

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 921240-WS
Contributions-in-Aid-of-) ORDER NO. PSC-93-1565-PHO-WS
Construction (CIAC) Gross-up) ISSUED: October 25, 1993
Funds Received by FLORIDA CITIES)
WATER COMPANY in Brevard,)
Collier, and Lee Counties.)
_____)

Pursuant to Notice, a Prehearing Conference was held on October 20, 1993, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

WAYNE SCHIEFELBEIN, Esquire, Gatlin, Woods, Carlson & Cowdery, 1709-D Mahan Drive, Tallahassee, Florida, 32308.
On behalf of Florida Cities Water Company.

LILA A. JABER, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida, 32399-0863.
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

Orders Nos. 16971 and 23541, issued December 18, 1986, and October 1, 1990, respectively, require that utilities annually file information to be used to determine the actual state and federal income tax liability directly attributable to contributions-in-aid-of-construction (CIAC), and whether a refund of the gross-up is appropriate for any given year for which gross-up was in effect.

Order No. PSC-92-0961-FOF-WS, issued September 9, 1992, clarified the provisions 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. That Order included the generic calculation form.

In accordance with Order No. 16971, Florida Cities Water Company (Florida Cities or utility) filed its 1987 through 1990 annual CIAC reports regarding its collection of gross-up each year. By Order No. PSC-93-0389-FOF-WS, issued March 15, 1993, the Commission proposed that the utility refund excess CIAC gross-up

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collections for the years 1987 through 1990. The proposed refund amounts were \$30,478 for 1987, \$95,341 for 1988, \$86,097 for 1989, and \$70,121 for 1990.

On April 2, 1993, Florida Cities timely filed a protest to Order No. PSC-93-0389-FOF-WS. Pursuant to Florida Cities' protest, this matter is currently scheduled for an administrative hearing on November 4 and 5, 1993.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the

confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. POST-HEARING PROCEDURE

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. You must include in that statement, a summary of each position of no more than 50 words, set off with asterisks. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing

position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

IV. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

V. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
James B. Werle	Utility	1-3
Joseph Schifano	Utility	1-3

ISSUE 2: Should the first years depreciation on CIAC be deducted from taxable CIAC in calculating the refund of excess gross-up collections on CIAC?

POSITIONS

UTILITY: No. (Werle, Schifano)

STAFF: Yes. (Causseaux)

ISSUE 3: Should the refund formula in Order No. PSC-92-0961-FOF-WS be used in calculating the refund of excess gross-up collections for 1987 through 1990?

POSITIONS

UTILITY: No. (Werle, Schifano)

STAFF: Yes. The purpose of Order No. PSC-92-0961-FOF-WS was to clarify the calculation of the refund only, and therefore, should be applied to the calculation of refunds for 1987 through 1990. (Causseaux)

VIII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
James B. Werle	Utility	JBW-1	Transcript from the February 16, 1993 P S C A g e n d a Conference.
	Utility	JBW-2	Letter dated September 28, 1992 to Sherri S. Meador, along with the attachments.
Joseph Schifano	Utility	JS-1	Copies of approved tariff sheets reflecting the Tax Impact of CIAC.

	Utility	JS-2	Order No. 16971.
	Utility	JS-3	Staff Advisory Bulletin No. 25, issued August 31, 1987.
Ann P. Causseaux	Staff	APC-1	Orders Nos. PSC-92- 0961-FOF-WS and PSC- 92-0961A-FOF-WS
		APC-2	1987 CIAC Report
		APC-3	Florida Cities' CIAC Reports
		APC-4	Order No. PSC-93- 0389-FOF-WS

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
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Rebuttal

James B. Werle	Utility	JBW-3	Excerpts of the transcripts from the February 2 and 16, 1993, PSC Agenda Conferences.
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Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

IX. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

X. PENDING MOTIONS

There are no pending motions at this time.

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Based on the foregoing, it is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 25th day of October, 1993.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

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.