

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of
contributions-in-aid-of-
construction (CIAC) gross-up
funds collected during the years
12/31/92 through 12/31/96 by
JJ's Mobile Homes, Inc. in Lake
County.

DOCKET NO. 980954-WS
ORDER NO. PSC-99-2369-PAA-WS
ISSUED: December 6, 1999

The following Commissioners participated in the disposition of
this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER ACCEPTING SETTLEMENT OFFER
AND REQUIRING REFUNDS FOR THE YEARS 1992, 1993, 1994, AND 1995

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

JJ's Mobile Homes, Inc. (JJ's or utility), was a Class C
utility located in Lake County, Florida. JJ's provided water and
wastewater service to approximately 278 water and wastewater
customers in the City of Mt. Dora (City), Florida. Its 1995 annual
report reflected gross operating revenues of \$136,790 and \$138,025
for water and wastewater, respectively, and net operating losses of
\$60,567 and \$45,929 for water and wastewater, respectively.

On July 9, 1996, the utility and the City filed a joint
application for transfer of the utility to a governmental
authority, pursuant to Section 367.071(4)(a), Florida Statutes.
The contract for the sale between JJ's and the City was made on

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FPCD-RECORDS/REPORTING

ORDER NO. PSC-99-2369-PAA-WS
DOCKET NO. 980954-WS
PAGE 2

June 21, 1996, with closing and transfer of all water and wastewater assets effective July 3, 1996. By Order No. PSC-96-1245-FOF-WS, issued October 7, 1996, in Docket No. 921237-WS, we acknowledged the transfer of the water and wastewater assets of JJ's to the City and canceled Certificates Nos. 298-W and 248-S.

The disposition of contributions-in-aid-of-construction (CIAC) gross-up collections was not addressed in the above-mentioned docket. However, we have jurisdiction to address the disposition of CIAC gross-up collections even though the facilities have been sold to the City. See Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1st DCA 1995) (determining that the Commission had jurisdiction over a rate dispute between a county and a water utility involving alleged overcharges to the county for water service occurring before transfer of the utility's water facility to the city). Therefore, Docket No. 980954-WS was opened on July 28, 1998 to address the disposition of excess CIAC gross-up collections for the years 1992 through 1996.

As a result of the repeal of Section 118(b) of the Internal Revenue Code, effective January 1, 1987, CIAC became gross income and was depreciable for federal tax purposes. Therefore, by Order No. 16971, issued December 18, 1986, in Docket No. 860184-PU, this Commission authorized corporate water and wastewater utilities to collect the gross-up on CIAC in order to meet the tax impact resulting from the inclusion of CIAC as gross income.

On January 7, 1992, pursuant to Order No. 23541, issued October 1, 1990, in Docket No. 860184-PU, JJ's filed for authority to gross-up CIAC for the related tax impact. On February 17, 1992, the developer, George Wimpey of Florida, d/b/a Morrison Homes (Morrison Homes), filed a Petition to Intervene. Subsequently, Morrison Homes withdrew its intervention in that docket. By Order No. PSC-92-0777-FOF-WS, issued August 10, 1992, in Docket No. 920032-WS, JJ's was granted authority to gross-up using the full gross-up formula. As a result, JJ's gross-up tariff authority became effective on September 1, 1992.

Orders Nos. 16971 and 23541 require that utilities annually file information to be used to determine the actual state and federal income tax liability directly attributable to the CIAC. The information determines whether refunds of gross-up are appropriate. These orders also 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, be refunded on a pro rata basis to those persons who contributed the taxes.

However, the Small Business Job Protection Act of 1996, which became law on August 20, 1996, provided for the non-taxability of CIAC collected by water and wastewater utilities effective retroactively for amounts received after June 12, 1996. The purpose of this Order is to address the disposition of gross-up funds collected by the utility for the years 1992 through 1996.

ADJUSTMENTS TO REFUND CALCULATIONS

As stated above, JJ's was sold to the City on July 3, 1996. However, the CIAC tax gross-up monies were not transferred to the City, and the utility maintained all rights and obligations to the gross-up monies upon the sale. Therefore, in compliance with Order No. 16971, JJ's timely filed its 1992 through 1996 annual CIAC reports regarding its collection of CIAC and gross-up.

By letter dated December 22, 1997, our staff submitted their preliminary refund calculation to the utility and requested additional information to finalize the review. On February 13, 1998, the utility responded that it did not agree with our staff's preliminary refund calculation.

Based on the utility's initial gross-up filing, our staff noted numerous differences with information that was on file with the Commission. Most of the differences related to the filing of incorrect annual reports and inadequate record-keeping. Our staff adjusted the amounts in the gross-up reports to reconcile them to the amounts that were supported by the annual reports and other information on file at the Commission. Our staff then prepared refund calculations and submitted these new calculations to the utility.

On August 11, 1999, the utility provided a revised gross-up refund proposal in which it agreed to or accepted all but three of our staff's adjustments. The adjustments with which it disagreed are: (a) what is the treatment required for the 1993 capitalization of a 1992 Operation and Maintenance (O&M) expense; (b) whether the benefit of first year's depreciation should be given to the contributor; and (c) whether fifty percent of legal and accounting fees should be offset against the gross-up refund. These adjustments are discussed below:

a) 1993 Capitalization of 1992 O&M Expense - In 1993, the utility realized that \$7,695 of construction cost was erroneously expensed in 1992. The utility adjusted its 1993 books and tax return to reflect the reclassification of this amount to plant in service. Although the adjustment for this reclassification had the effect of increasing retained earnings, the utility did not file an amended tax return to reflect the effect on taxable income, for 1992.

We note that the total company showed a loss of \$221,939 on its tax return for 1992. The deduction of \$7,695 was included in the loss. This loss was carried forward in its entirety to 1993 to offset total company taxable income of \$321,862 for 1993. In addition, it appears that the \$7,695 was included in depreciable plant on the books and tax return for 1993, and is being depreciated. Therefore, it appears that the utility realized the benefit of both the deduction and the depreciation for book and tax purposes.

Further, through price indexing, the utility received the benefit of these expenses being classified above-the-line. The utility filed for and implemented a 1993 price-index rate increase based on its 1992 O&M expenses which included the \$7,695. Furthermore, the subsequent 1994 through 1996 price-index rate increases compounded this error by adding index increases onto the 1993 indexed rates.

Therefore, the utility has received the benefit of that expense in subsequent price-index rate increases and in the net operating loss (NOL) carryforward, as well as the benefit of the depreciation when the expense was capitalized in 1993. Based on the above, we find that the \$7,695 expense shall be included as an above-the-line O&M expense for 1992.

(b) First Year's Depreciation on CIAC - For each year under consideration, the utility did not deduct first year's depreciation on CIAC in its refund calculation. In support of its position, the utility states that:

1. The utility did not receive any tax benefits on CIAC, since all depreciation was recaptured in the tax on the gain on sale of the utility in 1996. Thus, any tax benefit realized by the utility prior to 1996 was repaid in the computation of the gain; and

2. The Commission has recognized that elimination of the first year's depreciation benefit is appropriate where the utility's assets have been sold and depreciation has been recaptured. The Commission recognized this in the case of Sunbelt Utilities, Inc., by Order No. PSC-97-0147-FOF-WS, issued February 11, 1997, in Docket No. 940076-WS, and possibly other cases.

In further support of its position, the utility enclosed a copy of its 1996 Form 4797, Sales of Business Property, attempting to demonstrate that, "\$299,440 of depreciation was added back to the gross sales price (recaptured) in determining the taxable amount of the gain." The utility's accounting firm also provided information which supplemented its 1996 Federal Income Tax return in support of its position. The information provided by the utility does support that all depreciation was recaptured in the tax on gain on the sale of the utility.

Nevertheless, we find that it is correct to give the benefit of first year's depreciation on CIAC to the contributors for several reasons. First, this treatment is in accordance with the standard refund calculation appended to Order No. PSC-92-0961A-FOF-WS. Second, the final order of Florida Cities Water Company's CIAC Disposition proceeding, which went to hearing (Order No. PSC-94-0213-FOF-WS, issued February 23, 1994, in Docket No. 921240-WS), states:

Depreciation is and has been an element used in determining the actual tax liability of the utility. The determination of a utility's actual tax liability has been referenced in both Orders Nos. 16971 and 23541, and therefore, should be included in calculating each year's refund of excess gross-up collections. The utility's arguments ignore completely the basic fact that depreciation is an integral part of the calculation of the utility's actual tax liability.

Further, that Order stated:

The Orders clearly indicate that the intent of the Commission has always been to determine that amount of gross-up to be retained based upon the utility's actual tax liability, which would include a deduction to CIAC revenue for depreciation.

Therefore, we find that the benefit of first year's depreciation shall go to the contributor, rather than the utility. This treatment recognizes that the utility may pay taxes, net of depreciation, on contributed property in the year of receipt. Therefore, since the utility's tax liability on CIAC is net of depreciation, the benefit shall be passed back to the contributors, the parties who originally paid the gross-up.

Third, we note that in at least six of our prior decisions, which were not protested, we have given the benefit of first year's depreciation to the contributor in calculating a gross-up refund for a utility that was sold during the collection and disposition period. These were:

1. Mid-Clay Service Corp., Order No. PSC-95-0357-FOF-WS, issued 3/14/95 in Docket No. 940096-WS;
2. Canal Utilities, Inc., Order No. PSC-95-0781-FOF-WS, issued 6/28/95 in Docket No. 941083-WS;
3. Orange-Osceola Utilities, Inc., Order No. PSC-96-0986-FOF-WS, issued 8/5/96 in Docket No. 950317-WS;
4. Martin Downs Utilities, Inc., Order No. PSC-97-1147-FOF-WS, issued 9/30/97 in Docket No. 931065-WS;
5. Clay Utility Company, Order No. PSC-97-1364-FOF-WS, issued 10/28/97 in Docket No. 940097-WS;
6. Gulf Utility Company, Order No. PSC-98-1626-FOF-WS, issued 12/7/98 in Docket No. 980943-WS.

Fourth, we find that the tax consequences of the sale of a utility should not be considered in the gross-up refund calculation. We shall consider the financial events and their tax consequences prior to the sale of a utility, including the refund of excess gross-up funds collected up until the date of sale. The gains and losses from the sale of a water and wastewater utility are not "flowed back to" or "collected from" the ratepayer. Therefore, because the tax consequences are attached to the gains and losses, it follows that the tax consequences should not be considered by us in the gross-up refund calculation.

However, we have reviewed our decision in Sunbelt Utilities, Inc., Docket No. 940076-WS. While we allowed Sunbelt to exclude first year's depreciation on CIAC from the gross-up refund calculation in that case based on the utility's recapture of its depreciation in the year the utility was sold, this is the only case of which we are aware in which that treatment has been allowed.

We note that water and wastewater utilities are routinely sold while under our jurisdiction. When gross-up policy was being established and the gross-up formulae were being constructed, no provision was made to distinguish between utilities sold during the gross-up refund process, utilities sold following completion of the gross-up refund process or utilities that remained under the same ownership. Therefore, based on the above analysis and precedent, we find it appropriate to deduct the first year's depreciation from CIAC in our calculation of the CIAC gross-up refund in this case.

(c) Legal and Accounting - Consistent with prior Commission decisions, the utility requested that it be allowed to offset fifty percent of legal and accounting costs incurred in preparing the gross-up refund reports against the contributors' refunds. The utility provided documentation requesting legal and accounting fees of \$9,028 for 1992, \$13,307 for 1993, \$6,076 for 1994, \$5,442 for 1995 and \$6,703 for 1996, for a total of \$40,556.

We have reviewed these costs and find that the cost incurred to revise the gross-up reports because of the reporting errors which required amendments to the tax return should not be borne by the contributor. Therefore, we have disallowed fifty percent of the cost associated with gross-up report preparation that was a result of the filing of amended tax returns in 1993. Also, filing tax returns is a normal cost of operations, and this cost should not be passed directly to the contributors of the gross-up.

In addition, several revisions of the utility's refund calculations were required to correct erroneous information contained in the utility's CIAC gross-up filings. The utility also spent a substantial amount of time preparing a reconciliation of the amounts reported in the 1992 and 1993 annual reports to the amounts reported in the tax returns and gross-up reports for those years. It appears that the discrepancies in these amounts were due primarily to inadequate record-keeping. Further, an audit of the utility's books and records in 1994 indicated that prior to the utility's engagement of Cronin, Jackson, Nixon and Wilson to

prepare its general ledger and accompanying financial statements, the books and records were not maintained in substantial compliance with NARUC Water and Wastewater, Class "C", Accounting Instruction II, A and B. Accounting Instruction IIA reads, "The books of accounts of all water utilities shall be kept by the double entry method, on an accrual basis. Each utility shall keep its accounts monthly and shall close its books at the end of each calendar year." Further, Accounting Instruction IIB reads, "All books of accounts, together with records and memoranda supporting the entries therein, shall be kept in such a manner as to support fully the facts pertaining to such entries. The books and records referred to herein include not only the accounting records in a limited technical sense, but also all other records, reports, correspondence, invoices, memoranda and information useful in determining the facts regarding a transaction."

Since most of the utility's revised reporting was due to correcting erroneous information filed in its annual reports and/or providing information that was omitted from the reports, only one-half of the cost of filing the revised CIAC gross-up reports and schedules shall be allowed. Reducing the contributors' refunds by the total cost incurred would penalize the contributors, although the contributors of the gross-up did not have any control over the utility's inadequate record-keeping, erroneous annual report filings, and the resultant reconciliations necessary to correct the utility's gross-up filing. However, because the revised CIAC gross-up reports and schedules were filed to satisfy regulatory requirements, one-half of the cost of revising the CIAC gross-up filings shall be disallowed.

Further, some of the legal and accounting costs requested related to other dockets and/or cases and unsupported costs. As a result, we have excluded these associated legal and accounting costs in determining the allowable legal and accounting cost.

Based upon the adjustments above, only \$30,510 of the \$40,556 legal and accounting fees requested by the utility for preparing the required gross-up reports and calculating the tax effect and the proposed refunds shall be considered. The acceptable legal and accounting expenses for each year are \$6,458 for 1992; \$7,425 for 1993; \$4,800 for 1994; \$4,167 for 1995; and \$7,660 for 1996. Fifty percent of these amounts are \$3,229 for 1992, \$3,713 for 1993, \$2,400 for 1994, \$2,084 for 1995 and \$3,830 for 1996.

We have considered on several occasions the question of whether an offset should be allowed against CIAC gross-up refunds. (See Order No. PSC-97-0647-FOF-SU, issued June 7, 1997, in Docket No. 961077-SU; Order No. PSC-97-0657-AS-WS, issued June 9, 1997, in Docket No. 961076-WS; and Order No. PSC-97-0816-FOF-WS, issued July 7, 1997, in Docket No. 970275-WS.) In these orders, we accepted the utilities' settlement proposals that fifty percent of the legal and accounting costs be offset against the refund amount. However, we note that Orders Nos. 16971 and 23541 do not provide for the netting of costs incurred with filing gross-up refund reports against the refund of excess gross-up collections. Those orders specifically state that "all gross-up amounts in excess of a utility's actual tax liability resulting from its collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes."

However, we recognize, as in the other cases, that acceptance of the utility's request would avoid the substantial cost associated with a hearing, which may in fact exceed the amount of the legal and accounting costs to be recovered. We further note that the actual costs associated with making the refunds have not been included in these calculations and will be absorbed by the utility. Moreover, we find that the utility's request is a reasonable compromise. Therefore, we accept JJ's request that it be allowed to offset fifty percent of the adjusted legal and accounting fees against the refund.

DISPOSITION OF CIAC GROSS-UP FUNDS

In calculating the refunds, we have used the method adopted in Order No. PSC-92-0961-FOF-WS. The adjustments were based on the August 11, 1999 revised gross-up refund proposal, on information provided by the utility in its gross-up reports, other information on file at the Commission, supplemental information from the utility, federal income tax returns on file, annual reports and our recent decisions. The adjustments have been explained in the body of this Order and are reflected on Schedule No. 1. A summary of each year's refund calculation follows.

1992

The utility proposes no refund in 1992. We calculate an over collection of gross-up of \$6,616. However, offsetting the over collection by fifty percent of the allowable legal and accounting costs, we calculate a refund of \$3,387 for 1992.

JJ's revised refund proposal calculates the above-the-line loss at \$6,907, before the inclusion and effect of taxable CIAC. However, as a result of the adjustments discussed above, we calculate an above-the-line loss of \$14,602 before the inclusion and effect of taxable CIAC. The utility's CIAC gross-up report indicates that a total of \$17,160 in taxable CIAC was received; however, in calculating the appropriate refund, we deducted \$4,290 of taxable CIAC that was collected from the Dora Pines Mobile Homes Park (related party) because it was not grossed-up. Therefore, CIAC on which gross-up was collected totaled \$12,870.

The utility had an above-the-line loss of \$14,602. However, since only \$12,870 of the \$17,160 of taxable CIAC collected was grossed-up, only \$12,870 of this CIAC is being used in our calculation of CIAC. Therefore, we have allocated the above-the-line loss of \$14,602 pro rata between CIAC that was grossed-up and CIAC that was not grossed-up. As a result, only \$10,952 of the above-the-line loss is netted against the taxable CIAC of \$12,870. When the taxable CIAC of \$12,870 is reduced by \$14 for the first year's depreciation, the resulting taxable CIAC is \$12,856. When this amount is netted against the above-the-line loss of \$10,952 (loss related to CIAC that was grossed-up), the amount of taxable CIAC resulting in a tax liability is \$1,904.

Using the 37.63 percent combined marginal federal and state tax rates as provided in the CIAC gross-up report, we calculate the tax effect to be \$716. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$1,149. The utility collected \$7,765 of gross-up monies; therefore, the utility over collected \$6,616 before the offset of fifty percent of the allowable legal and accounting fees. Allowing for the offset of \$3,229, we calculate the refund to be \$3,387.

1993

The utility proposes no refund for 1993. We calculate an over collection of gross-up of \$5,272. However, offsetting the over collection by fifty percent of the allowable legal and accounting costs, we calculate a refund of \$1,559 for 1993.

We calculate that the above-the-line income was \$48,839, before the inclusion and effect of taxable CIAC. The utility's revised CIAC gross-up report indicates that a total of \$196,610 in taxable CIAC was received. First year's depreciation of \$8,502 was

deducted from the taxable CIAC of \$196,610, resulting in taxable CIAC of \$188,108.

Using the 37.63 percent combined federal and state tax rate as provided in the CIAC gross-up report, we calculate the tax effect to be \$70,785. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$113,492. The utility's revised CIAC gross-up report indicates gross-up collections of \$118,764. Therefore, we calculate an over collection of \$5,272 before the offset of fifty percent of the allowable legal and accounting fees. Allowing for the offset of \$3,713, we calculate the refund to be \$1,559 for 1993.

1994

The utility proposes no refund in 1994. We calculate an over collection of \$8,470. However, offsetting the over collection by fifty percent of the allowable legal and accounting costs, we calculate a refund of \$6,070.

We calculate that the above-the-line income was \$19,370, before the inclusion and effect of taxable CIAC. The utility's revised CIAC gross-up report indicates that a total of \$344,915 in taxable CIAC was received. First year's depreciation of \$14,028 was deducted from the taxable CIAC of \$344,915, resulting in taxable CIAC of \$330,887.

Using the 37.63 percent combined federal and state tax rate as provided in the CIAC gross-up report, we calculate the tax effect to be \$124,513. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$199,635. The utility's revised gross-up report indicates gross-up collections of \$208,105. Therefore, we calculate an over collection of \$8,470 before the offset of the allowable legal and accounting fees. Allowing for the offset of \$2,400, we calculate the refund to be \$6,070 for 1994.

1995

The utility proposes no refund for 1995. We calculate an over collection of \$2,532. However, offsetting the over collection by fifty percent of the allowable legal and accounting costs, we calculate a refund of \$448 for 1995.

We calculate that the above-the-line income is \$101,602, before the inclusion and effect of taxable CIAC. The utility's revised CIAC gross-up report indicates that a total of \$317,745 in taxable CIAC was received. First year's depreciation of \$4,188 was deducted from the eligible CIAC of \$317,745, resulting in taxable CIAC of \$313,557.

Using the 37.63 percent combined federal and state tax rate as provided in the CIAC gross-up report, we calculate the tax effect to be \$117,991. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$189,179. The utility's revised CIAC gross-up report indicates gross-up collections of \$191,711. Therefore, we calculate an over collection of \$2,532 before the offset of the allowable legal and accounting fees. Allowing for the offset of \$2,084, we calculate the refund to be \$448 for 1995.

1996

The utility proposes no refund for 1996. We calculate an over collection of \$943. However, offsetting the over collection by fifty percent of the allowable legal and accounting costs, we calculate that no refund is required.

We calculate that the above-the-line income is \$1,846 before the inclusion and effect of taxable CIAC. The utility's revised CIAC gross-up report indicates that a total of \$29,288 in taxable CIAC was received. First year's depreciation was not deducted because the utility was sold in 1996 and the first year's depreciation benefit was not recognized in that year.

Using the 37.63 percent combined federal and state tax rate as provided in the CIAC gross-up report, we calculate the tax effect to be \$11,021. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$17,670. The utility's revised gross-up report indicates gross-up collections of \$18,613. Therefore, we calculate an over collection of \$943 before the offset of fifty percent of the legal and accounting fees. Fifty percent of the allowable legal and accounting fees is \$3,830. Allowing for the offset of \$3,830, we calculate that no refund is required for 1996.

Gross-up Refunds on Meter Fees

JJ's collected gross-up on meter fees, which was not authorized by this Commission. Therefore all gross-up monies collected on meter fees in 1994 and 1995 shall be refunded. The utility shall refund \$6,353 for 1994 and \$6,918 for 1995 for a total of \$13,271 plus accrued interest through the date of the refund, for gross-up collected on meter fees.

Summary

Based on all the above, the utility shall refund: \$3,387 for 1992; \$1,559 for 1993; \$6,070 for 1994; and \$448 for 1995 for a total of \$11,464 plus accrued interest through the date of refund. In addition, the utility shall refund \$6,953 for 1994 and \$6,918 for 1995 for a total of \$13,271 plus accrued interest through the date of the refund, for the unauthorized collection of gross-up on meter fees.

All refunds shall be completed within two months of the effective date of this Order. The utility shall submit copies of canceled checks, or other evidence which verifies that the refunds have been made, within 30 days from the date of refund. The utility shall also provide a list of any unclaimed refunds detailing the amounts, and an explanation of the efforts made to make the refunds. Further, the utility shall deliver any unclaimed refunds to the State of Florida Comptroller's Office as abandoned property. The unclaimed refunds shall be delivered to the Comptroller's Office following our staff's written notification to the utility that the refunds have been made in accordance with this Order.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person, this Order shall become final and effective upon the issuance of a consummating order. The docket shall remain open pending verification of the refund and the delivery of any unclaimed refunds to the State of Florida Comptroller's Office as abandoned property. The docket shall be administratively closed upon our staff's verification that the refunds have been made.

Based on the foregoing, it is

ORDER NO. PSC-99-2369-PAA-WS
DOCKET NO. 980954-WS
PAGE 14

ORDERED by the Florida Public Service Commission that the settlement offer of JJ's Mobile Homes, Inc., shall be accepted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, 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" attached hereto. It is further

ORDERED that Schedule No. 1, attached to this Order, is incorporated herein by reference. It is further

ORDERED that, pursuant to the settlement offer, no refunds are required for 1996. It is further

ORDERED that JJ's Mobile Homes, Inc., shall refund excess gross-up of contributions-in-aid-of-construction in the amount of \$3,387 for 1992; \$1,559 for 1993; \$6,070 for 1994; and \$448 for 1995 for a total of \$11,464 plus accrued interest through the date of refund. It is further

ORDERED that JJ's Mobile Homes, Inc., shall refund \$6,953 for 1994 and \$6,918 for 1995 for a total of \$13,271 plus accrued interest through the date of the refund, for the unauthorized collection of gross-up on meter fees.

ORDERED that the refunds shall be made as set forth in the body of this Order. It is further

ORDERED that, pursuant to Orders Nos. 16971 and 23541, all refund amounts shall be refunded on a pro rata basis to those persons who contributed the funds. It is further

ORDERED that the refunds required herein shall be completed within two months of the effective date of this Order, and that JJ's Mobile Homes, Inc., shall submit copies of canceled checks, credits applied to monthly bills or other evidence verifying that the refunds have been made within 30 days of completion of the refund. It is further

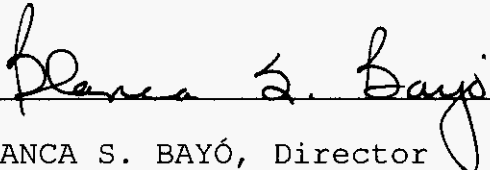
ORDER NO. PSC-99-2369-PAA-WS
DOCKET NO. 980954-WS
PAGE 15

ORDERED that within 30 days of completion of the refund, JJ's Mobile Homes, Inc., shall provide a list of unclaimed refunds detailing the contributor and the amount, and an explanation of the efforts made to make the refunds. It is further

ORDERED that JJ's Mobile Homes, Inc., shall deliver any unclaimed refunds to the State of Florida Comptroller's Office as abandoned property upon our staff's written notification to the utility that the refunds have been made in accordance with the Commission Order. It is further

ORDERED that the docket shall be administratively closed upon expiration of the protest period, if no timely protest is filed, and upon our staff's verification that the refunds have been made.

By ORDER of the Florida Public Service Commission this 6th day of December, 1999.



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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

ORDER NO. PSC-99-2369-PAA-WS
DOCKET NO. 980954-WS
PAGE 16

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. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 December 27, 1999.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.

JJ'S MOBILE HOMES , INC.

SCHEDULE NO. 1

GROSS-UP REFUND

| | 1992 | 1993 | 1994 | 1995 | 1996 |
|--|-------------------|------------------|-------------------|------------------|----------------|
| 1 A-T-L TAXABLE INCOME PER UTILITY BEFORE CIAC | (\$6,907) | \$48,839 | 19,370 | 101,602 | 1,846 |
| 2 Plus taxable CIAC | \$17,160 | \$196,610 | 344,915 | 317,745 | 29,288 |
| 3 Plus taxable Gross-up | 7,765 | 118,764 | 208,105 | 191,711 | 18,613 |
| 4 CIAC gross-up interest | 0 | 0 | 0 | 0 | 0 |
| 5 A-T-L TAXABLE INCOME PER UTILITY | <u>\$18,018</u> | <u>\$364,213</u> | <u>572,390</u> | <u>611,058</u> | <u>49,747</u> |
| 6 ADJUSTMENTS: | | | | | |
| 7 (a) Adjust O&M expenses to amounts on A/R and or FIT returns | (7,695) | 0 | 0 | 0 | 0 |
| 8 (b) First year's depreciation on contributed assets | (19) | (8,502) | (14,028) | (4,188) | 0 |
| 9 TOTAL ADJUSTMENTS | <u>(7,714)</u> | <u>(8,502)</u> | <u>(14,028)</u> | <u>(4,188)</u> | <u>0</u> |
| 10 A-T-L TAXABLE INCOME | \$10,304 | \$355,711 | \$558,362 | \$606,870 | \$49,747 |
| 11 Less CIAC | (17,160) | (196,610) | (344,915) | (317,745) | (29,288) |
| 12 Less Gross-up | (7,765) | (118,764) | (208,105) | (191,711) | (18,613) |
| 13 Plus first year's depreciation on CIAC | 19 | 8,502 | 14,028 | 4,188 | 0 |
| 14 A-T-L TAXABLE INCOME BEFORE CIAC | <u>(\$14,602)</u> | <u>\$48,839</u> | <u>\$19,370</u> | <u>\$101,602</u> | <u>\$1,846</u> |
| 15 Current Yr. Loss Related to CIAC Not Grossed-up | \$3,650 | \$0 | \$0 | \$0 | \$0 |
| 16 Adjusted Taxable Income Before CIAC | <u>(\$10,952)</u> | <u>\$48,839</u> | <u>\$19,370</u> | <u>\$101,602</u> | <u>\$1,846</u> |
| 17 Post 1986 CIAC eligible for gross-up refund | 12,870 | 196,610 | 344,915 | 317,745 | 29,288 |
| 18 Less first year's depreciation on CIAC | (14) | (8,502) | (14,028) | (4,188) | 0 |
| 19 Net Taxable CIAC | 12,856 | 188,108 | 330,887 | 313,557 | 29,288 |
| 20 Less Current Yr. Pro Rata Loss | (10,952) | 0 | 0 | 0 | 0 |
| 21 Taxable CIAC resulting in a Tax Liability | \$1,904 | \$188,108 | \$330,887 | \$313,557 | \$29,288 |
| 22 Combined Marg. Fed. & State Tax Rate | <u>37.63%</u> | <u>37.63%</u> | <u>37.63%</u> | <u>37.63%</u> | <u>37.63%</u> |
| 23 Net income tax on CIAC | \$716 | \$70,785 | \$124,513 | \$117,991 | \$11,021 |
| 24 Less ITC realized | 0 | 0 | 0 | 0 | 0 |
| 25 Net income tax | \$716 | \$70,785 | \$124,513 | \$117,991 | \$11,021 |
| 26 Expansion factor to gross up taxes | <u>1.60333</u> | <u>1.60333</u> | <u>1.60333</u> | <u>1.60333</u> | <u>1.60333</u> |
| 27 Gross-up required to pay tax effect | \$1,149 | \$113,492 | \$199,635 | \$189,179 | \$17,670 |
| 28 Gross-up collected to pay tax effect | (7,765) | (118,764) | (208,105) | (191,711) | (18,613) |
| 29 (OVER) OR UNDER COLLECTION | (\$6,616) | (\$5,272) | (\$8,470) | (\$2,532) | (\$943) |
| 30 Less 50 percent of legal and accounting fees | 3,229 | 3,713 | 2,400 | 2,084 | 943 |
| 31 Refund required with offset of legal & Accounting costs | (3,387) | (1,559) | (6,070) | (448) | 0 |
| 32 Refund gross-up on meter fees | | | (6,353) | (6,918) | |
| 33 TOTAL YEARLY REFUND | <u>(\$3,387)</u> | <u>(\$1,559)</u> | <u>(\$12,423)</u> | <u>(\$7,366)</u> | <u>90</u> |
| 34 PROPOSED REFUND (excluding interest) | <u>\$24,735</u> | | | | |