

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

October 17, 1996

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

FROM: DIVISION OF WATER & WASTEWATER (JOHNSON) *B. Johnson*
DIVISION OF LEGAL SERVICES (CYRUS-WILLIAMS) *CS*

RE: DOCKET NO. 961151-WU - DISPOSITION OF CONTRIBUTION IN AID
OF CONSTRUCTION BY EAST CENTRAL FLORIDA SERVICES, INC.
COUNTY: BREVARD, ORANGE, OSCEOLA

AGENDA: OCTOBER 29, 1996 - REGULAR AGENDA - PROPOSED AGENCY
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\961151.RCM

CASE BACKGROUND

As a result of the repeal of Section 118(b) of the Internal Revenue Code (I.R.C.), contributions-in-aid-of-construction (CIAC) gross income and are 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.

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 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, the Commission 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. East Central Florida Services, Inc. is a Class C water utility providing service to the

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public in Brevard, Orange, and Osceola Counties. As of December 31, 1994, the Utility served 290 water customers. The Utility had gross operating revenues of \$156,839 for the water system. The Utility reported a net operating loss of \$119,701 for the system. On May 12, 1992, pursuant to Order No. 23541, East Central Florida Services, Inc. (ECFS or Utility) filed for initial authority to gross-up CIAC. The information as filed met the filing requirements of Order No. 23541. Order No. PSC-92-0958-FOF-WU, issued September 9, 1992, granted East Central Florida Services, Inc. authority 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. This order included Attachment A which reflects the generic calculation form. No protests were filed, and the Order became final.

On October 12, 1994, this Commission issued Proposed Agency Action Order No. PSC-94-1265-FOF-WS, which revised the full gross-up formula. No protests were filed, and the Order 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, staff was directed to continue processing CIAC gross-up and refund cases pursuant to Order Nos. 16971 and 23541; however, staff was also directed to make a recommendation to the Commission concerning whether the Commission's policy regarding the collection and refund of CIAC should be changed upon staff's completion of its review of the proposals and comments offered by the workshop participants. In addition, staff was directed to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up.

However, The Small Business Job Protection Act of 1996 (The Act) was signed into law by President Clinton 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. Since, there was no longer a need to review the Commission's policy

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on the gross-up of CIAC, the Commission on September 16, 1996, 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 being processed pursuant to Order Nos. 16971 and 23541. Therefore, the purpose of this recommendation is to address the disposition of refunds for the years 1993 and 1994.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the refunds made by East Central Florida Services, Inc. for excess gross-up collections plus accrued interest for the years 1993 through 1994?

RECOMMENDATION: Yes, the Commission should approve the refunds totalling \$664 for 1993 and \$16,280 for 1994, for a total \$16,942 of gross-up collected in excess of the tax liability resulting from the collection of CIAC. The Commission should also approve the accrued interest paid on the refunds totalling \$16.87 for 1993 and \$208 for 1994. (JOHNSON)

STAFF ANALYSIS: In compliance with Orders Nos. 16971 and 23541, East Central Florida Services, Inc. filed its 1993 and 1994 annual CIAC reports regarding its collection of gross-up for each year. Staff's calculations and the utility's calculations are in agreement on the refund amounts for the years listed. By fax dated May 24, 1996, the utility provided staff with the cancelled checks to verify that the refunds were made.

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.

1993

The utility proposes a refund of \$664 for 1993 excess gross-up collections.

Staff calculates a refund of \$664 for 1993. The 1993 CIAC report indicates that a total of \$1,100 of CIAC was received, with the first year's depreciation reported as \$28. Based upon our review of the utility's 1993 filing, the utility incurred an above-the-line loss of \$110,451 prior to inclusion of the taxable CIAC in income. The above-the-line loss exceeded the CIAC income; therefore, no tax liability exists and all gross-up should be refunded.

The CIAC report indicates that the utility collected \$664 of gross-up; therefore, based upon the foregoing, staff calculates a refund of \$664 for 1993. This amount does not include the accrued

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interest which must also be refunded from December 31, 1993 to the date of refund.

In the 1993 filing, the utility states that it refunded \$664 in gross-up to the contributing customers, plus accrued interest of \$16.87. The interest paid is for the period of December 31, 1993, through the end of September 1994, the refund date. The utility submitted a cancelled check dated October 17, 1994 as evidence that the \$664 refund, plus accrued interest of \$16.87 was made.

1994

The utility proposes a refund of \$16,280 for 1994 excess gross-up collections.

Staff calculates a refund of \$16,280 for 1994. The 1994 CIAC report indicates that a total of \$93,177 of CIAC was received, with the first year's depreciation reported as \$582. Based upon our review of the utility's 1994 filing, the utility incurred an above-the-line loss of \$90,826, prior to inclusion of the taxable CIAC in income. Order No. 23541 requires that CIAC income be netted with the above-the-line loss; therefore, staff has made a reduction to the total amount of taxable CIAC to reflect the loss. When the above-the-line loss of \$90,826 is netted with the total taxable CIAC of \$93,177, and the first year's depreciation of \$582, the amount of taxable CIAC resulting in a tax liability is \$1,769. The remaining taxable CIAC income is offset with \$1,769 in net operating loss carryforwards. Therefore, no tax liability exists and all gross-up should be refunded. The CIAC report indicates that the utility collected \$16,280 of gross-up; therefore, based upon the foregoing, staff calculates a refund of \$16,280 for 1994. This amount does not include the accrued interest which must also be refunded from December 31, 1994 to the date of refund.

On May 24, 1996 the utility provided staff with a copy of a cancelled check dated September 28, 1995 as evidence that the refund was made. The utility refunded \$16,280 in gross-up to the contributing customers, plus accrued interest of \$208. The interest paid is for the period of December 31, 1994, through August 1995 the date of the refund.

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ISSUE 2: Should the docket be closed?

RECOMMENDATION: Yes, if a timely protest is not filed upon expiration of the protest period, this docket should be closed.
(CYRUS-WILLIAMS, JOHNSON)

STAFF ANALYSIS: Staff has received and reviewed the cancelled checks as verification that the refunds are complete. Therefore, 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.

STAFF CALCULATED GROSS-UP REFUND

EAST CENTRAL FLORIDA SERVICES, INC.

SOURCE: (Line references are from CIAC Reports)

	<u>1993</u>	<u>1994</u>
1 Form 1120, Line 30 (Line 15)	\$ (108,698)	\$ 18,049
2 Less CIAC (Line 7)	(1,100)	(93,177)
3 Less Gross-up collected (Line 19)	(664)	(16,280)
4 Add First Year's Depr on CIAC (Line 8)	28	582
5 Add/Less Other Effects (Lines 20 & 21)	(17)	(2)
6		
7 Adjusted Income Before CIAC and Gross-up	\$ (110,451)	\$ (90,828)
8		
9 Taxable CIAC (Line 7)	\$ 1,100	\$ 93,177
10 Less first years depr. (Line 8)	\$ (28)	\$ (582)
11		
12 Adjusted Income After CIAC	\$ (109,379)	\$ 1,767
13 Less: NOL Carry Forward	\$ 0	\$ (1,769)
14		
15 Net Taxable CIAC	\$ 0	\$ 0
16 Combined Marginal state & federal tax rates	15.00%	15.00%
17		
18 Net Income tax on CIAC	\$ 0	\$ 0
19 Less ITC Realized	0	0
20		
21 Net Income Tax	\$ 0	\$ 0
22 Expansion Factor for gross-up taxes	1.176470588	1.176470588
23		
24 Gross-up Required to pay tax effect	\$ 0	\$ 0
25 Less CIAC Gross-up collected (Line 19)	(664)	(16,280)
26		
27 (OVER) OR UNDER COLLECTION	\$ (664)	\$ (16,280)
28	=====	=====
29		
30 TOTAL YEARLY REFUND	\$ (664)	\$ (16,280)
31	=====	=====
32		
33 PROPOSED REFUND (excluding interest)	(16,944)	
34	=====	