

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for continuation) DOCKET NO. 910110-WS  
of gross-up of contributions-in- ) ORDER NO. PSC-92-0981-CFO-WS  
aid-of-construction (CIAC) in Lee) ISSUED: 09/11/92  
County by GULF UTILITY COMPANY )  
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ORDER GRANTING IN PART AND DENYING IN PART  
GULF UTILITY COMPANY'S MOTION FOR PROTECTIVE ORDER

Gulf Utility Company (Gulf or utility) submitted copies of its 1987, 1988, 1989, 1990 and 1991 federal income tax returns to the Commission on April 30, 1992. On May 21, 1992, intervenor in the above-referenced docket, Southwest Florida Capital Corporation (SFCC) requested that it be given the opportunity to examine and/or copy these returns. On May 21, 1992, Gulf filed a Request for Confidential Treatment of the Federal Income Tax Returns. By Order No. PSC-92-0773-CFO-WS, issued August 7, 1992, the Prehearing Officer ordered that Gulf's 1987, 1988, 1989, 1990, and 1991 federal tax returns as contained in Document No. 05235-92 are proprietary confidential business information pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, and would be treated as such by the Commission.

On June 22, 1992, SFCC served its First Request for Production of Documents to Gulf. SFCC requested that Gulf produce its Federal Income Tax Returns for the years 1987 through 1991. On July 9, 1992, Gulf filed a Motion for Protective Order requesting that the Commission issue an order protecting it from the annoyance, embarrassment, oppression, or undue burden or expense of producing its Federal Income Tax Returns to SFCC for inspection and copying.

In its Motion, Gulf cites Rasmussen v. South Florida Blood Service, Inc., 500 So.2d 533 (Fla. 1987), and asserts that a balancing test should be applied, whereby the potential harm to a party who does not receive the information is balanced against the harm to the party who has to give the information. Gulf also states that a party seeking confidential information must make a showing of necessity which outweighs the countervailing interest in maintaining confidentiality. It is Gulf's belief that SFCC can not make such a showing of necessity. Further, Gulf contends that SFCC is adequately protected: the information requested is already before the Commission, Gulf's request is for authorization to continue collecting the gross-up, and any gross-up collected is subject to refund. Thus, based on these three facts, Gulf believes

DOCUMENT NUMBER-DATE

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that no harm can come to SFCC if Gulf's Motion for Protective Order is granted.

On July 20, 1992, SFCC filed an Objection to Motion for Protective Order. SFCC states that under the balancing test discussed in Gulf's Motion, SFCC should be afforded access to the tax returns, as disclosure of the tax information is necessary if the gross-up determination is to have any validity. SFCC contends that because Gulf's tax burden is a central issue in the determination of the appropriateness of continuing Gulf's gross-up authority, the Commission must necessarily consider Gulf's tax records in ruling upon Gulf's petition.

Upon reviewing the Motion and Objection thereto, we find that these tax returns will be used in verifying the need for the utility's continued authority to gross-up the contributions-in-aid-of-construction (CIAC). SFCC may be harmed if not given the opportunity to examine certain documents which will be used in our determination. This determination will have an impact on SFCC's substantial interests.

In consideration of the above, Gulf's Motion for Protective Order shall be denied, to the extent that SFCC shall be given the opportunity to examine the tax returns. However, in accordance with Order No. PSC-92-0773-CFO-WS, SFCC shall maintain the confidentiality of the federal tax returns as the returns are proprietary confidential business information pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. Gulf shall produce within twenty days of the date of this Order, in its Counsel's office, its federal tax returns for the years 1987, 1988, 1989, 1990 and 1991 for SFCC.

Based on the foregoing, it is therefore

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the Motion for Protective Order of Gulf Utility Company is granted in part and denied in part. It is further

ORDERED that Gulf Utility Company shall produce within twenty days of the date of this Order, in its Counsel's office, its federal tax returns for the years 1987, 1988, 1989, 1990 and 1991 to Southwest Florida Capital Corporation. It is further

ORDERED that in accordance with Order No. PSC-92-0773-CFO-WS, Southwest Florida Capital Corporation shall maintain the

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confidentiality of Gulf Utility Company's federal tax returns as the returns are proprietary confidential business information pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 11th day of September, 1992.



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SUSAN F. CLARK, Commissioner  
and Prehearing Officer

( S E A L )  
SFC/LAJ

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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.