
12	Gross-up (Line 10)	75,645
13	Interest on gross-up (Line 15)	<u>981</u>
14		
15		<u>204,310</u>
16	Above the line taxable income	<u>211,040</u>
17	<u>Below the line taxable income</u>	
18	Income:	
19	Interest (Line 5)	4,528
20	Other income (Line 10)	<u>8,580</u>
21		
22		<u>13,108</u>
23	Deductions:	
24	Depreciation (Schedule No. 3)	78,923
25	Other deductions (Line 26):	
26	Contract services - management fee	15,000
27	Miscellaneous non-utility	3,037
28	Interest (Line 18)	1,731
29	State income taxes (Line 17)	<u>6,574</u>
30		<u>105,265</u>
31	Below the line loss	<u>(92,157)</u>
32	Total taxable income	<u>\$ 118,883</u>

33 Note: All line references are to the 1994 Federal Income Tax Return  
34 attached to this report.

Exhibit RCN-13  
Page 20 of 124  
Schedule No. 2

LAW OFFICES

ROSE, SUNDSTROM & BENTLEY

A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

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JOHN L. WHARTON

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TALLAHASSEE, FLORIDA 32302-1567  
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March 21, 1994

VIA HAND DELIVERY

Ms. Jena Price  
Division of Water and Wastewater  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0850

Re: Forest Utilities, Inc.  
1990 through 1992 CIAC Gross-up Reports  
Our File No. 25052.03

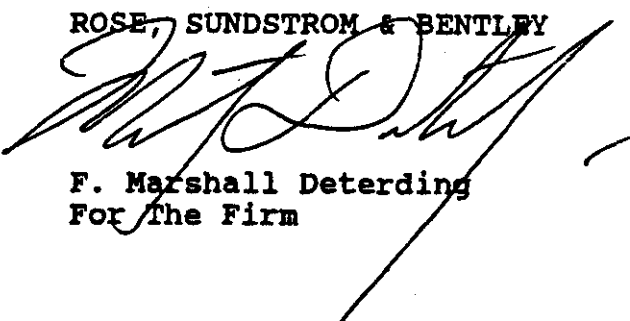
Dear Jena:

Attached is a letter from Bob Nixon, dated March 17, 1994, intended to respond to the inquiries contained in Mr. Hill's letter of February 28, 1994. I believe Mr. Nixon's letter adequately responds to all the questions raised by Mr. Hill's letter.

After review of Mr. Nixon's letter, if you have any further questions, please let me know.

Sincerely,

ROSE, SUNDSTROM & BENTLEY

  
F. Marshall Deterding  
For The Firm

FMD/lts  
Enclosure

cc: Robert C. Nixon, C.P.A.  
Ms. Judy Mallett  
Mr. David Swor

Exhibit RCN-13  
Page 21 of 124

State of Florida

Commissioners:  
J. TERRY DEASON, CHAIRMAN  
SUSAN F. CLARK  
JULIA L. JOHNSON  
DIANE K. KIESLING  
LUIS J. LAUREDO



DIVISION OF WATER &  
WASTEWATER  
CHARLES HILL  
DIRECTOR  
(904) 488-8482

## Public Service Commission

February 28, 1994

Mr. F. Marshall Deterding  
Rose, Sundstrom & Bentley  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301

SUBJECT: 1990 through 1992 CIAC Reports for Forest Utilities, Inc.

Dear Mr. Deterding:

We have received the CIAC gross-up reports as filed for each year 1990 through 1992. Orders No. 16971 and 23541 require that any gross-up amounts collected in excess of a utility's actual tax liability resulting from its collection of CIAC, shall be refunded on a pro rata basis to the contributors of those amounts. A copy of our preliminary analysis of the refund calculation is attached. This calculation is consistent with the calculation adopted by the Commission in Order No. PSC-92-0961-FOF-WS.

Please provide the calculation of the combined Federal and State tax rate which is reported in the 1990 CIAC report at 32.04%. Also, there was no first year's depreciation included in the 1990 and 1991 CIAC reports and the tax returns indicate that there was an increase in depreciable plant. Please provide the omitted depreciation for the above mentioned years.

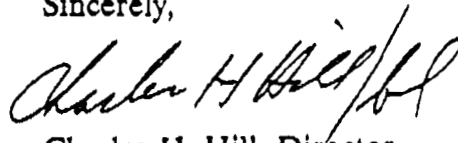
For 1990, how much of the taxable CIAC, \$19,375, was cash and how much was property? If all of the CIAC was cash, please indicate how none was converted to depreciable property when the tax return indicates that there was an increase in depreciable property. Likewise for 1991, CIAC of \$29,375 was reported, please break out the amount that is cash and the amount that is property. Again, the 1991 tax return reports an increase in depreciable property, please show how much cash was converted into depreciable property.

Lastly, there appears to be a discrepancy in Schedule M-1 of the 1992 tax return and the CIAC reported in the supporting schedules, please provide a reconciliation. If the utility disagrees with the enclosed calculations, alternative or corrected amounts with their supporting documentation should be provided no later than March 28, 1994. Should you

EXHIBIT RCN-13  
Page 22 of 124

have any questions, please contact Ms. Jena Price in our office.

Sincerely,



Charles H. Hill, Director  
Division of Water and Wastewater

CHH\JMP\jmp

CC: Division of Auditing and Financial Analysis (Causseaux)

Forest Utilities, Inc.

STAFF CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1990	1991	1992
1 Form 1120, Line 30 (Line 15)	\$ 81,685	\$ 113,749	\$ 67,687
2 Less CIAC (Line 7)	(19,375)	(29,375)	(11,250)
3 Less Gross-up collected (Line 19)	(12,121)	(19,159)	(7,038)
4 Add First Year's Depr on CIAC (Line 8)	0	0	496
5 Add/Less Other Effects (Lines 20 & 21)	(1,134)	(344)	(186)
6			
7 Adjusted Income Before CIAC and Gross-up	\$ 49,035	\$ 54,871	\$ 49,709
8			
9 Taxable CIAC (Line 7)	\$ 19,375	\$ 29,375	\$ 11,250
10			
11 Taxable CIAC Resulting in a Tax Liability	\$ 19,375	\$ 29,375	\$ 11,250
12 Less first years depr. (Line 8)	0	0	(496)
13			
14 Net Taxable CIAC	\$ 19,375	\$ 29,375	\$ 10,754
15 Combined marginal state and federal tax rate	32.04%	37.63%	37.63%
16			
17 Net Income tax on CIAC	\$ 6,208	\$ 11,054	\$ 4,047
18 Less ITC Realized	0	0	0
19			
20 Net Income Tax	\$ 6,208	\$ 11,054	\$ 4,047
21 Expansion Factor for gross-up taxes	1.471453796	1.603334936	1.603334936
22			
23 Gross-up Required to pay tax effect	\$ 9,135	\$ 17,723	\$ 6,489
24 Less CIAC Gross-up collected (Line 19)	(12,121)	(19,159)	(7,038)
25			
26 PROPOSED REFUND (excluding interest)	\$ (2,986)	\$ (1,436)	\$ (549)
27			
28			
29 TOTAL REFUND	\$ (4,971)		
30			

State of Florida

Commissioners:  
SUSAN F. CLARK, CHAIRMAN  
J. TERRY DEASON  
JULIA L. JOHNSON  
DIANE K. KIESLING  
JOE GARCIA



DIVISION OF WATER &  
WASTEWATER  
CHARLES HILL  
DIRECTOR  
(904) 413-6900

**Public Service Commission**

October 22, 1996

Mr. Robert C. Nixon  
Cronin, Jackson, Nixon & Wilson  
2560 Gulf-To-Bay Boulevard Suite 200  
Clearwater, Florida 34625-4419

Re: 1990 through 1995 CIAC Gross-up Reports for Forest Utilities, Inc. in Lake County

Dear Mr. Nixon:

We have reviewed the CIAC gross-up reports as filed for years 1989 through 1994 for the above referenced utility. Orders No. 16971 and 23541 require that any gross-up amounts collected in excess of a utility's actual tax liability resulting from its collection of CIAC, shall be refunded on a pro rata basis to the contributors of those amounts. A copy of our preliminary analysis of the refund calculation is attached. This calculation is consistent with the calculation adopted by the Commission in Order No. PSC-92-0961-FOF-WS.

The difference between staff's calculation and the utility's is the first years depreciation expense calculated for 1990 and 1991. The utility included first years depreciation expense for the years 1992 through 1995 on CIAC collected. Staff determined the depreciation rate by using the average of the depreciation taken in the years 1992 through 1995. By correspondence dated March 17, 1994, the utility addressed this issue of no first year depreciation on CIAC for 1990 and 1991. Therefore, it is not necessary for the utility to respond again on the issue of first year depreciation of CIAC.

Another difference in staff's calculation, is that all salary and wages expense for employees was considered an above-the-line expense in our calculation. In the CIAC report this expense was titled below-the-line compensation for officers. Why is it appropriate to allocate a portion of the salaries and wages expense for employees below-the-line? In the annual report these expenses are considered above-the-line for regulatory purposes and are use for setting rates. It appears that the utility has collected gross-up in excess of the amount of taxes related to the collection of taxable CIAC.

Exhibit RCN-13  
page 25 of 124

Letter to Mr. Nixon  
October 22, 1996  
Page Two

Based upon our review, it appears Forest Utilities, Inc. should refund \$26,337 for 1990-95. If the utility disagrees with staff's calculations, alternative or corrected amounts along with supporting documentation should be provided no later than November 19, 1996.

Should you have any questions, please do not hesitate to call me at (904) 413-6984.

Sincerely,



Cheryl Johnson  
Regulatory Analyst IV

CJ:tyg(A:NIXON.LTR)  
Enclosures

cc: Mr. F. Marshall Deterding, Attorney  
Division of Water and Wastewater (Hill)  
Division of Legal Services (Jaber)  
Division of Auditing and Financial Analysis (Romig)

Exhibit RCN-13  
Page 26 of 124

STAFF CALCULATED GROSS-UP REFUND  
21-Oct-96

127,480  
(26,337)  
101,143

	1990	1991	1992	1993	1994	1995
1 Form 1120, Line 30 (Line 15)	\$ 76,865	\$ 104,074	\$ 39,446	\$ 191,808	\$ (38,862)	\$ 28,401
2 Less CIAC (Line 7)	(19,375)	(29,375)	(11,250)	(125,924)	(5,164)	(25,936)
3 Less Gross-up collected (Line 19)	(12,121)	(19,159)	(7,038)	(82,747)	(3,287)	(3,128)
4 Add First Year's Depr on CIAC (Line 8)	816	1,237	496	4,652	258	973
5 Add/Less Other Effects (Lines 20 & 21)	(1,134)	(344)	(186)	0	0	0
6						
7 Adjusted Income Before CIAC and Gross-up	\$ 45,051	\$ 56,433	\$ 21,468	\$ (12,211)	\$ (45,055)	\$ (1,690)
8						
9 Taxable CIAC (Line 7)	\$ 19,375	\$ 29,375	\$ 11,250	\$ 125,924	\$ 5,164	\$ 25,936
10 Less first years depr. (Line 8)	\$ (816)	\$ (1,237)	\$ (496)	\$ (4,652)	\$ (258)	\$ (973)
11						
12 Adjusted Income After CIAC	\$ 18,559	\$ 28,138	\$ 10,754	\$ 109,061	\$ (40,149)	\$ 23,273
13 Less: NOL Carry Forward	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
14						
15 Net Taxable CIAC	\$ 18,559	\$ 28,138	\$ 10,754	\$ 109,061	\$ 0	\$ 23,273
16 Combined Marginal state & federal tax rates	32.04%	37.63%	37.63%	37.63%	37.63%	37.63%
17						
18 Net Income tax on CIAC	\$ 5,946	\$ 10,588	\$ 4,047	\$ 41,040	\$ 0	\$ 8,758
19 Less ITC Realized	0	0	0	0	0	0
20						
21 Net Income Tax	\$ 5,946	\$ 10,588	\$ 4,047	\$ 41,040	\$ 0	\$ 8,758
22 Expansion Factor for gross-up taxes	1.471453796	1.603334937	1.603334937	1.603334937	1.603334937	1.603334937
23						
24 Gross-up Required to pay tax effect	\$ 8,749	\$ 16,976	\$ 6,489	\$ 65,801	\$ 0	\$ 14,042
25 Less CIAC Gross-up collected (Line 19)	(12,121)	(19,159)	(7,038)	(82,747)	(3,287)	(3,128)
26						
27 (OVER) OR UNDER COLLECTION	\$ (3,372)	\$ (2,183)	\$ (549)	\$ (16,946)	\$ (3,287)	\$ 10,914
28						
29						
30 TOTAL YEARLY REFUND	\$ (3,372)	\$ (2,183)	\$ (549)	\$ (16,946)	\$ (3,287)	\$ 0
31						
32						
33 PROPOSED REFUND (excluding interest)	(2154)	1436	(558)	(9581)	(321)	0
34						
	(26,337)	(747)	(9)	(7365)	(2960)	—
	\$ (1213)					
	\$ 76,865	\$ 104,074	\$ 39,446	\$ 191,808	\$ (36,862)	\$ 28,401
	81,665	113,749	67,687	224,124	19743	59,123
	(4800)	(9675)	(28,241)	(32616)	(56,605)	(32722)
	4800	9675	28,241	32616	32616	30,000
	—	—	—	—	23489	?
	4800	9675	28,241	32,616	56,605	—
	—	—	—	—	—	(2722)

Exhibit RCN-13  
Page 27 of 124

*Utility*  
*Difference*  
*Form 1120 line 30*  
*As Filed*  
*Difference*  
*Officers Comp*  
*Legal + Att. Conv*  
*Unexplained difference*



# *Cronin, Jackson, Nixon & Wilson*

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
JAMES L. WILSON, C.P.A.  
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(813) 791-4020  
TELECOPIER  
(813) 797-3602

February 5, 1992

Officers and Directors  
Forest Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Forest Utilities, Inc., consisting of schedules one through four. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended December 31, 1990, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

Exhibit RCN-13  
Page 28 of 124

Forest Utilities, Inc.  
 Schedule of Above and Below the Line Taxable Income  
 For the Taxable Year Ended December 31, 1990  
 (Unaudited)

<u>Line No.</u>		<u>1990</u>
1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (line 1a)	<u>\$448,640</u>
3	Deductions:	
4	Compensation of officers (line 12)	36,000
5	Salaries & wages (line 13c)	57,729
6	Taxes, excluding state income & excise (line 17)	34,900
7	Interest (Schedule No. 3)(line 18)	10,433
8	Depreciation (Schedule No. 3)(line 21b)	18,347
9	Employee benefit programs (line 25)	8,008
10	Other deductions, excluding non-utility (line 26)	<u>234,188</u>
11		<u>399,605</u>
12	Taxable income before CIAC	<u>49,035</u>
13	CIAC:	
14	Taxable CIAC	19,375
15	CIAC gross-up	12,121
16	Interest earned on CIAC gross-up	<u>1,134</u>
17		<u>32,630</u>
18	Above the line taxable income	<u>81,665</u>
19	<u>Below the line taxable income (loss)</u>	
20	Income:	
21	Interest (line 5)	1,546
22	Other non-utility (line 10)	<u>790</u>
23		<u>2,336</u>
24	Deductions:	
25	Compensation of officers (line 12)	4,800
26	Taxes - state income & excise (line 17)	2,175
27	Interest (Schedule No. 3)(line 18)	19,697
28	Depreciation (Schedule No. 3)(line 21b)	16,050
29	Other deductions - non-utility (line 25)	<u>819</u>
30		<u>43,541</u>
31	Below the line taxable income (loss)	<u>(41,205)</u>
32	Total taxable income (line 30)	<u>\$ 40,460</u>
33	Note: All line references relate to page 1 of the federal tax return	
34	attached to this report.	

# *Cronin, Jackson, Nixon & Wilson*

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
JAMES L. WILSON, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
JAMES L. CARLSTEDT, C.P.A.

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SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
TELECOPIER  
(813) 797-3602

October 16, 1992

Officers and Directors  
Forest Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Forest Utilities, Inc., consisting of Schedules No. 1 through No. 4. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended December 31, 1991, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

Exhibit RCN-13  
page 30 of 124

Forest Utilities, Inc.  
 Schedule of Above and Below the Line Taxable Income  
 For the Taxable Year Ended December 31, 1991

<u>Line No.</u>		
1	<u>Above the line taxable income (loss)</u>	
2	Gross receipts/sales (line 1a)	<u>\$481,289</u>
3	Deductions:	
4	Compensation of officers (line 12)	48,000
5	Salaries and wages (line 13c)	63,369
6	Taxes, excluding state income and excise (line 17)	43,313
7	Interest (Schedule No. 3) (line 18)	5,435
8	Depreciation (Schedule No. 3) (line 21b)	17,526
9	Employee benefits programs (line 25)	15,517
10	Other deductions, excluding non-utility (line 26)	<u>223,258</u>
11	Total deductions	<u>416,418</u>
12	Taxable income before CIAC	<u>64,871</u>
13	CIAC:	
14	Taxable CIAC	29,375
15	CIAC gross-up	19,159
16	Interest earned on CIAC gross-up	<u>344</u>
17	Total CIAC	<u>48,878</u>
18	Above the line taxable income (loss)	<u>113,749</u>
19	<u>Below the line taxable income (loss)</u>	
20	Income:	
21	Interest (line 5)	4,980
22	Other non-utility (line 10)	<u>1,002</u>
23	Total other income	<u>5,982</u>
24	Deductions:	
25	Compensation of officers (line 12)	9,675
26	Taxes - state income and excise	2,972
27	Interest (Schedule No. 3) (line 18)	31,967
28	Depreciation (Schedule No. 3) (line 21b)	25,231
29	Other deductions - non-utility (line 26)	<u>1,577</u>
30	Total other deductions	<u>71,422</u>
31	Below the line taxable income (loss)	<u>(65,440)</u>
32	Total taxable income (line 30)	<u>\$ 48,309</u>
33	Note: All line references refer to page 1 of the Federal Tax Return	
34	attached to this report.	

Exhibit RCN-13  
 Page 31 of 124

*Cronin, Jackson, Nixon & Wilson*  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
BRENDA W. McBARRON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
JAMES L. WILSON, C.P.A.

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SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
TELECOPIER  
(813) 797-3602

November 1, 1993

Officers and Directors  
Forest Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Forest Utilities, Inc., consisting of Schedules No. 1 through No. 4. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended December 31, 1992, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

Exhibit RCN-13  
page 32 of 124

Forest Utilities, Inc.  
 Schedule of Above and Below the Line Taxable Income  
 For the Taxable Year Ended December 31, 1992

Line  
No.

1	<u>Above the line taxable income (loss)</u>	
2	Gross receipts/sales (line 1a)	\$ 486,225
3	Deductions:	
4	Compensation of officers (line 12)	60,000
5	Salaries and wages (line 13c)	73,378
6	Repairs (line 14)	12,633
7	Taxes	47,322
8	Interest (Schedule No. 3) (line 18)	11,196
9	Depreciation (Schedule No. 3) (line 21b)	24,070
10	Employee benefits programs (line 25)	11,087
11	Other deductions, excluding non-utility (line 26)	<u>197,326</u>
12	Total deductions	<u>437,012</u>
13	Taxable income before CIAC	<u>49,213</u>
14	CIAC:	
15	Taxable CIAC	11,250
16	CIAC gross-up	7,038
17	Interest earned on CIAC gross-up	<u>186</u>
18	Total CIAC	<u>18,474</u>
19	Above the line taxable income	<u>67,687</u>
20	<u>Below the line taxable loss</u>	
21	Income:	
22	Interest (line 5)	3,255
23	Capital gain - sale of securities (line 8)	11,483
24	Other non-utility (line 10)	<u>1,314</u>
25	Total other income	<u>16,052</u>
26	Deductions:	
27	Compensation of officers (line 12)	28,241
28	Interest (Schedule No. 3) (line 18)	30,470
29	Depreciation (Schedule No. 3) (line 21b)	24,652
30	Other deductions - non-utility (line 26)	1,049
31	Refund - prior year's gross-up (line 26)	<u>40,873</u>
32	Total other deductions	<u>125,285</u>
33	Below the line taxable loss	<u>(109,233)</u>
34	Total taxable loss (line 30)	<u>\$ (41,546)</u>

35 Note: All line references refer to page 1 of the Federal Tax Return  
 36 attached to this report.

Exhibit RCN-13  
 page 33 of 124  
 Schedule No. 2

State of Florida

Commissioners:  
SUSAN F. CLARK  
J. TERRY DEASON, CHAIRMAN  
JULIA L. JOHNSON  
DIANE K. KIESLING  
LUIS J. LAUREDO



DIVISION OF WATER &  
WASTEWATER  
CHARLES HILL  
DIRECTOR  
(904) 488-8482

## Public Service Commission

January 14, 1994

Mr. F. Marshall Deterding  
Rose, Sundstrom & Bentley  
Post Office Box 1567  
Tallahassee, Florida 32302-1567

Subject: 1990 through 1992 CIAC Reports for Aloha Utilities, Inc.

We have reviewed the CIAC gross-up reports as filed for each year 1990 through 1992 for the above referenced utility. Orders No. 16971 and 23541 require that any gross-up amounts collected in excess of a utility's actual tax liability resulting from its collection of CIAC, shall be refunded on a pro rata basis to the contributors of those amounts. A copy of our preliminary analysis of the refund calculation is attached. This calculation is consistent with the calculation adopted by the Commission in Order No. PSC-92-0961-FOF-WS.

Staff's calculations differ from the utility's in two areas. First, staff has removed the interest earned on the gross-up escrow account in determining the above-the-line taxable income prior to taxable CIAC consideration. Second, the utility has calculated an "effective" tax rate of 39.50% for 1990 and 1991. The maximum combined marginal federal and state tax rates result in a tax rate of 37.63%, which staff has employed.

The amounts included in our calculation were taken from the annual CIAC gross-up reports filed by the utility. Staff believes the utility has collected gross-up in excess of the amount of taxes related to the collection of taxable CIAC in 1991. The information indicates the gross-up required in years 1990 and 1992 exceed the amount of gross-up collected, and no refund would be required.

Based upon our review, it appears Aloha Utilities, Inc. should refund \$6,216 (excluding interest) for 1991, for the amount of over-collected gross-up. The utility does not propose a refund for any year, 1990 through 1992. If the utility disagrees with the enclosed calculations, alternative or corrected amounts with their supporting documentation should

Exhibit RCN-13  
page 34 of 124

Mr. Deterding  
Page 2

be provided no later than February 15, 1994.

Should you have any questions, please contact Mrs. Sherri S. Meador in our office.

Sincerely,



Charles H. Hill, Director  
Division of Water and Wastewater

CHH/SSM/ssm

cc: Division of Auditing and Financial Analysis (Causseaux)

Exhibit RCN-13  
page 35 of 124



ALOHA UTILITIES, INC.

STAFF CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1990	1991	1992	1993
1 Form 1120, Line 30 (Line 15)	\$ 1,020,053	\$ 1,964,380	\$ 733,089	\$ 0
2 Less CIAC (Line 7)	(608,545)	(1,116,535)	(331,525)	0
3 Less Gross-up collected (Line 19)	(359,492)	(669,921)	(177,703)	0
4 Add First Year's Depr on CIAC (Line 8)	8,942	16,474	4,857	0
5 Add/Less Other Effects (Lines 20 & 21)	(5,635)	(5,441)	0	0
6				
7 Adjusted Income Before CIAC and Gross-up	\$ 55,323	\$ 188,957	\$ 228,718	\$ 0
8				
9 Taxable CIAC (Line 7)	\$ 608,545	\$ 1,116,535	\$ 331,525	\$ 0
10				
11 Taxable CIAC Resulting in a Tax Liability	\$ 608,545	\$ 1,116,535	\$ 331,525	\$ 0
12 Less first years depr. (Line 8)	(8,942)	(16,474)	(4,857)	0
13				
14 Net Taxable CIAC	\$ 599,603	\$ 1,100,061	\$ 326,668	\$ 0
15 Combined marginal state and federal tax rate	37.63%	37.63%	37.63%	37.63%
16				
17 Net Income tax on CIAC	\$ 225,631	\$ 413,953	\$ 122,925	\$ 0
18 Less ITC Realized	0	0	0	0
19				
20 Net Income Tax	\$ 225,631	\$ 413,953	\$ 122,925	\$ 0
21 Expansion Factor for gross-up taxes	1.603334936	1.603334936	1.603334936	1.603334936
22				
23 Gross-up Required to pay tax effect	\$ 361,762	\$ 663,705	\$ 197,090	\$ 0
24 Less CIAC Gross-up collected (Line 19)	(359,492)	(669,921)	(177,703)	0
25				
26 PROPOSED REFUND (excluding interest)	\$ 0	\$ (6,216)	\$ 0	\$ 0
27				
28				
29 TOTAL REFUND	\$ (6,216)			
30				

Exhibit RCN-13  
page 36 of 124

# Cronin, Jackson, Nixon & Wilson

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
JAMES L. WILSON, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
JAMES L. CARLSTEDT, C.P.A.

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CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
TELECOPIER  
(813) 797-3602

January 20, 1992

1990

Officers and Directors  
Aloha Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Aloha Utilities, Inc., consisting of schedules one through three. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended December 31, 1990, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

EXHIBIT RCN-13  
page 37 of 124

Aloha Utilities, Inc.  
 Schedule of Above and Below the Line Taxable Income  
 For the Taxable Year Ended December 31, 1990  
 (Unaudited)

<u>Line No.</u>		<u>1990</u>
1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (line 1)	<u>\$2,706,870</u>
3	Deductions:	
4	Compensation of officers (line 12)	71,508
5	Salaries and wages (line 13c)	275,763
6	Bad debts (line 15)	13,521
7	Rents (line 16)	10,439
8	Taxes (excluding state income and excise) (line 17)	300,970
9	Interest (line 18)	39,162
10	Depreciation (Schedule No. 3) (line 21b)	182,249
11	Employee benefits (line 25)	164,300
12	Other deductions (line 26)	<u>1,602,577</u>
13		<u>2,660,489</u>
14	Taxable income (loss) before CIAC	<u>46,381</u>
15	CIAC:	
16	Taxable CIAC (line 10)	608,545
17	CIAC gross-up (line 10)	359,492
18	Interest on CIAC gross-up (line 10)	<u>5,635</u>
19		<u>973,672</u>
20	Above the line taxable income	<u>1,020,053</u>
21	<u>Below the line taxable income (loss)</u>	
22	Income: Interest (line 5)	<u>7,292</u>
23	Deductions:	
24	Compensation of officers (line 12)	112,338
25	Taxes - state income and excise (line 17)	44,882
26	Depreciation (Schedule No. 3) (line 21b)	<u>93,967</u>
27		<u>251,187</u>
28	Below the line taxable income (loss)	<u>(243,895)</u>
29	Total taxable income (line 30)	<u>\$ 776,158</u>
30	Note: Line references noted above relate to page 1 of the attached 1990	
31	federal income tax return of Aloha Utilities, Inc.	

*Cronin, Jackson, Nixon & Wilson*

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
JAMES L. WILSON, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
JAMES L. CARLSTEDT, C.P.A.

2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
TELECOPIER  
(813) 797-3602

1991

October 15, 1992

Officers and Directors  
Aloha Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Aloha Utilities, Inc., consisting of Schedules No. 1 through No. 3. This report is intended solely for use in meeting certain reporting requirements related to collection of tax impact charges on contributions in aid of construction for the year ended December 31, 1991, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

Exhibit RCN-13  
page 39 of 124

Aloha Utilities, Inc.  
 Schedule of Above and Below the Line Taxable Income  
 For the Taxable Year Ended December 31, 1991  
 (Unaudited)

Line  
No.

1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (line 1)	<u>\$2,792,057</u>
3	Deductions:	
4	Compensation of officers (line 12)	116,825
5	Salaries and wages (line 13c)	291,901
6	Bad debts (line 15)	5,650
7	Rents (line 16)	15,125
8	Taxes (excluding state income and excise) (line 17)	351,829
9	Interest (line 18)	38,953
10	Depreciation (Schedule No. 3) (line 21b)	76,454
11	Pension and profit sharing (line 24)	209,472
12	Other deductions (line 26)	<u>1,513,365</u>
13		<u>2,619,574</u>
14	Taxable income before CIAC	<u>172,483</u>
15	CIAC:	
16	Taxable CIAC (line 10)	1,116,535
17	CIAC gross-up (line 10)	669,921
18	Interest on CIAC gross-up (line 10)	<u>5,441</u>
19		<u>1,791,897</u>
20	Above the line taxable income	<u>1,964,380</u>
21	<u>Below the line taxable income (loss)</u>	
22	Income: Interest (line 5)	12,135
23	Meter fees (line 10)	<u>24,671</u>
24		<u>36,806</u>
25	Deductions:	
26	Compensation of officers (line 12)	78,838
27	Taxes - state income and excise (line 17)	99,053
28	Depreciation (Schedule No. 3) (line 21b)	<u>116,386</u>
29		<u>294,277</u>
30	Below the line taxable income (loss)	<u>(257,471)</u>
31	Total taxable income (line 30)	<u>\$1,706,909</u>
32	Note: Line references noted above relate to page 1 of the	
33	1991 federal income tax return of Aloha Utilities, Inc.	

Schedule No. 2

Exhibit RCN-13  
 Page 40 of 124

# *Cronin, Jackson, Nixon & Wilson*

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
BRENDA W. McBARRON, C.P.A.  
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CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
TELECOPIER  
(813) 797-3602

1992

September 24, 1993

Officers and Directors  
Aloha Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Aloha Utilities, Inc., consisting of Schedules No. 1 through No. 3. This report is intended solely for use in meeting certain reporting requirements related to collection of tax impact charges on contributions in aid of construction for the year ended December 31, 1992, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

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Aloha Utilities, Inc.  
 Schedule of Above and Below the Line Taxable Income  
 For the Taxable Year Ended December 31, 1992  
 (Unaudited)

Line  
No.

1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (line 1)	<u>\$3,085,695</u>
3	Deductions:	
4	Compensation of officers (line 12)	121,002
5	Salaries and wages (line 13c)	336,963
6	Rents (line 16)	20,413
7	Taxes (excluding state income and excise) (line 17)	394,165
8	Interest (line 18)	12,270
9	Depreciation (Schedule No. 3) (line 21b)	82,841
10	Pension and profit sharing (line 24)	211,781
11	Other deductions (line 26)	<u>1,682,399</u>
12		<u>2,861,834</u>
13	Taxable income before CIAC	<u>223,861</u>
14	CIAC:	
15	Taxable CIAC (line 10) (Note 2)	331,525
16	CIAC gross-up (line 10)	<u>177,703</u>
17		<u>509,228</u>
18	Above the line taxable income	<u>733,089</u>
19	<u>Below the line taxable income (loss)</u>	
20	Income:	
21	Interest (line 5)	2,113
22	Meter fees (line 10)	<u>25,635</u>
23		<u>27,748</u>
24	Deductions:	
25	Loss on plant abandonment (line 9)	229,978
26	Compensation of officers (line 12)	82,498
27	Taxes - state income	16,790
28	Depreciation (Schedule No. 3) (line 21b)	<u>138,093</u>
29		<u>467,359</u>
30	Below the line taxable loss	<u>(439,611)</u>
31	Total taxable income (line 30)	<u>\$ 293,478</u>
32	Notes: (1) Line references noted above relate to page 1 of the	
33	1992 federal income tax return of Aloha Utilities, Inc.	
34	(2) Taxable CIAC includes \$2,141 improperly classified as	
35	interest on CIAC gross-up per the 1992 tax returns.	

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of contribution-in-aid-of-construction gross-up funds collected by Aloha Utilities, Inc. In Pasco County.

DOCKET NO. 971529-WS  
ORDER NO. PSC-98-0319-AS-WS  
ISSUED: February 23, 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 ACCEPTING SETTLEMENT OFFER AND REQUIRING NO REFUNDS FOR THE YEARS 1993 THROUGH 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

Aloha Utilities, Inc. (Aloha or utility) is a Class A utility providing service to approximately 11,038 water and 10,554 wastewater customers in Pasco County. According to its 1996 annual report, operating revenues were \$1,885,752 for water and \$2,811,605 for wastewater. The utility reported net operating income of \$94,254 for the water system and \$407,422 for the wastewater system.

As a result of the repeal of Section 118(b) of the Internal Revenue Code, contributions-in-aid-of-construction (CIAC) became gross income and were depreciable for federal tax purposes. In 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.

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Orders Nos. 16971 and 23541, issued December 10, 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.

In Order No. 23541, we required any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue, to file a petition for approval with the Commission on or before October 29, 1990. Aloha filed for authority to continue to gross-up on December 28, 1990. By Order No. 25526, issued December 24, 1991, we granted Aloha's petition for continued gross-up authority using the full gross-up formula.

On September 9, 1992, we issued Proposed Agency Action Order (PAA) No. PSC-92-0961-FOF-WS, which clarified the provisions of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992, PAA Order No. PSC-92-0961A-FOF-WS was issued. This order included Attachment A which reflects the generic calculation form. No protests were filed, and these Orders became final.

On March 29, 1996, we opened Docket No. 960397-WS to review our policy concerning the collection and refund of CIAC gross-up. Workshops were held and comments and proposals were received from the industry and other interested parties. By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, we directed our staff to review the proposals and comments offered by the workshop participants and make a recommendation concerning whether our policy regarding the collection and refund of CIAC should be changed. In addition, we directed our staff to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up. Pending this review, we directed our staff to continue processing CIAC gross-up refund cases pursuant to Orders Nos. 16971 and 23541.

However, the Small Business Job Protection Act of 1996 (The Act) was signed into law on August 20, 1996. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, in Docket No. 960965-WS, we issued Order No. PSC-96-1180-FOF-WS revoking the authority of utilities to collect gross-up of CIAC and canceling

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the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance.

Since there was no longer a need to review our policy on the gross-up of CIAC, we closed Docket No. 960397-WS, by Order No. PSC-96-1253-FOF-WS, issued October 8, 1996. However, as established in Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Orders Nos. 16971 and 23541.

The disposition of gross-up funds collected by the utility in 1990-1992 was handled in Docket No. 940156-WS and Order No. PSC-94-0444-FOF-WS was issued accordingly. The purpose of this docket is to address the disposition of gross-up funds collected by the utility from 1993 to 1996, and to address the utility's proposal that 50 percent of its legal and accounting costs be offset against the refund amount.

#### REFUND REQUIREMENT

In compliance with Orders Nos. 16971 and 23541, Aloha filed its 1993 through 1996 annual CIAC reports regarding its collection of gross-up for each year. By letter dated November 14, 1997, our staff submitted preliminary refund calculation numbers to the utility. By letter dated December 22, 1997, the utility stated that while they do not agree with staff's above-the-line classification of officers' salaries, they accepted the staff's refund calculations for 1993-1996.

Our refund calculations are based on the method adopted in Order No. PSC-92-0961-FOF-WS. The adjustments have been explained in the body of this Order and are reflected on the schedule attached to this Order. A summary of each year's refund calculation follows.

1993

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1993 is not appropriate.

The 1993 CIAC report indicates 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 \$553,643 in taxable CIAC was received, with \$7,651 being deducted for the

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first year's depreciation. Using the 37.63 percent combined marginal federal and state tax rates as provided in the 1993 CIAC report, we calculate net income taxes to be \$205,457. 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 \$329,416.

In December, 1992, Aloha received and booked \$24,010 of property CIAC from Heritage Lake Development. Such CIAC was included as income on the 1992 tax return and the 1992 gross-up refund report filed with the Commission. However, the related gross-up of \$13,927 was not received and booked until January, 1993. Therefore, the gross-up amount collected in 1993 has been adjusted to properly match 1993 CIAC with the related 1993 gross-up collections. As a result, the amount of gross-up collected by the utility in 1993 is \$327,570. The utility required more in gross-up to pay the tax impact than the utility collected; therefore, no refund is necessary.

1994

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1994 is not appropriate.

The 1994 CIAC report indicates 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 \$1,301,370 in taxable CIAC was received, with \$15,192 being deducted for the first year's depreciation. Using the 37.63 percent combined marginal federal and state tax rates as provided in the 1994 CIAC report, we calculate net income taxes to be \$483,989. 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 \$775,996. The utility collected \$762,413 of gross-up monies. The utility required more in gross-up to pay the tax impact than the utility collected; therefore, no refund is necessary.

1995

The utility proposes that no refund is appropriate. We agree that a refund of gross-up collections for 1995 is not appropriate.

The 1995 CIAC report indicates the utility was in a taxable position on an above-the-line basis prior to the inclusion of

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PAGE 5

taxable CIAC and gross-up. Therefore, all of the taxable CIAC received would be taxed. The report indicates a total of \$401,761 in taxable CIAC was received, with \$7,043 being deducted for the first year's depreciation. Using the 37.63 percent combined marginal federal and state tax rates as provided in the 1995 CIAC report, we calculate net income taxes to be \$148,532. 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 \$238,147. The utility collected \$235,421 of gross-up monies. The utility required more in gross-up to pay the tax impact than the utility collected; therefore, no refund is necessary.

1996

The utility proposes that no refund is appropriate. We agree.

The 1996 CIAC report indicates 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 \$454,632 in taxable CIAC was received, with \$17,065 being deducted for the first year's depreciation. Using the 37.63 percent combined marginal federal and state tax rates as provided in the 1996 CIAC report, we calculate net income taxes to be \$164,656. 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 \$263,999. The utility collected \$266,858 of gross-up monies. Therefore, the utility collected \$2,859 more in gross-up than was required to pay the tax impact.

However, the utility provided documentation for legal and accounting fees of \$6,100, and requested that 50 percent of these fees be offset against any over collection. A review of these costs shows that all of the legal and accounting fees submitted by the utility are directly associated with preparing the required reports and calculating the tax effect, and, thus, are legitimate expenses. Fifty percent of this amount is \$3,050. We have considered on several occasions the question of whether such an offset should be allowed pursuant to the orders governing CIAC gross-up. 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, we accepted the utility's settlement proposals that 50 percent of the legal and accounting costs be offset against the refund amount.

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As in the other cases referenced above, we find that acceptance of the settlement proposal 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. We further note that the actual costs associated with making the refunds have not been included in these calculations and will be absorbed by the utility. Moreover, we believe the utility's settlement proposal is a reasonable "middle ground". Therefore, while not adopting the utility's position, we find it appropriate to accept Aloha's settlement proposal.

Although 50 percent of the utility's legal and accounting fees equals \$3,050, only \$2,859 of this amount is necessary to offset the overcollection of \$2,859. When the legal and accounting fees of \$2,859 is offset against the overcollection of \$2,859, there is nothing left to refund, and no refund is required for 1996.

Based on all the above, no refund is required for the years 1993 through 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 be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request of Aloha Utilities, Inc., to offset fifty percent of the legal and accounting fees against any overcollections is accepted. 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 25-22.036, 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 no refunds are required for the collection of gross-up on Contributions-in-Aid-of-Construction for the years 1993 through 1996. 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 in the event this Order becomes final, this Docket shall be closed.

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ORDER NO. PSC-98-0319-AS-WS  
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PAGE 8

By ORDER of the Florida Public Service Commission this 23rd  
day of February, 1998.

/s/ Blanca S. Bayó  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

This is a facsimile copy. A signed  
copy of the order may be obtained by  
calling 1-850-413-6770.

(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 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 and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), 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 March 16, 1998.

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In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

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Aloha Utilities, Inc.  
 SOURCE: (Line references

	1993	1994	1995	1996
1 Form 1120, Line 30 (Line \$	1,117	2,130	869.36	1,530.94
2 Less CIAC (Line 7)	(553.6)	(1,301)	(401.7)	(454.632)
3 Less Gross-up Collected	(341.4)	(762.4)	(235.4)	(266.858)
4 Add First Year's Depr on	7,651	15,192	7,043	17,065
5 Add/Less Other Effects	(1,779)	(1,455)	(968)	(1,055)
7 Adjusted Income Before \$	228.04	80,548	238.25	825,468
9 Taxable CIAC (Line 7) \$	553.64	1,301	401.76	454.632
10 Less first years depr. \$	(7,651)	(15,192)	(7,043)	(17,065)
11 Adjusted Income After CIAC \$	774.03	1,366	632.97	1,263.03
12 Less: NOL Carry Forward \$	0	0	0	0
13 Net Taxable CIAC \$	545.99	1,286	394.71	437.567
14 Combined Marginal state &	37.63%	37.63%	37.63%	37.63%
15 Net Income tax on CIAC \$	205.45	483.98	148.53	164.656
16 Less ITC Realized	0	0	0	0
17 Net Income Tax \$	205.45	483.98	148.53	164.656
18 Expansion Factor for	1.603334	1.603334	1.603334	1.603334
19 Gross-up Required to pay \$	329.41	775.99	238.14	263.999
20 Less CIAC Gross-up	(341.4)	(762.4)	(235.4)	(266.858)
21 Less 1992 Gross-up	13,927			
22 Adjusted 1993 Gross-up	(327.5)			
23 (OVER) OR UNDER COLLECTION \$	1,846	13,583	2,726	(2,859)
24 TOTAL YEARLY REFUND \$	0	0	0	(2,859)
25 Offset of Legal and				
26 PROPOSED REFUNDS \$	0	0	0	0

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Commissioners:  
SUSAN F. CLARK, CHAIRMAN  
J. TERRY DEASON  
JULIA L. JOHNSON  
DIANE K. KIESLING  
JOE GARCIA



DIVISION OF WATER &  
WASTEWATER  
CHARLES HILL  
DIRECTOR  
(904) 413-6900

## Public Service Commission

November 14, 1997

Mr. F. Marshall Deterding  
Rose, Sundstrom & Bentley  
Post Office Box 1567  
Tallahassee, Florida 32302-1567

Re: 1993, 1994, 1995 and 1996 CIAC Reports for Aloha Utilities, Inc.

Dear Mr. Deterding:

We have reviewed the Special Reports of Aloha Utilities, Inc. consisting of Schedules Nos. 1 through 4. A copy of our preliminary analysis of the refund calculation is attached. This calculation is consistent with the calculation adopted by the Commission in Order No. PSC-92-0961-FOF-WS. For 1993-1996, staff's calculation of Above the line taxable income (Schedule No. 2) differs from the utility's because of the following adjustments made:

### 1993

The utility's 1993 annual report shows \$151,385 as the amount for Officers Compensation, therefore, staff has increased Officers Compensation by \$23,215 to reflect the amount stated in the utility's annual report. Depreciation has been adjusted by \$7,651 to reflect First year's depreciation as above the line. As a result, Above the line taxable income per staff's calculations is \$1,117,308.

### 1994

The utility's 1994 annual report shows \$167,998 as the amount for Officers Compensation, therefore, staff has increased Officers Compensation by \$39,828 to reflect the amount stated in the utility's annual report. Salaries and wages has been decreased by \$35,100 to reflect the amount stated on the utility's tax return. Depreciation has been adjusted by \$15,192 to reflect First year's depreciation as above the line. As a result, Above the line taxable income per staff's calculations is \$2,130,594.

### 1995

The utility's 1995 annual report shows \$179,881 as the amount for Officers Compensation, therefore, staff has increased Officers Compensation by \$61,822 to reflect the amount stated in the utility's annual report. The utility's 1995 annual report shows \$224,542 as the amount for Employees Pensions and Benefits, therefore, Pension and profit

Letter to Mr. Deterding  
November 14, 1997  
Page 2

sharing has been increased by \$15,811 to reflect the entire amount as above the line. Depreciation has been adjusted by \$7,043 to reflect First year's depreciation as above the line. As a result, Above the line taxable income per staff's calculations is \$869,363.

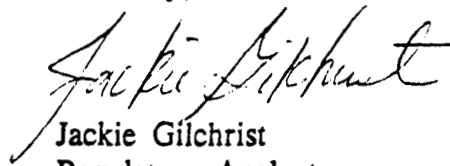
1996

Depreciation has been adjusted by \$17,065 to reflect First year's depreciation as above the line. As a result, Above the line taxable income per staff's calculations is \$1,530,948.

Based upon our review, we agree that Aloha does not owe a refund for 1991-1995 and an offset of the legal and accounting fees against the proposed refund amount results in no refund being required for 1996. If the utility disagrees with staff's calculations, alternative or corrected amounts along with supporting documentation should be provided no later than December 14, 1997.

If you should have any questions, please do not hesitate to contact me.

Sincerely,



Jackie Gilchrist  
Regulatory Analyst

Enclosure

cc: Division of Auditing and Financial Analysis (Causseaux)  
Mr. Robert C. Nixon

Exhibit RCN-13  
page 54 of 124

## COMMISSION CALCULATED GROSS-UP REFUND

Aloha Utilities, Inc.

SOURCE: (Line references are from CIAC Reports)

	1993	1994	1995	1996
1 Form 1120, Line 30 (Line 15)	\$ 1,117,308	\$ 2,130,594	\$ 869,363	\$ 1,530,948
2 Less CIAC (Line 7)	(553,643)	(1,301,370)	(401,761)	(454,632)
3 Less Gross-up Collected (Line 10)	(341,497)	(762,413)	(235,421)	(266,858)
4 Add First Year's Depr on CIAC (Line 8)	7,651	15,192	7,043	17,065
5 Add/Less Other Effects (Lines 20 & 21)	(1,779)	(1,455)	(968)	(1,055)
6				
7 Adjusted Income Before CIAC and Gross-up	\$ 228,040	\$ 80,548	\$ 238,256	\$ 825,468
8				
9 Taxable CIAC (Line 7)	\$ 553,643	\$ 1,301,370	\$ 401,761	\$ 454,632
10 Less first years depr. (Line 8)	\$ (7,651)	\$ (15,192)	\$ (7,043)	\$ (17,065)
11				
12 Adjusted Income After CIAC	\$ 774,032	\$ 1,366,726	\$ 632,974	\$ 1,263,035
13 Less: NOL Carry Forward	\$ 0	\$ 0	\$ 0	\$ 0
14				
15 Net Taxable CIAC	\$ 545,992	\$ 1,286,178	\$ 394,718	\$ 437,567
16 Combined Marginal state & federal tax rates	37.63%	37.63%	37.63%	37.63%
17				
18 Net Income tax on CIAC	\$ 205,457	\$ 483,989	\$ 148,532	\$ 164,656
19 Less ITC Realized	0	0	0	0
20				
21 Net Income Tax	\$ 205,457	\$ 483,989	\$ 148,532	\$ 164,656
22 Expansion Factor for gross-up taxes	1.6033349	1.6033349	1.6033349	1.6033349
23				
24 Gross-up Required to pay tax effect	\$ 329,416	\$ 775,996	\$ 238,147	\$ 263,999
25 Less CIAC Gross-up Collected (Line 19)	(341,497)	(762,413)	(235,421)	(266,858)
Less 1992 Gross-up Collected in 1993	13,927			
Adjusted 1993 Gross-up Collected	(327,570)			
26				
27 (OVER) OR UNDER COLLECTION	\$ 1,846	\$ 13,583	\$ 2,726	\$ (2,859)
28				
29 TOTAL YEARLY REFUND	\$ 0	\$ 0	\$ 0	\$ (2,859)
30 Offset of Legal and Accounting Fees				3,050
31				
32				\$ 191
33				
34 PROPOSED REFUND (excluding interest)	\$ 0	\$ 0	\$ 0	\$ 0

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page 55 of 124

*Cronin, Jackson, Nixon & Wilson*  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
BRENDA W. McBARRON, C.P.A.  
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2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
TELECOPIER  
(813) 797-3602

1993

August 4, 1994

Officers and Directors  
Aloha Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Aloha Utilities, Inc., consisting of Schedules No. 1 through No. 4. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended December 31, 1993, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

Exhibit RCN-13  
Page 56 of 124

Aloha Utilities, Inc.  
 Schedule of Above and Below the Line Taxable Income  
 For the Taxable Year Ended December 31, 1993  
 (Unaudited)

<u>Line No.</u>		
1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (Line 1)	<u>\$3,645,731</u>
3	Deductions:	
4	Officers compensation (Line 12)	128,170
5	Salaries and wages (Line 13c)	368,313
6	Bad debts (Line 15)	3,243
7	Rents (Line 16)	26,059
8	Taxes (Line 17)	428,992
9	Interest (Line 18)	13,058
10	Depreciation (Schedule No. 3; Line 21b)	59,293
11	Employee benefit programs (Line 25)	241,333
12	Other deductions (Line 26)	<u>2,126,015</u>
13		<u>3,394,476</u>
14	Taxable income before CIAC	<u>251,255</u>
15	CIAC:	
16	Taxable CIAC (Line 10)	553,643
17	CIAC gross-up (Line 10)	341,497
18	Interest earned	<u>1,779</u>
19		<u>896,919</u>
20	Above the line taxable income	<u>1,148,174</u>
21	<u>Below the line taxable income (loss)</u>	
22	Income:	
23	Interest (Line 5)	13,286
24	Meter fees (Line 10)	<u>31,367</u>
25		<u>44,653</u>
26		
27	Expenses:	
28	Compensation of officers	35,847
29	Taxes - State income	49,331
30	Depreciation (Schedule No. 3; Line 21b)	<u>160,641</u>
31		<u>245,819</u>
32	Below the line taxable loss	<u>(201,166)</u>
33	Total taxable income (Line 30)	<u>\$ 947,008</u>

Note: Line reference shown above refer to page one of the 1993 Federal income tax return of Aloha Utilities, Inc.

Exhibit RCN-13  
 page 57 of 124

**Cronin, Jackson, Nixon & Wilson**  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
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(813) 791-4020  
FACSIMILE  
(813) 797-3602

1994

December 13, 1996

Officers and Directors  
Aloha Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Aloha Utilities, Inc., consisting of Schedules No. 1 through No. 4. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended December 31, 1994, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*  
CRONIN, JACKSON, NIXON & WILSON

Exhibit RCN-13  
page 58 of 124

Aloha Utilities, Inc.  
 Schedule of Above and Below the Line Taxable Income  
 For the Taxable Year Ended December 31, 1994  
 (Unaudited)

Line  
No.

1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (Line 1)	<u>\$3,733,084</u>
3	Deductions:	
4	Officers' compensation (Line 12)	128,170
5	Salaries and wages (Line 13)	402,783
6	Bad debts (Line 15)	4,223
7	Rents (Line 16)	20,707
8	Taxes and licenses (Line 17)	429,404
9	Interest (Line 18)	12,466
10	Depreciation (Line 21b)	56,578
11	Employee benefit program (Line 26)	218,705
12	Other deductions (Line 26)	<u>2,374,772</u>
13		<u>3,647,808</u>
14	Taxable income before CIAC	<u>85,276</u>
15	CIAC:	
16	Taxable CIAC (Line 10)	1,301,370
17	CIAC gross-up (Line 10)	762,413
18	Interest earned (Line 5)	<u>1,455</u>
19		<u>2,065,238</u>
20	Above the line taxable income	<u>2,150,514</u>
21	<u>Below the line taxable income (loss)</u>	
22	Income:	
23	Interest (Line 5)	12,549
24	Meter fees (Line 10)	<u>44,431</u>
25		
26		<u>56,980</u>
27	Expenses:	
28	Compensation of officers (Line 12)	35,847
29	Taxes (Line 17)	111,989
30	Depreciation	<u>188,990</u>
31		<u>336,826</u>
32	Below the line taxable loss	<u>(279,846)</u>
33	Total taxable income (Line 30)	<u>\$1,870,668</u>
34	Note (1): Line references noted above refer to page 1 of the 1994	
35	Federal income tax return of Aloha Utilities, Inc.	

Exhibit RCW-13  
 page 59 of 124  
 Schedule No. 2



**Cronin, Jackson, Nixon & Wilson**  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
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1995

December 13, 1996

Officers and Directors  
Aloha Utilities, Inc.

As requested, we have prepared the accompanying Special Report of Aloha Utilities, Inc., consisting of Schedules No. 1 through No. 4. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended December 31, 1995, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*  
CRONIN, JACKSON, NIXON & WILSON

Exhibit RCN-13  
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Aloha Utilities, Inc.  
 Schedule of Above and Below the Line Taxable Income  
 For the Taxable Year Ended December 31, 1995  
 (Unaudited)

<u>Line No.</u>		
1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (Line 1)	<u>\$3,991,972</u>
3	Deductions:	
4	Officers' compensation (Line 12)	118,059
5	Salaries and wages (Line 13)	340,400
6	Bad debts (Line 15)	11,272
7	Rents (Line 16)	20,906
8	Taxes and licenses (Line 17)	457,847
9	Interest (Line 18)	14,359
10	Depreciation (Line 21b)	67,736
11	Pension and profit sharing (Line 24)	115,867
12	Employee benefit program (Line 26)	92,864
13	Other deductions (Line 26)	<u>2,436,773</u>
14		<u>3,676,083</u>
15	Taxable income before CIAC	<u>315,889</u>
16	CIAC:	
17	Taxable CIAC (Line 10)	401,761
18	CIAC gross-up (Line 10)	235,421
19	Interest earned (Line 5)	<u>968</u>
20		<u>638,150</u>
21	Above the line taxable income	<u>954,039</u>
22	<u>Below the line taxable income (loss)</u>	
23	Income:	
24	Interest (Line 5)	13,008
25	Meter fees (Line 10)	28,073
26	Gain on asset disposal (Line 9)	<u>1,208</u>
27		
28		<u>42,289</u>
29	Expenses:	
30	Compensation of officers (Line 12)	62,569
31	Taxes and licenses (Line 17)	40,855
32	Depreciation (Line 21b)	215,067
33	Pension and profit sharing (Line 24)	<u>15,811</u>
34		<u>334,302</u>
35	Below the line taxable loss	<u>(292,013)</u>
36	Total taxable income (Line 30)	<u>\$ 662,026</u>

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of	)	DOCKET NO. 930216-WS
Contributions-in-Aid-of-	)	ORDER NO. PSC-93-0871-FOF-WS
Construction (CIAC) Gross-Up	)	ISSUED: June 9, 1993
Funds Received by GULF UTILITY	)	
COMPANY in Lee County.	)	

---

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
 THOMAS M. BEARD  
 SUSAN F. CLARK  
 JULIA L. JOHNSON  
 LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION  
ORDER REQUIRING REFUND

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

Background

The repeal of Section 118(b) of the Internal Revenue Code (IRC) resulted in making contributions-in-aid-of-construction (CIAC) gross income and depreciable for federal tax purposes. By Order No. 16971, issued December 18, 1986, this Commission authorized corporate utilities to collect a CIAC tax gross-up in order for those utilities to pay the tax liability resulting from their receipt of CIAC.

In Order No. 23541, issued October 1, 1990, we ordered all water and wastewater utilities which were collecting the CIAC tax gross-up and which wanted to continue do so to file a petition for approval of same on or before October 29, 1990. Gulf Utility Company (Gulf or utility) filed a petition, and by proposed agency action (PAA) Order No. PSC-92-0742-FOF-WS, issued July 30, 1992, we proposed authorizing Gulf to continue to gross-up. However, Southwest Florida Capital Corporation protested that Order, so that matter proceeded to an administrative hearing. Since no final decision has been made in that case, the question of whether Gulf will be allowed to collect the gross-up on a prospective basis is yet to be resolved.

*Exhibit RCN-13  
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DOCUMENT NUMBER-DATE

06213 JUN-93

10-RECEIVED

ORDER NO. PSC-93-0871-FOF-WS  
DOCKET NO. 930216-WS  
PAGE 2

By Orders Nos. 16971 and 23541, we required utilities which gross-up to file annually the information needed for (1) a determination of the utility's state and federal income tax liability directly attributable to receipt of CIAC for that year and (2) a determination of whether a refund of gross-up charges collected that year is appropriate. These orders required that a utility refund on a pro rata basis the gross-up charges collected each year which exceeded the utility's actual above-the-line tax liability attributable to CIAC for the same year.

By PAA Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, as amended by Order No. PSC-92-0961A-FOF-WS, issued September 14, 1992, we clarified the refund calculation provisions of Orders Nos. 16971 and 23541. No protest to that PAA Order was filed, so the action taken therein became final.

Gulf is a class A utility providing water and wastewater service in Lee County. According to its 1991 annual report, Gulf had \$1,484,296 in operating revenue and \$44,650 in net operating income for its water system and had \$660,570 in operating revenue and \$44,650 in net operating income for its wastewater system.

Refund Calculations For Years 1987 Through 1991

In compliance with Order No. 16971, Gulf filed annual CIAC gross-up reports for 1987 through 1991. By letter dated April 10, 1991, Gulf amended its CIAC reports for 1987, 1988 and 1989. In response to some of our staff's preliminary refund calculations sent to Gulf on March 1, 1993, Gulf submitted copies of a special report containing Gulf's proposed refund calculation on April 7, 1993. Our calculations are reflected on Schedule No. 1, which is attached hereto and by reference incorporated herein. Our calculations differ with Gulf's in two respects.

First, in calculating net taxable CIAC, Gulf reduced the amount of taxable CIAC by the first year's depreciation only for years where there was above-the-line income exclusive of CIAC and gross-up. If there was an above-the-line loss, Gulf included the first year's depreciation in the loss, but did not subtract it from taxable CIAC to compute net taxable CIAC, apparently on the theory that the loss already included a reduction for the depreciation.

We believe it is appropriate to separately account for the first year's depreciation on taxable CIAC when calculating above-the-line income or loss, thus excluding all effects of gross-up

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ORDER NO. PSC-93-0871-FOF-WS  
DOCKET NO. 930216-WS  
PAGE 3

from that calculation, and to subtract the first year's depreciation from taxable CIAC when calculating the amount of net taxable CIAC. This is done so we can isolate the above-the-line income or loss as if CIAC gross-up were not a factor. The full gross-up formula, which Gulf used for the years in question, takes into account the first year's depreciation using a half-year convention. Depreciation is an expense which reduces the amount of taxable CIAC and the amount of taxes due.

We note that our calculation of net taxable CIAC agrees with Gulf's for each year except 1988. For that year, Gulf shows an above-the-line loss of \$76,885. That amount, however, includes \$99,700 in first year depreciation associated with taxable CIAC. As is shown in our calculation on Schedule No. 1, Gulf would have \$22,815 in above-the-line income when depreciation is added in. Therefore, no reduction to the amount of taxable CIAC should be made in 1988 for an above-the-line loss.

Our second disagreement with Gulf's calculations concerns the tax rate. Gulf used a combined effective state and federal tax rate which it calculated from its returns. By Order No. PSC-92-0961-FOF-WS, we adopted, and we have consistently used, the combined federal and state tax rates, and not combined effective tax rates. We have used the combined state and federal rates since the net amount of taxable CIAC will in fact be taxed at the combined rates and not at the effective rates.

We note that Gulf's proposed effective tax rates are higher than the combined federal and state tax rates for each year except 1987. In 1987, the federal tax rate was 46% for the first six months and 34% for the last six months. We calculated the average of the two combined federal and state rates and arrived at a combined federal and state tax rate of 43.3%; Gulf's effective federal and state rate for 1987 was 42.10%.

According to Order No. 23541, all gross-up amounts in excess of a utility's actual tax liability resulting from its collection of CIAC in a year should be refunded on a pro rata basis to those persons who paid the gross-up that year. According to our calculations, Gulf has a refund obligation for each year, 1987-1991. A summary of each year's calculation follows.

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DOCKET NO. 930216-WS  
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1987

The utility calculated a \$18,624 refund for 1987; we calculated a \$5,708 refund. The 1987 CIAC report indicates that a total of \$275,502 of gross-up charges were collected and that the first year's depreciation on CIAC was \$7,479. The utility had an above-the-line loss of \$100,334 prior to consideration of taxable CIAC and associated depreciation. We reduced the amount of taxable CIAC to account for this above-the-line loss and used the 43.30% combined federal and state tax rates to calculate the net income tax on CIAC. We then compared the gross-up required to pay the tax to the gross-up charges collected. The \$5,708 difference is the amount of the refund. The amount does not include the accrued interest from December 31, 1987, to the date of refund which must also be refunded.

1988

The utility calculated a \$26,658 refund for 1988; we calculated a \$49,212 refund. The 1988 CIAC report indicates that a total of \$1,407,307 of gross-up charges were collected and that the first year's depreciation on CIAC was \$99,700. Gulf had above-the-line income of \$22,815 for the year. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. We then compared the gross-up required to pay the tax to the gross-up charges collected. The \$49,212 difference is the amount of the refund. The amount does not include the accrued interest from December 31, 1988, to the date of refund which must also be refunded.

1989

The utility calculated a \$37,670 refund for 1989; we calculated a \$45,309 refund. The 1989 CIAC report indicates that a total of \$1,328,581 of gross-up charges were collected and that the first year's depreciation on CIAC was \$39,437. Gulf had above-the-line income of \$192,702 for the year. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. We then compared the gross-up required to pay the tax to the gross-up charges collected. The \$45,309 difference is the amount of the refund. The amount does not include the accrued interest from December 31, 1989, to the date of refund which must also be refunded.

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page 65 of 124

ORDER NO. PSC-93-0871-FOF-WS

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PAGE 5

1990

The utility calculated a \$25,677 refund for 1990; we calculated a \$32,462 refund. The 1990 CIAC report indicates that a total of \$1,021,526 of gross-up charges were collected and that the first year's depreciation on CIAC was \$60,146. Gulf had above-the-line income of \$120,292 for the year. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. We then compared the gross-up required to pay the tax to the gross-up charges collected. The \$32,462 difference is the amount of the refund. This amount does not include the accrued interest from December 31, 1990, to the date of refund which must also be refunded.

1991

The utility calculated a \$114,402 refund for 1991; we calculated a \$120,447 refund. The 1991 CIAC report indicates that a total of \$665,291 of gross-up charges were collected and that the first year's depreciation on the CIAC was \$24,630. The utility had an above-the-line loss of \$177,642 prior to consideration of taxable CIAC and associated depreciation. We reduced the amount of taxable CIAC to account for this above-the-line loss and used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. We then compared the gross-up required to pay the tax to the gross-up charges collected. The \$120,447 difference is the amount of the refund. This amount does not include the accrued interest from December 31, 1991, to the date of refund which must also be refunded.

Conclusion

Based upon the foregoing, Gulf is hereby required to refund on a pro rata basis to all persons who paid gross-up charges in a given year \$5,708 for 1987, \$49,212 for 1988, \$45,309 for 1989, \$32,462 for 1990, and \$120,447 for 1991, plus accrued interest through the date of the refund. The refunds must be completed within six months of the date of this Order. Gulf shall submit copies of canceled checks, bills which have had credits applied to them, or other evidence which verifies that the refunds have been made within 30 days of completion of the refund.

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ORDER NO. PSC-93-0871-FOF-WS  
DOCKET NO. 930216-WS  
PAGE 6

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that the provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

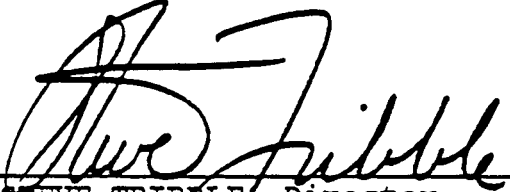
ORDERED that, as set forth hereinabove, Gulf Utility Company is hereby required to refund on a pro rata basis to all persons who paid gross-up charges in a given year \$5,708 for 1987, \$49,212 for 1988, \$45,309 for 1989, \$32,462 for 1990, and \$120,447 for 1991, plus accrued interest from the date of collection through the date of the refund. It is further

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

ORDERED that all matters contained in the schedule attached hereto are by reference incorporated herein. It is further

ORDERED that the docket will be closed upon expiration of the protest period if no timely protest is filed.

By ORDER of the Florida Public Service Commission this 9th day of June, 1993.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MJF

Exhibit RCN-13  
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DOCKET NO. 930216-WS  
PAGE 7

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 30, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 adversely 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.

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PAGE 8

SCHEDULE NO. 1

GULF UTILITY COMPANY

COMMISSION CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	1987	1988	1989	1990	1991
1 Form 1120, Line 30 (Line 15)	\$ 633,346	\$ 3,364,655	\$ 3,482,926	\$ 2,238,372	\$ 1,092,219
2 Less CIAC (Line 7)	(461,100)	(2,350,680)	(2,166,402)	(1,599,474)	(1,105,326)
3 Less Gross-up collected (Line 19)	(275,502)	(1,407,307)	(1,328,581)	(1,021,526)	(665,291)
4 Add First Year's Depr on CIAC (Line 8)	7,479	99,700	39,437	60,146	24,530
5 Add/Less Other Effects (Lines 20 & 21)	(4,557)	316,437	165,322	542,774	476,126
6					
7 Adjusted Income Before CIAC and Gross-up	\$ (100,334)	\$ 22,815	\$ 192,702	\$ 120,292	\$ (177,642)
8					
9 Taxable CIAC (Line 7)	\$ 461,100	\$ 2,350,680	\$ 2,166,402	\$ 1,599,474	\$ 1,105,326
10					
11 Taxable CIAC Resulting in a Tax Liability	\$ 360,766	\$ 2,350,680	\$ 2,166,402	\$ 1,599,474	\$ 927,684
12 Less first years depr. (Line 8)	(7,479)	(99,700)	(39,437)	(60,146)	(24,530)
13					
14 Net Taxable CIAC	\$ 353,287	\$ 2,250,980	\$ 2,126,965	\$ 1,539,328	\$ 903,054
15 Effective state and federal tax rate	43.30%	37.63%	37.63%	37.63%	37.63%
16					
17 Net Income tax on CIAC	\$ 152,973	\$ 847,044	\$ 800,377	\$ 616,879	\$ 339,819
18 Less ITC Realized	0	0	0	0	0
19					
20 Net Income Tax	\$ 152,973	\$ 847,044	\$ 800,377	\$ 616,879	\$ 339,819
21 Expansion Factor for gross-up taxes	1.763668430	1.603334936	1.603334936	1.603334936	1.603334936
22					
23 Gross-up Required to pay tax effect	\$ 269,794	\$ 1,358,095	\$ 1,283,272	\$ 989,064	\$ 544,844
24 Less CIAC Gross-up collected (Line 19)	(275,502)	(1,407,307)	(1,328,581)	(1,021,526)	(665,291)
25					
26 PROPOSED REFUND (excluding interest)	\$ (5,708)	\$ (49,212)	\$ (45,309)	\$ (32,462)	\$ (120,447)
27					
28					
29 TOTAL REFUND	\$ (253,138)				
30					

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*Cronin, Jackson, Nixon & Wilson*

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
BRENDA W. McBARRON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
JAMES L. WILSON, C.P.A.

2560 GULF-TO-BAY BOULEVARD  
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CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
TELECOPIER  
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April 7, 1993

Officers and Directors  
Gulf Utility Company

As requested, we have prepared the accompanying Special Report of Gulf Utility Company, consisting of Schedules No. 1 through No. 8. This report is intended solely for use in fulfilling certain reporting requirements related to the collection of tax impact charges on contributions in aid of construction, for the five years ended December 31, 1991, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

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Gulf Utility Company  
 Schedule of Proposed Gross-up Refunds  
 For the Years 1987 through 1991  
 (Unaudited)

	1987	1988	1989	1990	1991
Above the line taxable income (loss) (Schedule No. 2) (1)	\$ (107,813)	\$ (76,885)	N/A	N/A	\$ (202,272)
Taxable CIAC (Schedule No. 2) (2)	461,100	2,350,680	2,166,402	1,699,474	1,105,326
First year depreciation on CIAC			(39,437)	(60,146)	
Net taxable CIAC	353,287	2,273,795	2,126,965	1,639,328	903,054
Effective state and federal tax rate (Schedule No. 3)	42.10%	37.78%	37.77%	37.79%	37.89%
Actual tax on CIAC	148,734	859,040	803,355	619,502	342,167
Expansion factor for gross-up (3)	1.7271	1.6072	1.6069	1.6075	1.6100
Gross-up required	256,878	1,380,649	1,290,911	995,849	550,889
Gross-up collected (Schedule No. 2)	275,502	1,407,307	1,328,581	1,021,526	665,291
Gross-up (refund) deficiency	<u>\$ (18,624)</u>	<u>\$ (26,658)</u>	<u>\$ (37,670)</u>	<u>\$ (25,677)</u>	<u>\$ (114,402)</u>

Refund Summary

1987	\$ 18,624
1988	26,658
1989	37,670
1990	25,677
1991	114,402
Total refund proposed (4)	<u>\$ 223,031</u>

Notes: (1) First year depreciation is included in losses for 1987, 1988, and 1991. Company had income in 1989 and 1990.

(2) Taxable CIAC by year is summarized as follows:

	1987	1988	1989	1990	1991
Plant capacity charges	\$ 401,881	\$ 678,847	\$ 1,075,424	\$ 601,827	\$ 485,750
Water property	56,841	575,243	448,269	468,327	158,936
Sewer property		1,095,965	646,370	629,043	460,011
Other	2,378	625	(3,661)	277	629
Total	<u>\$ 461,100</u>	<u>\$ 2,350,680</u>	<u>\$ 2,166,402</u>	<u>\$ 1,699,474</u>	<u>\$ 1,105,326</u>

(3)  $\frac{1}{1 - \text{Effective tax rate}}$

(4) Proposed refund will be made on a pro-rata basis, plus accrued interest to the date of refund.

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GULF UTILITY COMPANY  
TAXABLE INCOME RECONCILIATION  
ABOVE AND BELOW THE LINE  
DECEMBER 31, 1987

<u>INCOME</u>	<u>TOTAL</u>	<u>ABOVE</u>	<u>BELOW</u>
GROSS RECEIPTS	1,152,548	1,152,548	0
INTEREST	5,055	0	5,055
OTHER INCOME:			0
CONNECTION FEES (1)	401,881	0	401,881
WATER LINES/HYDRANTS/MAINS/SERVICES	56,841	0	56,841
SEWER MAINS/LIFT STATIONS/LINES	0	0	0
OTHER CIAC	2,378	0	2,378
TAP INS & METER INSTALLATIONS	51,362	51,362	0
JETTING & JACK & BORE FEES	7,680	7,680	0
PERMITS	2,460	2,460	0
NET GAIN (LOSS) SECTION 4797	(1,476)	0	(1,476)
SALES TAX INCOME	9	0	9
CIAC AMORTIZATION	77,247	77,247	0
OTHER CIAC AMORTIZATION	0	0	0
RATE CASE AMORTIZATION	0	0	0
TAX IMPACT FUNDS CIAC	275,502	0	275,502
<b>TOTAL INCOME</b>	<b>2,031,487</b>	<b>1,291,297</b>	<b>740,190</b>
<u>DEDUCTIONS</u>			
OFFICERS COMPENSATION	131,232	131,232	
SALARIES & WAGES	195,423	195,423	
BAD DEBTS	0	0	
RENTS	17,063	17,063	
TAXES	106,482	69,912	36,570
INTEREST	139,944	139,944	0
DEPRECIATION	308,758	289,653	19,105
PENSION & PROFIT SHARING	51,775	32,046	19,729
EMPLOYEE BENEFIT	15,348	15,348	
OTHER DEDUCTIONS:			
AMORTIZATION	3,687	3,687	0
PURCHASED WATER & POWER	100,015	100,015	
CHEMICALS	74,586	74,586	
MATERIALS & SUPPLIES	93,286	93,286	
CONTRACTUAL SERVICES	76,413	76,413	0
TRANSPORTATION MEALS & ENTERTAINMENT	7,853	0	7,853
INSURANCE	46,633	46,633	
METERS & METER INSTALLATION	62,487	62,487	0
REGULATORY ASSESSMENT FEE	28,879	28,879	
SLUDGE REMOVAL	1,031	1,031	
RATE CASE COSTS	2,286	2,286	0
SERVICES	0	0	
MISCELLANEOUS AMORTIZATION	15,302	0	15,302
MISCELLANEOUS	36,246	19,186	17,060
<b>TOTAL DEDUCTIONS</b>	<b>1,514,729</b>	<b>1,399,110</b>	<b>115,619</b>
<b>TAXABLE INCOME</b>	<b>516,758</b>	<b>(107,813)</b>	<b>624,571</b>

(1) Plant capacity charges

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GULF UTILITY COMPANY  
TAXABLE INCOME RECONCILIATION  
ABOVE AND BELOW THE LINE  
DECEMBER 31, 1988

<u>INCOME</u>	<u>TOTAL</u>	<u>ABOVE</u>	<u>BELOW</u>
GROSS RECEIPTS	1,404,986	1,404,986	0
INTEREST	89,447	0	89,447
OTHER INCOME:			
CONNECTION FEES (1)	678,847	0	678,847
WATER LINES/HYDRANTS/MAINS/SERVICES	575,243	0	575,243
SEWER MAINS/LIFT STATIONS/LINES	1,095,965	0	1,095,965
OTHER CIAC	625	0	625
TAP INS & METER INSTALLATIONS	87,616	87,616	0
JETTING & JACK & BORE FEES	10,200	10,200	0
PERMITS	4,410	4,410	0
AMORTIZATION PURCHASED BOND DISCOUNT	8,811	0	8,811
SALES TAX INCOME	4	0	4
CIAC AMORTIZATION	77,247	77,247	0
OTHER CIAC AMORTIZATION	7,651	0	7,651
RATE CASE AMORTIZATION	21,051	21,051	0
TAX IMPACT FUNDS CIAC	1,407,307	0	1,407,307
<b>TOTAL INCOME</b>	<b>5,469,410</b>	<b>1,605,510</b>	<b>3,863,900</b>
<u>DEDUCTIONS</u>			
OFFICERS COMPENSATION	135,982	135,982	0
SALARIES & WAGES	204,186	204,186	0
BAD DEBTS	199	199	0
RENTS	16,062	16,062	0
TAXES	310,784	107,579	203,205
INTEREST	216,845	119,026	97,819
DEPRECIATION	410,254	341,093	69,161
PENSION & PROFIT SHARING	45,718	24,725	20,993
EMPLOYEE BENEFIT	24,313	24,313	0
OTHER DEDUCTIONS:			
AMORTIZATION	6,343	6,343	0
PURCHASED WATER & POWER	128,652	128,652	0
CHEMICALS	105,394	105,394	0
MATERIALS & SUPPLIES	74,212	74,212	0
CONTRACTUAL SERVICES	127,431	127,431	0
TRANSPORTATION MEALS & ENTERTAINMENT	11,449	0	11,449
INSURANCE	56,857	56,857	0
METERS & METER INSTALLATION	38,819	38,819	0
REGULATORY ASSESSMENT FEE	27,757	27,757	0
SLUDGE REMOVAL	4,290	4,290	0
RATE CASE COSTS	51,635	51,635	0
SERVICES	37,096	37,096	0
LEGAL	8,430	8,430	0
SEWER	20,729	20,729	0
MISCELLANEOUS AMORTIZATION	216	0	216
MISCELLANEOUS	41,092	21,585	19,507
<b>TOTAL DEDUCTIONS</b>	<b>2,104,745</b>	<b>1,682,395</b>	<b>422,350</b>
<b>TAXABLE INCOME</b>	<b>3,364,665</b>	<b>(76,885)</b>	<b>3,441,550</b>

(1) Plant capacity charges

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GULF UTILITY COMPANY  
TAXABLE INCOME RECONCILIATION  
ABOVE AND BELOW THE LINE  
DECEMBER 31, 1989

<u>INCOME</u>	<u>TOTAL</u>	<u>ABOVE</u>	<u>BELOW</u>
GROSS RECEIPTS	1,721,080	1,721,080	
INTEREST	542,547	0	542,547
OTHER INCOME:			
CONNECTION FEES (1)	1,075,424-	0	1,075,424
WATER LINES/HYDRANTS/MAINS/SERVICES	448,269	0	448,269
SEWER MAINS/LIFT STATIONS/LINES	646,370	0	646,370
OTHER CIAC	(3,661)	0	(3,661)
TAP INS & METER INSTALLATIONS	72,781	72,781	0
JETTING & JACK & BORE FEES	6,960	6,960	0
PERMITS	3,810	3,810	0
AMORTIZATION PURCHASED BOND DISCOUNT	149,061	0	149,061
SALES TAX INCOME	182	0	182
CIAC AMORTIZATION	77,247	77,247	0
OTHER CIAC AMORTIZATION	0	0	0
RATE CASE AMORTIZATION	0	0	0
TAX IMPACT FUNDS CIAC	1,328,581	0	1,328,581
<b>TOTAL INCOME</b>	<b>6,068,651</b>	<b>1,881,878</b>	<b>4,186,773</b>
<u>DEDUCTIONS</u>			
OFFICERS COMPENSATION	147,746	147,746	
SALARIES & WAGES	246,595	246,595	
BAD DEBTS	1,472	1,472	0
RENTS	14,343	14,343	
TAXES	325,838	142,542	183,296
INTEREST	821,897	171,037	650,860
DEPRECIATION	500,549	242,291	258,258
PENSION & PROFIT SHARING	0	0	
EMPLOYEE BENEFIT	91,085	91,085	
OTHER DEDUCTIONS:			
AMORTIZATION	6,239	6,239	0
PURCHASED WATER & POWER	135,091	135,091	
CHEMICALS	132,619	132,619	
MATERIALS & SUPPLIES	63,627	63,627	
CONTRACTUAL SERVICES	163,145	163,145	
TRANSPORTATION MEALS & ENTERTAINMENT	12,127	0	12,127
INSURANCE	51,773	51,773	
METERS & METER INSTALLATION	40,205	40,205	0
REGULATORY ASSESSMENT FEE	1,800	1,800	
SLUDGE REMOVAL	4,490	4,490	
RATE CASE COSTS	0	0	0
SERVICES	29,091	29,091	0
LEGAL	0	0	
SEWER	0	0	
MISCELLANEOUS AMORTIZATION	29,952	0	29,952
MISCELLANEOUS	56,324	43,423	12,901
<b>TOTAL DEDUCTIONS</b>	<b>2,876,008</b>	<b>1,728,613</b>	<b>1,147,395</b>
<b>TAXABLE INCOME</b>	<b>3,192,643</b>	<b>153,265</b>	<b>3,039,378</b>

(1) Plant capacity charges

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**GULF UTILITY COMPANY  
TAXABLE INCOME RECONCILIATION  
ABOVE AND BELOW THE LINE  
DECEMBER 31, 1990**

<u>INCOME</u>	<u>TOTAL</u>	<u>ABOVE</u>	<u>BELOW</u>
<b>GROSS RECEIPTS</b>	<b>1,923,793</b>	<b>1,923,793</b>	
<b>INTEREST</b>	<b>553,085</b>	<b>0</b>	<b>553,085</b>
<b>OTHER INCOME:</b>			
<b>CONNECTION FEES (1)</b>	<b>601,827</b>	<b>0</b>	<b>601,827</b>
<b>WATER LINES/HYDRANTS/MAINS/SERVICES</b>	<b>468,327</b>	<b>0</b>	<b>468,327</b>
<b>SEWER MAINS/LIFT STATIONS/LINES</b>	<b>629,043</b>	<b>0</b>	<b>629,043</b>
<b>OTHER CIAC</b>	<b>277</b>	<b>0</b>	<b>277</b>
<b>TAP INS &amp; METER INSTALLATIONS</b>	<b>47,742</b>	<b>47,742</b>	<b>0</b>
<b>JETTING &amp; JACK &amp; BORE FEES</b>	<b>5,640</b>	<b>5,640</b>	<b>0</b>
<b>PERMITS</b>	<b>1,440</b>	<b>1,440</b>	<b>0</b>
<b>AMORTIZATION PURCHASED BOND DISCOUNT</b>	<b>100,428</b>	<b>0</b>	<b>100,428</b>
<b>SALES TAX INCOME</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CIAC AMORTIZATION</b>	<b>77,247</b>	<b>77,247</b>	<b>0</b>
<b>NET GAIN (LOSS) SECTION 4797</b>	<b>175</b>	<b>0</b>	<b>175</b>
<b>RATE CASE AMORTIZATION</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TAX IMPACT FUNDS CIAC</b>	<b>1,021,526</b>	<b>0</b>	<b>1,021,526</b>
<b>TOTAL INCOME</b>	<b>5,430,550</b>	<b>2,055,862</b>	<b>3,374,688</b>
<b>DEDUCTIONS</b>			
<b>OFFICERS COMPENSATION</b>	<b>165,364</b>	<b>165,364</b>	
<b>SALARIES &amp; WAGES</b>	<b>323,654</b>	<b>316,384</b>	<b>7,270</b>
<b>BAD DEBTS</b>	<b>4,519</b>	<b>4,519</b>	<b>0</b>
<b>RENTS</b>	<b>4,003</b>	<b>4,003</b>	
<b>TAXES</b>	<b>297,133</b>	<b>164,349</b>	<b>132,784</b>
<b>INTEREST</b>	<b>791,682</b>	<b>180,266</b>	<b>611,416</b>
<b>DEPRECIATION</b>	<b>658,881</b>	<b>262,809</b>	<b>396,072</b>
<b>PENSION &amp; PROFIT SHARING</b>	<b>0</b>	<b>0</b>	
<b>EMPLOYEE BENEFIT</b>	<b>112,055</b>	<b>112,055</b>	
<b>OTHER DEDUCTIONS:</b>			
<b>AMORTIZATION</b>	<b>6,467</b>	<b>6,467</b>	<b>0</b>
<b>PURCHASED WATER &amp; POWER</b>	<b>148,731</b>	<b>148,731</b>	
<b>CHEMICALS</b>	<b>159,397</b>	<b>159,397</b>	
<b>MATERIALS &amp; SUPPLIES</b>	<b>89,841</b>	<b>89,841</b>	
<b>CONTRACTUAL SERVICES</b>	<b>207,895</b>	<b>192,023</b>	<b>15,872</b>
<b>TRANSPORTATION MEALS &amp; ENTERTAINMENT</b>	<b>15,321</b>	<b>0</b>	<b>15,321</b>
<b>INSURANCE</b>	<b>67,191</b>	<b>67,191</b>	
<b>METERS &amp; METER INSTALLATION</b>	<b>36,437</b>	<b>36,437</b>	<b>0</b>
<b>REGULATORY ASSESSMENT FEE</b>	<b>33,469</b>	<b>33,469</b>	
<b>SLUDGE REMOVAL</b>	<b>5,327</b>	<b>5,327</b>	
<b>RATE CASE COSTS</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>SERVICES</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>LEGAL</b>	<b>0</b>	<b>0</b>	
<b>SEWER</b>	<b>0</b>	<b>0</b>	
<b>MISCELLANEOUS AMORTIZATION</b>	<b>0</b>	<b>0</b>	
<b>MISCELLANEOUS</b>	<b>64,811</b>	<b>53,609</b>	<b>11,202</b>
<b>TOTAL DEDUCTIONS</b>	<b>3,192,178</b>	<b>2,002,241</b>	<b>1,189,937</b>
<b>TAXABLE INCOME</b>	<b>2,238,372</b>	<b>53,621</b>	<b>2,184,751</b>

(1) Plant capacity charges

*Exhibit RCW-13  
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GULF UTILITY COMPANY  
TAXABLE INCOME RECONCILIATION  
ABOVE AND BELOW THE LINE  
DECEMBER 31, 1991

<u>INCOME</u>	<u>TOTAL</u>	<u>ABOVE</u>	<u>BELOW</u>
GROSS RECEIPTS	2,144,867	2,144,867	
INTEREST	438,540	0	438,540
OTHER INCOME:			
CONNECTION FEES (1)	485,750	0	485,750
WATER LINES/HYDRANTS/MAINS/SERVICES	158,936	0	158,936
SEWER MAINS/LIFT STATIONS/LINES	460,011	0	460,011
OTHER CIAC	629	0	629
TAP INS & METER INSTALLATIONS	36,366	36,366	
JETTING & JACK & BORE FEES	3,360	3,360	
PERMITS	685	685	
AMORTIZATION PURCHASED BOND DISCOUNT	32,870	0	32,870
SALES TAX INCOME	0	0	
CIAC AMORTIZATION	77,247	77,247	
NET GAIN (LOSS) SECTION 4797	0	0	
RATE CASE AMORTIZATION	0	0	
TAX IMPACT FUNDS CIAC	665,291	0	665,291
<b>TOTAL INCOME</b>	<b>4,504,552</b>	<b>2,262,525</b>	<b>2,242,027</b>
<u>DEDUCTIONS</u>			
OFFICERS COMPENSATION	187,799	187,799	
SALARIES & WAGES	355,017	337,420	17,597
BAD DEBTS	3,699	3,699	
RENTS	3,315	3,315	
TAXES	301,505	244,293	57,212
INTEREST	980,064	481,500	498,564
DEPRECIATION	764,907	234,981	529,926
PENSION & PROFIT SHARING	0	0	
EMPLOYEE BENEFIT	141,914	141,914	
OTHER DEDUCTIONS:			
AMORTIZATION	603	603	
PURCHASED WATER & POWER	158,022	158,022	
CHEMICALS	193,533	193,533	
MATERIALS & SUPPLIES	94,804	94,804	
CONTRACTUAL SERVICES	202,440	190,193	12,247
TRANSPORTATION MEALS & ENTERTAINMENT	21,681	18,225	3,456
INSURANCE	59,309	59,309	
METERS & METER INSTALLATION	24,575	24,575	
REGULATORY ASSESSMENT FEE	39,205	39,205	
SLUDGE REMOVAL	8,703	8,703	
RATE CASE COSTS		0	
SERVICES		0	
LEGAL		0	
SEWER		0	
MISCELLANEOUS AMORTIZATION		0	
MISCELLANEOUS	48,880	42,704	6,176
<b>TOTAL DEDUCTIONS</b>	<b>3,589,975</b>	<b>2,464,797</b>	<b>1,125,178</b>
<b>TAXABLE INCOME</b>	<b>914,577</b>	<b>(202,272)</b>	<b>1,116,849</b>

(1) Plant capacity charges

Exhibit RCN-13  
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Schedule No. 2  
Page 5 of 5

GULF UTILITY  
TAXABLE INCOME RECONCILIATION  
SUPPLEMENTAL SCHEDULES

	1987	1988	1989	1990
<b><u>SALARIES &amp; WAGES</u></b>				
TOTAL WAGES	195,423	204,186	246,595	323,654
DISALLOWED WAGES ABOVE THE LINE WAGES				(7,270)
	<u>195,423</u>	<u>204,186</u>	<u>246,595</u>	<u>316,384</u>
<b><u>INTEREST EXPENSE</u></b>				
INTEREST EXPENSE	139,944	216,845	821,897	791,682
INTEREST ALLOWED BELOW THE LINE INTEREST EXPENSE	(139,944)	(119,026)	(171,037)	(180,266)
	<u>0</u>	<u>97,819</u>	<u>650,860</u>	<u>611,416</u>
<b><u>TAX EXPENSE</u></b>				
TOTAL TAXES	106,482	310,784	325,838	297,133
STATE INCOME TAXES ABOVE THE LINE TAX EXPENSE	(36,570)	(203,205)	(183,296)	(132,784)
	<u>69,912</u>	<u>107,579</u>	<u>142,542</u>	<u>164,349</u>
<b><u>MISCELLANEOUS</u></b>				
TOTAL PER TAX RETURN	36,246	41,092	56,324	64,811
DIRECTORS FEES	(9,000)	(6,000)	0	0
BUSINESS PROMOTION EXPENSES	(8,060)	(13,507)	(12,901)	(11,202)
	<u>19,186</u>	<u>21,585</u>	<u>43,423</u>	<u>53,609</u>
<b><u>MISCELLANEOUS AMORTIZATION</u></b>				
PER TAX RETURN	15,302	216	29,952	0
ENVIROGRO WRITE OFF			(20,442)	
RECALCINING FACILITY WRITE OFF			(9,510)	
OTHER AMORTIZATION		(216)		
KEOHANE COSTS	(15,302)			
ABOVE THE LINE TOTAL	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

GULF UTILITY  
TAXABLE INCOME RECONCILIATION  
SUPPLEMENTAL SCHEDULES

1991

SALARIES & WAGES

TOTAL WAGES	355,017
DISALLOWED WAGES ABOVE THE LINE WAGES	<u>(17,597)</u>
	<u>337,420</u>

TAX EXPENSE

TOTAL TAXES	301,505
STATE INCOME TAXES ABOVE THE LINE TAX EXPENSE	<u>(57,212)</u>
	<u>244,293</u>

MISCELLANEOUS

TOTAL PER TAX RETURN	48,880
DIRECTORS FEES BUSINESS PROMOTION EXPENSES	<u>(6,176)</u>
	<u>42,704</u>

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-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

Exhibit RCN-13  
page 80 of 124

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.

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

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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

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

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ORDER NO. PSC-98-1626-FOF-WS  
DOCKET NO. 980943-WS  
PAGE 6

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: s/ Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

( 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 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

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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.

SCHOLIE

Gulf Utility Company  
 SOURCE: (Line references are from

	1992	1993	1994	1995
1 Form 1120, Line 30 (Line 15) \$	992,548	1,678,56	2,503,60	1,722
2 Less CIAC (Line 7)	(528,301)	(957,765)	(1,469,03)	(1,103)
3 Less Gross-up Collected (Line 8)	(321,518)	(578,151)	(886,312)	(672)
4 Add First Year's Depr on CIAC	4,886	18,803	38,301	38
5 Add/Less Other Effects (Lines 6, 7)	(2,347)	(4,984)	(4,348)	(260)
8 Adjusted Income Before CIAC and Taxable CIAC (Line 7) \$	145,268	156,469	182,211	478
9 Less first years depr. (Line 8) \$	(4,886)	(18,803)	(38,301)	(3,65)
1 Adjusted Income After CIAC \$	668,683	1,095,43	1,612,94	1,123
1 Less: NOL Carry Forward \$	0	0	0	0
1 Net Taxable CIAC \$	523,415	938,962	1,430,73	1,076
1 Combined Marginal state &	37.63%	37.63%	37.63%	38
1 Net Income tax on CIAC \$	196,961	353,331	538,384	413

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 Page 85 of 12

1	Less ITC Realized		0		0		0		0
2	Net Income Tax	\$	196,961	\$	353,331	\$	538,384	\$	404,398
2	Expansion Factor for gross-up		1.60333493		1.60333493		1.60333493		1.60333493
2	Gross-up Required to pay tax	\$	315,794	\$	566,508	\$	863,210	\$	648,385
2	Less CIAC Gross-up collected		(321,518)		(578,151)		(886,312)		(617,226)
2	(OVER) OR UNDER COLLECTION	\$	(5,724)	\$	(11,643)	\$	(23,102)	\$	31,159
2	TOTAL YEARLY REFUND	\$	(5,724)	\$	(11,643)	\$	(23,102)	\$	0
3	REFUND (excluding interest)	\$	(40,469)	\$		\$		\$	

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 page 86 of 124

# *Cronin, Jackson, Nixon & Wilson*

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
BRENDA W. McBARRON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
JAMES L. WILSON, C.P.A.

2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
TELECOPIER  
(813) 797-3602

March 29, 1994

Officers and Directors  
Gulf Utility Company

As requested, we have prepared the accompanying Special Report of Gulf Utility Company, consisting of Schedules No. 1 through No. 6. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended December 31, 1992, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

EXHIBIT RCN-13  
Page 87 of 124

Gulf Utility Company  
 Schedule of Above and Below the Line Taxable Income  
 Tax Year Ended December 31, 1992  
 (unaudited)

152,847  
 - 43,887 Meter fees.  
 35,908 Meter gross  
 (75,797)  
 145,268

<u>Above the line taxable income</u>		
1	Gross receipts/sales	\$ 2,618,804
2	Meter, tap fees and miscellaneous CIAC not 3 subject to gross-up	43,487
4	Deductions:	2,662,291
	Compensation of officers	184,221
	Salaries and wages	317,332
	Bad debts	2,690
	Rents	3,952
	Taxes	271,261
	Interest (Schedule No. 3)	522,513
	Depreciation (Schedule No. 5)	302,298
	Employee benefits	166,388
	Other deductions excluding amortization, meals and entertainment, and engineering	738,789
		2,509,444
4	Above the line income before CIAC	152,847
	CIAC:	
5	Taxable CIAC	528,301
	Gross-up collections	321,518
		849,819
	Total above the line income	1,002,666
<u>Below the line taxable income (loss)</u>		
	Income:	
	Interest income	\$ 343,591
	Deductions:	
	Amortization of bond issue costs	6,344
	Taxes	19,398
	Interest (Schedule No. 3)	435,289
	Depreciation (Schedule No. 5)	477,964
	Other deductions:	
	Miscellaneous amortization	603
	Meals and entertainment	2,045
	Engineering	22,040
		963,683
	Total below the line loss	(620,092)
	Total taxable income	\$ 382,574

# *Cronin, Jackson, Nixon & Wilson*

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

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CLEARWATER, FLORIDA 34625-4419  
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TELECOPIER  
(813) 797-3602

September 26, 1994

Officers and Directors  
Gulf Utility Company

As requested, we have prepared the accompanying Special Report of Gulf Utility Company, consisting of Schedules No. 1 through No. 6. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction for the year ended December 31, 1993, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

Exhibit RCN-13  
Page 89 of 124

Gulf Utility Company  
 Schedule of Above and Below the Line Taxable Income  
 For the Year Ended December 31, 1993

223714  
 \* -145257 AFT  
 \* - 40490 ME  
 \* - 15803  
 \* - 55002  
 \* - 4459  
 + 15046

Line No.

1	<u>Above the line taxable income</u>	
2	Income:	
3	Operating revenue (line 1c)	\$2,821,541
4	Meter, tap fees, and miscellaneous CIAC	
5	not subject to gross-up (1)	<u>40,490</u> TO 1572
6		<u>2,862,031</u>
7	Deductions:	
8	Compensation of officers (line 12)	230,264
9	Salaries and wages (line 13c)	294,390
10	Bad debts (line 15)	1,994
11	Rents (line 16)	3,479
12	Taxes (line 17)(2)	288,534
13	Interest (line 18, Schedule No. 3)	483,329
14	Depreciation (line 21b, Schedule No. 4)	278,462
15	Employee benefit programs (line 25)	151,687
16	Other deductions (line 26, Schedule No. 5)	<u>846,178</u>
17		<u>2,578,317</u>
18	Above the line income before CIAC	<u>283,714</u>
19	CIAC:	
20	Taxable CIAC	957,765
21	Gross-up collections	<u>578,151</u>
22		<u>1,535,916</u>
23	Total above the line income	<u>1,819,630</u>
24	<u>Below the line income (loss)</u>	
25	Income:	
26	Interest (line 5)	324,704
27	Capital gains (line 8)	<u>36,037</u>
28		<u>360,741</u>
29	Deductions:	
30	Taxes (line 17)(2)	56,980
31	Interest (line 18, Schedule No. 3)	557,030
32	Depreciation (line 21, Schedule No. 4)	435,858
33	Other deductions (line 26, Schedule No. 5)	103,277
34	Amortization of acquisition adjustment (line 10)	<u>8,904</u>
35		<u>1,162,049</u>
36	Total below the line loss	<u>(801,308)</u>
37	Total taxable income	<u>\$1,018,322</u>

Gulf Utility Company  
 Above and Below the Line "Other Deductions"  
 For the Year Ended December 31, 1993

<u>Line No.</u>		<u>Total "Other" Deductions</u>	<u>Above the Line</u>	<u>Below the Line</u>
1	<u>Description:</u>			
2	Fuel for power produced	\$ 323	\$ 323	
3	Purchased power	199,230	199,230	
4	Chemicals	181,005	181,005	
5	Material and supplies	77,984	77,984	
6	Contractual services -			
7	"engineering	5,751	5,751	
8	Contractual services -			
9	accounting	3,370	3,370	
10	Contractual services - legal	28,100	28,100	
11	Contractual services - other	138,439	138,439	
12	Sludge removal	12,625	12,625	
13	Transportation expense	19,254	19,254	
14	Insurance	81,065	81,065	
15	Regulatory expense	18,431	18,431	
16	General expense	21,945	21,945	
17	Meter services	58,502	58,502	
18	Gross-up refunds	89,373		\$ 89,373
19	Engineering development	11,827		11,827
20	Meals and entertainment (80%)	2,077		2,077
21	Amortization (franchise fee)	154		154
22		<u>\$ 949,455</u>	<u>\$846,178</u>	<u>\$103,277</u>



*Cronin, Jackson, Nixon & Wilson*  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

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SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
FACSIMILE  
(813) 797-3602

November 15, 1995

Officers and Directors  
Gulf Utility Company

As requested, we have prepared the accompanying Special Report of Gulf Utility Company, consisting of Schedules No. 1 through No. 6. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction for the year ended December 31, 1994, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

Exhibit RCN-13  
Page 92 of 124

Gulf Utility Company  
 Schedule of Above and Below the Line Taxable Income  
 For the Year Ended December 31, 1994

223,224  
 - 83,503 AFPJ  
 - 65,168 meter  
 107,658 meter  
<41,013>  
 182,211

Line No.

1	<u>Above the line taxable income</u>		
2	Income:		
3	Operating revenue (line 1c)		\$3,065,578
4	Rate case amortization (line 10)		17,038
5	Meter, tap fees, and miscellaneous CIAC		
6	not subject to gross-up (Note 1)		<u>65,168</u>
7			<u>3,147,784</u>
8	Deductions:		
9	Compensation of officers (line 12)		241,893
10	Salaries and wages (line 13c)		373,796
11	Rents (line 16)		3,428
12	Taxes (line 17) (Note 2)		299,695
13	Interest (line 18, Schedule No. 3)		479,511
14	Depreciation (line 21b, Schedule No. 4)		314,766
15	Employee benefit programs (line 25)		180,624
16	Other deductions (line 26, Schedule No. 5)		<u>1,030,847</u>
17			<u>2,924,560</u>
18	Above the line income before CIAC		<u>223,224</u>
19	CIAC:		
20	Taxable CIAC (line 10)		1,469,031
21	Gross-up collections (line 10)		<u>886,312</u>
22			<u>2,355,343</u>
23	Total above the line income		<u>2,578,567</u>
24	<u>Below the line income (loss)</u>		
25	Income:		
26	Interest (line 5)		329,908
27	Engineering and prior years' amortized		
28	gross-up (line 10)		<u>31,272</u>
29			<u>361,180</u>
30	Deductions:		
31	Taxes (line 17) (Note 2)		104,323
32	Interest (line 18, Schedule No. 3)		484,926
33	Depreciation (line 21, Schedule No. 4)		500,579
34	Other deductions (line 26, Schedule No. 5)		19,612
35	Amortization of acquisition adjustment (line 10)		<u>8,904</u>
36			<u>1,118,344</u>
37	Total below the line loss		<u>(757,164)</u>
38	Total taxable income		<u>\$1,821,403</u>

Schedule No. 2

Page 1 of 2

EXHIBIT RCN-13  
 On 00 93 of 174

Gulf Utility Company  
 Above and Below the Line "Other Deductions"  
 For the Year Ended December 31, 1994

<u>Line No.</u>		<u>Total "Other" Deductions</u>	<u>Above the Line</u>	<u>Below the Line</u>
1	<u>Description:</u>			
2	Purchased water	\$ 7,704	\$ 7,704	
3	Sludge Removal	28,123	28,123	
4	Fuel for power produced	154	154	
5	Purchased power	194,345	194,345	
6	Chemicals	165,952	165,952	
7	Material and supplies	94,370	94,370	
8	Contractual services:			
9	Engineering	6,936	6,936	
10	Accounting	43,203	43,203	
11	Legal	16,552	16,552	
12	Other	<u>173,790</u>	<u>173,790</u>	
13		<u>240,481</u>	<u>240,481</u>	
14	Transportation expense	30,112	30,112	
15	Insurance	80,143	80,143	
16	Regulatory and general expense	81,805	81,805	
17	Amortization - engineering and			
18	permits	9,117		\$ 9,117 ✓
19	Meter services	107,658	107,658	
20	Construction period interest	1,261		1,261
21	Gross-up refunds	7,363		7,363
22	Amortization (franchise fee)	154		154 ✓
23	50% of Meals and entertainment	<u>1,717</u>		<u>1,717</u> ✓
24		<u>\$1,050,459</u>	<u>\$1,030,847</u>	<u>\$ 19,612</u>

*Cronin, Jackson, Nixon & Wilson*  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

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December 13, 1996

Officers and Directors  
Gulf Utility Company

As requested, we have prepared the accompanying Special Report of Gulf Utility Company, consisting of Schedules No. 1 through No. 6. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction for the year ended December 31, 1995, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*  
CRONIN, JACKSON, NIXON & WILSON

Exhibit RCN-13  
Page 95 of 124

Gulf Utility Company  
 Schedule of Above and Below the Line Taxable Income  
 For the Year Ended December 31, 1995

13,964  
 - 55,088 *Meter, tap fees*  
 88,837 *Meter Service*  
33749  
47,713

Line No.		
1	<u>Above the line taxable income</u>	
2	Income:	
3	Operating revenue (line 1c)	\$3,242,148
4	Rate case amortization (line 10)	9,939
5	Meter, tap fees, and miscellaneous CIAC	
6	not subject to gross-up (Note 1)	<u>55,088</u>
7		<u>3,307,175</u>
8	Deductions:	
9	Compensation of officers (line 12)	290,759
10	Salaries and wages (line 13c)	397,855
11	Rents (line 16)	13,601
12	Taxes (line 17) (Note 2)	331,814
13	Interest (line 18, Schedule No. 3)	528,101
14	Depreciation (line 21b, Schedule No. 4)	425,027
15	Employee benefit programs (line 25)	218,345
16	Other deductions (line 26, Schedule No. 5)	<u>1,087,709</u>
17		<u>3,293,211</u>
18	Above the line income before CIAC	<u>13,964</u>
19	CIAC:	
20	Taxable CIAC (line 10)	1,110,304
21	Gross-up collections (line 10)	<u>617,226</u>
22		<u>1,727,530</u>
23	Total above the line income	<u>1,741,494</u>
24	<u>Below the line income (loss)</u>	
25	Income:	
26	Interest (line 5)	353,118
27	Engineering and prior years' amortized	
28	gross-up (line 10)	<u>40,345</u>
29		<u>393,463</u>
30	Deductions:	
31	Taxes (line 17) (Note 2)	62,106
32	Interest (line 18, Schedule No. 3)	387,663
33	Depreciation (line 21, Schedule No. 4)	557,714
34	Other deductions (line 26, Schedule No. 5)	15,768
35	Amortization of acquisition adjustment (line 10)	<u>8,904</u>
36		<u>1,032,155</u>
37	Total below the line loss	<u>(638,692)</u>
38	Total taxable income	<u>\$1,102,802</u>

*Exhibit RCN-13  
 page 96 of 124*

Gulf Utility Company  
 Above and Below the Line "Other Deductions"  
 For the Year Ended December 31, 1995

<u>Line No.</u>		<u>Total "Other" Deductions</u>	<u>Above the Line</u>	<u>Below the Line</u>
1	<u>Description:</u>			
2	Sludge removal	\$ 67,759	\$ 67,759	
3	Purchased power	209,977	209,977	
4	Fuel for power produced	646	646	
5	Chemicals	164,851	164,851	
6	Material and supplies	96,817	96,817	
7	Contractual services:			
8	Engineering	17,430	17,430	
9	Accounting	41,670	41,670	
10	Legal	36,931	36,931	
11	Other	<u>176,937</u>	<u>176,937</u>	
12		<u>272,968</u>	<u>272,968</u>	
13	Transportation expense	23,035	23,035	
14	Insurance	81,945	81,945	
15	Regulatory and general expense	80,874	80,874	
16	Amortization - engineering and			
17	permits	9,117		\$ 9,117
18	Meter services	88,837	88,837	
19	Construction period interest	1,261		1,261
20	Gross-up refunds	3,208		3,208
21	Amortization (franchise fee)	154		154
22	50% of Meals and entertainment	<u>2,028</u>		<u>2,028</u>
23		<u>\$1,103,477</u>	<u>\$1,087,709</u>	<u>\$ 15,768</u>

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February 24, 1998

Officers and Directors  
Gulf Utility Company

As requested, we have prepared the accompanying Special Report of Gulf Utility Company, consisting of Schedules No. 1 through No. 6.

This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction for the year ended December 31, 1996, to be filed with the Florida Public Service Commission.

We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*  
CRONIN, JACKSON, NIXON & WILSON

Gulf Utility Company  
 Schedule of Above & Below the Line Taxable Income (Loss)  
 For the Year Ended December 31, 1996  
 (Unaudited)

23874  
 - 31447 Meter fees  
 68464 meter surch  
 37017  
60891

<u>Line No.</u>		
1	<u>Above the line taxable income</u>	
2	Income:	
3	Gross receipts/sales (Line 1c)	\$ 3,344,627
4	Meter, tap fees & miscellaneous CIAC not subject to gross-up (Note 1)	31,447
5		<u>3,376,074</u>
6	Deductions:	
7	Compensation of officers (Line 12)	179,661
8	Salaries & wages (Line 13)	517,297
9	Rents (Line 16)	59,565
10	Taxes & licenses (Line 17)(Note 2)	349,313
11	Interest (Line 18)(Schedule No. 3)	567,724
12	Depreciation (Line 21b)(Schedule No. 4)	344,581
13	Employee benefit programs (Line 25)	232,722
14	Other deductions (Line 26)(Schedule No. 5)	1,101,337
15		<u>3,352,200</u>
16	Above the line loss before CIAC	<u>23,874</u>
17	CIAC:	
18	Taxable CIAC (Line 10)	546,906
19	Gross-up collections (Line 10)	320,647
20		<u>867,553</u>
21	Above the line taxable income	<u>891,427</u>
22	<u>Below the line taxable loss</u>	
23	Income:	
24	Interest (Line 5)	247,960
25	Amortization of engineering & prior years gross-up (Line 10)	52,815
26	Tax loss on disposal of assets	(32,312)
27		<u>268,463</u>
28	Deductions:	
29	Officers salary (Mann)	29,856
30	Taxes & licenses (Line 17)(Note 2)	5,720
31	Interest (Line 18)(Schedule No. 3)	348,474
32	Depreciation (Line 21b)(Schedule No. 4)	797,209
33	Other deductions (Line 26)(Schedule No. 5)	188,343
34		<u>1,369,602</u>
35	Below the line taxable loss	<u>(1,101,139)</u>
36	Net taxable loss	<u>\$ (209,712)</u>



Gulf Utility Company  
Above & Below the Line Other Deductions  
For the Year Ended December 31, 1996  
(Unaudited)

Line No.	Total "Other" Deductions	Above the Line	Below the Line
1	<u>Description</u>		
2	\$ 45,196	\$ 45,196	
3	243,909	243,909	
4	332	332	
5	185,084	155,541	\$ 29,543 (1)
6	122,263	122,263	
7	<u>Contractual services</u>		
8	24,947	24,947	
9	42,589	42,589	
10	24,587	24,587	
11	85,236	85,236	
12	108,729	108,729	
13	<u>286,088</u>	<u>286,088</u>	
14	22,321	22,321	
15	74,250	74,250	
16	74,456	74,456	
17	8,517	8,517	
18	68,464	68,464	
19	1,261		1,261
20	58,170		58,170
21	97,730		97,730
22	154		154
23	1,485		1,485
24	<u>\$ 1,289,680</u>	<u>\$ 1,101,337</u>	<u>\$ 188,343</u>

25 Note (1): Remove chemicals for corrosion control disallowed in Order No. PSC-97-1544-FOF-WS.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of	)	DOCKET NO. 940158-SU
Contributions-in-Aid-of-	)	ORDER NO. PSC-94-0443-FOF-SU
Construction (CIAC) Gross-UP	)	ISSUED: April 13, 1994
Funds Collected by NORTH FORT	)	
MYERS UTILITY, INC. in Lee	)	
County	)	

ORDER NO. PSC-94-0443-FOF-SU  
 DOCKET NO. 940158-SU  
 PAGE 2

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
 SUSAN F. CLARK  
 JULIA L. JOHNSON  
 DIANE K. KIESLING  
 LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION  
ORDER FINDING REFUND NOT REQUIRED

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

Background

The repeal of Section 118(b) of the Internal Revenue Code (IRC) resulted in making contributions-in-aid-of-construction (CIAC) gross income and depreciable for federal tax purposes. By Order No. 16971, issued December 18, 1988, this Commission authorized corporate utilities to collect a CIAC tax gross-up in order for those utilities to pay the tax liability resulting from their receipt of CIAC.

In Order No. 23541, the Commission determined that any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue collecting the gross-up, had to file a petition for approval with the Commission on or before October 29, 1990. North Fort Myers filed for authority to continue to gross-up on December 27, 1990. By Order No. PSC-92-0251-FOF-SU, issued April 27, 1992, North Fort Myers was granted authority to continue to gross-up using the full gross-up formula.

By Orders Nos. 16971 and 23541, we required utilities which gross-up to file annually the information needed for (1) a determination of the utility's state and federal income tax liability directly attributable to receipt of CIAC for that year and (2) a determination of whether a refund of gross-up charges collected during that year is appropriate. These orders required that a utility refund on a pro rata basis the gross-up charges collected each year which exceeded the utility's actual above-the-line tax liability attributable to CIAC for the same year.

By Proposed Agency Action (PAA) Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, as amended by Order No. PSC-92-0961A-FOF-WS, issued September 14, 1992, we clarified the refund calculation provisions of Order Nos. 16971 and 23541. No protest to that PAA Order was filed, so the action taken therein became final.

North Fort Myers is a class B wastewater utility providing wastewater service to 2,556 customers in Lee County. According to its 1992 annual report, North Fort Myers had \$686,547 in operating revenue and a net operating loss of \$204,452 for the wastewater system.

Refund Calculations For Years 1990 Through 1991

In compliance with Order No. 16971, North Fort Myers filed annual CIAC gross-up reports for 1990 through 1991. Using North Fort Myers' annual gross-up reports, we have made a refund calculation for each of the years North Fort Myers collected CIAC and the gross-up, 1990-1991, and we find that no refunds are due. Our calculations are reflected on Schedule No. 1, which is attached hereto and by reference incorporated herein. A summary of each year's calculation follows.

1990

North Fort Myers' 1990 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. North Fort Myers' 1990 CIAC report indicates that a total of \$109,206 in CIAC gross-up charges was collected, and the first year's depreciation on the CIAC was \$10,608 associated with \$282,885 in taxable CIAC. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. Since the utility required more in gross-up to pay the tax impact than was collected, no refund is necessary.

EXHIBIT PCN-13  
 PAGE 101 of 124

DOCUMENT NUMBER-DATE  
 03452 APR 13 1994  
 PSC-REC'D/REG/REPORTING

1991

North Fort Myers' 1991 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. North Fort Myers' 1991 CIAC report indicates that a total of \$66,812 in CIAC gross-up charges was collected, with no first year depreciation deduction because no depreciable assets were added in 1991. Taxable CIAC of \$157,768 was collected. We used the 37.63% combined federal and state tax rates to calculate the net income tax on CIAC. Since the utility required more in gross-up to pay the tax impact than was collected, no refund is necessary.

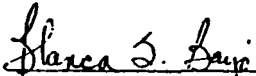
Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that North Fort Myers Utility, Inc., 18500 Tucker Lane, North Fort Myers, Florida 33917, is not required to refund any CIAC gross-up funds collected for the period 1990 through 1991. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that the docket should be closed upon expiration of the protest period if no timely protest is filed.

By ORDER of the Florida Public Service Commission this 13th day of April, 1994.

  
\_\_\_\_\_  
BLANCA S. BAYO, Director  
Division of Records and Reporting

( S E A L )

MSN

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 4, 1994.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 adversely 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.

EXH. B1 + RCN-1  
page 102 of 12

NORTH FORT MYERS UTILITY, INC.

CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	5/31/91 1990	5/31/92 1991	1992	1993
1 Form 1120, Line 30 (Line 15)	\$ 437,441	\$ 275,322	\$ 0	\$ 0
2 Less CIAC (Line 7)	(282,885)	(157,768)	0	0
3 Less Gross-up collected (Line 19)	(109,206)	(66,812)	0	0
4 Add First Year's Depr on CIAC (Line 8)	10,608	0	0	0
5 Add/Less Other Effects (Lines 20 & 21)	0	0	0	0
6				
7 Adjusted Income Before CIAC and Gross-up	\$ 55,958	\$ 50,742	\$ 0	\$ 0
8				
9 Taxable CIAC (Line 7)	\$ 282,885	\$ 157,768	\$ 0	\$ 0
10				
11 Taxable CIAC Resulting in a Tax Liability	\$ 282,885	\$ 157,768	\$ 0	\$ 0
12 Less first years depr. (Line 8)	(10,608)	0	0	0
13				
14 Net Taxable CIAC	\$ 272,277	\$ 157,768	\$ 0	\$ 0
15 Combined marginal state and federal tax rate	37.65%	37.65%	37.65%	37.65%
16				
17 Net Income tax on CIAC	\$ 102,458	\$ 59,368	\$ 0	\$ 0
18 Less ITC Realized	0	0	0	0
19				
20 Net Income Tax	\$ 102,458	\$ 59,368	\$ 0	\$ 0
21 Expansion Factor for gross-up taxes	1.603334936	1.603334936	1.603334936	1.603334936
22				
23 Gross-up Required to pay tax effect	\$ 164,274	\$ 95,187	\$ 0	\$ 0
24 Less CIAC Gross-up collected (Line 19)	(109,206)	(66,812)	0	0
25				
25 REFUND (excluding interest)	\$ 0	\$ 0	\$ 0	\$ 0
27				
28				
29 TOTAL REFUND	\$ 0			
30				

41

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

March 10, 1994

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF WATER AND WASTEWATER (MEADOR, McCASKILL)  
DIVISION OF LEGAL SERVICES (NASH)

RE : UTILITY: NORTH FORT MYERS UTILITIES, INC.  
DOCKET NO.: 940158-SU  
COUNTIES: LEE  
CASE: DISPOSITION OF GROSS-UP FUNDS COLLECTED

AGENDA : MARCH 22, 1994 - REGULAR - PROPOSED AGENCY ACTION - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

RECOMMENDATION FILE NAME: I:\WP\WAW\940158.RCM WAW

CASE BACKGROUND

The repeal of Section 118(b) of the Internal Revenue Code (I.R.C.) resulted in making contributions-in-aid-of-construction (CIAC) gross income and depreciable for federal tax purposes. In 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.

Orders Nos. 16971 and 23541, issued October 1, 1990, 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, and whether a refund of the gross-up is appropriate for any given year for which gross-up was in effect. 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 resulting from its collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes.

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page 104 of 124

DOCUMENT NUMBER-DATE

02333 MAR 10 94

14

DOCKET NO. 940158-SU  
MARCH 10, 1994

In Order No. 23541, the Commission determined that any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue collecting the gross-up, had to file a petition for approval with the Commission on or before October 29, 1990. North Fort Myers Utilities, Inc. (North Ft. Myers or utility) filed for authority to continue to gross-up on December 27, 1990. By Order No. Psc-92-0251-FOF-SU, issued April 27, 1992, North Ft. Myers was granted authority to continue to gross-up using the full gross-up formula.

On September 9, 1992, this Commission issued Proposed Agency Action Order No. PSC-92-0961-FOF-WS, which clarified the provision of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992, Order No. PSC-92-0961A-FOF-WS, was issued which included Attachment A which reflects the generic calculation form. No protests were filed, and the Order became final.

North Ft. Myers is a Class B wastewater utility which provides wastewater service to 2,556 customers in Lee County. According to their 1992 annual report, operating revenue os \$686,547 was reported. The utility reported a net operating loss of \$204,452 for the wastewater system.

DISCUSSION OF ISSUES

ISSUE 1: Should North Fort Myers Utilities, Inc. be required to refund excess gross-up collections for 1990 and 1991?

RECOMMENDATION: No, the utility required more gross-up than was collected in each year; therefore, no refund is necessary.  
(MEADOR, MCCASKILL)

STAFF ANALYSIS: In compliance with Order No. 16971, North Ft. Myers filed its 1990 and 1991 annual CIAC reports regarding its collection of gross-up for each year. By letter dated January 14, 1994, staff submitted their preliminary refund calculation numbers to the utility.

By letter dated February 1, 1994, the utility responded that they agreed with staff's preliminary calculations.

Staff has 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

Exhibit RCN-13  
page 105 of 124

DOCKET NO. 940158-SU  
MARCH 10, 1994

method adopted in Order No. PSC-92-0961-FOF-WS.

ANNUAL GROSS-UP REFUND AMOUNTS

Based upon the foregoing, staff has calculated the amount of refund per year which is appropriate. Our calculations, taken from the information provided by the utility in its gross-up reports filed each year are reflected on Schedule No. 1. A summary of each year's refund calculation follows.

**1990**

The utility proposes that no refund is appropriate.

Staff agrees that a refund of gross-up collections for 1990 is not appropriate. The 1990 CIAC report indicates 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 taxable CIAC received would be taxed. The report indicates a total of \$109,206 gross-up collections were received, with the first year's depreciation of \$10,608 associated with \$282,885 in taxable CIAC. Staff has used the 37.63% combined marginal federal and state tax rates as provided in the 1990 CIAC Report to calculate the tax effect. Based upon the foregoing, staff calculates that the utility required more in gross-up to pay the tax impact than was collected; therefore, no refund is necessary.

**1991**

The utility proposes that no refund is appropriate.

Staff agrees that a refund of gross-up collections for 1991 is not appropriate. The 1991 CIAC report indicates 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 taxable CIAC received would be taxed. The report indicates a total of \$66,812 gross-up collections were received. No first year's depreciation was deducted because no depreciable assets were added in 1991. Taxable CIAC of \$157,768 was received. Staff has used the 37.63% combined marginal federal and state tax rates as provided in the 1991 CIAC Report to calculate the tax effect. Based upon the foregoing, staff calculates that the utility required more in gross-up to pay the tax impact than was collected; therefore, no refund is necessary.

DOCKET NO. 940158-SU  
MARCH 10, 1994

ISSUE 2: Should the docket be closed?

RECOMMENDATION: Yes. (McCASKILL, NASH)

STAFF ANALYSIS: If a timely protest is not filed, upon expiration of the protest period, processing of this docket is complete and the docket should be closed.



## TH FORT MYERS UTILITY, INC.

## STAFF CALCULATED GROSS-UP REFUND

SOURCE: (Line references are from CIAC Reports)

	5/31/91 1990	5/31/92 1991	1992	1993
1 Form 1120, Line 30 (Line 15)	\$ 437,441	\$ 275,322	\$ 0	\$ 0
2 Less CIAC (Line 7)	(282,885)	(157,768)	0	0
3 Less Gross-up collected (Line 19)	(109,206)	(66,812)	0	0
4 Add First Year's Depr on CIAC (Line 8)	10,608	0	0	0
5 Add/Less Other Effects (Lines 20 & 21)	0	0	0	0
6				
7 Adjusted Income Before CIAC and Gross-up	\$ 55,958	\$ 50,742	\$ 0	\$ 0
8				
9 Taxable CIAC (Line 7)	\$ 282,885	\$ 157,768	\$ 0	\$ 0
10				
11 Taxable CIAC Resulting in a Tax Liability	\$ 282,885	\$ 157,768	\$ 0	\$ 0
12 Less first years depr. (Line 8)	(10,608)	0	0	0
13				
14 Net Taxable CIAC	\$ 272,277	\$ 157,768	\$ 0	\$ 0
15 Combined marginal state and federal tax rate	37.63%	37.63%	37.63%	37.63%
16				
17 Net Income tax on CIAC	\$ 102,458	\$ 59,368	\$ 0	\$ 0
18 Less ITC Realized	0	0	0	0
19				
20 Net Income Tax	\$ 102,458	\$ 59,368	\$ 0	\$ 0
21 Expansion Factor for gross-up taxes	1.603334936	1.603334936	1.603334936	1.603334936
22				
23 Gross-up Required to pay tax effect	\$ 164,274	\$ 95,187	\$ 0	\$ 0
24 Less CIAC Gross-up collected (Line 19)	(109,206)	(66,812)	0	0
25				
26 PROPOSED REFUND (excluding interest)	\$ 0	\$ 0	\$ 0	\$ 0
27				
28				
29 TOTAL REFUND	\$ 0			
30				

# *Cronin, Jackson, Nixon & Wilson*

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
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May 5, 1992

Officers and Directors  
North Fort Myers Utility, Inc.

As requested, we have prepared the accompanying Special Report of North Fort Myers Utility, Inc., consisting of Schedules No. 1 through 4. This report is intended solely for use in meeting certain reporting requirements related to collection of tax impact charges on contributions in aid of construction for the year ended May 31, 1991, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

Exhibit RCW-1  
Page 109 of 126

North Fort Myers Utility, Inc.  
 Schedule of Above and Below the Line Taxable Income (Loss)  
 For the Taxable Year Ended May 31, 1991  
 (Unaudited)

<u>Line No.</u>		<u>1991</u>
1	<u>Above the line taxable income (loss)</u>	
2	Gross receipts/sales (line 1c)	\$ 593,835
3	Cost of goods sold, excluding security, engineering, and	
4	testing and depreciation (line 2)	<u>(192,238)</u>
5	Gross profit (line 3)	<u>401,597</u>
6	Deductions:	
7	Salaries and wages (line 13c)	78,627
8	Rents (line 16)	8,861
9	Taxes (line 17)	33,217
10	Interest (line 18)(Schedule No. 3)	77,282
11	Depreciation (line 21a)(Schedule No. 3)	105,679
12	Other deductions (line 26):	
13	Miscellaneous	2,161
14	Insurance	16,958
15	Professional fees	20,000
16	Office	4,574
17	Uniforms	1,356
18	Auto	3,952
19	Telephone	3,674
20	Other	<u>(94)</u>
21		<u>356,247</u>
22	Taxable income (loss) before CIAC	<u>45,350</u>
23	CIAC:	
24	Taxable CIAC (line 10)	282,885
25	Taxable gross-up (line 10)	<u>109,206</u>
26		<u>392,091</u>
27	Total above the line taxable income	<u>437,441</u>
28	<u>Below the line taxable income (loss)</u>	
29	Income:	
30	Interest (line 5)	73,388
31	Net gain (loss) (line 9)	(217,424)
32	Other income (line 10)	99
33		<u>(143,937)</u>
34	Deductions:	
35	Compensation of officers (line 12)	130,000
36	Interest (line 18)(Schedule No. 3)	1,118,489
37	Depreciation (line 21a)(Schedule No. 3)	348,886
38	Other deductions:	
39	Amortization	1,003
40	Travel and entertainment	26,885
41	Professional fees	132,495
42	Cost of goods sold (line 2):	
43	Security	27,939
44	Engineering	<u>208,137</u>
45		<u>1,993,834</u>
46	Total below the line taxable income (loss)	<u>(2,137,771)</u>
47	Total taxable income (loss) (line 28)	<u>\$ (1,700,330)</u>

*Cronin, Jackson, Nixon & Wilson*

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(813) 797-3602

January 29, 1993

Officers and Directors  
North Fort Myers Utility, Inc.

As requested, we have prepared the accompanying Special Report of North Fort Myers Utility, Inc., consisting of Schedules No. 1 through No. 4. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended May 31, 1992, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

Exhibit RCN-13  
Page 111 of 124

North Fort Myers Utility, Inc.  
 Schedule of Above and Below the Line Taxable Income  
 For the Taxable Year Ended May 31, 1992  
 (Unaudited)

<u>Line</u> <u>No.</u>		
1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (Line 1c)	\$ 626,487
3	Cost of goods sold (Line 2):	
4	Cost of labor (Schedule A, Line 3)	120,041
5	Utilities	61,030
6	Repairs & maintenance	54,888
7	Supplies	950
8	Engineering & testing	<u>2,500</u>
9		<u>239,409</u>
10	Deductions:	
11	Salaries & wages (Line 13c)	104,974
12	Rents (Line 16)	7,123
13	Taxes (Line 17), excluding officers payroll	74,034
14	Interest (Line 18, Schedule No. 3)	24,275
15	Depreciation (Line 21b, Schedule No. 3)	60,366
16	Other deductions:	
17	Insurance	19,058
18	Auto expense	3,634
19	Accounting	20,000
20	Telephone	2,411
21	Uniforms	2,878
22	Miscellaneous	7,741
23	Office expense	<u>9,842</u>
24		<u>336,336</u>
25	Above the line taxable income (loss) before CIAC	<u>50,742</u>
26	CIAC (Line 10)	157,768 ✓
27	Gross-up (Line 10)	<u>66,812</u>
28		<u>224,580</u>
29	Total above the line taxable income	<u>275,322</u> ✓
30	<u>Below the line taxable income</u>	
31	Interest income (Line 5)	<u>21,420</u>
32	Cost of goods sold (Line 2):	
33	Engineering & testing	140,436
34	Security	<u>12,018</u>
35		<u>152,454</u>

North Fort Myers Utility, Inc.  
 Schedule of Above and Below the Line Taxable Income  
 For the Taxable Year Ended May 31, 1992  
 (Unaudited)

<u>Line No.</u>		
1	Deductions:	
2	Officers salaries (Line 12)	156,928
3	Taxes - officers payroll (Line 17)	6,190
4	Interest (Line 18, Schedule No. 3)	1,163,561
5	Depreciation (Line 21b, Schedule No. 3)	307,723
6	Other deductions:	
7	Amortization	1,002
8	Travel & entertainment	21,454
9	Accounting	43,721
10	Legal	234,582
11	Telephone	<u>3,000</u>
12		<u>1,938,161</u>
13	Below the line taxable income (loss)	<u>(2,069,195)</u>
14	Total taxable income (loss) (Line 28)	<u>\$(1,793,873)</u>
15	Note: All line references relate to North Fort Myers Utility, Inc.,	
16	Form 1120, pages 1 and 2.	

/s/

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of gross-up ) DOCKET NO. 961263-SU  
funds collected by North Fort ) ORDER NO. PSC-97-0062-FOF-SU  
Myers Utility, Inc. in Lee ) ISSUED: January 17, 1997  
County )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

5/31/93; 5/31/94

NOTICE OF PROPOSED AGENCY ACTION  
ORDER ON DISPOSITION OF CIAC GROSS-UP FUNDS

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

North Ft. Myers Utility, Inc. (NFMU or utility) is a Class A wastewater utility providing service to approximately 4,966 customers in Lee County. According to its 1995 annual report, the utility reported gross operating revenues of \$1,493,279 and a net operating loss of \$131,325.

As a result the repeal of Section 118(b) of the Internal Revenue Code, contributions-in-aid-of-construction (CIAC) became gross income and were depreciable for federal tax purposes. 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.

Order Nos. 16971, issued December 18, 1986, and 23541, issued October 1, 1990, 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 require that all gross-up collections

ORDER NO. PSC-97-0062-FOF-SU

DOCKET NO. 961263-SU

PAGE 2

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.

By Order No. 23541, this Commission required water and wastewater utilities that wished to continue collecting gross-up on CIAC to file a petition for approval. By Order No. 25532, issued December 24, 1991, we granted NFMU authority to continue to gross-up using the full gross-up formula. By Order No. PSC-92-0130-FOF-WS, issued March 31, 1992, we granted Sunray authority to continue to gross-up using the full gross-up formula. On September 9, 1992, this Commission issued Proposed Agency Action Order No. PSC-92-0961-FOF-WS, which clarified the provisions of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. Order No. PSC-92-0961A-FOF-WS, issued on September 14, 1992, set forth the generic calculation form.

By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, we directed our staff to continue processing CIAC gross-up and refund cases pursuant to Order Nos. 16971 and 23541. We also determined that further study of the policy and possible alternatives should be pursued. However, The Small Business Job Protection Act of 1996 (The Act) signed into law on August 20, 1996, significantly changed the treatment of CIAC. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, in Docket No. 960965-WS, by Order No. PSC-96-1180-FOF-WS, we revoked the authority of utilities to collect gross-up of CIAC and canceled the respective tariffs unless affected utilities requested a variance.

#### DISPOSITION OF CIAC GROSS-UP FUNDS FOR 1992 AND 1993

As established in Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases shall be processed pursuant to Order Nos. 16971 and 25341. In compliance with Orders Nos. 16971 and 23541, NFMU filed its 1992 and 1993 annual CIAC reports regarding its collection of gross-up for each year. We 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.

NFMU's 1992 CIAC report indicated 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 indicated a total of \$1,129,778 in taxable CIAC for that year, with \$5,794 being deducted for the first year's depreciation. Using the 37.63 percent

EXHIBIT RCN-13  
PAGE 115 OF 124



combined marginal federal and state tax rates as provided in the 1992 CIAC Report to calculate a tax effect of \$422,955. 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 \$678,139. The utility collected \$563,410 of gross-up monies. Because the utility required more in gross-up to pay the tax impact than the utility collected, we conclude that no refund is necessary.

As to 1993, the utility received taxable CIAC of \$409,690. We deducted \$20,008 for the first year's depreciation, resulting in net taxable CIAC of \$389,682. The utility's 1993 CIAC report indicated that the utility operated at a loss before the inclusion of CIAC in income. Order No. 23541 requires that CIAC income be netted against the above-the-line loss; therefore, not all of the CIAC collected would create a tax liability. When CIAC in the amount of \$389,682 is netted against the calculated loss of \$56,189, the amount of taxable CIAC resulting in a tax liability is \$333,493. We used the 37.63 percent combined marginal federal and state tax rates as provided in the 1993 CIAC Report to calculate net income taxes of \$125,493. 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 \$201,207. The utility collected \$191,017 of gross-up monies. The utility required more in gross-up to pay the tax impact than the utility collected. Therefore, we conclude that no refund is necessary for 1993.

In its filing, the utility did not make a deduction for first year's depreciation, and indicated that it did not believe that first year's depreciation should be deducted. We were not persuaded by the utility's argument. Depreciation is an allowable deduction for federal tax purposes, which the utility claimed on its federal tax returns in determining taxable income. Depreciation is an integral part of the determination of taxable income, which should be calculated by reducing the amount of taxable CIAC collected in each year by the amount of first year's depreciation deduction taken by the utility. By definition, CIAC charges are intended for plant and are to be utilized for the acquisition, or construction of utility property, and therefore, the CIAC collected will be converted into property and, thus, depreciated. To the extent that cash CIAC is used and useful, first year's depreciation exists because the cash either pays for a prior investment made by the utility or it provides for new plant in the year it is received by the utility. Based on the foregoing, first year's depreciation was included in our calculation of the net taxable amount of CIAC.

ORDER NO. PSC-97-0062-FOF-SU  
DOCKET NO. 961263-SU  
PAGE 4

If a timely protest is not filed by a substantially affected person within the protest period set forth below, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that North Fort Myers Utilities, Inc., is not required to refund any CIAC gross-up funds collected in 1992 and 1993. It is further

ORDERED that the provisions of this Order issued as proposed agency action shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0863, by the date set forth in the Notice of Further Proceedings below.

By ORDER of the Florida Public Service Commission, this 17th day of January, 1997.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: /s/ Kay Flynn  
Chief, Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.

( S E A L )

MEO

EXHIBIT RCN-13  
Page 117 of 124

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), 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 February 7, 1997.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

*Cronin, Jackson, Nixon & Wilson*  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
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July 11, 1994

Officers and Directors  
North Fort Myers Utility, Inc.

In accordance with your request, we have prepared the accompanying Special Report of North Fort Myers Utility, Inc., consisting of Schedules No. 1 through No. 6. This report is intended solely for use in fulfilling certain reporting requirements related to collections of tax impact charges on contributions in aid of construction (CIAC), for the fiscal year ended May 31, 1993, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

EXHIBIT RC4-13  
Page 119 of 124

North Fort Myers Utility, Inc.  
 Schedule of Above and Below the Line Taxable Income (Loss)  
 Year Ended May 31, 1993

Above the line taxable income

Gross receipts/sales (line 1c)	\$ 789,047
Cost of goods sold (line 2, Schedule A):	
Cost of labor	158,536
Utilities	83,338
Repairs & Maintenance	33,524
Supplies	7,838
	283,236
	505,811
Other above the line income:	
Miscellaneous service income (Statement 1)	6,099
Amortization of pre 1987 CIAC (Note 1)	58,481
	570,391
Gross above the line profit	
Deductions:	
Salaries & wages (line 13c)	150,135
Rents (line 16)	7,123
Taxes (line 17, Schedule No. 3)	70,528
Interest (line 18, Schedule No. 3)	19,083
Depreciation (line 21b, Schedule No. 3)	180,031
Other deductions (line 26, statement 2, Schedule No. 4)	92,816
	519,716
	50,675
Above the line income before CIAC	
CIAC (line 10, statement 1, note 1)	1,129,778
CIAC gross-up (line 10, note 1)	563,410
	1,693,188
	1,743,863

Below the line taxable income (loss)

Income:	
Interest (line 5)	52,789
Deductions:	
Cost of goods sold (line 2, Schedule A)	
Security	700
Engineering & testing	136,791
Officers compensation (line 2)	166,144
Taxes (line 17, Schedule No. 3)	18,364
Interest (line 18, Schedule No. 3)	760,532
Depreciation (line 21b, Schedule No. 3)	258,538
Other deductions (line 26, statement 2, Schedule No. 4)	171,488
	1,512,557
Below the line income (loss) before NOL deduction	(1,459,768)
Below the NOL deduction (see previous years filings) (line 29c)	(2,288,696)
	(3,748,464)
Total below the line taxable income (loss)	
Total taxable income (loss) (line 30)	\$ (2,004,601)

Note (1): A breakdown of "Other Income" shown on line 10 and statement 1 of the tax return is as follows:

CIAC	\$ 1,129,778
CIAC gross-up	563,410
Amortization of pre 1987 CIAC	58,481
	1,751,669
Miscellaneous	6,099
	1,757,768
Total (line 10)	\$ 1,757,768

All line references relate to page 1 of the Federal income tax return. Statement references relate to documents attached to and filed with the Federal tax return.

Schedule No. 2  
 Exhibit RCN-12  
 Date 17 of 124

North Fort Myers Utility, Inc.  
Schedule of Above and Below the Line "Other Deductions"  
Year Ended May 31, 1993

Above the line "other deductions"

Insurance	\$ 33,737
Repairs & maintenance	8,177
Accounting	20,000
Telephone	2,400
Uniforms	4,317
Miscellaneous	15,250
Office expenses & bank charges	<u>8,935</u>
	<u>92,816</u>

Below the line "other deductions"

Accounting	41,433
Legal	97,294
Telephone	3,173
Travel & entertainment	20,894
Amortization (loan costs)	<u>8,694</u>
	<u>171,488</u>

Total "other deductions"

\$ 264,304

*Cronin, Jackson, Nixon & Wilson*

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

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April 7, 1995

F. Marshall Deterding, Esq.  
Rose, Sundstrom & Bentley  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301

BY FEDERAL EXPRESS

Re: North Fort Myers Utility, Inc. - 1994 CIAC Gross-up  
Refund Report for Fiscal Year Ended May 31, 1994

Dear Marty:

As requested, I have enclosed seven copies of the PSC CIAC gross-up refund report of North Fort Myers Utility, Inc. for the fiscal year ended May 31, 1994.

Also, I have enclosed two copies of the state and federal income tax returns.

As you will note, no refund is proposed, since the Company under collected gross-up by approximately \$22,000.

Please contact me if you have any questions.

Very truly yours,

CRONIN, JACKSON, NIXON & WILSON



Robert C. Nixon

RCN/amp

Enclosures

cc: J. Boley (w/encl.)  
T. Reeves (w/encl.)  
J. Schenkman (w/encl.)

Exhibit RCN-13  
Page 122 of 124

North Ft. Myers Utility, Inc.  
 Schedule of Above and Below the Line Taxable Income (Loss)  
 Fiscal Year Ended May 31, 1994

Line  
No.

1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (Line 1c)	<u>\$ 1,026,290</u>
3	Cost of goods sold (Line 2, Schedule A, Statement 3):	
4	Cost of labor	226,931
5	Utilities	70,904
6	Repairs and maintenance	20,250
7	Supplies	<u>25,634</u>
8		<u>343,719</u>
9	Gross profit	<u>682,571</u>
10	Deductions:	
11	Salaries and wages (Line 13a)	132,419
12	Repairs and maintenance (Line 14)	6,233
13	Rents (Line 16)	7,123
14	Taxes and licenses (Line 17) (Schedule No. 3)	90,291
15	Interest (Line 18) (Schedule No. 3)	167,745
16	Depreciation (Line 21b) (Schedule No. 3)	216,672
17	Other deductions (Line 26) (Schedule No. 4)	<u>118,277</u>
18		<u>738,760</u>
19	* Above the line taxable income before CIAC	<u>(56,189)</u>
20	CIAC	409,690
21	Gross-up	<u>191,017</u>
22		<u>600,707</u>
23	Total above the line taxable income	<u>544,518</u>
24	<u>Below the line taxable income (loss)</u>	
25	Income:	
26	Interest (Line 5)	33,504
27	Miscellaneous (Line 10, Statement 1)	<u>5,226</u>
28		<u>38,730</u>
29	Deductions:	
30	Cost of goods sold (Line 2, Schedule A, Statement 3):	
31	Security	682 -
32	Engineering and testing	221,749 -
33	Officers compensation (Line 12)	179,888 -
34	Taxes (Line 17) (Schedule No. 3)	18,870
35	Interest (Line 18) (Schedule No. 3)	1,082,815
36	Depreciation (Line 21b) (Schedule No. 3)	256,954
37	Other deductions (Line 26) (Schedule No. 4)	<u>176,073</u>
38		<u>1,937,031</u>
39	Total below the line tax loss	<u>(1,898,301)</u>
40	Total taxable income (loss) (Line 28)	(1,353,783)
41	Below the line net operating loss deduction (Line 29c)	<u>(1,368,646)</u>
42	Total taxable income (loss) (Line 30)	<u>\$ (2,722,429)</u>

Schedule No. 2  
 Exhibit RCN-1?  
 Page 172 of 174



North Ft. Myers Utility, Inc.  
Schedule of Above and Below the Line "Other Deductions"  
Fiscal Year Ended May 31, 1994

Line  
No.

1	Above the line "Other deductions":	
2	Insurance	\$ 52,901
3	Accounting	30,000
4	Telephone	12,951
5	Office expense and bank charges	<u>22,425</u>
6	Total above the line "Other deductions"	<u>118,277</u>
7	Below the line "Other deductions":	
8	Accounting	18,317
9	Legal	122,553
10	Travel and entertainment	19,533
11	Amortization	<u>15,670</u>
12	Total below the line "Other deductions"	<u>176,073</u>
13	Total "Other deductions"	<u>\$294,350</u>

**EXHIBIT RCN-14**

2

North Fort Myers Utility, Inc.  
Amended Income Taxes on CIAC & Proposed Gross-up Refund  
For the Fiscal Year Ended May 31, 1995

Line No.		As Revised 01/09/97	Adjustment (1)	As Amended (1)
1	Total above the line taxable income	\$ 885,396	\$ 60,409	\$ 945,805
2	Less: Gross-up collected (Schedule No. 2)	(338,017)	(17,414)	(355,431)
3	First year's depreciation on CIAC	<u>                    </u>	<u>(22,120)</u>	<u>(22,120)</u>
4	Net taxable CIAC (1)	547,379	20,875	568,254
5	Combine federal & state income tax rate	<u>0.3763</u>	<u>0.3763</u>	<u>0.3763</u>
6	Income tax on CIAC	205,979	7,855	213,834
7	Tax expansion factor for gross-up	<u>1.6033</u>	<u>1.6033</u>	<u>1.6033</u>
8	Gross-up required to pay tax on CIAC	330,246	12,594	342,840
9	Actual gross-up collected	<u>(338,017)</u>	<u>(17,414)</u>	<u>(355,431)</u>
10	Under (over) collection of gross-up (2)	(7,771)	(4,820)	(12,591)
11	Less: Offset of 50% of legal & accounting fees	<u>-</u>	<u>8,926</u>	<u>8,926</u>
12	Net under (over) collection of CIAC	<u>\$ (7,771)</u>	<u>\$ 4,106</u>	<u>\$ (3,665)</u>
13	Notes: (1) The fiscal 1995 tax return was amended to include \$28,865 of CIAC and \$17,414 of gross-up			
14	as additional taxable income associated with amounts contractually due as accounts receivable. Also,			
15	first year's depreciation on CIAC was included on this schedule consistent with Staff's prior adjustments.			
16	See Schedule No. 2.			
17	(2) The Company overcollected \$3,665 of gross-up after reduction for 50% of legal and			
18	accounting fees.			

Exhibit RCN-14  
Page 1 of 31

North Fort Myers Utility, Inc.  
Amended Schedule of Above & Below the Line Taxable Income (Loss)  
For the Fiscal Year Ended May 31, 1995

Line No.		As Filed	Adjustments	As Amended
1	<u>Above the line taxable income</u>			
2	Gross receipts/sales	\$ 1,334,763		\$ 1,334,763
3	Miscellaneous (Line 10, Statement 1; Schedule No. 3)	9,175		9,175
4		<u>1,343,938</u>		<u>1,343,938</u>
5	Cost of goods sold (Line 2, Schedule A, Statement 3):			
6	Cost of labor	254,751		254,751
7	Utilities	113,061		113,061
8	Repairs & maintenance	21,798		21,798
9	Supplies	23,448		23,448
10		<u>413,058</u>		<u>413,058</u>
11	Gross profit	<u>930,880</u>		<u>930,880</u>
12	Deductions:			
13	Salaries & wages (Line 13)	121,226		121,226
14	Repairs & maintenance (Line 14)	12,770		12,770
15	Rents (Line 16)	7,123		7,123
16	Taxes & licenses (Line 17)(Schedule No. 3)	106,982		106,982
17	Interest (Line 18)(Schedule No. 3)	201,845		201,845
18	Depreciation (Line 21b)(Schedule No. 3)	380,765	\$ (14,130)	366,635
19	Other deductions (Line 26)(Schedule No. 3)	142,940		142,940
20		<u>973,651</u>	<u>(14,130)</u>	<u>959,521</u>
21	Above the line taxable income before CIAC	<u>(42,771)</u>	<u>14,130</u>	<u>(28,641)</u>
22	CIAC (Line 10; Schedule No. 3)	590,150	28,865	619,015
23	Gross-up (Line 10; Schedule No. 3)	338,017	17,414	355,431
24		<u>928,167</u>	<u>46,279</u>	<u>974,446</u>
25	Total above the line taxable income	<u>885,396</u>	<u>60,409</u>	<u>945,805</u>
26	<u>Below the line taxable loss</u>			
27	Income:			
28	Interest (Line 5)	<u>37,412</u>		<u>37,412</u>
29	Deductions:			
30	Cost of goods sold (Line 2, Schedule A, Statement 3):			
31	Security	140		140
32	Engineering & testing	184,511		184,511
33	Officer's compensation	199,940		199,940
34	Taxes (Line 17)(Schedule No. 3)	15,479		15,479
35	Interest (Line 18)(Schedule No. 3)	724,929		724,929
36	Depreciation (Line 21b)(Schedule No. 3)	254,265	14,130	268,395
37	Other deductions (Line 26)(Schedule No. 4)	161,218		161,218
38		<u>1,540,482</u>	<u>14,130</u>	<u>1,554,612</u>
39	Total below the line taxable loss	<u>(1,503,070)</u>		<u>(1,517,200)</u>
40	Total taxable income (loss) (Line 28)	(617,674)	46,279	(571,395)
41	Below the line net operating loss deduction (Line 29c)	<u>(2,215,483)</u>	<u>87,551</u>	<u>(2,127,932)</u>
42	Total taxable income (loss) (Line 30)	<u>\$ (2,833,157)</u>	<u>\$ 133,830</u>	<u>\$ (2,699,327)</u>

Exhibit RCN-14  
Page 2 of 31

Schedule No. 2  
Amended

North Fort Myers Utility, Inc.  
 Above and Below the Line Taxes, Interest & Depreciation  
 For the Fiscal Year Ended May 31, 1995

<u>Line No.</u>		
1	(A) <u>Taxes</u>	
2	(1) <u>Property taxes</u>	
3	Total property taxes	\$ 16,552
4	Composite non-used & useful percent (Schedule No. 5)	<u>36.12 %</u>
5	Below the line property taxes	<u>5,982</u>
6	(2) <u>Payroll taxes</u>	
7	Officer's salary subject to social security tax	111,120
8	Payroll tax rate	<u>6.2 %</u>
9		<u>6,889</u>
10	Officer's salary subject to Medicare tax	179,888
11	Medicare tax rate	<u>1.45 %</u>
12		<u>2,608</u>
13	Total below the line payroll taxes	<u>9,497</u>
14	Below the line taxes	15,479
15	Above the line taxes	<u>106,982</u>
16	Total taxes	<u>\$ 122,461</u>
17	(B) <u>Interest</u>	
18	Total long-term debt	<u>\$ 10,596,227</u>
19	Rate base	\$ 2,367,013
20	Less: Customer deposits	<u>(80,780)</u>
21	Rate base supported by long-term debt	<u>\$ 2,286,233</u>
22	Long-term debt in excess of rate base	<u>\$ 8,309,994</u>
23	Percentage excess	78.24 %
24	Interest expense, net of \$2,356 interest on customer deposits,	
25	plus amortization of loan costs	<u>\$ 924,418</u>
26	Below the line interest expense	724,929
27	Above the line interest expense	<u>201,845</u>
28	Total interest expense	<u>\$ 926,774</u>

Exhibit RCW-14  
 Page 3 of 31

Schedule No. 3  
 Page 1 of 2  
 Amended

North Fort Myers Utility, Inc.  
Above and Below the Line Taxes, Interest & Depreciation  
For the Fiscal Year Ended May 31, 1995

Line No.				
1	(C) <u>Depreciation</u>			
2	(1) <u>Net depreciation</u>			
3	Total depreciation per Line 21b		\$ 686,749	
4	Less: Depreciation on pre-1987 CIAC assets (1)		<u>(51,719)</u>	
5	Net depreciation expense included on return		635,030	
6	Less: Depreciation on prior years contributed property		(38,967)	
7	First year's depreciation on CIAC		<u>(22,120)</u>	
8	Net depreciation		<u>\$ 573,943</u>	
9	(2) <u>Above &amp; below the line depreciation</u>			
10	Net depreciation on invested property per above		\$ 573,943	
11	Composite used & useful percentage (Schedule No. 5)		<u>63.88 %</u>	
12	Above the line depreciation		366,635	
13	Below the line depreciation		<u>268,395</u>	
14	Total net depreciation		<u>\$ 635,030</u>	
15	Notes: (1) "Other income," on Line 10 and Statement 1, consists of the following:			
16		<u>As Filed</u>	<u>Adjustment</u>	<u>As Amended</u>
17	Taxable CIAC	\$ 590,150	\$ 28,865 (2)	\$ 619,015
18	Taxable gross-up	338,017	17,414 (2)	355,431
19	Amortization of pre-1987 CIAC assets	<u>51,719</u>		<u>51,719</u>
20		979,886	46,279	1,026,165
21	Miscellaneous income	<u>9,175</u>		<u>9,175</u>
22		<u>\$ 989,061</u>	<u>\$ 46,279</u>	<u>\$ 1,035,340</u>
23	(2) Adjustment to recognize 1995 CIAC accounts receivable into income.			

Exhibit RCN-14  
Page 4 of 31

Schedule No. 3  
Page 2 of 2  
Amended

North Fort Myers Utility, Inc.  
Schedule of Above & Below the Line "Other Deductions"  
For the Fiscal Year Ended May 31, 1995

<u>Line No.</u>		
1	Above the line "Other deductions":	
2	Insurance	\$ 69,921
3	Accounting	39,970
4	Telephone	9,810
5	Miscellaneous expense	1,734
6	Contract services	3,058
7	Office expense & bank charges	<u>18,447</u>
8	Total above the line "Other deductions"	<u>142,940</u>
9	Below the line "Other deductions":	
10	Legal	128,509
11	Travel & entertainment	12,094
12	Amortization of plant retirement	<u>20,615</u>
13	Total below the line "Other deductions"	<u>161,218</u>
14	Total "Other deductions"	<u>\$ 304,158</u>

North Fort Myers Utility, Inc.  
 Schedule of Rate Base & Composite Non-Used & Useful Percentage  
 For the Fiscal Year Ended May 31, 1995

Line No.			
1	I. <u>Rate base</u>		
2	Utility plant in service		\$ 10,836,618
3	Land		252,453
4	Non-used & useful plant (1)		(3,249,877)
5	Accumulated depreciation		(1,595,804)
6	CIAC (net)		<u>(3,876,377)</u>
7	Rate base		<u>\$ 2,367,013</u>
8	Note (1): Non-used & useful plant was calculated as follows:		
9	(A) <u>Treatment plant</u>		
10	Peak average month flow (September, 1994)(mgd)		<u>0.862</u>
11	Divide by plant capacity (mgd)		2.000
12	Percent used & useful		43.10 %
13	Percent non-used & useful		<u>56.90</u>
14	Total		<u>100.00 %</u>
15	(B) <u>Deepwell</u>		
16	Peak average month flow to deepwell (January, 1995)(mgd)		<u>0.285</u>
17	Divide by deepwell capacity (mgd)		2.000
18	Percent used & useful		14.25 %
19	Percent non-used & useful		<u>85.75</u>
20	Total		<u>100.00 %</u>
21	(C) <u>Amounts non-used &amp; useful</u>		
22		<u>Treatment</u>	<u>Deepwell</u>
23	Total plant costs	\$ 5,484,667	\$ 925,774
24	Accumulated depreciation	(983,331)	(122,722)
25	Net plant	<u>4,501,336</u>	<u>803,052</u>
26	Percent non-used & useful	<u>56.90 %</u>	<u>85.75 %</u>
27	Net non-used & useful plant	<u>\$ 2,561,260</u>	<u>\$ 688,617</u>
28	Total net non-used & useful plant		<u>\$ 3,249,877</u>



North Fort Myers Utility, Inc.  
 Schedule of Rate Base & Composite Non-Used & Useful Percentage  
 For the Fiscal Year Ended May 31, 1995

<u>Line No.</u>			
1	II. <u>Composite non-used &amp; useful percentage</u>		
2	Total plant costs per above	\$ 5,484,667	\$ 925,774
3	Percent non-used & useful	<u>56.90 %</u>	<u>85.75 %</u>
4	Amount non-used & useful	<u>\$ 3,120,776</u>	<u>\$ 793,851</u>
5	Total non-used & useful plant costs		
6	(\$3,120,776 + \$793,851)	\$ 3,914,627	
7	Divide by total depreciable plant	<u>\$ 10,836,618</u>	
8	Composite non-used & useful percentage		<u>36.12 %</u>
9	Composite used & useful percentage		<u>63.88 %</u>

North Fort Myers Utility, Inc.  
Income Tax on CIAC and Proposed Gross-up Refund  
Fiscal Year Ended May 31, 1995

Line  
No.

1	Total above the line taxable income (Schedule No. 2)	\$ 885,396
2	Less: Gross-up collected (Schedule No. 2)	<u>(338,017)</u>
3	Net taxable CIAC (1)	547,379
4	Combined Federal and State tax rate	<u>.3763</u>
5	Income tax on CIAC	205,979
6	Tax expansion factor for gross-up	<u>1.6033</u>
7	Gross-up required to pay tax on CIAC	330,246
8	Actual gross-up collected	<u>(338,017)</u>
9	Under (over) collection of gross-up (2)	<u>\$ (7,771)</u>
10	Notes: (1) The Company did not receive any contributions of physical	
11	property during the fiscal year. Increases in contributed property	
12	resulted entirely from the acquisition of existing systems and their	
13	historic cost basis. Therefore, no adjustment for first year	
14	depreciation is made. Plant additions were funded through increases	
15	in Company debt.	
16	(2) The Company overcollected \$7,771 of gross-up before	
17	reduction for legal and accounting fees of \$9,351. As a result, no	
18	refund is proposed.	

*Exhibit RCN-14*  
*page 8 of 31*

North Fort Myers Utility, Inc.  
 Schedule of Above and Below the Line Taxable Income (Loss)  
 Fiscal Year Ended May 31, 1995

Line  
No.

1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (Line 1c)	\$ 1,334,763
3	Miscellaneous (Line 10, Statement 1) (Schedule No. 3)	<u>9,175</u>
4		<u>1,343,938</u>
5	Cost of goods sold (Line 2, Schedule A, Statement 3):	
6	Cost of labor	254,751
7	Utilities	113,061
8	Repairs and maintenance	21,798
9	Supplies	<u>23,448</u>
10		<u>413,058</u>
11	Gross profit	<u>930,880</u>
12	Deductions:	
13	Salaries and wages (Line 13)	121,226
14	Repairs and maintenance (Line 14)	12,770
15	Rents (Line 16)	7,123
16	Taxes and licenses (Line 17) (Schedule No. 3)	106,982
17	Interest (Line 18) (Schedule No. 3)	201,845
18	Depreciation (Line 21b) (Schedule No. 3)	380,765
19	Other deductions (Line 26) (Schedule No. 4)	<u>142,940</u>
20		<u>973,651</u>
21	Above the line taxable income before CIAC	<u>(42,771)</u>
22	CIAC (Line 10, Schedule No. 3)	590,150
23	Gross-up (Line 10, Schedule No. 3)	<u>338,017</u>
24		<u>928,167</u>
25	Total above the line taxable income	<u>885,396</u>
26	<u>Below the line taxable income (loss)</u>	
27	Income:	
28	Interest (Line 5)	<u>37,412</u>
29	Deductions:	
30	Cost of goods sold (Line 2, Schedule A, Statement 3):	
31	Security	140
32	Engineering and testing	184,511
33	Officers compensation (Line 12)	199,940
34	Taxes (Line 17) (Schedule No. 3)	15,479
35	Interest (Line 18) (Schedule No. 3)	724,929
36	Depreciation (Line 21b) (Schedule No. 3)	254,265
37	Other deductions (Line 26) (Schedule No. 4)	<u>161,218</u>
38		<u>1,540,482</u>
39	Total below the line tax loss	<u>(1,503,070)</u>
40	Total taxable income (loss) (Line 28)	(617,674)
41	Below the line net operating loss deduction (Line 29c)	<u>(2,215,483)</u>
42	Total taxable income (loss) (Line 30)	<u>\$ (2,833,157)</u>

EXHIBIT RCN-14  
 PAGE 9 OF 31

Schedule No. 2  
 (Revised)

North Fort Myers Utility, Inc.  
 Actual and Estimated Accounting Fees to  
 Process Gross-up Refund Reports for  
 the Fiscal Year Ended May 31, 1995

<u>Cronin, Jackson, Nixon &amp; Wilson</u>	<u>Invoice Date</u>	<u>Fees</u>	<u>Out-of-Pocket Expense</u>	<u>Total</u>
June, 1996	07/16/96	\$ 840	\$ 40	\$ 880
April, 1996	05/24/96	1,115		1,115
<b>Total actual expense</b>		<u>1,955</u>	<u>40</u>	<u>1,995</u>
<b>Estimate to complete:</b>				
Respond to Staff letter, Review Staff Recommendation and PAA Order - R. Nixon 10 hours @ \$150				
		<u>1,500</u>	<u>50</u>	<u>1,550</u>
<b>Total actual and estimated expense</b>		<u>\$ 3,455</u>	<u>\$ 90</u>	<u>\$ 3,545</u>

Exhibit RCN-14  
page 10 of 31

**Cronin, Jackson, Nixon & Wilson**  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
JAMES L. WILSON, C.P.A.

2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
FACSIMILE  
(813) 797-3602

**I N V O I C E**

July 16, 1996

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

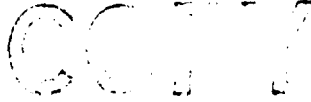
For professional services rendered during  
June, 1996, as follows:

1. Preparation and review of the 1996 Indexed Rate Adjustment	\$ 532.50
2. Prepare response to PSC staff calculation of gross up refunds for fiscal years ended 1992 and 1993	1,120.00
3. Preparation of gross up refund report for fiscal year ended May 31, 1995	840.00
4. Telephone, postage and copies	39.51
Total	<u>\$2,532.01</u>

Exhibit RCN-14  
Page 11 of 31

**Cronin, Jackson, Nixon & Wilson**  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
JAMES L. WILSON, C.P.A.



2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
FACSIMILE  
(813) 797-3602

**I N V O I C E**

May 24, 1996

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
April, 1996, as follows:

1. Preparation and review of the 1995 PSC Annual Report	\$2,750.00
2. Partial billing for preparation of the 1995 gross-up refund report	1,115.00
3. Telephone, Federal Express charges, and copies	<u>93.00</u>
Total	<u>\$3,958.00</u>

Exhibit RCN-14  
page 12 of 31

**NORTH FORT MYERS UTILITY, INC.  
1995 Gross-up Costs**

**ACTUAL ATTORNEYS FEES AND COSTS THROUGH NOVEMBER 30, 1996:**

<u>Invoice Number</u>	<u>Billing Date</u>	<u>Fees</u>	<u>Out-of Pocket</u>	<u>Total</u>
15252*	07/16/96	\$ 60.00	\$ 7.33	\$ 67.33
15780*	10/14/96	270.00	123.40	393.40
16089*	11/19/96	150.00	181.23	331.23
16218*	12/23/96	435.00	428.74	863.74
Total expense through 11/30/96		\$ 915.00	\$ 740.70	\$ 1,655.70
Estimated to complete**		\$ <u>3,850.00</u>	\$ <u>300.00</u>	\$ <u>4,150.00</u>
Total Actual and Estimated Expenses		\$ <u>4,765.00</u>	\$ <u>1,040.70</u>	\$ <u>5,805.70</u>

\*Pro rata cost allocation

\*\* Review and assist in response to additional Staff inquiries; obtain and review Staff Recommendation; prepare for and attendance at Agenda Conference; correspondence and reporting to client re: same; review order and reporting to client; final report to client after protest and appeal period.

Estimated 22 hours to complete @ \$175 per hour = \$3,850 + Costs \$300 for total of \$4,150.

Exhibit RCN-14  
page 13 of 31

LAW OFFICES  
**ROSE, SUNDSTROM & BENTLEY**  
 A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS  
 P. O. BOX 1587  
 TALLAHASSEE, FLORIDA 32302-1587

(904) 877-8555

PLEASE REFER TO INVOICE NUMBER  
 WHEN REMITTING

F.E.I. # 88-2783836

NORTH FORT MYERS UTILITY, INC

INVOICE # 15252  
 JULY 16, 1996  
 FILE # 16319-0029

PAGE 3

06/27/96 MSF	FINALIZE AND FAX ALL. RESEARCH AND DRAFT DEVELOPER AGREEMENT FOR GREASE MONKEY OIL CHANGE; LETTER TO MR. REEVES REGARDING SAME	2.40	360.00
06/27/96 FMD	REVIEW INFORMATION ON PROPOSED LEGISLA- TION TO REPEAL TAX ON CIAC; RESEARCH RE: STATUS OF SAME THROUGH INTERNET; CONTACTS WITH HOUSE OF REPRESENTATIVES AND U.S. SENATE; TELEPHONE CONFERENCE WITH NAWC REPRESENTATIVE RE: SAME;	1.20	180.00
06/27/96 FMD	DRAFT LETTER TO CLIENT RE: ALL; TELEPHONE CONFERENCE WITH TONY REEVES RE: ALL AND RE: NEW GROSS-UP FILING.	0.00	0.00
06/28/96 WES	DISCUSSION WITH RAY JUDAH RELATIVE TO ASSISTANCE WITH THE CONSTRUCTION OF A LINE TO THE CRA REBUILD PROJECT ALONG THE NORTH SHORE OF THE CALOOSAHATCHEE RIVER; DISCUSSION WITH TONY REEVES RELATIVE TO VARIOUS MATTERS.	1.00	150.00

WILLIAM E SUNDSTROM	5.70	855.00
MARTIN S FRIEDMAN	11.40	1,710.00
JOHN R JENKINS	2.40	350.00
F MARSHALL DETERDING	5.00	750.00
DAREN L SHIPPY	6.90	1,035.00

31.40 4,710.00

LONG DISTANCE CALLS	134.98
FEDERAL EXPRESS	53.00
TELECOPIER	30.00
PHOTOCOPIES	187.30
MISCELLANEOUS EXPENSE	150.00

TOTAL COSTS ADVANCED 575.48

TOTAL STATEMENT \$3,295.48

Exhibit RCN-14  
 page 14 of 31 Continued



LAW OFFICES  
**ROSE, SUNDSTROM & BENTLEY**  
 A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS  
 P O BOX 1567  
 TALLAHASSEE, FLORIDA 32302-1567  
 (904) 877-8888

PLEASE REFER TO INVOICE NUMBER  
 WHEN REMITTING

F E I # 59-2783838

NORTH FORT MYERS UTILITY, INC  
 P O BOX 2547  
 FORT MYERS, FL 33902

INVOICE # 15780  
 OCTOBER 14, 1996  
 FILE # 16319-0029

PAGE 1

MATTER MISCELLANEOUS LEGAL ADVICE

09/03/96 FMD	ATTEND PSC AGENDA CONFERENCE AND MAKE ARGUMENTS RE: CANCELLATION OF GROSS-UP TARIFFS AND REQUIRED REFUNDS OF POST-JUNE 12TH COLLECTIONS AND ARGUMENTS RE: INTEREST CALCULATION.	0.20	30.00
09/05/96 JRJ	ATTEND MEETINGS WITH CLIENT AND LAVON WISHER OF PFM RE: ARBITRAGE REBATE REPORT AND INVESTMENT ADVICE RE: BOND PROCEEDS.	2.00	300.00
09/16/96 MSF	REVIEW EXECUTED WASTEWATER AGREEMENT AND LETTER TO PSC CLERK REGARDING SAME.	0.30	45.00
09/17/96 MSF	OBTAIN AND REVIEW PERC-SIX 1995 ANNUAL REPORT; INTRA-OFFICE CONFERENCE REGARDING SAME.	0.50	75.00
09/24/96 MSF	RESEARCH AND DRAFT DEVELOPER AGREEMENT FOR GOODWILL AFFORDABLE HOUSING; LETTER TO MR. REEVES REGARDING SAME	2.30	345.00
09/26/96 FMD	REVIEW PSC ORDER ON POST-JUNE 12TH GROSS-UP COLLECTION AND REFUNDS RE: SAME AND GROSS-UP AUTHORITY CANCELLATION; DRAFT LETTER TO CLIENT RE: SAME AND RE: REQUIREMENTS OF ORDER; TELEPHONE CONFERENCE WITH TONY REEVES RE: GROSS-UP.	1.20	180.00
09/30/96 FMD	FINAL REVIEW AND FILING OF GROSS-UP FOR 1995; FILE SAME WITH COVER LETTER TO CHUCK HILL AND FILE TAX RETURNS TO CLERK WITH COVER LETTER.	1.40	210.00

*Y3 1995*

*1995*

MARTIN S FRIEDMAN	3.10	465.00
JOHN R JENKINS	2.00	300.00
F MARSHALL DETERDING	2.90	420.00

7.80

1,135.00

Exhibit RCN-14  
 Page 15 of 31

*465.00  
 300.00  
 420.00*

LAW OFFICES  
**ROSE, SUNDSTROM & BENTLEY**  
A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS  
P. O. BOX 1567  
TALLAHASSEE, FLORIDA 32302-1567  
(904) 877-8885

FEI # 59-2783636

PLEASE REFER TO INVOICE NUMBER  
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NORTH PORT MYERS UTILITY, INC

INVOICE # 15780  
OCTOBER 14, 1996  
FILE # 16319-0029

PAGE 2

LONG DISTANCE CALLS	76.21
TRAVEL EXPENSE	367.00
TELECOPIER	26.00
PHOTOCOPIES	65.00
COPY OF ANNUAL REPORT	7.40

TOTAL COSTS ADVANCED

541.61

TOTAL STATEMENT

\$1,726.61

PLEASE REFER TO INVOICE # WHEN REMITTING

123.40

Exhibit RCN-14  
page 16 of 31

LAW OFFICES  
**ROSE, SUNDSTROM & BENTLEY**  
 A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS  
 P O BOX 1667  
 TALLAHASSEE, FLORIDA 32302-1667  
 (904) 877-8866

FEI # 50-2783636

PLEASE REFER TO INVOICE NUMBER  
 WHEN REMITTING

NORTH FORT MYERS UTILITY, INC  
 P O BOX 2547  
 FORT MYERS, FL 33902

INVOICE # 16089  
 NOVEMBER 19, 1996  
 FILE # 16319-0029

PAGE 1

MATTER MISCELLANEOUS LEGAL ADVICE

10/04/96 MSF	REVIEW EXECUTED DEVELOPER AGREEMENT FOR FT. MYERS COMMUNITY PARK AND LETTER TO PSC CLERK REGARDING SAME.	0.20	30.00
10/08/96 FMD	REVIEW OF INFORMATION FROM CLIENT RE: PAYMENT OF GROSS-UP REFUNDS.	0.50	75.00
10/09/96 FMD	FINALIZE REVIEW OF CHECKS AND SCHEDULES AND SEND TO PSC WITH COVER LETTER.	0.50	75.00
10/16/96 JSB	TELEPHONE CONFERENCE WITH TONY REEVES RE: INSURANCE PROPOSAL FROM POS & BROWN. REVIEW OF PROPOSAL AND RESEARCH RE: ENVIRONMENTAL REGULATION.	1.20	152.00
10/22/96 MSF	TELEPHONE CONFERENCE REGARDING BAD CHECK CHARGE: DRAFT NOTICE; LETTER TO MS. BOLEY REGARDING SAME.	0.40	60.00
10/24/96 MSF	TELEPHONE CONFERENCE WITH MS. BOLEY WHO TELEPHONED REGARDING PREPARING DEVELOPMENT AGREEMENT; REVIEW INFORMATION FROM MR. RIVERS REGARDING SAME; TELEPHONE CONFERENCE WITH MR. RIVERS; DRAFT DEVELOPER AGREEMENT AND LETTER TO MS. BOLEY REGARDING SAME.	0.90	135.00
10/24/96 MSF		0.00	0.00
	MARTIN S FRIEDMAN	3.50	525.00
	F MARSHALL DETERDING	1.00	150.00
	JENNIFER S BRUBAKER	1.00	150.00
		5.70	825.00
	LONG DISTANCE CALLS		49.15
	FEDERAL EXPRESS		13.75
	TRAVEL EXPENSE		242.00
	TELECOPIER		2.00
	PHOTOCOPIES		15.00

505.00  
 150.00  
 1162.80

Exhibit RCN-14  
 Page 17 of 31

LAW OFFICES  
**ROSE, SUNDSTROM & BENTLEY**  
 A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS  
 P O BOX 1867  
 TALLAHASSEE, FLORIDA 32302-1867  
 (904) 877-8855

F.E.I. # 58-2783538

PLEASE REFER TO INVOICE NUMBER  
WHEN REMITTING

NORTH FORT MYERS UTILITY, INC

INVOICE # 16089  
 NOVEMBER 19, 1996  
 FILE # 16319-0029

PAGE	2
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TOTAL COSTS ADVANCED	1,033.00
TOTAL STATEMENT	\$1,870.00

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 Page 18 of 31

LAW OFFICES  
**ROSE, SUNDSTROM & BENTLEY**  
 A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS  
 P. O. BOX 1587  
 TALLAHASSEE, FLORIDA 32302-1587  
 (904) 877-8888

FEI # 58-2783536

PLEASE REFER TO INVOICE NUMBER  
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NORTH FORT MYERS UTILITY, INC  
 P O BOX 2547  
 FORT MYERS, FL 33902

INVOICE # 16218  
 DECEMBER 23, 1996  
 FILE # 16319-0029

PAGE 1

MATTER MISCELLANEOUS LEGAL ADVICE

11/04/96 JSB	TELEPHONE CONFERENCE WITH TONY REEVES RE: POLLUTION REMEDIATION INSURANCE PROPOSAL.	0.40	54.00
11/05/96 MSF	TELEPHONE CONFERENCE WITH MS. XANDER AT PSC WHO TELEPHONED REGARDING LAZY DAYS; TELEPHONE CONFERENCE WITH MR. REEVES REGARDING VARIOUS MATTERS; LETTER TO MS. XANDER.	0.80	120.00
11/05/96 JSB	TELEPHONE CONFERENCE WITH TONY REEVES RE: POLLUTION INSURANCE PROPOSAL.	0.90	121.50
11/06/96 MSF	LETTER TO PSC CLERK REGARDING KINSER OIL COMPANY DEVELOPER AGREEMENT; LETTER TO MS. BOLEY REGARDING CHANGE IN BAD CHECK CHARGE LAW.	0.40	60.00
11/21/96 MSF	REVIEW COMMUNITY DENTAL DEVELOPER AGREEMENT AND LETTER TO PSC CLERK REGARDING SAME.	0.30	45.00
11/21/96 FMD	TELEPHONE CONFERENCE WITH STAFF RE: NEEDED INFORMATION ON GROSS-UP AND INSTALLMENT PAYMENTS OF CIAC AND GROSS-UP AND TIMING OF SAME; TELEPHONE CONFERENCE WITH BOB NIXON AND PAUL DECHARIO RE: SAME; INTRA-OFFICE CONFERENCE RE: SAME AND REVIEW TARIFF.	1.40	210.00
11/21/96 FMD		0.00	0.00
11/22/96 FMD	TELEPHONE CONFERENCE WITH BOB NIXON; CONFERENCE CALL WITH MR. NIXON AND TONY REEVES RE: RESPONSE TO STAFF INQUIRY ON GROSS-UP; INTRA-OFFICE CONFERENCE RE: SAME.	1.50	225.00
	MARTIN S FRIEDMAN	1.50	225.00
	F MARSHALL DETERDING	2.90	435.00
	JENNIFER S BRUBAKER	1.30	175.50

1995

225.00  
 435.00  
 175.50

5.70

Exhibit RCN-1  
 Page 19 of 31

LAW OFFICES  
**ROSE, SUNDSTROM & BENTLEY**  
A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS  
P. O. BOX 1567  
TALLAHASSEE, FLORIDA 32302-1567  
(904) 677-6568

PLEASE REFER TO INVOICE NUMBER  
WHEN REMITTING

F E I # 88-2783538

NORTH FORT MYERS UTILITY, INC

INVOICE # 16218  
DECEMBER 23, 1996  
FILE # 16319-0029

PAGE 2

		835.50
LONG DISTANCE CALLS	124.89	
FEDERAL EXPRESS	16.55	
TRAVEL EXPENSE	450.00	
TELECOPIER	29.00	
PHOTOCOPIES	222.25	
TOTAL COSTS ADVANCED		842.69
TOTAL STATEMENT		\$1,678.19

PLEASE REFER TO INVOICE # WHEN REMITTING

Exhibit RCN-14  
Page 20 of 31

# *Cronin, Jackson, Nixon & Wilson*

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
JAMES L. WILSON, C.P.A.

2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
FACSIMILE  
(813) 797-3602

January 9, 1997

Ms. Jackie Gilchrist  
Regulatory Analyst  
Division of Water & Wastewater  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

BY FEDERAL EXPRESS

Re: 1995 CIAC Gross-up Report for North Fort Myers Utility, Inc.  
(Fiscal year ended May 31, 1995)

Dear Ms. Gilchrist:

On behalf of our client, North Fort Myers Utility, Inc., I am responding to your letter dated December 10, 1996.

North Fort Myers Utility, Inc. disagrees with Staff's computation of excess gross-up collected of \$33,409. The Company believes that the appropriate excess collected (as revised) is \$7,771, before consideration of legal and accounting expenses incurred in connection with this matter. The difference appears to be related solely to Staff's imputation of first year's depreciation on CIAC of \$33,331, with which we disagree, and the revision discussed in further detail below.

The Company believes that the imputed CIAC depreciation benefit does not exist for the following reasons:

1. All plant additions were funded through increases in Company debt, including refinancing of previously incurred debt.
2. Staff's belief that cash CIAC should be used to pay off the Company's debt is unfounded, since there is no Commission rule or policy requiring a specific use of cash CIAC collections.

In addition, Staff's position ignores the reality of the Company's financial state of affairs and its use of debt to fund plant additions.

EXHIBIT RCN-14  
Page 21 of 31

Ms. Jackie Gilchrist  
January 9, 1997  
Page Two

The amount of cash CIAC collected during fiscal year 1995 was not enough to pay interest on outstanding debt, much less any principal. Thus, Staff's belief simply could not occur or result in any tax benefit attributable to the receipt of cash CIAC.

3. Staff's estimate of first year's depreciation on CIAC is greater than the first year's depreciation shown on Form 4562, attached to the return previously filed with the Commission.

Also, you asked for the dollar amount of contributed property resulting from acquisitions of existing systems. During the fiscal year, North Fort Myers acquired \$206,675 of CIAC resulting from acquisitions of existing systems.

On Schedule No. 3 of the Company's filing, interest expense of \$924,418 was used to determine the amount of below the line interest expense. You asked for the gross amount of interest on customer deposits and the amount of amortization of loan costs. The gross amount of interest on customer deposits was \$2,356, and the amount of amortization of loan costs was \$25,212. The net interest expense on Schedule No. 3 was determined as follows:

Interest on long-term debt	\$750,150
AFUDC	(17,109)
Short-term line of credit	166,165
Customer deposits	2,356
Amortization of loan costs	<u>25,212</u>
	926,774
Less: Interest on customer deposits	<u>(2,356)</u>
Net interest expense	<u>\$924,418</u>

Additionally, you asked how much interest was earned during the fiscal year on the gross-up escrow account. Such interest earnings amounted to \$1,462.

I have revised the Company's originally proposed refund to include \$9,175 of miscellaneous income as above the line income. Such income was determined by the Utility to be miscellaneous service revenue from reconnect fees and, as such, should be classified above the line. The Utility filed a corrected Regulatory Assessment Fee to correct the misclassification. As a result, I have enclosed revised Schedules No. 1 and 2 which result in a revised over collection of gross-up of \$7,771, before reduction for legal and accounting expense.

Exhibit RCN-14  
page 22 of 31



Ms. Jackie Gilchrist  
January 9, 1997  
Page Three

Finally, the Company believes that the legal and accounting expenses incurred to file and process the 1995 gross-up refund report should offset the revised excess gross-up collected of \$7,771. Actual and estimated accounting fees to process this report total \$3,545, while actual and estimated legal fees total \$5,806, resulting in total expense of \$9,351. Since such total expenses exceed the revised excess gross-up collected, no refund is required.

Please contact me if you have additional questions concerning this matter.

Very truly yours,

CRONIN, JACKSON, NIXON & WILSON



Robert C. Nixon

RCN/apf

cc: F. M. Deterding, Esq. (w/encl.)  
T. Reeves (w/encl.)

Exhibit RCN-14  
page 23 of 31

*Cronin, Jackson, Nixon & Wilson*  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
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2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
FACSIMILE  
(813) 797-3602

June 18, 1996

Officers and Directors  
North Fort Myers Utility, Inc.

As requested, we have prepared the accompanying Special Report of North Fort Myers Utility, Inc., consisting of Schedules No. 1 through No. 5. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended May 31, 1995, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

EXHIBIT RCN-14  
PAGE 24 OF 31

North Fort Myers Utility, Inc.  
Income Tax on CIAC and Proposed Gross-up Refund  
Fiscal Year Ended May 31, 1995

Line  
No.

1	Total above the line taxable income (Schedule No. 2)	\$ 876,221
2	Less: Gross-up collected (Schedule No. 2)	<u>(338,017)</u>
3	Net taxable CIAC (1)	538,204
4	Combined Federal and State tax rate	<u>.3763</u>
5	Income tax on CIAC	202,526
6	Tax expansion factor for gross-up	<u>1.6033</u>
7	Gross-up required to pay tax on CIAC	324,710
8	Actual gross-up collected	<u>(338,017)</u>
9	Under (over) collection of gross-up (2)	<u>\$ (13,307)</u>
10	Notes: (1) The Company did not receive any contributions of physical	
11	property during the fiscal year. Increases in contributed property	
12	resulted entirely from the acquisition of existing systems and their	
13	historic cost basis. Therefore, no adjustment for first year	
14	depreciation is made. Plant additions were funded through increases	
15	in Company debt.	
16	(2) The Company proposes a refund of \$13,307.	

Exhibit RCN-14  
Page 25 of 31

Schedule No. 1

North Fort Myers Utility, Inc.  
 Schedule of Above and Below the Line Taxable Income (Loss)  
 Fiscal Year Ended May 31, 1995

Line  
No.

1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (Line 1c)	\$ 1,334,763
3	Cost of goods sold (Line 2, Schedule A, Statement 3):	
4	Cost of labor	254,751
5	Utilities	113,061
6	Repairs and maintenance	21,798
7	Supplies	23,448
8		<u>413,058</u>
9	Gross profit	<u>921,705</u>
10	Deductions:	
11	Salaries and wages (Line 13)	121,226
12	Repairs and maintenance (Line 14)	12,770
13	Rents (Line 16)	7,123
14	Taxes and licenses (Line 17) (Schedule No. 3)	106,982
15	Interest (Line 18) (Schedule No. 3)	201,845
16	Depreciation (Line 21b) (Schedule No. 3)	380,765
17	Other deductions (Line 26) (Schedule No. 4)	142,940
18		<u>973,651</u>
19	Above the line taxable income before CIAC	<u>(51,946)</u>
20	CIAC (Line 10, Schedule No. 3)	590,150
21	Gross-up (Line 10, Schedule No. 3)	338,017
22		<u>928,167</u>
23	Total above the line taxable income	<u>876,221</u>
24	<u>Below the line taxable income (loss)</u>	
25	Income:	
26	Interest (Line 5)	37,412
27	Miscellaneous (Line 10, Statement 1) (Schedule No. 3)	9,175
28		<u>46,587</u>
29	Deductions:	
30	Cost of goods sold (Line 2, Schedule A, Statement 3):	
31	Security	140
32	Engineering and testing	184,511
33	Officers compensation (Line 12)	199,940
34	Taxes (Line 17) (Schedule No. 3)	15,479
35	Interest (Line 18) (Schedule No. 3)	724,929
36	Depreciation (Line 21b) (Schedule No. 3)	254,265
37	Other deductions (Line 26) (Schedule No. 4)	161,218
38		<u>1,540,482</u>
39	Total below the line tax loss	<u>(1,493,895)</u>
40	Total taxable income (loss) (Line 28)	(617,674)
41	Below the line net operating loss deduction (Line 29c)	<u>(2,215,483)</u>
42	Total taxable income (loss) (Line 30)	<u>\$ (2,833,157)</u>

Exhibit RCAI-14  
 Page 26 of 31

Schedule No. 2

North Fort Myers Utility, Inc.  
 Above and Below the Line Taxes, Interest, and Depreciation  
 Fiscal Year Ended May 31, 1995

Line No.		
1	(A) <u>Taxes</u>	
2	(1) <u>Property taxes</u>	
3	Total property taxes	\$ 16,552
4	Composite non-used and useful percent	
5	(Schedule No. 5)	<u>36.14%</u>
6	Below the line property taxes	<u>5,982</u>
7	(2) <u>Payroll taxes</u>	
8	Officers salary subject to social	
9	security tax	111,120
10	Payroll tax rate	<u>6.2%</u>
11		<u>6,889</u>
12	Officers salary subject to Medicare tax	179,888
13	Medicare tax rate	<u>1.45%</u>
14		<u>2,608</u>
15	Total below the line payroll taxes	<u>9,497</u>
16	Below the line taxes	15,479
17	Above the line taxes	<u>106,982</u>
18	Total taxes	<u>\$ 122,461</u>
19	(B) <u>Interest</u>	
20	Total long-term debt	<u>\$10,596,227</u>
21	Rate base	\$ 2,367,013
22	Less: Customer deposits	<u>(80,780)</u>
23	Rate base supported by long-term debt	<u>\$ 2,286,233</u>
24	Long-term debt in excess of rate base	<u>\$ 8,309,994</u>
25	Percentage excess	78.42%
26	Interest expense, net of \$2,356 interest on	
27	customer deposits, plus amortization of	
28	loan costs	<u>\$ 924,418</u>
29	Below the line interest expense	724,929
30	Above the line interest expense	<u>201,845</u>
31	Total interest expense	<u>\$ 926,774</u>

Exhibit RCM-14  
 Page 27 of 31

North Fort Myers Utility, Inc.  
 Above and Below the Line Taxes, Interest, and Depreciation  
 Fiscal Year Ended May 31, 1995

Line No.			
1	(C) <u>Depreciation</u>		
2	(1) <u>Net depreciation</u>		
3	Total depreciation per Line 21b	\$ 686,749	
4	Less: Depreciation on pre-1987 CIAC assets (1)	<u>(51,719)</u>	
5	Net depreciation expense included on return	635,030	
6	Less: Depreciation on prior years		
7	contributed property	<u>(38,967)</u>	
8	Net depreciation	<u>\$ 596,063</u>	
9	(2) <u>Above and below the line depreciation</u>		
10	Net depreciation on invested property		
11	per above	\$ 596,063	
12	Composite used and useful percentage		
13	(Schedule No. 5)	<u>63.88%</u>	
14	Above the line depreciation	380,765	
15	Below the line depreciation	<u>254,265</u>	
16	Total net depreciation	<u>\$ 635,030</u>	
17	Note (1): "Other income" on Line 10 and Statement 1 consists of the		
18	following:		
19	Taxable CIAC	\$590,150	
20	Taxable gross-up	338,017	
21	Amortization of pre-1987 CIAC assets	<u>51,719</u>	
22		<u>979,886</u>	
23	Miscellaneous income	<u>9,175</u>	
24	Total	<u>\$989,061</u>	

Exhibit RCN-14  
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North Fort Myers Utility, Inc.  
Schedule of Above and Below the Line "Other Deductions"  
Fiscal Year Ended May 31, 1995

Line  
No.

1	Above the line "Other deductions":	
2	Insurance	\$ 69,921
3	Accounting	39,970
4	Telephone	9,810
5	Miscellaneous expense	1,734
6	Contract services	3,058
7	Office expense and bank charges	<u>18,447</u>
8	Total above the line "Other deductions"	<u>142,940</u>
9	Below the line "Other deductions":	
10	Legal	128,509
11	Travel and entertainment	12,094
12	Amortization of plant retirement	<u>20,615</u>
13	Total below the line "Other deductions"	<u>161,218</u>
14	Total "Other deductions"	<u>\$304,158</u>

EXHIBIT RCN-14  
Page 29 of 31

Schedule No. 4

North Fort Myers Utility, Inc.  
 Schedule of Rate Base and Composite Non-Used and Useful Percentage  
 Fiscal Year Ended May 31, 1995

Line  
No.

1	I. <u>Rate base</u>		
2	Utility plant in service		\$10,836,618
3	Land		252,453
4	Non-used and useful plant (1)		(3,249,877)
5	Accumulated depreciation		(1,595,804)
6	CIAC (net)		<u>(3,876,377)</u>
7	Rate base		<u>\$ 2,367,013</u>
8	Note (1): Non-used and useful plant was calculated as follows:		
9	(A) <u>Treatment plant</u>		
10	Peak average month flow (September, 1994) (mgd)	.862	
11	Divide by plant capacity (mgd)	<u>2.000</u>	
12	Percent used and useful		43.10%
13	Percent non-used and useful		<u>56.90</u>
14	Total		<u>100.00%</u>
15	(B) <u>Deepwell</u>		
16	Peak average month flow to deepwell		
17	(January, 1995) (mgd)	<u>.285</u>	
18	Divide by deepwell capacity (mgd)		2.000
19	Percent used and useful		14.25%
20	Percent non-used and useful		<u>85.75</u>
21	Total		<u>100.00%</u>
22	(C) <u>Amounts non-used and useful</u>		
23		<u>Treatment</u>	<u>Deepwell</u>
24	Total plant costs	\$5,484,667	\$ 925,774
25	Accumulated depreciation	<u>(983,331)</u>	<u>(122,722)</u>
26	Net plant	4,501,336	803,052
27	Percent non-used and useful	<u>56.90%</u>	<u>85.75%</u>
28	Net non-used and useful plant	<u>\$2,561,260</u>	<u>\$ 688,617</u>
29	Total net non-used and useful plant		<u>\$3,249,877</u>

Exhibit RCN-14  
 Page 30 of 31



North Fort Myers Utility, Inc.  
 Schedule of Rate Base and Composite Non-Used and Useful Percentage  
 Fiscal Year Ended May 31, 1995

Line  
No.

1	II. <u>Composite non-used and useful percentage</u>			
2	Total plant costs per above	\$5,484,667	\$	925,774
3	Percent non-used and useful	56.90%		85.75%
4	Amount non-used and useful	\$3,120,776	\$	793,851
5	Total non-used and useful plant costs			
6	(\$3,120,776 + \$793,851)	\$ 3,914,627		
7	Divide by total depreciable plant	\$10,836,618		
8	Composite non-used and useful percentage	36.12%		
9	Composite used and useful percentage	63.88%		

**EXHIBIT RCN-15**

North Fort Myers Utility, Inc.  
Amended Income Tax on CIAC & Gross-up Required to Pay Tax  
For the Year Ended May 31, 1996

Line No.		Filed with Gross-up Report (1)	Adjustment	Tax Return "As Filed"	Adjustment	Tax Return Filed "As Amended"
1	Above the line taxable income	\$ 1,443,563	\$ (253,197) (2)	\$ 1,190,366	\$ 764,393 (5)	\$ 1,954,759
2	Less: Contributed property not grossed-up				(477,842) (6)	(477,842)
3	Gross-up collected	(402,730)		(402,730)	(143,374) (7)	(546,104)
4	Net taxable CIAC	1,040,833	(253,197)	787,636	143,177	930,813
5	Less: First year's depreciation of CIAC	(21,863)	3,136 (3)	(18,727)	(6,469) (8)	(25,196)
6	CIAC associated with systems not grossed-up	(296,184)	296,184 (4)			
7	Net taxable CIAC for gross-up	722,786	46,123	768,909	136,708	905,617
8	Combined Federal & State tax rate	37.63	37.63	37.63	37.63	37.63
9	Income tax on CIAC	271,984	17,356	289,340	51,444	340,784
10	Tax expansion factor for gross-up taxes	1.6033	1.6033	1.6033	1.6033	1.6033
11	Gross-up required to pay tax on CIAC	436,072	27,827	463,899	82,480	546,379
12	Actual gross-up collected	402,730		402,730	143,374	546,104
13	Gross-up under (over) collected	33,342	27,827	61,169	(60,894)	275
14	Less: Offset of 50% of legal & accounting fees	-	-	-	9,980	9,980
15	Net gross-up under (over) collected	<u>\$ 33,342</u>	<u>\$ 27,827</u>	<u>\$ 61,169</u>	<u>\$ (50,914)</u>	<u>\$ 10,255</u>

- 16 Notes: (1) The tax return dated 01/08/97, filed with the gross-up report (dated 04/04/97) was a "Draft" and was changed to reflect purchased  
17 CIAC shown in Note (2) on 02/12/97. This actual return "As Filed" was amended on 12/05/97 to include as income all CIAC and gross-up  
18 contractually due as accounts receivable.
- 19 (2) Reduce income for CIAC acquired with purchased property.  
20 (3) Remove first year's depreciation on acquired contributed property per Note (1).  
21 (4) Revise adjustment for CIAC associated with systems not grossed-up.  
22 (5) Increase income for accounts receivable - CIAC recorded as taxable income and revised above the line depreciation.  
23 (6) Remove CIAC associated with contributed systems not grossed-up.  
24 (7) Increase income for accounts receivable - gross-up recorded as CIAC.  
25 (8) Increase first year's depreciation on CIAC for amended amounts.

Exhibit RCN-15  
Page 1 of 31

North Fort Myers Utility, Inc.  
Schedule of Above & Below the Line Taxable Income (Loss)  
For the Year Ended May 31, 1996

Line No.		Filed with Gross-up Report	Adjustment	Tax Return "As Filed"	Adjustment	Tax Return Filed "As Amended"
1	<b>Above the line taxable income</b>					
2	Gross receipts/sales (Statement 1, Line 1c)	\$ 1,637,154		\$ 1,637,154		\$ 1,637,154
3	Cost of goods sold (Statement 1, Line 2; Schedule No. 6)	(464,353)		(464,353)		(464,353)
4	Gross profit	1,172,801		1,172,801		1,172,801
5	<b>Deductions:</b>					
6	Salaries & wages (Statement 1, Line 13)	78,293		78,293		78,293
7	Repairs & maintenance (Statement 1, Line 14)	1,062		1,062		1,062
8	Bad debts (Statement 1, Line 15)	2,840		2,840		2,840
9	Rents (Statement 1, Line 16)	7,123		7,123		7,123
10	Taxes (Statement 1, Line 17; Schedule No. 3)	159,904		159,904		159,904
11	Interest (Statement 1, Line 18; Schedule No. 3)	226,819		226,819		226,819
12	Depreciation (Statement 1, Line 21b; Schedule No. 3)	488,494	2,290 (1)	490,784	\$ (4,724) (2)	486,060
13	Other deductions (Statement 1, Line 26; Schedule No. 4)	236,294		236,294		236,294
14		1,200,829	2,290	1,203,119	(4,724)	1,198,395
15	Above the line taxable loss before CIAC	(28,028)	(2,290)	(30,318)	4,724	(25,594)
16	<b>CIAC</b>					
17	Net taxable CIAC additions (Schedule No. 3)	1,068,861	\$ (250,907) (2)	817,954	616,295 (3)	1,434,249
18	Gross-up	402,730		402,730	143,374 (3)	546,104
19		1,471,591	(250,907)	1,220,684	759,669	1,980,353
20	Total above the line taxable income	1,443,563	(253,197)	1,190,366	764,393	1,954,759
21	<b>Below the line taxable income</b>					
22	<b>Income:</b>					
23	Interest (Statement 1, Line 5)	179,227		179,227		179,227
24	Other income (Statement 1, Line 10; Schedule No. 3)	10,560		10,560		10,560
25		189,787		189,787		189,787
26	<b>Deductions:</b>					
27	Cost of sales (Statement 1, Line 2; Schedule No. 6)	186,807		186,807		186,807
28	Compensation of officers (Statement 1, Line 12)	224,952		224,952		224,952
29	Taxes (Statement 1, Line 18; Schedule No. 3)	29,088		29,088		29,088
30	Interest (Statement 1, Line 18; Schedule No. 3)	939,934		939,934		939,934
31	Depreciation (Statement 1, Line 21c; Schedule No. 3)	253,568	(2,290) (1)	251,278	75,522 (2)	326,800
32	Other deductions (Statement 1, Line 26; Schedule No. 4)	317,615		317,615		317,615
33		1,951,964	(2,290)	1,949,674	75,522	2,025,196
34	Total below the line taxable loss	(1,762,177)	2,290	(1,759,887)	(75,522)	(1,835,409)
35	Total tax income (loss) (Statement 1, Line 10)	\$ (318,614)	\$ (250,907)	\$ (569,521)	\$ 688,871	\$ 119,350

Notes: (1) Increase/decrease to above & below the line depreciation for removal of first year's depreciation of CIAC acquired in purchase of existing system (Schedule No. 3 - \$3,136 x .7303).  
(2) Reduction in used & useful above the line depreciation (\$490,784 - \$486,060) and increase in below the line depreciation per Schedule No. 3 (\$4,724 + \$70,798).  
(3) To include CIAC and gross-up receivable in income and reclassify per Schedule No. 3.

Exhibit RCN-15  
Page 2 of 31

North Fort Myers Utility, Inc.  
 Above & Below the Line Taxes, Interest, and Depreciation  
 For the Year Ended May 31, 1996

Line No.		
1	A. <u>Taxes</u>	
2	1. <u>Property taxes</u>	
3	Total property taxes	\$ 69,869
4	Composite non-used & useful percentage (Schedule No. 5)	<u>26.97 %</u>
5	Below the line property taxes	<u>18,844</u>
6	2. <u>Payroll taxes</u>	
7	Officer's salary subject to social security tax	112,620
8	Social security tax rate	<u>6.20 %</u>
9		<u>6,982</u>
10	Officer's salary subject to Medicare tax	224,952
11	Medicare tax rate	<u>1.45 %</u>
12		<u>3,262</u>
13	Total below the line payroll taxes	<u>10,244</u>
14	Below the line taxes	29,088
15	Above the line taxes	<u>159,904</u>
16	Total taxes	<u>\$ 188,992</u>
17	B. <u>Interest</u>	
18	Total long-term debt	<u>\$ 13,698,237</u>
19	Rate base (Schedule No. 5)	\$ 2,694,178
20	Less: Customer deposits	<u>(110,649)</u>
21	Rate base supported by long-term debt	<u>\$ 2,583,529</u>
22	Long-term debt in excess of rate base	<u>\$ 11,114,708</u>
23	Percentage excess	81.14 %
24	Interest expense, net of \$8,343 interest on customer deposits	<u>\$ 1,158,410</u>
25	Below the line interest expense	939,934
26	Above the line interest expense	<u>226,819</u>
27	Total interest expense	<u>\$ 1,166,753</u>

North Fort Myers Utility, Inc.  
Above & Below the Line Taxes, Interest, and Depreciation  
For the Year Ended May 31, 1996

Line No.		Filed with Gross-up Report	Adjustment	Tax Return "As Filed"	Adjustment	Tax Return "As Amended"
1	C. <u>Depreciation</u>					
2	1. <u>Net depreciation</u>					
3	Total depreciation per Line 21b	\$ 793,781		\$ 793,781		\$ 793,781
4	Less: Depreciation on pre-1987 CIAC assets (1)	(51,719)		(51,719)		(51,719)
5	CIAC depreciation - post-1987 assets (3)				\$ 70,798	70,798
6	Net depreciation expense included on return	742,062		742,062	70,798	812,860
7	Less: Depreciation of prior years contributed property	(51,304)		(51,304)		(51,304)
8	First year's depreciation of CIAC	(21,863)	3,136 (2)	(18,727)	(6,469)	(25,196)
9	CIAC depreciation - post 1987 assets (3)				(70,798)	(70,798)
10	Net depreciation	<u>\$ 668,895</u>	<u>\$ 3,136</u>	<u>\$ 672,031</u>	<u>\$ (6,469)</u>	<u>\$ 665,562</u>
11	2. <u>Above &amp; below the line depreciation</u>					
12	Net depreciation on invested property, per above	\$ 668,895		\$ 672,031		\$ 665,562
13	Composite used & useful percentage (Schedule No. 5)	73.03		73.03		73.03
14	Above the line depreciation	488,494		490,784		486,060
15	Below the line depreciation	253,568		251,278		326,800
16	Total above & below the line depreciation	<u>\$ 742,062</u>		<u>\$ 742,062</u>		<u>\$ 812,860</u>
17	Notes: (1) Other income on Line 10 and Statement 16 consists of the following:					
18	Cash CIAC additions	\$ 340,113	\$ (1)	\$ 340,112	\$ 616,295	\$ 956,407
19	Property CIAC additions	728,748	(250,906)	477,842		477,842
20	Gross-up received	402,730		402,730	143,374	546,104
21	Pre-1987 CIAC depreciation	51,719		51,719		51,719
22	CIAC depreciation - post-1987 assets				(70,798)	(70,798)
23		1,523,310	(250,907)	1,272,403	688,871	1,961,274
24	Other income	10,560		10,560		10,560
25	Total	<u>\$ 1,533,870</u>	<u>\$ (250,907)</u>	<u>\$ 1,282,963</u>	<u>\$ 688,871</u>	<u>\$ 1,971,834</u>
26	(2) Reduce first year's depreciation on CIAC for reduction in taxable CIAC for CIAC acquired in purchase of an existing system (Tamiami Village).					
27	(3) Depreciation on post-1987 CIAC assets included as expense on Line 10 of tax return per Note (1).					

Exhibit RCN-15  
Page 4 of 31

North Fort Myers Utility, Inc.  
 Schedule of Above & Below the Line "Other Deductions"  
 For the Year Ended May 31, 1996

<u>Line No.</u>		
1	Above the line "other deductions" (Statement 16)	
2	Accounting	\$ 100,973
3	Auto expense	6,475
4	Bank charges	1,399
5	Contract services	217
6	Customer records & collection	11,441
7	Insurance	67,025
8	Miscellaneous	16,526
9	Office expenses	20,611
10	Telephone	9,373
11	Training	<u>2,254</u>
12	Total above the line "other deductions"	<u>236,294</u>
13	Below the line "other deductions"	
14	Amortization of plant retirement	123,118
15	Christmas expense	325
16	Legal	151,518
17	Travel & entertainment	23,294
18	Trustee expense	<u>19,360</u>
19	Total below the line "other deductions"	<u>317,615</u>
20	Total "other deductions"	<u>\$ 553,909</u>

Exhibit RCN-15  
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North Fort Myers Utility, Inc.  
 Schedule of Rate Base and Composite Non-used & Useful Percentage  
 For the Year Ended May 31, 1996

Line No.			
1	I.	<u>Rate base</u>	
2		Utility plant in service	\$ 11,943,550
3		Land	303,250
4		Non-used & useful plant (IIC)	(2,586,750)
5		Accumulated depreciation	(2,299,152)
6		CIAC (net)	<u>(4,666,720)</u>
7		Rate base	<u>\$ 2,694,178</u>
8	II.	<u>Non-used &amp; useful plant</u>	
9	A.	<u>Treatment plant</u>	
10		Peak average month flow (October, 1995) mgd	<u>\$ 1.039</u>
11		Divide by plant capacity mgd	2.000
12		Percent used & useful	51.95 %
13		Percent non-used & useful	<u>48.05</u>
14			<u>100.00 %</u>
15	B.	<u>Deep well</u>	
16		Peak average month flow to deep well (December, 1995)	<u>0.700</u>
17		Divide by deep well capacity (mgd)	2.000
18		Percent used & useful	35.00 %
19		Percent non-used & useful	<u>65.00</u>
20			<u>100.00 %</u>
21	C.	<u>Amounts non-used &amp; useful</u>	
22			<u>Treatment</u>
23		Total plant costs	<u>\$ 5,445,335</u>
24		Accumulated depreciation	<u>(1,121,301)</u>
25		Net plant	4,324,034
26		Percent non-used & useful	<u>48.05</u>
			<u>Deep well</u>
		Total plant costs	<u>\$ 929,523</u>
		Accumulated depreciation	<u>(146,366)</u>
		Net plant	783,157
		Percent non-used & useful	<u>65.00</u>
27		Net non-used & useful plant	<u>\$ 2,077,698</u>
28		Total net non-used & useful plant	<u>\$ 2,586,750</u>



North Ft. Myers Utility, Inc.  
 Schedule of Rate Base and Composite Non-used & Useful Percentage  
 For the Year Ended May 31, 1996

<u>Line No.</u>		<u>Treatment</u>	<u>Deep well</u>
1	III. <u>Composite used &amp; useful percentage</u>		
2			
3	Total plant costs, per above	<u>\$ 5,445,335</u>	<u>\$ 929,523</u>
4	Percent non-used & useful	<u>48.05</u>	<u>65.00</u>
5	Amount non-used & useful	<u>\$ 2,616,483</u>	<u>\$ 604,190</u>
6	Total non-used & useful plant		
7	(\$2,616,483 + \$604,190)	<u>\$ 3,220,673</u>	
8	Divide by total depreciable plant	<u>\$ 11,943,550</u>	
9	Composite non-used & useful percentage		<u>26.97 %</u>
10	Composite used & useful percentage		<u>73.03 %</u>

Exhibit RW-15  
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North Fort Myers Utility, Inc.  
 Above and Below the Line Cost of Sales  
 For the Year Ended May 31, 1996

<u>Line No.</u>		
1	<u>Above the line cost of sales</u>	
2	Cost of labor	\$ 246,825
3	Other costs (Statement 19):	
4	Utilities	136,483
5	Repairs & maintenance	52,412
6	Supplies	28,403
7	Insurance	230
		<hr/>
8	Total above the line cost of sales	464,353
		<hr/>
9	<u>Below the line cost of sales</u>	
10	Other costs (Statement 19):	
11	Engineering & testing	186,713
12	Security	94
		<hr/>
13	Total below the line cost of sales	186,807
		<hr/>
14	Total cost of sales	\$ 651,160
		<hr/> <hr/>

Exhibit RCN-15  
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North Fort Myers Utility, Inc.  
Summary of Legal & Accounting Expense to  
Prepare & Process Gross-up Refund Reports

	<u>1995</u>	<u>1996</u>	<u>Total</u>
Legal expense	\$ 9,655	\$ 9,655	\$ 19,310
Accounting expense	<u>8,197</u>	<u>10,304</u>	<u>18,501</u>
Total	<u>\$ 17,852</u>	<u>\$ 19,959</u>	<u>\$ 37,811</u>

**NORTH FORT MYERS UTILITY, INC.**  
**Legal Fees and Costs Re: Gross-Up Disposition 1994-1995<sup>(1)</sup>**

<u>Invoice Number</u>	<u>Billing Date</u>	<u>Fees</u>	<u>Out-of-Pocket</u>	<u>Total</u>
15252*	07/16/96	60.00	7.33	67.33
15780*	10/14/96	270.00	123.40	393.40
16089*	11/19/96	150.00	181.23	331.23
16218*	12/23/96	435.00	428.74	863.74
16356*	01/27/97	\$ 659.85	\$ 164.10	\$ 823.95
16523*	02/19/97	1,661.10	216.98	1,878.08
16582*	03/21/97	1,529.50	267.82	1,797.32
16705*	04/15/97	1,012.38	152.14	1,164.52
16857*	05/14/97	1,055.25	97.17	1,152.42
17015*	06/17/97	280.00	618.78	898.78
17177*	07/15/97	1,524.25	143.75	1,668.00
17342*	08/15/97	227.85	28.15	256.00
17684*	10/16/97	1,610.00	97.62	1,707.62
17865*	11/18/97	1,308.80	405.35	1,714.15
18051*	12/11/97	<u>1,393.18</u>	<u>168.93</u>	<u>1,562.11</u>
Total Fees & Costs Through 11/30/97		\$ 13,177.16	\$ 3,101.49	\$ 16,278.65
Incurred But Unbilled December 1997		815.93	265.19	1,081.12
January 1997				
Estimated to Complete to PAA (if unprotested)		<u>1,750.00</u>	<u>200.00</u>	<u>1,950.00</u>
Total Actual & Estimated Fees Through PAA		<u>15,743.09</u>	<u>3,566.68</u>	<u>19,309.77</u>
1994 (1/2)		<u>9,655.00</u>		
1995 (1/2)		<u>9,655.00</u>		

<sup>(1)</sup> Fiscal years ended 5/31/95 and 5/31/96.

North Fort Myers Utility, Inc.  
 Actual and Estimated Accounting Fees to Prepare and  
 Process Gross-up Refund Reports  
 Fiscal Years Ended May 31, 1995 and 1996

<u>Cronin, Jackson, Nixon &amp; Wilson</u>	Fiscal Report	
	Year Ended	
<u>Invoice Date</u>	<u>05/31/95</u>	<u>05/31/96</u>
05/24/96	\$ 1,115	
07/16/96	880	
01/16/97 (1/2 to 1995)	469	
02/19/97		\$ 2,492
03/17/97		1,907
04/23/97		173
06/19/97 (1/2 to each year)	234	234
08/15/97 (1/2 to each year)	691	691
09/12/97 (1/2 to each year)	166	166
11/19/97 (1/2 to each year)	604	604
	<hr/>	<hr/>
Total actual expense to 10/31/97	4,159	6,267
	<hr/>	<hr/>
<u>Estimate to complete (1/2 to each year):</u>		
Revise 1995 & 1996 gross-up reports for amended returns		
R. Nixon - 24.5 hours @ \$150	1,838	1,837
P. DeChario - 44 hours @ \$75	1,650	1,650
Clerical - 9 hours @ \$25	112	113
Review Staff revised calculations and discuss with client & attorney		
R. Nixon - 3 hours @ \$150	225	225
Review PAA Order		
R. Nixon - 1.5 hours @ \$150	113	112
Phone, copies, Federal Express charges	100	100
	<hr/>	<hr/>
Total estimate to complete	4,038	4,037
	<hr/>	<hr/>
Total actual and estimated accounting expense	\$ 8,197	\$ 10,304
	<hr/>	<hr/>

Exhibit RCN-15  
 Page 11 of 31

**Cronin, Jackson, Nixon & Wilson**  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
JAMES L. WILSON, C.P.A.

COPY

2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
FACSIMILE  
(813) 797-3602

**I N V O I C E**

May 24, 1996

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
April, 1996, as follows:

1. Preparation and review of the 1995 PSC Annual Report	\$2,750.00
2. Partial billing for preparation of the 1995 gross-up refund report	1,115.00
3. Telephone, Federal Express charges, and copies	<u>93.00</u>
Total	<u>\$3,958.00</u>

Exhibit RCN-15  
Page 12 of 31

# Cronin, Jackson, Nixon & Wilson

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ROBERT H. JACKSON, C.P.A.  
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SUITE 200  
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(813) 791-4020  
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(813) 797-3602

## I N V O I C E

July 16, 1996

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
June, 1996, as follows:

1. Preparation and review of the 1996 Indexed Rate Adjustment	\$ 532.50
2. Prepare response to PSC staff calculation of gross up refunds for fiscal years ended 1992 and 1993	1,120.00
3. Preparation of gross up refund report for fiscal year ended May 31, 1995	840.00
4. Telephone, postage and copies	39.51
Total	<u>\$2,532.01</u>

\$880

840.00  
39.51

Exhibit RCN-15  
Page 13 of 31

**Cronin, Jackson, Nixon & Wilson**  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
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SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
FACSIMILE  
(813) 797-3602

**I N V O I C E**

January 16, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
December, 1996, as follows:

1. Work related to the 1994 and 1995 gross-up refund reports, including response to Staff's calculations	\$935.00
2. Telephone charges	<u>3.43</u>
Total	<u>\$938.43</u>

*1/2 to 1995 F.Y. Report \$469*

*Exhibit RCN-15  
Page 14 of 31*



**Cronin, Jackson, Nixon & Wilson**  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ERIC M. DOAN, C.P.A.  
ROBERT H. JACKSON, C.P.A.  
BRENDA M. McBARRON, C.P.A.  
ROBERT C. NIXON, C.P.A.  
HOLLY M. TOWNER, C.P.A.  
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2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
FACSIMILE  
(813) 797-3602

COPY

**I N V O I C E**

February 19, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
January, 1997, as follows:

1. Preparation of 1996 gross-up refund report for the fiscal year ended May 31, 1996	\$2,412.50
2. Telephone, postage, Federal Express charges, and copies	<u>79.30</u>
<b>Total</b>	<u>\$2,491.80</u>

Exhibit RCN-15  
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**Cronin, Jackson, Nixon & Wilson**  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
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2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
FACSIMILE  
(813) 797-3602

**I N V O I C E**

March 17, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
February, 1997, as follows:

1. Preparation of the PSC gross-up refund report for the fiscal year ended May 31, 1996	\$1,887.50
2. Telephone, postage, and copies	<u>19.32</u>
Total	<u>\$1,906.82</u>

Exhibit RCN-15  
Page 16 of 31

**Cronin, Jackson, Nixon & Wilson**  
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**I N V O I C E**

April 23, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
March, 1997, as follows:

1. Final preparation and transmission of 1996 gross-up refund report to Mr. Deterding for filing	\$156.25
2. Telephone and Federal Express charges	<u>17.13</u>
Total	<u>\$173.38</u>

Exhibit RCN-15  
Page 17 of 31

Cronin, Jackson, Nixon & Wilson  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

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COPY

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I N V O I C E

June 19, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
May, 1997, as follows:

1. Work related to the 199 <sup>5</sup> and 199 <sup>6</sup> gross-up refund reports related to Staff request for information	\$456.25
2. Telephone charges and copies	<u>11.88</u>
Total	<u>\$468.13</u>

*1/2 to each year*

Exhibit RCN-15  
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# Cronin, Jackson, Nixon & Wilson

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

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CCNY

## INVOICE

August 15, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
July, 1997, as follows:

1. Prepare calculation of gross-up refunds for the fiscal years ending May 31, 1995 and 1996, using PSC Staff approach to installment gross-up contracts	\$1,375.00
2. Telephone charges	<u>5.85</u>
Total	<u>\$1,380.85</u>

Exhibit RCN-15  
page 19 of 31

**Cronin, Jackson, Nixon & Wilson**  
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**I N V O I C E**

November 18, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
October, 1997, as follows:

1. Review Staff Recommendation with revised calculations of gross-up refunds for the fiscal years ending 199 <del>8</del> and 199 <del>6</del> , and discussion of same with Mr. Deterding	\$1,200.00
2. Telephone charges	<u>8.39</u>
Total	<u>\$1,208.39</u>

EXHIBIT RCN-15  
PAGE 20 OF 31

# Cronin, Jackson, Nixon & Wilson

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## I N V O I C E

September 12, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
August, 1997, as follows:

1. Preparation of schedules of accounting expense incurred to prepare gross-up refund reports for the fiscal years ended May 31, 1995 and 1996	\$325.00
2. Postage and copies	<u>6.96</u>
Total	<u>\$331.96</u>

Exhibit RCN-15  
Page 21 of 31

*Cronin, Jackson, Nixon & Wilson*

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(813) 797-3602

*copy  
filed*

April 4, 1997

F. Marshall Deterding, Esquire  
Rose, Sundstrom & Bentley  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301

BY FEDERAL EXPRESS

Re: North Fort Myers Utility, Inc. - 1996 Gross-up Refund Report

Dear Marty:

As requested, I have enclosed seven copies of the 1996 gross-up refund report for North Fort Myers Utility, Inc., based on the fiscal year ended May 31, 1996.

Also, I have enclosed two copies of the consolidated income tax returns.

Please contact me if you have any questions.

Very truly yours,

CRONIN, JACKSON, NIXON & WILSON

*Bob*

Robert C. Nixon

RCN/apf

Enclosures

cc: T. Reeves (w/encl.)

*Exhibit RCN-15  
page 22 of 31*



# *Cronin, Jackson, Nixon & Wilson*

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
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April 4, 1997

Officers and Directors  
North Fort Myers Utility, Inc.

As requested, we have prepared the accompanying Special Report of North Fort Myers Utility, Inc., consisting of Schedules No. 1 through No. 6. This report is intended solely for use in fulfilling certain reporting requirements related to collection of tax impact charges on contributions in aid of construction, for the year ended May 31, 1996, to be filed with the Florida Public Service Commission. We have not audited or reviewed this Special Report and express no opinion or any other form of assurance on it.

*Cronin, Jackson, Nixon & Wilson*

CRONIN, JACKSON, NIXON & WILSON

EXHIBIT RCN-15  
PAGE 23 OF 31

North Fort Myers Utility, Inc.  
 Income Tax on CIAC and Gross-up Required to Pay Tax  
 For the Year Ended May 31, 1996

Line  
No.

1	Above the line taxable income	1,443,563
2	Less: Gross-up collected (Schedule No. 2)	\$ <del>1,434,249</del> <u>(402,730)</u>
3	Net taxable CIAC	1,040,833
4	Less: First year's depreciation of CIAC	<del>1,031,519</del>
5	CIAC associated with purchase of existing	(21,863)
6	systems not grossed-up	<u>(296,184)</u>
7	Net taxable CIAC for gross-up	722,786
8	Combined federal and state tax rate	<del>713,472</del> <u>.3763</u>
9	Income tax on CIAC	271,984
10	Tax expansion factor for gross-up taxes	<del>268,480</del> <u>1.6033</u>
11	Gross-up required to pay tax on CIAC	436,072
12	Actual gross-up collected	<del>430,453</del> <u>(402,730)</u>
13	Gross-up undercollected	33,342 <u>\$ 27,723</u>
14	Note: The Company undercollected gross-up by \$ <sup>33,342</sup> <del>27,723</del> ; therefore, no	
15	refund is proposed.	

Exhibit RCN-15  
Page 24 of 31

North Fort Myers Utility, Inc.  
 Schedule of Above and Below the Line Taxable Income (Loss)  
 For the Year Ended May 31, 1996

<u>Line No.</u>		
1	<u>Above the line taxable income</u>	
2	Gross receipts/sales (Statement 1, Line 1c)	\$ 1,637,154
3	Cost of goods sold (Statement 1, Line 2; Schedule 6)	<u>(464,353)</u>
4	Gross profit	<u>1,172,801</u>
5	Deductions:	
6	Salaries and wages (Statement 1, Line 13)	78,293
7	Repairs and maintenance (Statement 1, Line 14)	1,062
8	Bad debts (Statement 1, Line 15)	2,840
9	Rents (Statement 1, Line 16)	7,123
10	Taxes (Statement 1, Line 17; Schedule 3)	159,904 ✓
11	Interest (Statement 1, Line 18; Schedule 3)	226,819 ✓
12	Depreciation (Statement 1, Line 21b; Schedule 3)	488,494 ✓
13	Other deductions (Statement 1, Line 26; Schedule 4)	<u>236,294</u>
14		<u>1,200,829</u>
15	Above the line taxable loss before CIAC	<u>(28,028)</u>
16	<u>CIAC</u>	
17	Net taxable CIAC additions (Schedule No. 3)	1,068,861
18	Gross-up	<u>402,730</u>
19		<u>1,471,591</u>
20	Total above the line taxable income	<u>1,443,563</u>
21	<u>Below the line taxable income</u>	
22	Income:	
23	Interest (Statement 1, Line 5)	179,227
24	Other income (Statement 1, Line 10; Schedule No. 3)	<u>10,560</u>
25		<u>189,787</u>
26	Deductions:	
27	Cost of sales (Statement 1, Line 2; Schedule No. 6)	186,807
28	Compensation of officers (Statement 1, Line 12)	224,952
29	Taxes (Statement 1, Line 17; Schedule No. 3)	29,088 ✓
30	Interest (Statement 1, Line 18; Schedule No. 3)	939,934 ✓
31	Depreciation (Statement 1, Line 21c; Schedule No. 3)	253,568 ✓
32	Other deductions (Statement 1, Line 26;	
33	Schedule No. 4)	<u>317,615</u>
34		<u>1,951,964</u>
35	Total below the line loss	<u>(1,762,177)</u>
36	Total tax loss (Statement 1, Line 30)	<u>\$ (318,614)</u>

Exhibit RCN-15  
 Page 25 of 31  
 Schedule No. 2

North Fort Myers Utility, Inc.  
Above and Below the Line Taxes, Interest, and Depreciation  
For the Year Ended May 31, 1996

Line No.		
1	A. <u>Taxes</u>	
2	1. <u>Property taxes</u>	
3	Total property taxes	\$ 69,869
4	Composite non-used and useful percentage	
5	(Schedule No. 5)	<u>26.97%</u>
6	Below the line property taxes	<u>18,844</u>
7	2. <u>Payroll taxes</u>	
8	Officer's salary subject to social security	
9	tax	112,620
10	Social security tax rate	<u>6.20%</u>
11		<u>6,982</u>
12	Officer's salary subject to Medicare tax	224,952
13	Medicare tax rate	<u>1.45%</u>
14		<u>3,262</u>
15	Total below the line payroll taxes	<u>10,244</u>
16	Below the line taxes	29,088
17	Above the line taxes	<u>159,904</u>
18	Total taxes	<u>\$ 188,992</u>
19	B. <u>Interest</u>	
20	Total long-term debt	<u>\$13,698,237</u>
21	Rate base (Schedule No. 5)	\$ 2,694,178
22	Less: Customer deposits	<u>(110,649)</u>
23	Rate base supported by long-term debt	<u>\$ 2,583,529</u>
24	Long-term debt in excess of rate base	<u>\$11,114,708</u>
25	Percentage excess	81.14%
26	Interest expense, net of \$8,343 interest on	
27	customer deposits, plus amortization of	
28	loan costs of \$172,740	<u>\$ 1,158,410</u>
29	Below the line interest expense	939,934 ✓
30	Above the line interest expense	<u>226,819 ✓</u>
31	Total interest expense	<u>\$ 1,166,753</u>

EXHIBIT RCM-15  
Page 26 of 31  
Schedule No. 3  
Page 1 of 2

North Fort Myers Utility, Inc.  
 Above and Below the Line Taxes, Interest, and Depreciation  
 For the Year Ended May 31, 1996

<u>Line</u> <u>No.</u>		
1	C. <u>Depreciation</u>	
2	1. <u>Net depreciation</u>	
3	Total depreciation per Line 21b	\$ 793,781
4	Less: Depreciation on pre-1987 CIAC	
5	assets (1)	<u>(51,719)</u>
6	Net depreciation expense included on return	742,062
7	Less: Depreciation on prior years	
8	contributed property	(51,304)
9	First year depreciation on CIAC	<u>(21,863)</u>
10	Net depreciation	<u>\$ 668,895</u>
11	2. <u>Above and below the line depreciation</u>	
12	Net depreciation on invested property,	
13	per above	\$ 668,895
14	Composite used and useful percentage	
15	(Schedule No. 5)	<u>73.03%</u>
16	Above the line depreciation	488,494
17	Below the line depreciation	<u>253,568</u>
18		<u>\$ 742,062</u>
19	Note (1): Other income on Line 10 and Statement 16 consists of the	
20	following:	
21	Cash CIAC additions	\$ 340,113
22	Property CIAC additions	728,748
23	Gross-up received	402,730
24	Pre-1987 CIAC amortization	<u>51,719</u>
25		1,523,310
26	Other income	<u>10,560</u>
27	Total	<u>\$ 1,533,870</u>

Exhibit RCN-15  
 page 27 of 31

North Fort Myers Utility, Inc.  
 Schedule of Above and Below the Line "Other Deductions"  
 For the Year Ended May 31, 1996

<u>Line</u> <u>No.</u>		
1	Above the line "other deductions" (Statement 16)	
2	Accounting	\$ 100,973
3	Auto expense	6,475
4	Bank charges	1,399
5	Contract services	217
6	Customer records and collection	11,441
7	Insurance	67,025
8	Miscellaneous	16,526
9	Office expenses	20,611
10	Telephone	9,373
11	Training	<u>2,254</u>
12	Total above the line "other deductions"	<u>236,294</u>
13	Below the line "other deductions"	
14	Amortization of plant retirement	123,118
15	Christmas expense	325
16	Legal	151,518
17	Travel and entertainment	23,294
18	Trustee expense	<u>19,360</u>
19	Total below the line "other deductions"	<u>317,615</u>
20	Total "other deductions"	<u>\$ 553,909</u>

Exhibit RCN-15  
 Page 28 of 31

North Fort Myers Utility, Inc.  
 Schedule of Rate Base and Composite Non-Used & Useful Percentage  
 For the Fiscal Year Ended May 31, 1996

Line  
No.

1	I. <u>Rate base</u>		
2	Utility plant in service		\$11,943,550
3	Land		303,250
4	Non-used and useful plant (IIc)		(2,586,750)
5	Accumulated depreciation		(2,299,152)
6	CIAC (net)		<u>(4,666,720)</u>
7	Rate base		<u>\$ 2,694,178</u>
8	II. <u>Non-used &amp; useful plant</u>		
9	A. <u>Treatment plant</u>		
10	Peak average month flow (October, 1995) mgd		<u>1.039</u>
11	Divide by plant capacity mgd		2.000
12	Percent used and useful		51.95%
13	Percent non-used and useful		<u>48.05</u>
14			<u>100.00%</u>
15	B. <u>Deep well</u>		
16	Peak average month flow to deep well		
17	(December, 1995)		<u>.700</u>
18	Divide by deep well capacity (mgd)		2.000
19	Percent used and useful		35.00%
20	Percent non-used and useful		<u>65.00</u>
21			<u>100.00%</u>
22	C. <u>Amounts non-used and useful</u>		
23		<u>Treatment</u>	<u>Deep Well</u>
24	Total plant costs	\$ 5,445,335	\$ 929,523
25	Accumulated depreciation	<u>(1,121,301)</u>	<u>(146,366)</u>
26	Net plant	4,324,034	783,157
27	Percent non-used and useful	<u>48.05</u>	<u>65.00</u>
28	Net non-used and useful plant	<u>\$ 2,077,698</u>	<u>\$ 509,052</u>
29	Total net non-used and useful plant		<u>\$2,586,750</u>

Exhibit RCN-15  
 Page 29 of 31

North Fort Myers Utility, Inc.  
 Schedule of Rate Base and Composite Non-Used & Useful Percentage  
 For the Fiscal Year Ended May 31, 1996

Line  
No.

1	III. <u>Composite used and useful percentage</u>		
2		<u>Treatment</u>	<u>Deep Well</u>
3	Total plant costs, per above	\$ 5,445,335	\$ 929,523
4	Percent non-used and useful	<u>48.05</u>	<u>65.00</u>
5	Amount non-used and useful	<u>\$ 2,616,483</u>	<u>\$ 604,190</u>
6	Total non-used and useful plant		
7	(\$2,616,483 + \$604,190)	<u>\$ 3,220,673</u>	
8	Divide by total depreciable plant	\$11,943,550	
9	Composite non-used and useful percentage		<u>26.97%</u>
10	Composite used and useful percentage		<u>73.03%</u>

Exhibit RCN-15  
 Page 30 of 31



North Fort Myers Utility, Inc.  
Above and Below the Line Cost of Sales  
For the Year Ended May 31, 1996

Line  
No.

1	<u>Above the line cost of sales</u>	
2	Cost of labor	\$ 246,825
3	Other costs (Statement 19):	
4	Utilities	136,483
5	Repairs and maintenance	52,412
6	Supplies	28,403
7	Insurance	<u>230</u>
8	Total above the line cost of sales	<u>464,353</u>
9	<u>Below the line cost of sales</u>	
10	Other costs (Statement 19):	
11	Engineering and testing	186,713
12	Security	<u>94</u>
13	Total below the line cost of sales	<u>186,807</u>
14	Total cost of sales	<u>\$ 651,160</u>

EXHIBIT RCN-15  
Page 31 of 31

Schedule No. 6

**EXHIBIT RCN-16**

North Ft. Myers Utility, Inc.  
Revised Gross-up Refund  
Fiscal Years Ended May 31, 1995 and 1996

	<u>Year Ended 05/31/95</u>	<u>Year Ended 05/31/96</u>
Amended above the line loss before CIAC as filed	\$ (28,641)	\$ (25,594)
Adjustments:		
Reclassify "testing to above the line (ATL) (1)	(69,542)	(45,100)
Reclassify 40% of General Manager's salary ATL (2)	<u>(45,987)</u>	<u>(56,645)</u>
Revised loss before CIAC	(144,170)	(127,339)
Taxable CIAC	<u>619,015</u>	<u>1,434,249</u>
	474,845	1,306,910
Less: CIAC not grossed-up	-	(477,842)
First year depreciation on CIAC	<u>(22,120)</u>	<u>(25,196)</u>
Net taxable CIAC	452,725	803,872
Combined effective tax rate	<u>37.63 %</u>	<u>37.63 %</u>
Tax on CIAC	170,360	302,497
Factor for gross-up	<u>1.6033</u>	<u>1.6033</u>
Gross-up required to pay tax	273,138	484,993
Gross-up collected	<u>(355,431)</u>	<u>(546,104)</u>
Excess gross-up collected	(82,293)	(61,111)
Less: 50% of accounting & legal fees	<u>8,926</u>	<u>9,980</u>
Proposed gross-up refund	<u>\$ (73,367)</u>	<u>\$ (51,131)</u>
Total refund both years	<u>\$ (124,498)</u>	
(1) Tax expenses classified as "engineering & testing":		
General Manager's salary	\$ 114,969	\$ 141,613
Testing	46,807	26,996
Plant supplies	<u>22,735</u>	<u>18,104</u>
Total classified as "engineering & testing" for tax	184,511	186,713
Less: General Manager's salary	<u>(114,969)</u>	<u>(141,613)</u>
Total "testing" reclassified ATL	<u>\$ 69,542</u>	<u>\$ 45,100</u>
(2) General Manager's salary (fiscal year)	\$ 114,969	\$ 141,613
Percentage of time devoted to ATL activities	<u>0.40</u>	<u>0.40</u>
Total related to ATL activities	<u>\$ 45,987</u>	<u>\$ 56,645</u>

North Ft. Myers Utility, Inc.  
Impact of Revising Annual Reports to Reclassify Above the Line (ATL) Expenses to  
Below the Line (BTL) Expenses as Shown on Gross-up Refund Reports  
Calendar Years Ended December 31,

	Annual Report	
	1994	1995
Operating income per Annual Reports as filed	\$ (254,824)	\$ (131,325)
Reclass 60% of General Manager salary BTL (1)	107,058	63,694
Reclass officers' salaries BTL (2)	178,430	173,907
Reclass legal expense BTL (3)	152,480	136,418
Reclass amortization of plant loss BTL (4)	19,524	19,524
Reclass deferred tax benefit BTL (5)	(132,288)	(130,098)
	325,204	263,445
Revised operating income	\$ 70,380	\$ 132,120
Rate base per Annual Reports as filed	\$ 2,151,281	\$ 3,141,456
Rate of return:		
Per Annual Reports as filed	(11.85) %	(4.18) %
As revised per above	3.27 %	4.21 %
Authorized rate of return	10.80 %	10.80 %
Adjustments:		
1. Total "engineering" & testing (A)	\$ 213,669	\$ 143,739
Less: Testing which should be ATL	(35,239)	(37,582)
General Manager's salary	178,430	106,157
Percentage related to BTL activities	0.60	0.60
	\$ 107,058	\$ 63,694
2. Officers' salaries in ATL expenses	\$ 178,430	\$ 173,907
3. Legal expense in ATL expense	\$ 152,480	\$ 136,418
4. Amortization of plant abandonment loss in ATL expenses	\$ 19,524	\$ 19,524
5. Deferred tax benefit in ATL income	\$ (132,288)	\$ (130,098)
(A) Included in Account 735, Contract Services - Other:		
Testing	\$ 35,239	\$ 37,582
General Manager's salary	178,430	106,157
Other contract maintenance services	4,097	9,475
Total per Annual Report	\$ 217,766	\$ 153,214

Exhibit RCN-11  
00000004

*Cronin, Jackson, Nixon & Wilson*  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
JOHN H. CRONIN, JR., C.P.A.  
ERIC M. DOAN, C.P.A.  
ROBERT H. JACKSON, C.P.A.  
BRENDA W. McBARRON, C.P.A.  
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June 8, 1998

F. Marshall Deterding, Esquire  
Rose, Sundstrom & Bentley  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301

BY FEDERAL EXPRESS

Re: North Fort Myers Utility, Inc. - Staff Requested Analysis  
of Below the Line Adjustments on Rates of Return Shown in  
Annual Reports

Dear Marty:

Enclosed is an analysis of the Annual Report information requested  
by Staff at our last meeting for 1994 and 1995.

I have reclassified officers' salaries, legal expense, and  
amortization of the plant loss below the line, consistent with the  
treatment we have always given these expenses in all prior gross-up  
reports. As you know, the PSC has issued gross-up refund orders  
accepting this treatment from 1987 through 1993.

With regard to the General Manager's salary, I have left 40 percent  
of his compensation above the line in recognition that this amount of his  
time is devoted to day-to-day operations.

The other adjustment relates to reclassification of the deferred tax  
benefit to below the line. As you know, these tax benefits arise from  
interest in excess of rate base, non-used and useful depreciation, and  
other expenses in excess of those being recovered in rates.

The impact of these adjustments is that the revised rate of return  
is still substantially less than that which is authorized (10.80%).

Finally, I have enclosed a schedule which shows the impact of these  
adjustments on the proposed gross-up refunds for 1995 and 1996. As you  
will note, these changes result in a refund of \$73,367 for 1995 and  
\$51,131 for 1996, for a total refund of \$124,498.

EXHIBIT RCN-16  
page 3 of 4

F. Marshall Deterding, Esq.  
June 8, 1998  
Page 2

I believe that the enclosed schedules represent a reasonable basis for settlement of these gross-up years and would avoid the need for our amending the 1994 and 1995 Annual Reports.

Should you have questions regarding the enclosed schedules, please contact me.

Very truly yours,

CRONIN, JACKSON, NIXON & WILSON



Robert C. Nixon

RCN/apf

Enclosures

cc: T. Reeves (w/encl.)

Exhibit RCN-16  
page 4 of 4

**EXHIBIT RCN-17**

section 1274(d), rounded to the nearest full percent (or, if a multiple of  $\frac{1}{2}$  of 1 percent, such rate shall be increased to the next highest full percent).

Rounded to the nearest full percent, the federal short-term rate determined during the month of October 1987 is 8 percent. Accordingly, an overpayment rate of 10 percent and an underpayment rate of 11 percent is established for the calendar quarter beginning January 1, 1988. The rates apply to amounts bearing interest during the calendar quarter. The 11 percent rate also applies to

estimated tax underpayments for the quarter and for the first 15 days in April.

Interest factors for daily compound interest for annual rates of 10 percent and 11 percent were published in Tables 40 and 41 of Rev. Proc. 83-7, 1983-1 C.B. 583, 624, 625.

Annual interest rates to be compounded daily pursuant to section 6622 of the Code that apply for prior periods are set forth in the following table:

Period	Rate	Daily Rate Table in 1983-1 C.B.
<b>OVERPAYMENTS AND UNDERPAYMENTS</b>		
January 1, 1983—June 30, 1983	16%	Table 22, pg. 605
July 1, 1983—December 31, 1983	11%	Table 17, pg. 600
January 1, 1984—June 30, 1984	11%	Table 41, pg. 625
July 1, 1984—December 31, 1984	11%	Table 41, pg. 625
January 1, 1985—June 30, 1985	13%	Table 19, pg. 602
July 1, 1985—December 31, 1985	11%	Table 17, pg. 600
January 1, 1986—June 30, 1986	10%	Table 16, pg. 599
July 1, 1986—December 31, 1986	9%	Table 15, pg. 598
<b>OVERPAYMENTS</b>		
January 1, 1987—March 31, 1987	8%	Table 14, pg. 597
April 1, 1987—June 30, 1987	8%	Table 14, pg. 597
July 1, 1987—September 30, 1987	8%	Table 14, pg. 597
October 1, 1987—December 31, 1987	9%	Table 15, pg. 598
<b>UNDERPAYMENTS</b>		
January 1, 1987—March 31, 1987	9%	Table 15, pg. 598
April 1, 1987—June 30, 1987	9%	Table 15, pg. 598
July 1, 1987—September 30, 1987	9%	Table 15, pg. 598
October 1, 1987—December 31, 1987	10%	Table 16, pg. 599

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Mary Jane Kossar of the Individual Tax Division.

For further information regarding this revenue ruling contact Ms. Kossar on (202) 566-3466 (not a toll-free call).

→ [¶ 6798] Notice 87-82, I.R.B. 1987-51, December 3, 1987.

#### [Code Sec. 118]

**Contributions to corporate capital: Public utilities: Construction.**—The Internal Revenue Service provides guidelines with respect to the treatment of contributions in aid of construction after the amendment of Code Sec. 118 by Sec. 824 of the Tax Reform Act of 1986. Back reference: ¶ 1185.013.

This notice provides guidance with respect to the treatment of contributions in aid of construction after enactment of section 824 of the Tax Reform Act of 1986 (the "Act"), Pub. L. No. 99-514.

#### I. Background

Section 118(b) of the Internal Revenue Code of 1954 (the "1954 Code") provided a special rule for contributions in aid of construction received by regulated public utilities ("utilities") providing certain services. Under this rule, contributions in aid of construction were treated as contributions to capital and were therefore excluded from gross income under section 118(a). Section 824 of

the Act changed the treatment of amounts received as contributions in aid of construction after December 31, 1986, in taxable years ending after such date. New section 118(b) of the Internal Revenue Code of 1986 (the "1986 Code") expressly provides that contributions in aid of construction and other contributions made by a customer or potential customer (collectively, "CIACs") are not contributions to capital and thus are not excluded from gross income under section 118. Accordingly, such amounts are required to be included in gross income under section 61.

¶ 6798

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Exhibit RCN-17  
page 1 of 6



## II. Relocation of Utility Facilities

The Internal Revenue Service has received numerous inquiries regarding the Federal income tax treatment under the 1986 Code of fees and other amounts received by utilities for relocating utility facilities ("relocation fees"). Frequently, utilities are required to relocate utility facilities in order to accommodate a public right-of-way. For example, a utility line may have to be relocated in order to allow for the construction or improvement of a public highway. Similarly, overhead utility lines may be placed underground under a governmental program undertaken for reasons of community esthetics and public safety. In such cases, the utility typically receives, directly or indirectly, a relocation fee in reimbursement for the costs of relocating the utility facilities.

The legislative history to section 824 of the Act indicates that Congress viewed the receipt by utilities of CIACs as a prepayment for future services that the utilities would provide to their customers. H.R. Rep. No. 99-426, 99th Cong., 1st Sess. 643-45 (1985) ("House Report"). Congress viewed the exclusion of these amounts from income as inappropriate and accordingly, required that a utility

report as an item of gross income the value of any property, including money, that it receives to provide, or encourage . . . the provision of, services to or for the benefit of the person transferring the property. A utility is considered as having received property to encourage the provision of services if the receipt of the property is a prerequisite to the provision of services, if the receipt of the property results in the provision of services earlier than would be the case had the property not been received, or if the receipt of the property otherwise causes the transferor to be favored in any way.

House Report at 644.

The legislative history to the Act also indicates that a

person transferring the property will be considered as having been benefitted [from such transfer] if he is the person who will receive the [utility] services, an owner of the property that will receive the services, a former owner of the property that will receive the services, or if he derives any benefit from the property that will receive the services. Thus, a builder who transfers property to a utility in order to obtain services for a house that he was paid to build will be considered as having benefitted from the provision of the services . . . despite the fact that the builder may never have had an ownership interest in the property and may make the

transfer to the utility after the house has been completed and accepted.

House Report at 644-45.

In contrast, the legislative history to the Act provides that the repeal of section 118(b) of the 1954 Code does not affect transfers of property which are not made in connection with the provision of services, including situations where "it is clearly shown that the benefit of the public as a whole was the primary motivating factor in the transfers." *Id.*

Based on the foregoing, the Federal income tax treatment of many types of relocation fees has not been affected by section 824 of the Act. If, for example, it can be shown that a particular payment received by a utility does not reasonably relate to the provision of services by such utility to or for the benefit of the person making the payment but rather relates to the benefit of the public at large, then the payment is not treated as a CIAC under section 118(b) of the 1986 Code. For example, relocation payments received by a utility under a government program for placing utility lines underground shall not be treated as CIACs where such relocation is undertaken for purposes of community esthetics and public safety and not for the direct benefit of particular customers of the utility in their capacity as customers. See *Brown Shoe Co. v. Commissioner*, 339 U.S. 583 (1950) (payments made by certain community groups as an inducement to location or expansion of taxpayer's factory were held to be contributions to taxpayer's capital because the payments were made to benefit the community at large, and not for services). Similar principles apply where the utility is being reimbursed for the costs of relocating utility lines to accommodate the construction or expansion of a highway and not for the provision of utility services.

Moreover, taxpayers failing to meet the criteria for exclusion of relocation fees under section 118(a) may treat such fees under the provisions of section 1031 or 1033 if the conditions of the respective section are otherwise met.

In other cases, however, relocation fees are treated as CIACs and included in gross income because they relate to the provision of services by the utility to or for the benefit of the person making the payment. Assume, for example, that a customer of a utility moves its business office to another location and is required to pay the utility a fee to relocate the utility facilities to the new office site. The utility has received the fee as a prerequisite to the provision of services to the new location, and thus the fee is a CIAC under section 118(b) and is included currently in the utility's income. In addition, assume a real estate devel-

oper pays a fee to a utility in return for the utility extending new underground services to a particular tract being developed. Since the payment is being made to or for the benefit of the developer and since the fee is a prerequisite to the provision of underground services to the tract, the fee is a CIAC and currently included in the utility's gross income.

Similarly, assume that a potential customer of a utility is required (either by the utility or by a governmental entity) to pay the utility for the costs of relocating utility facilities in order to obtain access to utility services for a site the customer is developing. Since the payment of the relocation fees is a prerequisite to obtaining utility services, the payment is a CIAC and is included in the utility's income, regardless of whether the particular utility facilities being relocated are related to the site the customer is developing.

Relocation fees are treated as CIACs and included in gross income if such payments relate to the provision of services by the utility, regardless of the status or identity of the customer from whom the fees are received. For example, assume a utility receives a payment relating to the relocation or extension of utility facilities to a newly constructed municipal building (e.g., a public hospital, civic center, or museum) whose operations are conducted for the benefit of the community at large. Assume also that payment of the relocation fee was required in order to obtain utility services for the new building. Since the relocation fee is a prerequisite to the provision of services to the customer, the fee is a CIAC and included in gross income even though the customer is exclusively engaging in activities for the public benefit. Similarly, payments that are made to a utility as a prerequisite to the utility providing new or additional services to particular customers are treated as CIACs and included in gross income because such payments are a prerequisite to the provision of services by the utility, although a governmental entity may be making the payments in question.

### III. Fair Market Value of CIACs

A utility shall include in income the amount of any cash received as a CIAC and the fair market value of all property received as a CIAC. If the property received by the utility will be used in the provision of utility services, all of the relevant facts and circumstances are taken into account in determining the fair market value of the property. Absent unusual circumstances, normally the value of such property provided to a utility is the "replacement cost" of the property, i.e., the cost that another party would incur to construct prop-

erty that is functionally similar to the subject property and thus could replace such subject property in the performance of the property's intended function. The fact that property received as a CIAC is not included in the utility's rate base or cost of service for regulatory accounting purposes shall not, in any manner, affect the determination of the fair market value of the property for this purpose. See Rev. Rul. 87-117, 1987-46 I.R.B. 8.

### IV. Other Transactions Qualifying as CIACs

A transaction will be treated as a CIAC if such treatment is in accordance with the substance of the transaction, regardless of the form in which such transaction is conducted. For example, a sale of property to a utility at less than its fair market value (with fair market value being determined as described in the provisions of section III of this notice) will be treated as a CIAC that is taxable to the utility to the extent of the bargain element in the sale. A lease of property to a utility at less than its fair market rental value will be treated in a similar manner, with the bargain element inherent in each periodic rent payment taxed to the utility at the time such payment is made.

In addition, a transaction will be treated as a CIAC if the utility effectively obtains the burdens and benefits of ownership with respect to property, although legal title to such property is held by the customer, a governmental entity, or another person. Transactions which purportedly avoid CIAC characterization through the retention of legal title to property by a person other than a utility will be scrutinized carefully and will be treated as taxable CIACs to the utility if, in fact, the utility is, for Federal income tax purposes, the owner of the property. Factors which suggest ownership of the property by the utility include, but are not limited to, (i) whether the utility is responsible for maintaining the property; (ii) whether the utility effectively has unrestricted access to and control of the property; and (iii) whether the utility would bear legal liability with respect to a malfunction of or accident involving the property.

Similarly, any payment to a utility (whether such payment is direct or indirect) will be treated as a CIAC if such payment is made to obtain the provision of services from the utility and otherwise meets the requirements of this notice. Thus, for example, a utility will be taxed on a CIAC regardless of whether the customer engages the services of an unrelated contractor to construct the property to which the CIAC relates or whether the customer instead directly pays the CIAC to the utility with the utility itself assum-

ing responsibility to construct the related property.

Moreover, a purported loan to a utility from a person benefitting from utility services relating to the loan (e.g., a real estate developer, customer, or potential customer) will be treated as a CIAC and included in the utility's gross income if the transaction lacks the economic characteristics of a genuine loan for Federal income tax purposes. As an example, where repayment of a "loan" by a utility to the lender is contingent and the contingent loan is made to allow or to encourage the utility to provide services for the benefit of the person making the loan, the amount received by the utility will be treated as a taxable CIAC. Where a utility included the entire amount of such a "loan" in taxable income as a CIAC, repayments of such loan by the utility to the lender would normally be deductible by the utility when made.

Finally, where a genuine loan with a "below-market" interest rate is made from persons benefitting from utility services to the utility, the utility shall currently include in income as a CIAC the benefit that the utility receives from the below-market interest rate. See section 7872.

#### V. Normalization of CIACs

Section 168(f)(2) of the 1986 Code effectively provides that a utility is required to use a normalization method of accounting with respect to public utility property in order to use the accelerated methods of depreciation under section 168 with respect to that property. Under section 168(i)(9)(C), a utility not using a normalization method of accounting with respect to public utility property is required to use a method of depreciation and a depreciation period for such property that is the same as the method and period used by the taxpayer in computing its depreciation expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account. Public utility property is defined in section 167(1)(3)(A) as property used predominantly in the trade or business of furnishing or selling various enumerated utility services at rates established or approved by certain governmental entities, public utility commissions, and other similar bodies. Public utility property includes property that is received as a CIAC or that is financed or acquired with the proceeds of CIACs. In any such case, the CIAC property is subject to the normalization rules of sections 167 and 168.

For regulatory accounting purposes, utilities typically disregard the receipt of CIACs on their regulated books of account and do not include CIACs or CIAC property in income, cost of ser-

vice, or rate base. This method of accounting (the "noninclusion method") is equivalent to including a CIAC in income in the year of receipt and depreciating the related CIAC property in its entirety in the same year. Accordingly, a utility using the noninclusion method of accounting for a CIAC will be treated for purposes of the normalization rules as if it computed its regulated tax expense by depreciating the related CIAC property in its entirety in the year in which the CIAC is received. The Internal Revenue Service believes that this treatment is consistent with the noninclusion method of accounting and is necessary in order to carry out the purposes of the normalization rules.

Under the normalization rules, a utility must make adjustments to a reserve to reflect the deferral of taxes resulting from the difference between the amount of depreciation used to determine the utility's Federal income tax liability and the amount of depreciation used to compute regulated tax expense. In the typical case, part of the utility's tax expense is deferred (i.e., taxes are actually paid to the Federal government after they are taken into account under the regulatory accounting method) because property is depreciated more rapidly in determining Federal income tax liability than in computing regulated tax expense. If a utility uses the noninclusion method of accounting for CIACs, however, CIAC property is depreciated less rapidly in determining Federal income tax liability than in computing regulated tax expense, and taxes are paid before they are taken into account under the regulatory accounting method. This prepayment, or negative deferral, of tax is also subject to the normalization rules, and the utility must make adjustments to the reserve for deferred taxes to reflect the prepayment.

Under these adjustments, the amount of deferred taxes on the utility's regulated books of account is offset or decreased by the prepayment of tax resulting from the taxable receipt of the CIAC. Thus, if a taxpayer reduces rate base by the deferred taxes resulting from normalization, any prepayment to tax resulting from the normalization of CIACs will increase the rate base to which the utility's rate of return is applied. Similarly, if a taxpayer treats the deferred taxes resulting from normalization as "zero-cost" or "no-cost" capital for ratemaking purposes, any prepayment of taxes resulting from the normalization of CIACs will decrease the amount of zero-cost capital or no-cost capital for ratemaking purposes.

Further adjustments are made to the reserve for deferred taxes when the timing differences with respect to CIAC property reverse. This occurs as depreciation is taken into account in

determining Federal income tax liability over the applicable recovery period prescribed under section 168. As the reversal occurs, previously paid taxes will be taken in account under the regulatory accounting method that will reduce, ultimately to zero, the amount of prepaid tax resulting from the normalization of the CIAC.

If, in its regulatory accounting for CIACs, a utility uses or changes to a method other than the noninclusion method, the normalization rules apply to timing differences determined under the regulatory accounting method used by the utility. For example, if a utility changes to a regulatory accounting method under which CIAC property is depreciated over its useful life, the deferral of tax resulting from the normalization of a CIAC taken into account under the new method would depend on the difference between the depreciation taken into account under the new method and the depreciation taken into account in determining Federal income tax liability.

#### VI. Normalization Rules Not Applicable to Certain CIACs

The normalization rules do not apply to a CIAC (or property related thereto) if the following conditions are satisfied:

- (1) The CIAC is included in gross income solely by reason of the amendments to section 118(b) of the Code by section 824 of the Act;
- (2) The utility uses the noninclusion method of accounting for the CIAC;
- (3) The Federal income tax attributable to the receipt of the CIAC is not taken into account in determining cost of service for any person (other than, perhaps, the person from whom the CIAC is received, i.e., the "contributor"); and
- (4) The contributor pays the utility an additional amount that is reasonably intended to indemnify or reimburse the utility for the prepayment of tax resulting from receipt of the CIAC (an "indemnification").

In the case of a CIAC that satisfies these conditions (a "grossed-up" CIAC), neither the utility nor its ratepayers (other than the contributor) are affected by the prepayment of taxes that results from receipt of the CIAC. Thus, it is not necessary to normalize a grossed-up CIAC in order to carry out the purposes of the normalization rules. See section 167(1)(5). Alternatively, grossed-up CIACs may be normalized in the same manner as other CIACs. Thus, a utility may use an accelerated method of depreciation under section 168 with respect to its public utility property whether or not grossed-up CIACs are normalized by the utility. The utility's depreciable basis in the CIAC property is determined under other provisions of

the Code and is independent of the existence of an indemnification. If, for example, a utility receives a total payment from a contributor of \$160 and expends \$100 in constructing the CIAC property, the utility's depreciable basis in the property is \$100. Similarly, if a utility receives a total payment from a contributor of \$100 and expends \$100 in constructing the CIAC property (with the income tax payments pertaining to the CIAC being obtained from other sources), the utility's depreciable basis in the property is also \$100.

The condition of indemnification, necessary in order for a payment to qualify as a grossed-up CIAC, is required only for the prepayment of tax that results from receipt of the CIAC. Thus, the amount of the indemnification may be determined by reducing the amount of tax attributable to the receipt of the CIAC by the present value of the tax benefits to be obtained by depreciating the CIAC property in determining the utility's Federal income tax liability. A reduction attributable to such tax benefits is not required, however, because the identity of the ultimate recipient of those benefits pertaining to the grossed-up CIAC (i.e., the contributor, the utility, or the utility's ratepayers) is a matter outside the scope of the normalization rules and Federal income tax laws.

A utility may establish that an indemnification has occurred (i) by reference to a contract or agreement in which the contributor and the utility provide for such indemnification, (ii) by reference to an indemnification requirement contained in a rate order issued by a regulatory commission or in the record of a hearing or similar proceeding conducted by such a commission, or (iii) by any other reasonable method or procedure. Moreover, the Internal Revenue Service will not scrutinize the adequacy of an indemnification in any case in which the parties have attempted in good faith to indemnify or reimburse the utility for the prepayment of tax that results from receipt of the CIAC.

#### VII. Accounting Treatment of CIACs By Customers

Sections 1.461-1(a)(1) and (2) of the Income Tax Regulations provide that taxpayers using the cash and accrual methods of accounting, respectively, may not currently deduct the total amount of an expenditure which results in the creation of an asset having a useful life which extends substantially beyond the close of the taxable year. Instead, such taxpayers are required to capitalize such expenditures as assets and deduct the costs of the expenditures over the useful life of the asset in question. See, e.g., Rev. Rul. 70-413, 1970-2 C.B. 103.

Any taxpayer paying a CIAC to a utility is incurring an expenditure which results in the cre-

ation of an intangible asset having a useful life extending substantially beyond the close of the taxpayer's taxable year. If a taxpayer incurs a CIAC with respect to property used in a trade or business and is required to replace the CIAC property upon its obsolescence or deterioration, the amount of such payment is capitalized and deducted on a pro rata basis over the useful life of the asset. In such a situation, the useful life of the intangible asset would correspond to the economic life (in contrast to the tax life or recovery period) of the public utility property to which the CIAC relates. See, e.g., Rev. Rul. 69-229, 1969-1 C.B. 86. In contrast, if the taxpayer incurs a CIAC with respect to property used in a trade or business and is not required to replace the CIAC property upon its obsolescence or deterioration, the intangible asset has an indeterminate economic life. In such a case, the taxpayer must capitalize the payment and is not permitted to amortize the amount of the prepaid asset. See, e.g., Rev. Rul. 68-607, 1968-2 C.B. 115.

In the case of a taxpayer (e.g., a real estate developer or home builder) who incurs CIACs with respect to property primarily held for sale to

customers in the ordinary course of the taxpayer's business, the cost of the CIAC should be capitalized. The intangible asset should be allocated to the property held for sale to customers and deducted when such property and the related intangible asset are sold.

#### VIII. Transactions not Affected by this Notice

This notice does not apply to transactions which do not involve CIACs as described under section 118(b) and this notice. Thus, for example, this notice does not apply to "customer connection fees" as defined in section 118(b)(3)(A) of the 1954 Code. (Such connection fees are currently included in gross income by utilities under both the 1986 and 1954 Codes.) Similarly, this notice does not apply to payments made from utilities to their customers. Thus, for example, this notice does not apply to payments made to a public utility in connection with the supply of electricity to such utility by a cogenerating facility under the Public Utilities Regulatory Policy Act of 1978 ("PURPA"), Pub. L. No. 95-617. No inference is intended herein as to the treatment of such transactions.

[¶ 6799] Rev. Rul. 87-129, I.R.B. 1987-49, 5.

[Code Sec. 995]

**Taxation of DISC income to shareholders.**—This revenue ruling sets forth the "base period T-bill rate" for the period ending September 30, 1987, as required by section 995(f)(4) of the Code. Back reference: ¶ 4399R.001.

Section 995(f)(1) of the Internal Revenue Code provides that a shareholder of a DISC shall pay interest each taxable year in an amount equal to the product of the shareholder's DISC-related deferred tax liability for the year and the "base period T-bill rate." Under section 995(f)(4) of the Code, the base period T-bill rate is the annual rate of interest determined by the Secretary to be equivalent to the average investment yield of United States Treasury bills with maturities of 52 weeks which were auctioned during the one-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder. The base period T-bill rate for the period ending September 30, 1987, is 6.49 percent.

Pursuant to section 6622 of the Code, interest must be compounded daily.

The table below provides factors for compounding the base period T-bill rate daily for any number of days in the shareholder's taxable year (including a 52-53 weeks accounting period) for the 1987 base period T-bill rate. To compute the

amount of the interest charge for the shareholder's taxable year, multiply the amount of the shareholder's DISC-related deferred tax liability (as defined in section 995(f)(2) of the Code) for that year by the base period T-bill rate factor corresponding to the number of days in the shareholder's taxable year for which the interest charge is being computed. Generally, use the factor for 365 days. Use a different factor only if the shareholder's taxable year from which the interest charge is being determined is a short taxable year, if the shareholder uses the 52-53 week taxable year, or if the shareholder's taxable year is a leap year.

For the base period T-bill rates for the periods ending in prior years, see Rev. Rul. 86-132, 1986-2 C.B. 137.

#### DRAFTING INFORMATION

The principle author of this revenue ruling is David Bergkuist of the office of the Associate Chief Counsel (International). For further information about this revenue ruling, contact Mr. Bergkuist on (202) 566-6457 (not a toll-free call).

**EXHIBIT RCN-18**

North Fort Myers Utility, Inc.  
Summary of Accounting & Legal Expense to  
Prepare & Process Gross-up Refund Reports through Hearing  
Fiscal Years Ended May 31, 1995 and 1996

	<u>Fiscal Report Year Ended</u>	
	<u>05/31/95</u>	<u>05/31/96</u>
Accounting - Cronin, Jackson, Nixon & Wilson per Exhibit RCN-18	\$ 48,935	\$ 51,043
Legal - Rose, Sundstrom & Bentley per Exhibit MFD-1	<u>60,035</u>	<u>60,035</u>
Total	<u>\$ 108,970</u>	<u>\$ 111,078</u>

North Fort Myers Utility, Inc.  
 Actual and Estimated Accounting Fees to Prepare and  
 Process Gross-up Refund Reports  
 Fiscal Years Ended May 31, 1995 and 1996

<u>Cronin, Jackson, Nixon &amp; Wilson</u>	Fiscal Report Year Ended	
	<u>05/31/95</u>	<u>05/31/96</u>
<u>Invoice Date</u>		
05/24/96	\$ 1,115	
07/16/96	880	
01/16/97 (1/2 to 1995)	469	
02/19/97		\$ 2,492
03/17/97		1,907
04/23/97		173
06/19/97 (1/2 to each year)	234	234
08/15/97 (1/2 to each year)	691	691
09/12/97 (1/2 to each year)	166	166
11/18/97 (1/2 to each year)	604	604
02/17/98 (1/2 to each year)	3,527	3,527
03/16/98 (1/2 to each year)	387	387
04/20/98 (1/2 to each year)	2,454	2,454
06/12/98 (1/2 to each year)	1,761	1,762
07/21/98 (1/2 to each year)	1,466	1,466
08/17/98 (1/2 to each year)	375	375
09/23/98 (1/2 to each year)	405	405
10/22/98 (1/2 to each year)	1,640	1,640
12/24/98 (1/2 to each year)	338	338
01/26/99 (1/2 to each year)	1,946	1,946
02/19/99 (1/2 to each year)	2,325	2,325
03/22/99 (1/2 to each year)	3,718	3,718
04/22/99 (1/2 to each year)	867	867
05/28/99 (1/2 to each year)	646	646
06/22/99 (1/2 to each year)	1,411	1,410
08/25/99 (1/2 to each year)	<u>83</u>	<u>82</u>
 Total actual expense through July, 1999	 <u>27,508</u>	 <u>29,615</u>
 Actual unbilled expense:		
October, 1999 - Prepare direct testimony	<u>6,110</u>	<u>6,110</u>
 Total actual expense to 10/28/99	 <u>33,618</u>	 <u>35,725</u>



North Fort Myers Utility, Inc.  
 Actual and Estimated Accounting Fees to Prepare and  
 Process Gross-up Refund Reports  
 Fiscal Years Ended May 31, 1995 and 1996

<u>Cronin, Jackson, Nixon &amp; Wilson</u>	Fiscal Report Year Ended	
	05/31/95	05/31/96
Estimate to complete:		
Finish direct testimony and Exhibits		
R. Nixon - 35 hours @ \$160	\$ 2,800	\$ 2,800
Clerical - 6 hours @ \$25	75	75
Prepare rebuttal testimony and Exhibits		
R. Nixon - 50 hours @ \$160	4,000	4,000
Clerical - 10 hours @ \$25	125	125
Answer interrogatories		
R. Nixon - 6 hours @ \$160	480	480
Clerical - 1 hour @ \$25	12	13
Prepare for and attend deposition		
R. Nixon - 16 hours @ \$160	1,280	1,280
Hotel, meals, travel	200	200
Prepare for and attend hearing		
R. Nixon - 32 hours @ \$160	2,560	2,560
Clerical - 10 hours @ \$25	125	125
Hotel, meals, travel	200	200
Review transcript, briefs, conference with client & attorney		
R. Nixon - 24 hours @ \$160	1,920	1,920
Review Staff Recommendation and conference with client & attorney		
R. Nixon - 12 hours @ \$160	960	960
Review Final Order and conference with client & attorney		
R. Nixon - 6 hours @ \$160	480	480
Phone, copies, Federal Express	100	100
 Total estimate to complete	 15,317	 15,318
 Total actual and estimated expense	 \$ 48,935	 \$ 51,043

Note: Estimate to complete is allocated 50% to 1995 and 50% to 1996.

Exhibit RCN-18  
Page 3 of 28

*Cronin, Jackson, Nixon & Wilson*  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

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COPY

2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 34625-4419  
(813) 791-4020  
FACSIMILE  
(813) 797-3602

I N V O I C E

May 24, 1996

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
April, 1996, as follows:

1. Preparation and review of the 1995 PSC Annual Report	\$2,750.00
2. Partial billing for preparation of the 1995 gross-up refund report	1,115.00
3. Telephone, Federal Express charges, and copies	<u>93.00</u>
Total	<u>\$3,958.00</u>

Exhibit RCN-18  
Page 4 of 28

# Cronin, Jackson, Nixon & Wilson

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## I N V O I C E

July 16, 1996

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
June, 1996, as follows:

1. Preparation and review of the 1996 Indexed Rate Adjustment	\$ 532.50
2. Prepare response to PSC staff calculation of gross up refunds for fiscal years ended 1992 and 1993	1,120.00
3. Preparation of gross up refund report for fiscal year ended May 31, 1995	840.00
4. Telephone, postage and copies	(39.51)
Total	<u>\$2,532.01</u>

\$880 ← (840.00)  
(39.51)

Exhibit RCN-18  
Page 5 of 28

# Cronin, Jackson, Nixon & Wilson

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## I N V O I C E

January 16, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
December, 1996, as follows:

1. Work related to the 1994 and 1995 gross-up refund reports, including response to Staff's calculations	\$935.00
2. Telephone charges	<u>3.43</u>
Total	<u>\$938.43</u>

*1/2 to 1995 F.Y. Report \$469.*

*Exhibit RCN-18  
Page 6 of 28*

**Cronin, Jackson, Nixon & Wilson**  
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**I N V O I C E**

February 19, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
January, 1997, as follows:

1. Preparation of 1996 gross-up refund report for the fiscal year ended May 31, 1996	\$2,412.50
2. Telephone, postage, Federal Express charges, and copies	<u>79.30</u>
<b>Total</b>	<b><u>\$2,491.80</u></b>

Exhibit RCN-18  
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# Cronin, Jackson, Nixon & Wilson

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## INVOICE

March 17, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
February, 1997, as follows:

1. Preparation of the PSC gross-up refund report for the fiscal year ended May 31, 1996	\$1,887.50
2. Telephone, postage, and copies	<u>19.32</u>
Total	<u>\$1,906.82</u>

Exhibit RCN-18  
page 8 of 28

# Cronin, Jackson, Nixon & Wilson

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## I N V O I C E

April 23, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
March, 1997, as follows:

1. Final preparation and transmission of 1996 gross-up refund report to Mr. Deterding for filing	\$156.25
2. Telephone and Federal Express charges	<u>17.13</u>
Total	<u>\$173.38</u>

Exhibit RCN-18  
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Cronin, Jackson, Nixon & Wilson  
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INVOICE

June 19, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
May, 1997, as follows:

1. Work related to the 199 <sup>5</sup> and 199 <sup>6</sup> gross-up refund reports related to Staff request for information	\$456.25
2. Telephone charges and copies	<u>11.88</u>
Total	<u>\$468.13</u>

*1/2 to each year*

Exhibit RCN-18  
Page 10 of 28



# Cronin, Jackson, Nixon & Wilson

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## I N V O I C E

August 15, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
July, 1997, as follows:

1. Prepare calculation of gross-up refunds for the fiscal years ending May 31, 1995 and 1996, using PSC Staff approach to installment gross-up contracts	\$1,375.00
2. Telephone charges	<u>5.85</u>
Total	<u>\$1,380.85</u>

Exhibit RCW-18  
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**Cronin, Jackson, Nixon & Wilson**  
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**I N V O I C E**

September 12, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
August, 1997, as follows:

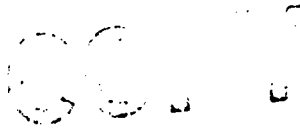
1. Preparation of schedules of accounting expense incurred to prepare gross-up refund reports for the fiscal years ended May 31, 1995 and 1996	\$325.00
2. Postage and copies	<u>6.96</u>
Total	<u>\$331.96</u>

Exhibit RCN-18  
Page 12 of 28

**Cronin, Jackson, Nixon & Wilson**  
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**I N V O I C E**

November 18, 1997

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
October, 1997, as follows:

1. Review Staff Recommendation with revised calculations of gross-up refunds for the fiscal years ending 199 <del>8</del> and 199 <del>6</del> , and discussion of same with Mr. Deterding	\$1,200.00
2. Telephone charges	<u>8.39</u>
<b>Total</b>	<b><u>\$1,208.39</u></b>

Exhibit RCN-18  
Page 13 of 28

# Cronin, Jackson, Nixon & Wilson

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COPY

## INVOICE

February 17, 1998

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
January, 1998, as follows:

1. Partial billing for preparation of revised gross-up refund reports for 1995 and 1996 due to the filing of amended tax returns to include financed CIAC and gross-up	\$7,046.75
2. Telephone and postage	<u>7.83</u>
Total	<u>\$7,054.58</u>

Exhibit RCW-18  
Page 14 of 28

**Cronin, Jackson, Nixon & Wilson**  
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**I N V O I C E**

March 16, 1998

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
February, 1998, as follows:

1. Preparation of revised gross-up refund schedules for 1995 and 1996	\$637.50
2. Telephone, Federal Express charges, and copies	<u>136.68</u>
Total	<u>\$774.18</u>

Exhibit RCN-18  
Page 15 of 28

# Cronin, Jackson, Nixon & Wilson

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## INVOICE

April 20, 1998

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
March, 1998, as follows:

1. Partial billing for work completed on the 1997 PSC Annual Report	\$ 350.00
2. Prepare response to PSC Staff letter with revised calculation of gross-up refunds for the fiscal years ended May 31, 1995 and 1996	4,875.00
3. Telephone, postage, Federal Express charges, and copies	<u>32.47</u>
Total	<u>\$5,257.47</u>

Exhibit RCN-18  
page 16 of 28

# Cronin, Jackson, Nixon & Wilson

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## I N V O I C E

June 12, 1998

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
May, 1998, as follows:

1. Conference with PSC Staff in Tallahassee on May 21, 1998	\$1,200.00
2. Review revised Staff calculation of gross-up refunds and begin analysis of impact on reported rate of return for revision of Annual Report expense to below the line	2,031.25
3. Telephone, copies, and airfare	<u>291.54</u>
Total	<u>\$3,522.79</u>

Exhibit RCN-18  
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# Cronin, Jackson, Nixon & Wilson

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## I N V O I C E

July 21, 1998

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
June, 1998, as follows:

1. Preparation of schedules requested by PSC Staff showing achieved rate of return if certain Annual Report expenses had been classified below the line	\$2,906.25
2. Partial billing for preparation of 1998 indexed rate adjustment (Note: This will not be filed until gross-up matter is settled)	562.50
3. Telephone, postage, Federal Express charges, and copies	<u>25.58</u>
Total	<u>\$3,494.33</u>

Exhibit RCN-18  
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*Cronin, Jackson, Nixon & Wilson*

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**INVOICE**

August 17, 1998

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

COPY

#551

For professional services rendered during  
July, 1998, as follows:

1. Review of PSC Staff's gross-up refund computations dated July 1, 1998, and discussion of same with Mr. Reeves and Mr. Deterding

\$750.00

Exhibit RCN-18  
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**Cronin, Jackson, Nixon & Wilson**  
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**INVOICE**

September 23, 1998

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

**COPY**

#551

For professional services rendered during  
August, 1998, as follows:

1. Prepare analysis of gross-up refund and rates of return if certain operating expenses are classified as below the line expenses	\$700.00
2. Telephone, postage, copies, and mileage (DeChario)	<u>110.36</u>
Total	<u>\$810.36</u>

Exhibit RCN-18  
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# Cronin, Jackson, Nixon & Wilson

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JOHN A. VANTREASE, C.P.A.  
JAMES L. WILSON, C.P.A.

2560 GULF-TO-BAY BOULEVARD  
SUITE 200  
CLEARWATER, FLORIDA 33765-4419  
(727) 791-4020  
FACSIMILE  
(727) 797-3602

# COPY

## I N V O I C E

October 22, 1998

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
September, 1998, as follows:

1. Field work at Utility's offices installing plant in service and depreciation schedules on new software (DeChario)			\$2,231.25
2. Work related to the gross-up refund report, including analysis of settlement alternatives, conferences with Mr. Deterding, and updating legal and accounting fees incurred to settle gross-up refunds			{ 3,268.75 }
3. Telephone, postage, and copies	195 '96 50/50	\$3280.15	{ 11.40 }
Total			<u>\$5,511.40</u>

Exhibit RCN-18  
Page 21 of 28

**Cronin, Jackson, Nixon & Wilson**  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

JAMES L. CARLSTEDT, C.P.A.  
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**I N V O I C E**

December 24, 1998

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
October and November, 1998, as follows:

1. Work related to the gross-up refund, including review of Staff Recommendation and letter from Public Counsel; discuss same with Mr. Deterding and Mr. Reeves	'95 '96 50/50	\$ 675.00
2. Work related to depreciation and CIAC amortization software and set up both correct balances (DeChario)		1,650.00
3. Telephone, copies, and mileage		<u>105.31</u>
Total		<u>\$2,430.31</u>

Exhibit RCN-18  
Page 22 of 28

Cronin, Jackson, Nixon & Wilson  
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I N V O I C E

January 26, 1999

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
December, 1998, as follows:

1. Work related to the gross-up refunds for 1995 and 1996, including review of settlement alternatives, review Staff Recommendation; prepare for and attend Agenda Conference in Tallahassee on 12/15/98	\$3,450.00
2. Work related to set-up of depreciation schedules and CIAC/Accumulated Amortization (DeChario)	2,100.00
3. Telephone, postage, airfare, and other travel expenses	<u>442.68</u>
Total	<u>\$5,992.68</u>

'95 '96  
50/50

< 2,100.00 >

3,892.68

Exhibit RCN-18  
Page 23 of 28

**Cronin, Jackson, Nixon & Wilson**  
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**I N V O I C E**

February 19, 1999

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
January, 1999, as follows:

1. Prepare schedule showing calculation of indexed revenue adjustments for 1997 through 2000; telephone conferences with Steve Reilly and Kim Dismukes concerning possible settlement of gross-up case; prepare report and back-up related to the change in PSC policy concerning above and below the line treatment of operating expenses for gross-up purposes	\$4,637.50
2. Federal Express charges, postage, and copies	<u>12.54</u>
Total	<u>\$4,650.04</u>

EXHIBIT RCW-18  
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Cronin, Jackson, Nixon & Wilson  
CERTIFIED PUBLIC ACCOUNTANTS, P.A.

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e-Mail  
cjniw@worldnet.att.net

I N V O I C E

March 22, 1999

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during  
February, 1999, as follows:

1. Revise 1994-1997 PSC Annual Reports to reclassify certain O&M expenses below the line	\$ 492.50
2. Research of prior gross-up orders for Staff change in policy regarding above and below the line treatment; prepare schedules and exhibits	6,942.50
3. Telephone, Federal Express charges, and copies	<u>247.71</u>
Total	<u>\$7,682.71</u>
	<u>&lt; 492.50 &gt;</u>
	<u>\$ 7,435</u>

'95 '96  
50/50

Exhibit RCN-18  
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# Cronin, Jackson, Nixon & Wilson

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## I N V O I C E

May 28, 1999

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during April, 1999, as follows:

1. Partial billing for work completed on the 1998 PSC Annual Report	\$ 210.00
2. Review of Arthur Andersen memo on taxation of CIAC and letter to Mr. Reeves	492.50
3. Review Staff Recommendation on refund of gross-up and conferences with Mr. Reeves and Mr. Deterding regarding same	1,267.50
4. Telephone, postage, and copies	<u>25.45</u>
Total	<u>\$1,995.45</u>

< 210 >  
< 493 >

195 197  
50/50

\$ 1,292

Exhibit RCN-18  
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Cronin, Jackson, Nixon & Wilson  
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I N V O I C E

June 22, 1999

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during May, 1999, as follows:

1. Prepare for and attend PSC Agenda Conference on gross-up on 05/04/99	\$1,932.50
2. Preparation and review of the 1998 PSC Annual Report	4,712.50
3. Telephone, Federal Express charges, airfare, and travel expense	<u>889.25</u>
Total	<u>\$7,534.25</u>

'95 '96  
50/50

<4,712.50>  
8 1409

Exhibit RCN-18  
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# Cronin, Jackson, Nixon & Wilson

CERTIFIED PUBLIC ACCOUNTANTS, P.A.

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## I N V O I C E

August 25, 1999

Ms. Jo Ann Boley  
North Fort Myers Utility, Inc.  
P.O. Box 2547  
Fort Myers, FL 33902

#551

For professional services rendered during July, 1999, as follows:

1. Billing for work completed on schedules to track components of CIAC receivable	\$278.80
2. Review PSC pre-hearing procedure order for gross-up refund docket	160.00
3. Telephone and postage	5.14
Total	<u>\$443.94</u>

Exhibit RCN-18  
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