

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of CIAC ) DOCKET NO. 970402-SU  
gross-up funds collected in 1995 ) ORDER NO. PSC-97-0548-FOF-SU  
by Gulf Aire Properties d/b/a ) ISSUED: May 13, 1997  
Gulf Aire Wastewater Treatment )  
Plant in Gulf County )  
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The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
JOE GARCIA  
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION ORDER  
FINDING NO REFUNDS TO BE REQUIRED 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 \$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, contributions-in-aid-of-construction (CIAC) became gross income and were depreciable for federal tax purposes. In Order No. 16971, issued December 18, 1986, this 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

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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, 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 (PAA) Order No. PSC-92-0961-FOF-WS, which clarified the provisions of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992, PAA 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 PAA Order No. PSC-96-0686-FOF-WS, issued May 24, 1996, we directed our staff to continue processing CIAC gross-up and refund cases pursuant to Orders Nos. 16971 and 23541. As established in PAA Order No. PSC-96-0686-FOF-WS, this pending CIAC gross-up refund case was processed pursuant to Orders Nos. 16971 and 23541.

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

#### REFUND CALCULATIONS FOR 1995

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. Because Order No. PSC-92-0003-FOF-WS had granted Gulf Aire the authority to gross-up for CIAC, our staff, by correspondence dated February 7, 1997, requested the utility to

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explain 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 we agree, that Gulf Aire should not be placed in a position where it would have to make refunds. Since there were no gross-up funds collected by Gulf Aire in 1995, no refunds are required.

CLOSING OF DOCKET

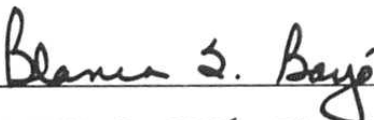
No further action is required in this docket. Accordingly, upon expiration of the protest period, if a timely protest is not received by a substantially affected person, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that, because Gulf Aire Wastewater Treatment Plant did not collect contributions-in-aid-of-construction gross-up funds for 1995, no refund is required for this year. It is further

ORDERED that the docket shall be closed upon expiration of the protest period, if no timely protest is filed.

By ORDER of the Florida Public Service Commission, this 13th day of May, 1997.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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 June 3, 1997.

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.