

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for)
continuation of gross-up of)
contributions-in-aid-of-)
construction (CIAC) in Lee)
County by GULF UTILITY COMPANY))
_____)

DOCKET NO. 910110-WS
ORDER NO. PSC-93-0261-PCO-WS
ISSUED: 02/18/93

ORDER DENYING MOTION FOR CONTINUANCE

By Order No. 24808, issued July 12, 1991, the Commission granted Southwest Florida Capital Corporation's (SFCC or intervenor) Petition of Intervention in the above-referenced docket. On July 30, 1992, by Order No. PSC-92-0742-FOF-WS, the Commission authorized Gulf Utility Company (Gulf or utility) to continue gross-up of CIAC. On August 20, 1992, SFCC protested Order No. PSC-92-0742-FOF-WS. On September 30, 1992, Order No. PSC-92-1079-PCO-WS, was issued, establishing procedure. Pursuant to the Order Establishing Procedure, intervenor testimony should have been filed February 1, 1993.

On January 29, 1993, SFCC filed a Motion for Continuance. In the Motion, SFCC requests an extension of time to file intervenor testimony, which would result in a continuance of the hearing. SFCC also requested that the hearing be held in September. As grounds therefor, SFCC alleges the following: 1) SFCC delayed in hiring an accountant expert witness to prepare testimony because it hoped to avoid litigation. Instead, SFCC's efforts were directed toward demonstrating that certain alternatives to gross-up of CIAC were both practical and legal under the Internal Revenue Code; 2) SFCC attempted to reach a negotiation or mediation session with Gulf. A meeting was held on November 30, 1992. A settlement was not reached; 3) SFCC has not been able to locate a witness it believes is conversant in the area of CIAC gross-up. The accountants who do have expertise in the area generally obtained that expertise while working for utilities, and thus there is a significant problem with conflict of interest; 4) The effort to obtain an expert witness was complicated by the December holidays, which effectively delayed the ability to contact consultants and discuss the case with them.

SFCC believes that it will have secured the services of an expert in the area within ten days. However, SFCC states in its Motion that it cannot represent in good faith that an extension of the filing date will be sufficient for SFCC to adequately prepare its case.

DOCUMENT NUMBER-DATE

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On February 3, 1993, Gulf filed an Objection to the Motion for Continuance. In its objection, Gulf basically states the following: 1) SFCC has had at least six months to prepare its testimony and exhibits, and 2) Gulf is entitled to have this matter brought to a conclusion.

SFCC has indeed had knowledge of its testimony filing date since the date of the Order Establishing Procedure. The utility timely filed its testimony on December 1, 1992. SFCC has had adequate time to prepare testimony and exhibits for this hearing. Upon reviewing the intervenor's motion, it is clear that SFCC has not provided sufficient grounds for a continuance. Further, SFCC stated in its motion that it may be able to secure a witness within 10 days. Sufficient time has passed since SFCC filed its motion. In consideration of the foregoing, SFCC's Motion for Continuance is denied. However, we do find it appropriate to give SFCC some additional time to file its testimony. SFCC shall file its testimony by February 26, 1993. As a result of the Motion for Continuance, it has become necessary to revise the Order Establishing Procedure. Therefore, Order No. PSC-92-1079-PCO-WS is revised in the following manner:

Intervenors' direct testimony and exhibits	February 26, 1993
Staff's direct testimony and exhibits, if any	March 19, 1993
Rebuttal testimony and exhibits	March 26, 1993
Prehearing Statements	March 26, 1993
Prehearing Conference	April 2, 1993
Hearing	May 5-6, 1993
Briefs	May 26, 1993

All other aspects of Order No. PSC-92-1079-PCO-WS are hereby reaffirmed.

Based on the foregoing, it is therefore,


ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer that Southwest Florida Capital Corporation's Motion for Continuance is denied. It is further

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ORDERED that Southwest Florida Capital Corporation shall file intervenor testimony on or before February 26, 1993. It is further

ORDERED that Order No. PSC-92-1079-PCO-WS is hereby revised to reflect the dates set forth in the body of this Order. All other aspects of Order No. PSC-92-1079-PCO-WS are hereby reaffirmed.

By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 18th day February, 1993.



THOMAS M. BEARD, Commissioner
and Prehearing Officer

(S E A L)

LAJ

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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.

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.

M E M O R A N D U M

February 16, 1993

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (JABERY) 
RE: DOCKET NO. 910110-WS - PETITION FOR CONTINUATION OF
GROSS-UP OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION (CIAC)
IN LEE COUNTY BY GULF UTILITY COMPANY.

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Attached is an Order Denying Motion for Continuance to be issued in the above-referenced docket. (Number of pages in Order 4)

LAJ/dr

Attachment

cc: Division of Water and Wastewater (McCaskill)

I:910110-C.LAJ

DOCUMENT NUMBER-DATE

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