

FLORIDA PUBLIC SERVICE COMMISSION  
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**M E M O R A N D U M**

September 26, 1996

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

FROM: DIVISION OF WATER & WASTEWATER (GILCHRIST) *BM*  
DIVISION OF LEGAL SERVICES (CYRUS-WILLIAMS) *OS*  
*dw*

RE: DOCKET NO. 960934-WU - DISPOSITION OF CIAC GROSS-UP FUNDS  
COLLECTED IN 1994-1996 BY BOCILLA UTILITIES, INC.  
COUNTY: CHARLOTTE

AGENDA: OCTOBER 8, 1996 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\960934.RCM

**CASE BACKGROUND**

On September 27, 1994, the Board of County Commissioners of Charlotte County adopted a resolution declaring all water and wastewater utilities within its boundaries to be subject to the jurisdiction of the Florida Public Service Commission. By Order No. PSC-95-0966-POF-WU, issued August 8, 1995, the Commission granted Bocilla Utilities, Inc. (Bocilla or utility) a certificate pursuant to Section 367.171, Florida Statutes, to provide water service in Charlotte County. Also, by the same order, the Commission authorized Bocilla to continue collecting gross-up of Contributions-in-aid-of-construction (CIAC) on an interim basis, subject to refund with interest. Bocilla is a Class C utility providing water service to approximately 158 customers in Charlotte County. For 1995, the utility reported gross operating revenues of \$97,673 and a net operating loss of \$14,270.

On May 28, 1996, staff received a letter from Mr. R. Craig Noden, President of the utility, requesting that the gross-up charge be removed from the utility's customer connection (tap-in) charge. On July 1, 1996, Mr. Noden explained that because Bocilla is operating at a loss and would not be taxed on any CIAC collected, it would no longer gross-up CIAC. Further, he explained that since the utility had paid no taxes on the CIAC collected during 1994 and 1995, the gross-up collected had to be refunded to the contributors. By correspondence dated July 5, 1996, staff

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advised Mr. Noden that pursuant to Order No. PSC-95-0966-FOF-WU, Bocilla was required to 1) place any gross-up taxes collected from September 27, 1994 forward into an interest bearing account; 2) provide a report by the 20th of each month stating the monthly and total revenue collected subject to refund; and 3) file, within 90 days of the issuance of the order, the information required by Order No. 23541, issued October 1, 1990, granting water and wastewater utilities authority to continue collecting gross-up of CIAC. The utility did not comply with this third requirement in a timely manner and this matter is discussed further in Issue 1 of this recommendation.

On August 1, 1996, The Small Business Job Protection Act of 1996 (the Act) passed Congress and was signed by President Clinton the same day. The Act provides for the non-taxability of CIAC collected by water and wastewater utilities, effective retroactively for amounts received after June 12, 1996. Pursuant to the Act, this Commission, by Order No. PSC-96-1180-FOF-WS, issued September 20, 1996, in Docket No. 960965-WS, revoked Bocilla's authority to collect gross-up of CIAC. The utility's respective tariff will be cancelled within 30 days of the issuance of the order.

Staff advised Mr. Noden that because the Act provides for the non-taxability of CIAC collected by water and wastewater utilities, the information required by Order No. 23541 was no longer needed. Staff, however, advised Mr. Noden that the other requirements of Order No. PSC-95-0966-FOF-WU still had to be met before staff could process the requested tariff change. The purpose of this docket is to process the requested tariff change and to address the disposition of the gross-up of CIAC funds collected by Bocilla from 1994 to 1996.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Bocilla to show cause, in writing within 20 days, why it should not be fined for failure to comply with Order No. PSC-95-0966-FOF-WU?

RECOMMENDATION: No. Show cause proceedings should not be initiated. (CYRUS-WILLIAMS)

STAFF ANALYSIS: As noted in the Case Background, pursuant to Order No. PSC-95-0966-FOF-WU, issued August 8, 1995, Bocilla was required to 1) place any gross-up taxes collected from September 27, 1994 forward into an interest bearing account; 2) provide a report by the 20th of each month stating the monthly and total revenue collected subject to refund; and 3) file the information required by Order No. 23541 within 90 days of the issuance of the order so that a final determination could be made regarding Bocilla's authority to continue collecting gross-up of CIAC. The utility timely complied with item numbers 1 and 3, but failed to provide the monthly reports required by item number 2. Upon staff's request, the utility, one year later on August 8, 1996, filed the required reports and provided copies of cancelled checks, verifying that refunds of CIAC had been made.

At staff's request, the utility, on September 23, 1996, provided an explanation of why it did not timely file the reports required by Order No. PSC-95-0966-FOF-WS. The utility explained that the monthly reporting requirement was overlooked when the order was first received because the utility has only one full-time employee, the plant operator. The utility further explained that its customer base of 170 has not been able to generate enough revenue to provide for office help.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes or any lawful rule or order of the Commission.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to comply with a monthly reporting requirement, would meet the standard for a "willful violation." In

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Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure to comply with the monthly reporting requirement of Order No. PSC-95-0966-FOF-WS is an apparent willful violation of a Commission order. However, staff is not recommending that a show cause proceeding be initiated for the following reasons. First, once staff notified the utility of this violation, the utility immediately responded and provided the information necessary to process the case. Second, Bocilla has already made the appropriate refunds and staff, in Issue 2 of this recommendation, has verified the refund amounts. Staff does not believe that this utility's failure to comply with Order No. PSC-95-0966-FOF-WS rises to the level of warranting that a show cause order be issued.

Accordingly, Staff recommends that the Commission not order Bocilla to show cause why it should not be fined for failing to comply with the monthly reporting requirement of Order No. PSC-95-0966-FOF-WS.

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ISSUE 2: Should the Commission approve the refunds made by Bocilla Utilities, Inc., for excess gross-up of CIAC collections plus accrued interest for the years 1994-1996?

RECOMMENDATION: Yes, the Commission should approve refunds of \$9,498.02 for 1994, \$13,801.25 for 1995, and \$1,398.73 for 1996, for a total amount of \$24,264 plus accrued interest of \$433.27 for gross-up of CIAC collected in excess of the tax liability. (GILCHRIST)

STAFF ANALYSIS: On August 8, 1996, the utility filed its refund report which consisted of copies of cancelled checks, a check register listing each contributor, and monthly statements of its escrow account. Staff has reviewed the information provided by the utility and has verified that the refunds are complete. Staff is recommending that the Commission approve refunds of \$9,498.02 for 1994, \$13,801.25 for 1995, and \$1,398.73 for 1996, for a total amount of \$24,264 plus accrued interest of \$433.27 for gross-up of CIAC collected in excess of the tax liability.

As discussed in the Case Background, by Order No. PSC-96-1180-FOF-WS, issued September 20, 1996, in Docket No. 960965-WS, this Commission voted to revoke Bocilla's authority to collect gross-up of CIAC and to cancel the respective tariff within thirty days of the issuance of the order. The gross-up charge has been removed from the utility's customer connection fee and the revised tariff sheet has been submitted accordingly. Since all refunds have been verified, the revised tariff sheet will be approved administratively, effective for connections made on or after October 20, 1996, the expiration of the protest period for Order No. PSC-96-1180-FOF-WS.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, the docket should be closed. (CYRUS-  
WILLIAMS)

STAFF ANALYSIS: Staff has completed the verification of the refunds. If the Commission approves Issue 2 of this recommendation, the revised tariff sheet will be approved administratively, effective for connections made on or after October 20, 1996, the expiration of the protest period for Order No. PSC-96-1180-FOF-WS. There is no further action required in this docket and the docket should be closed.