

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of ) DOCKET NO. 930216-WS  
Contributions-in-Aid-of- ) ORDER NO. PSC-94-0057-FOF-WS  
Construction (CIAC) Gross-Up ) ISSUED: January 18, 1994  
Funds Received by GULF UTILITY )  
COMPANY in Lee County. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
JULIA L. JOHNSON  
LUIS J. LAUREDO

ORDER DENYING MOTION TO DISMISS

BY THE COMMISSION:

In accordance with Order No. 16971, issued December 18, 1986, Gulf Utility Company (Gulf or utility) filed its 1987 through 1991 annual contributions-in-aid-of-construction (CIAC) reports regarding its collection of gross-up each year. By Proposed Agency Action Order No. PSC-93-0871-FOF-WS, issued June 9, 1993, the Commission proposed to require Gulf to refund excess gross-up collections for the years 1987 through 1991. On June 28, 1993, Southwest Florida Capital Corporation (SFCC) timely filed a protest to Order No. PSC-93-0871-FOF-WS.

On November 23, 1993, Gulf filed a Motion to Dismiss SFCC's Petition on Proposed Agency Action, wherein Gulf requested that the Commission dismiss the above-referenced proceeding and close the docket. SFCC did not file a Response to Gulf's Motion and the time for filing such has expired.

In support of its Motion, Gulf asserted the following:

1. SFCC did not timely file an exhibit referred to in Mr. Goldberg's testimony, and therefore, failed to comply with the requirements of Order No. PSC-93-1061-PCO-WS (Order Establishing Procedure); and
2. Because SFCC has failed to comply with the requirements of Order No. PSC-93-1061-PCO-WS, Gulf was unable to prepare its rebuttal testimony.

DOCUMENT NUMBER-DATE

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We find that the assertions made in Gulf's Motion to Dismiss are moot. By Order No. PSC-93-1720-PCO-WS, issued November 30, 1993, the Prehearing Officer specifically found that "SFCC has failed to comply with the procedure outlined in the Order by not filing its completed testimony and the exhibit." Therefore, the Prehearing Officer ordered SFCC to file the exhibit referred to in Mr. Goldberg's testimony by December 6, 1993. Mr. Goldberg's testimony was filed September 18, 1993. Additionally, by Order No. PSC-93-1720-PCO-WS, the Prehearing Officer allowed Gulf until December 16, 1993, to file its rebuttal testimony. SFCC timely filed its exhibit on December 6, 1993, and on December 16, 1993, Gulf filed rebuttal testimony. In consideration of the foregoing, Gulf's Motion to Dismiss is denied.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Gulf Utility Company's Motion to Dismiss is denied.

By ORDER of the Florida Public Service Commission, this 18th day of January, 1994.



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STEVE TRIBBLE, Director  
Division of Records and Reporting

( 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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.