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MEMORANDUM

March 4, 1998

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JAEGER) *[Signature]*

RE: DOCKET NO. 980062-SU - DISPOSITION OF CONTRIBUTION-IN-AID-OF-CONSTRUCTION (CIAC) GROSS-UP FUNDS COLLECTED IN 1996 BY GULF AIRE PROPERTIES d/b/a GULF AIRE WASTEWATER TREATMENT PLANT IN GULF COUNTY.

98-0356-FOF-SU

Attached is an NOTICE OF PROPOSED AGENCY ACTION ORDER REQUIRING NO REFUNDS FOR THE YEAR 1996 AND CLOSING DOCKET, to be issued in the above-referenced docket.

(Number of pages in order - 5)

RRJ/lw

Attachment

cc: Division of Water and Wastewater (Gilchrist)

I:980062or.rrj

*boxed -  
inverted - 0/1*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of  
contribution-in-aid-of-  
construction (CIAC) gross-up  
funds collected in 1996 by Gulf  
Aire Properties d/b/a Gulf Aire  
Wastewater Treatment Plant in  
Gulf County.

DOCKET NO. 980062-SU  
ORDER NO. PSC-98-0356-FOF-SU  
ISSUED: March 4, 1998

The following Commissioners participated in the disposition of  
this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION  
ORDER REQUIRING NO REFUNDS FOR THE YEAR 1996  
AND CLOSING DOCKET

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action discussed herein is preliminary in  
nature and will become final unless a person whose interests are  
substantially affected files a petition for a formal proceeding,  
pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Gulf Aire Wastewater Treatment Plant (Gulf Aire or utility) is  
a Class "C" wastewater utility providing wastewater service to  
approximately 203 customers in Gulf County. Gulf Aire reported  
gross revenues of \$78,800 and net operating income of \$9,125 in its  
1996 annual report.

As a result of the repeal of Section 118(b) of the Internal  
Revenue Code, contributions-in-aid-of-construction (CIAC) became  
gross income and were depreciable for federal tax purposes. In

DOCUMENT NUMBER-DATE

02857 MAR-4 98

FPSC-RECORDS/REPORTING

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Order No. 16971, issued December 18, 1986, we 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.

Orders Nos. 16971 and 23541, issued December 18, 1986 and October 1, 1990, respectively, 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 also required 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, we required any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue, to file a petition for approval with us on or before October 29, 1990. On July 8, 1991, in Docket No. 910753-SU, Gulf Aire applied for authority to continue to collect gross-up on CIAC. By Order No. PSC-92-0003-FOF-WS, issued March 3, 1992, Gulf Aire was granted continued authority to gross-up CIAC for the related tax impact.

However, on August 1, 1996, the Small Business Job Protection Act of 1996 (The Act) passed Congress and 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, we issued Order No. PSC-96-1180-FOF-WS revoking the authority of utilities to collect gross-up of CIAC and cancelling the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance.

The disposition of gross-up refunds collected by the utility in 1995 was addressed in Docket No. 970402-SU and Order No. PSC-97-0548-FOF-SU, was issued accordingly. The purpose of this Order is to address the disposition of gross-up funds for the utility for 1996.

REFUND REQUIREMENT FOR 1996

In compliance with Order No. 16971, Gulf Aire filed its annual CIAC report regarding its collection of gross-up for 1996. Gulf Aire's CIAC reports revealed that the utility did not gross-up for CIAC in 1996. Gulf Aire explained that it had been operating at a loss because of extremely high debt requirements. As a result, the utility stated, and we agree, that Gulf Aire should not be placed in a position where it may have to make refunds. Since there were no gross-up funds collected by Gulf Aire in 1996, no refunds are required.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, this docket shall be closed.

Based on the foregoing, it is

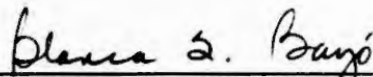
ORDERED by the Florida Public Service Commission that Gulf Aire Properties, d/b/a Gulf Aire Wastewater Treatment Plant, did not collect any gross-up funds in 1996, and no refunds are required for 1996. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that, if a timely protest is not filed by a substantially affected person, the docket shall be closed.

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By ORDER of the Florida Public Service Commission this 4th  
day of March, 1998.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 25, 1998.

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In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.