

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

APRIL 24, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (GILCHRIST)
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (CAUSSEAU)
DIVISION OF LEGAL SERVICES (JAEGER)

**RE: DOCKET NO. 970402-SU - GULF AIRE PROPERTIES d/b/a GULF
AIRE WASTEWATER TREATMENT PLANT - DISPOSITION OF
CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION (CIAC) GROSS-UP
FUNDS COLLECTED IN 1995
COUNTY: GULF**

**AGENDA: MAY 6, 1997 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE**

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\MAW\WP\970402.RCM

CASE 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 \$74,881 and net operating income of \$5,410 in its 1995 annual report.

As a result of the repeal of Section 118(b) of the Internal Revenue Code (I.R.C.), contributions-in-aid-of-construction (CIAC) became gross income and were depreciable for federal tax purposes. In Order No. 16971, issued December 18, 1986, the Commission 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.

Order No. 16971 and Order No. 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

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 970402-SU
APRIL 24, 1997

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, the Commission required any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue, to file a petition for approval with the Commission 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.

On September 9, 1992, this Commission issued Proposed Agency Action Order No. PSC-92-0961-FOF-WS, which clarified the provision 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. This order included Attachment A which reflects the generic calculation form. No protests were filed, and the Order became final.

On March 29, 1996, Docket No. 960397-WS was opened to review the Commission's policy concerning the collection and refund of CIAC gross-up. Workshops were held and comments and proposals were received from the industry and other interested parties. By Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, staff was directed to continue processing CIAC gross-up and refund cases pursuant to Order Nos. 16971 and 23541; however, staff was also directed to make a recommendation to the Commission concerning whether the Commission's policy regarding the collection and refund of CIAC should be changed upon staff's completion of its review of the proposals and comments offered by the workshop participants. In addition, staff was directed to consider ways to simplify the process and determine whether there were viable alternatives to the gross-up.

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, Order No. PSC-96-1180-POF-WS was issued to revoke the authority of utilities to collect gross-up of CIAC and to cancel the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Since there was no longer a need to review the Commission's policy on the gross-up of CIAC, on October 8, 1996, Order No. PSC-96-1253-FOF-WS was issued, closing Docket No. 960397-WS. However, as established in Order No.

DOCKET NO. 970402-SU
APRIL 24, 1997

PSC-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Order Nos. 16971 and 23541.

The disposition of gross-up refunds collected by the utility in 1991-1994 were addressed in Docket No. 960055-SU and Order No. PSC-96-0351-FOF-WS, was issued accordingly. The purpose of this recommendation is to address the disposition of gross-up funds collected by the utility in 1995.

DOCKET NO. 970402-SU
APRIL 24, 1997

DISCUSSION OF ISSUES

ISSUE 1: Should Gulf Aire Wastewater Treatment Plant be required to refund excess gross-up collections for 1995?

RECOMMENDATION: No, the utility did not collect any gross-up funds in 1995; therefore, no refunds are required for 1995. (GILCHRIST, CAUSSEUX)

STAFF ANALYSIS: In compliance with Order No. 16971, Gulf Aire filed its annual CIAC report regarding its collection of gross-up for 1995. Gulf Aire's CIAC reports revealed that the utility did not gross-up for CIAC in 1995. Pursuant to Order No. PSC-92-0003-FOF-WS, and in accordance with its tariff, Gulf Aire has the authority to gross-up for CIAC. Therefore, by correspondence dated February 7, 1997, staff requested, and the utility provided an explanation of why it did not collect gross-up for 1995. Gulf Aire explained that it has been operating at a loss because of extremely high debt requirements. As a result, the utility stated, and staff agrees, 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 1995, no refunds are required.

ISSUE 2: Should the docket be closed?

RECOMMENDATION: Yes. Upon expiration of the protest period, if a timely protest is not received by a substantially affected person, the docket should be closed. (JAEGER)

STAFF ANALYSIS: No further action is required in this docket. The utility did not collect any gross-up funds in 1995; therefore, refunds are not required in this docket. Accordingly, upon expiration of the protest period, if a timely protest is not received by a substantially affected person, this docket should be closed.