

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by FLORIDA WATERWORKS	)	DOCKET NO. 860184-PU
ASSOCIATION for investigation of	)	ORDER NO. 22786
proposed repeal of Section 118(b),	)	ISSUED: 4-9-90
Internal Revenue Code (contributions-	)	
in-aid-of-construction)	)	
	)	

ORDER DENYING REQUEST FOR MOTION HEARING,  
GRANTING MOTIONS TO FILE RESPONSIVE TESTIMONY, AND  
GRANTING IN PART, AND DENYING IN PART, MOTIONS  
FOR POSTPONEMENT OF PREHEARING STATEMENTS,  
PREHEARING CONFERENCE AND HEARING

By Order No. 16971, issued December 18, 1986, this Commission authorized certain corporate water and wastewater utilities to elect to "gross-up" contributions-in-aid-of-construction (CIAC) in order to offset the tax impact of an amendment to Section 118(b), Internal Revenue Code. To date, forty-four water and/or wastewater utilities have elected to implement such a gross-up.

By Order No. 21266, issued May 22, 1989, this Commission proposed to establish guidelines to control the collection of taxes on CIAC. On or before June 12, 1989, a number of substantially affected persons filed protests to Order No. 21266.

On June 26, 1989, by Order No. 21436, this Commission proposed to require a number of water and/or wastewater utilities to refund certain amounts of contributed taxes. We also proposed to require other utilities to make adjustments to their depreciation reserves. On or before July 17, 1989, a number of substantially affected persons filed protests to Order No. 21436.

On April 2, 1990, Aloha Utilities, Inc., Canal Utilities, Inc., Clay Utility Company, Eagle Ridge Utilities, Inc., El Agua Corporation, and Martin Downs Utilities, Inc. (Petitioners) filed a Motion For Opportunity To File Responsive Testimony in Relation to Order No. 21436, a Motion For Postponement of Prehearing Statements, Prehearing Conference and Hearing, and a Request For Hearing On Motions[s].

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On April 3, 1990, Alafaya Utilities, Inc., Aloha Utilities, Inc., Canal Utilities, Inc., Clay Utility Company, Eagle Ridge Utilities, Inc., El Agua Utilities, Inc., Kingsley Service Company, Martin Downs Utilities, inc., Neighborhood Utilities, Inc., North Fort Myers Utility, Inc., Royal Utility Company, Inc., and Southside Utilities, inc. (also Petitioners) filed a Motion for Opportunity To File Responsive Testimony in Relation to Order No. 21436, and a Motion For Postponement of Prehearing Statements, Prehearing Conference and Hearing.

The basis of Petitioners' motions for opportunity to file responsive testimony is that, since the Staff of this Commission (Staff) did not respond to Petitioners' concerns, as represented by Petitioners' direct testimony, until Staff filed rebuttal testimony on March 30, 1990, Petitioners' were not able to determine prior to that time what issues Staff considered in controversy and Staff's positions thereon. Petitioners, therefore, request that they be given an opportunity to file testimony in response to Staff's rebuttal testimony. The main thrust of Petitioners' motions for postponement of prehearing statements, prehearing conference and hearing is basically the same; however, Petitioners also argue that, since this is "tax season", they will be hard-pressed to come up with an expert to provide testimony in response to Staff's rebuttal testimony on such short notice. Accordingly, Petitioners request that the filing of prehearing statements, the prehearing conference and the hearing be postponed in order to allow them sufficient time to find such an expert. Finally, Petitioners request that they be given a hearing on their motions.

With regard to Petitioners' request for a hearing on their motions, the Prehearing Officer does not believe that allowing Petitioners to present oral argument will aid in his understanding or facilitate his disposition of such matters. Petitioners' request for a motion hearing is, therefore, denied.

As for Petitioners' motion for an opportunity to file testimony responsive to Staff's rebuttal testimony, such a request does not appear unreasonable, as long as all other parties and Staff are also afforded opportunities to file testimony responsive to the other parties' rebuttal testimony. Petitioners' motion is, therefore, granted. The parties and Staff shall have until the close of business on April 23, 1990, to file such responsive testimony.

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Regarding Petitioners motion for postponement of prehearing statements, prehearing conference and hearing, it at least does not appear appropriate to postpone the hearing. Although it is "tax season", the tax issues involved in this case are not terribly exotic or complicated, and tax experts should become available no later than April 17, 1990, the day after federal income tax returns are due to be filed. Accordingly, Petitioners' motion is denied insofar as it relates to a postponement of the hearing. However, since further testimony will be allowed, it does appear appropriate to postpone the prehearing conference until Petitioners have had an opportunity to retain and confer with their tax experts. Petitioners should know the identity of their experts and the substance of their testimony by April 20, 1990. Accordingly, the prehearing conference is hereby rescheduled for April 20, 1990. In addition, it does not appear to be inappropriate to postpone the date for filing prehearing statements. Accordingly, the prehearing statements of all parties and Staff shall be due no later than April 13, 1990.

Based upon the foregoing, it is

ORDERED by Chairmain Michael McK. Wilson, as Prehearing Officer, that Petitioners' request for a motion hearing is hereby denied, as set forth in the body of this Order. It is further

ORDERED that Petitioners' motions to file responsive testimony are hereby granted, as set forth in the body of this Order. It is further


ORDERED that all parties and Staff shall file any further testimony in this matter no later than the close of business on April 23, 1990. It is further

ORDERED that Petitioners' motions for postponement of prehearing statements, prehearing conference and hearing are hereby denied with regard to a postponement of the hearing and granted with regard to a postponement of prehearing statements and prehearing conference, as set forth in the body of this Order. It is further

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ORDERED that the prehearing statements of all parties and Staff shall be due no later than the close of business on April 13, 1990.

By ORDER of Chairman Michael McK. Wilson, as Prehearing Officer, this 9th day of APRIL, 1990.

  
MICHAEL McK. WILSON, Chairman and  
Prehearing Officer

( S E A L )

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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 sewer 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.