

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

August 22, 1996

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

FROM: DIVISION OF AUDITING & FINANCIAL ANALYSIS (CAUSSEAU) *APC*
DIVISION OF WATER & WASTEWATER (MCCASKILL) *MS*
DIVISION OF LEGAL SERVICES (JAEGER) *MS*

RE: DOCKET NO. 960965-WS - CANCELLATION OF AUTHORITY TO
GROSS-UP CONTRIBUTIONS IN AID OF CONSTRUCTION
COUNTY: SEE ATTACHMENT A

AGENDA: SEPTEMBER 3, 1996 - REGULAR AGENDA - FINAL AGENCY ACTION
EXCEPT ISSUE 2 WHICH IS PAA, INTERESTED PARTIES MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\AFA\WP\960965WS.RCM

CASE BACKGROUND

On February 13, 1986, the Florida Waterworks Association (FWWA) requested the Commission investigate what could be done in anticipation of repeal of sections 118(b) and (c) of the Internal Revenue Code (Code). A workshop was held on April 25, 1986, and as a result Order 16120 was issued May 16, 1986. The order allowed utility companies to file tariffs containing their suggested method of coping with the pending legislation when it appeared that contributions in aid of construction (CIAC) might become taxable.

Eighteen utilities filed proposed tariffs. By Order No. 16392, issued July 21, 1986, some of those eighteen water and wastewater companies were allowed to include in their developer agreements clauses providing for contingency collections of gross-up if section 118(b) was repealed, the repeal created a situation that justified an increase for that utility, and the Commission determined the additional amount to be paid. When the Tax Reform Act of 1986 was signed into law on October 22, 1986, the Commission, in response to a request from the FWWA, issued Order 16971, on December 12, 1986, which rushed through emergency relief allowing the filing of tariffs for gross-up.

DOCUMENT NUMBER-DATE

08930 AUG 22 96

FPSC-RECORDS/REPORTING

DOCKET NO. 960965-WS
DATE: August 22, 1996

The National Association of Regulatory Utility Commissioners, this Commission, the National Association of Water Companies, the FWWA, the utilities under the jurisdiction of this Commission, and others have actively sought to return CIAC to its former, non-taxable status. Those efforts have now been successful. The Small Business Job Protection Act of 1996 (the Act) passed Congress on August 1, 1996, and was signed by President Clinton on August 20, 1996. The Act provides for CIAC collected by water and sewer utilities to become non-taxable on a retroactive basis effective for amounts received after June 12, 1996. A copy of the applicable portions of the legislation appear as Attachment B.

DOCKET NO. 960965-WS
DATE: August 22, 1996

DISCUSSION OF ISSUES

ISSUE 1: Should the companies' authority to collect gross-up be revoked effective with the vote of this Commission on this issue?

RECOMMENDATION: Yes, the authority of the companies, named on Attachment A, to collect gross-up should cease with the vote of this Commission on this issue and the respective gross-up tariffs should be cancelled.

STAFF ANALYSIS: With the passage of the Act, CIAC was returned to its former, non-taxable status. Since the utilities were quickly granted relief from both a possible change in the Federal tax law and the actual change in the law which treated CIAC as ordinary income, those paying the CIAC and gross-up should receive equally prompt relief. Because CIAC ceased to be taxable on June 12, 1996, the authority of utilities now collecting gross-up on CIAC should be cancelled effective with the Commission's vote on this matter. The tariff cancellations will be handled individually for each utility named on Attachment A.

DOCKET NO. 960965-WS
DATE: August 22, 1996

ISSUE 2: Should companies with authority to collect gross-up be ordered to refund all gross-up collected and retained since June 12, 1996, the last date that CIAC was taxable?

RECOMMENDATION: Yes, since the legislation became effective for CIAC collected after June 12, 1996, the utilities should be ordered to refund with interest, within 60 days of the effective date of the order in this docket, all gross-up collected after June 12, 1996. Each utility should provide copies of canceled checks, or other evidence, which verify that the refunds have been made, within 30 days from the date of the refund.

STAFF ANALYSIS: Order No. 16971, issued December 18, 1986, and Order No. 23541, Issued October 1, 1990, required utilities to deposit gross-up collected into a fully funded interest bearing escrow account. Order No. 16971 further provided that monies in the escrow account could be withdrawn periodically for the purpose of paying that portion of the estimated federal and state income tax which could 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.

Since the effective date of the legislation was made retroactive, the utilities will not need the gross-up they may have collected and retained from June 12, 1996, to date. Thus, they should refund, with interest, any gross-up which they collected and still hold, to those who paid the gross-up. The utilities should refund the gross-up to those who paid it within 60 days of the date this decision becomes final. Further, each utility should provide copies of canceled checks, or other evidence, which verify that the refunds have been made, within 30 days from the date of the refund.

Sixty days should be adequate since the monies are being held in interest bearing escrow accounts, subject to refund, in conformance to the requirements of Order No. 16971, issued December 18, 1986, and Order No. 23541, issued October 1, 1990.

DOCKET NO. 960965-WS
DATE: August 22, 1996

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If no person, whose interests are substantially affected by the proposed action, files a protest within the 21 day protest period, this docket may be closed upon verification of the refunds.

STAFF ANALYSIS: The refunds ordered by this docket should be verified. After verification, if no person, whose interests are substantially affected by the proposed action, files a protest within the 21 day protest period, this docket may be closed.

DOCKET NO. 960965-WS
DATE: August 22, 1996

Attachment A

UTILITIES WITH AUTHORITY TO GROSS-UP

Net present value gross-up:	Palm Coast, Flagler County
Full gross-up:	
Aloha Utilities, Inc.	Pasco County
Bocilla Utilities, Inc.	Charlotte County
Eagle Ridge Utilities, Inc.	Lee County
Forest Utilities, Inc.	Lee County
Fountain Lakes Sewer Corp.	Lee County
Gulf Aire Wastewater Treatment Plant	Gulf County
Gulf Utility Company	Gulf County
Hudson Bay Company	Pasco County
Hydratech Utilities, Inc.	Martin County
Indiantown Company, Inc.	Martin County
JJ's Mobile Homes, Inc.	Lake County
Lake Groves Utilities, Inc.	Lake County
Lake Hills Utility Company	Lake County
North Fort Myers Utilities, Inc.	Lake County
Orange-Osceola Utilities, Inc.	Lee County
Ortega Utility Company	Osceola County
Parkland Utilities, Inc.	Duval County
Poinciana Utilities, Inc.	Broward County
Rampart Utilities, Inc.	Polk County
Rolling Oaks Utilities, Inc.	Charlotte County
Sandalhaven Utilities, Inc.	Citrus County
Sanlando Utilities Corp.	Charlotte County
Sunray Utilities, Inc.	Seminole County
Tradewinds Utilities, Inc.	Nassau County
	Marion County

TITLE I--SMALL BUSINESS AND OTHER TAX PROVISIONS
SUBTITLE E--REVENUE OFFSETS

PART I--GENERAL PROVISIONS

Sec. 1611. Treatment of contributions in aid of construction.

(a) TREATMENT OF CONTRIBUTIONS IN AID OF CONSTRUCTION--

(1) IN GENERAL- Section 118 (relating to contributions to the capital of a corporation) is amended--

(A) by redesignating subsection (c) as subsection (e), and

(B) by inserting after subsection (b) the following new subsections:

(c) SPECIAL RULES FOR WATER AND SEWERAGE DISPOSAL UTILITIES--

(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 water or sewerage disposal services if--

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

(B) in the case of contribution of property other than water or sewerage disposal facilities, such amount meets the requirements of the expenditure rule of paragraph (2), and

(C) such amount (or any property acquired or constructed with such amount) is not included in the taxpayer's rate base for ratemaking purposes.

(2) EXPENDITURE RULE- An amount meets the requirements of this paragraph if--

(A) an amount equal to such amount is expended for the acquisition or construction of tangible property described in section 1231(b)--

(i) which is the property for which the contribution was made or is of the same type as such property, and

(ii) which is used predominantly in the trade or business of furnishing water or sewerage disposal services,

(B) the expenditure referred to in subparagraph (A) occurs before the end of the second taxable year after the year in which such amount was received, and

(C) accurate records are kept of the amounts contributed and expenditures made, the

DOCKET NO. 960965-WS
DATE: August 22, 1996

expenditures to which contributions are allocated, and the year in which the contributions and expenditures are received and made.

- (3) DEFINITIONS- For purposes of this subsection--
- (A) CONTRIBUTION IN AID OF CONSTRUCTION- The term 'contribution in aid of construction' shall be defined by regulations prescribed by the Secretary, except that such term shall not include amounts paid as service charges for starting or stopping services.
 - (B) PREDOMINANTLY- The term 'predominantly' means 80 percent or more.
 - (C) REGULATED PUBLIC UTILITY- The term 'regulated public utility' has the meaning given such term by section 7701(a)(33), except that such term shall not include any utility which is not required to provide water or sewerage disposal services to members of the general public in its service area.
- (4) DISALLOWANCE OF DEDUCTIONS AND CREDITS; ADJUSTED BASIS- Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, any expenditure which constitutes a contribution in aid of construction to which this subsection applies. The adjusted basis of any property acquired with contributions in aid of construction to which this subsection applies shall be zero.
- (d) STATUTE OF LIMITATIONS- If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (c), then--
- (1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of--
 - (A) the amount of the expenditure referred to in subparagraph (A) of subsection (c)(2),
 - (B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or
 - (C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (c)(2), and

DOCKET NO. 960965-WS
DATE: August 22, 1996

- (2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

* * *

- (2) CONFORMING AMENDMENT- Section 118(b) is amended by inserting 'except as provided in subsection (c),' before 'the term'.
(3) EFFECTIVE DATE- The amendments made by this subsection shall apply to amounts received after June 12, 1996.

- (b) RECOVERY METHOD AND PERIOD FOR WATER UTILITY PROPERTY-
- (1) REQUIREMENT TO USE STRAIGHT LINE METHOD- Section 168(b)(3) is amended by adding at the end the following new subparagraph:
(F) Water utility property described in subsection (e)(5).'
- (2) 25-YEAR RECOVERY PERIOD- The table contained in section 168(c)(1) is amended by inserting the following item after the item relating to 20-year property: 'Water utility property 25 years'.
- (3) WATER UTILITY PROPERTY-
- (A) IN GENERAL- Section 168(e) is amended by adding at the end the following new paragraph:
(5) WATER UTILITY PROPERTY- The term 'water utility property' means property--
(A) which is an integral part of the gathering, treatment, or commercial distribution of water, and which, without regard to this paragraph, would be 20-year property, and
(B) any municipal sewer.
- (B) CONFORMING AMENDMENTS- Section 168 is amended--
(i) by striking subparagraph (F) of subsection (e)(3), and
(ii) by striking the item relating to subparagraph (F) in the table in subsection (g)(3).
- (4) ALTERNATIVE SYSTEM- Clause (iv) of section 168(g)(2)(C) is amended by inserting 'or water utility property' after 'tunnel bore'.
- (5) EFFECTIVE DATE- The amendments made by this subsection shall apply to property placed in service after June 12, 1996, other than property placed in service pursuant to a binding contract in effect before June 10, 1996, and at all times

DOCKET NO. 960965-WS
DATE: August 22, 1996

thereafter before the property is placed in
service.