

ORIGINAL



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RECORDS AND
REPORTING

January 7, 2000

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 971179-SU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Direct Testimony of Kimberly H. Dismukes for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Reilly
Associate Public Counsel

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00304 JAN-7 8

FPSC-RECORDS AND REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of CIAC)
gross-up funds collected by)
North Fort Myers Utility, Inc.)
in Lee County.)
_____)

Docket No. 971179-SU
Filed: January 7, 2000

Direct Testimony

of

Kimberly H. Dismukes

On Behalf of the Citizens of the State of Florida

Jack Shreve
Public Counsel

Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
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Attorney for the Citizens
of the State of Florida

DOCUMENT NUMBER-DATE

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TESTIMONY
OF
KIMBERLY H. DISMUKES
On Behalf of the
Florida Office of the Public Counsel
Before the
FLORIDA PUBLIC SERVICE COMMISSION
Docket No. 971179-SU

Q. WHAT IS YOUR NAME AND ADDRESS?

A. Kimberly H. Dismukes, 6455 Overton Street, Baton Rouge, Louisiana 70808.

Q. BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?

A. I am a self-employed consultant in the field of public utility regulation. I have been retained by the Office of the Public Counsel (OPC), on behalf of the Citizens of the State of Florida, to address the Commission's Proposed Agency Action Order No. PSC - 99-1068-PAA-SU (the Order), which ordered North Fort Myers Utility, Inc. (NFMU or the utility) to refund Contributions in Aid of Construction (CIAC) gross-up collections for the fiscal years 1994 and 1995, to reduce rates for improperly implemented price indexes for the years 1995, 1996, and 1997, to refund monies

1 collected from improperly implemented prices indexes for the same years and to
2 show cause why it should not be fined for having improperly implemented three
3 price indexes.

4 **Q. DO YOU HAVE AN EXHIBIT WHICH SUPPORTS YOUR TESTIMONY?**

5 A. Yes. I have Exhibit (KHD-1), containing seven Schedules which supports my
6 testimony.

7 **Q. DO YOU HAVE AN APPENDIX THAT DESCRIBES YOUR**
8 **QUALIFICATIONS IN REGULATION?**

9 A. Yes. Appendix I, attached to my testimony, was prepared for this purpose.

10 **Q. BEFORE ADDRESSING THE SUBSTANCE OF THE ISSUES AT DISPUTE**
11 **WITH THE COMMISSION'S ORDER, WOULD YOU BRIEFLY PLEASE**
12 **DESCRIBE THE BACKGROUND SURROUNDING THE GROSS-UP OF**
13 **CIAC?**

14 A. Yes. In 1986, section 118(b) of the Internal Revenue Code was repealed, changing
15 the tax treatment of contributions-in-aid-of-construction. This change caused CIAC
16 to be treated as gross income and taxable for federal tax purposes. The Commission
17 responded to this change in the tax code with Order No. 16971, issued December 18,
18 1986. This order authorized utilities to collect a gross-up on CIAC to meet the
19 projected taxes on the contributions.

20
21 In 1996, however, the Small Business Job Protection Act again changed the tax
22 treatment of CIAC. This law provided that CIAC collected by water and wastewater

1 utilities would be non-taxable, retroactive to amounts collected after June 12, 1996.

2 The Commission responded to this change in federal law with Order No. PSC-96-
3 1180-FOF-WS revoking the water/wastewater utilities' authority to collect gross-up
4 on CIAC and canceling all related tariffs. The order also provided that any utility
5 seeking a variance had to do so within 30 days of the order issuance date.

6 **Q. THE INSTANT DOCKET INVOLVING THE DISPOSITION OF GROSS-UP**
7 **COLLECTIONS ON CIAC FOR NFMU HAS BEEN QUITE LENGTHY**
8 **WITH SEVERAL STAFF RECOMMENDATIONS AND REFUND AMOUNT**
9 **RECOMMENDATIONS. WOULD YOU PLEASE GIVE A CHRONOLOGY**
10 **OF THE EVENTS WHICH HAVE TRANSPIRED?**

11 A. During the course of this proceeding, the Staff made several estimates of the amount
12 of CIAC gross-up refunds that would be required by NFMU. Most of these are
13 reflected on my Schedules 1 and 2. Schedule 1 sets forth the Staff's calculation of the
14 CIAC gross-up refunds for the fiscal year 1994 and Schedule 2 reflects the same for
15 the fiscal year 1995.

16
17 This docket was opened by the Commission's Staff on September 9, 1997. However,
18 prior to opening the docket, several letters and correspondence between the utility
19 and the Commission's Staff transpired. The majority of this correspondence dealt
20 with the issue of how NFMU treated, for income tax purposes, CIAC and gross-up
21 collected through installment payments, after enactment of the Small Business Job
22 Protection Act.

1 The first such correspondence between the Staff and NFMU was dated February 28,
2 1997 in a letter from F. Marshall Deterding to Ms. Jackie Gilcrest. In this letter,
3 NFMU explained that it disagreed with a recent Commission decision concerning
4 Hudson Utilities wherein the Commission determined that installment payments
5 should be continued on a going forward basis. According to NFMU, it disagreed with
6 the Commission's characterization and instead felt that the gross-up monies collected
7 after June 12, 1996 should be considered an installment debt authorized by tariff
8 from the date that those individuals became customers of NFMU. NFMU explained
9 that after extensive review of its tax returns, it came to the conclusion that these
10 installment contracts were not booked as income in the year entered into, but instead
11 had been treated for the most part as income in the year in which the payments
12 themselves were received. Therefore, installment payments received after June 12,
13 1996, were not being treated as taxable income on the utility's tax return. Rather than
14 propose to refund these monies to customers, NFMU suggested to the Staff that post
15 June 12, 1996 gross-up payments which are not treated as income for tax purposes
16 should be treated as CIAC after applicable interest is removed. According to NFMU,
17 in this way, all customers pay an equal and nondiscriminatory charge and all
18 customers equally benefit from any change in the tax law.

19
20 NFMU further explained that its tax accountants still had not provided it with a
21 definitive statement of whether or not the entire amount of those installment
22 arrangements constituted CIAC and therefore taxable income at the time of

1 connection and execution of the installment agreements. NFMU also argued that if
2 the Commission required a refund of those post-June 12, 1996 installment payments
3 and required the Company to discontinue collection of some portion of those
4 payments, the Commission ran the risk that those payments might ultimately be
5 taxable.

6
7 NFMU concluded its letter by stating that continued collection of the entire
8 installment payments was necessary to avoid severe discrimination and injustice to
9 those customers who paid their connection fees in a timely manner rather than on an
10 installment basis. To avoid this severe discrimination, NFMU proposed to record
11 CIAC gross-up collected under the installment method, but not treated as taxable
12 income for income tax purposes, as CIAC.

13
14 On May 14, 1997, Staff sent NFMU a preliminary estimate of the fiscal year 1994
15 (year ended May 31, 1995) gross-up refund. Staff noted in the letter that this refund
16 amount would probably change upon receipt of information it requested concerning
17 the utility's installment plan customers. The May 14, 1997 letter also included a
18 preliminary analysis of fiscal year 1995 CIAC gross-up. Staff said that it was in
19 agreement with the utility and that no refund would be required for 1995.

20

1 In this May 1997 letter Staff explained why it believed, contrary to the utility's
2 treatment of installment payments, that installment payments should be treated as
3 cash in the year in which the contract was entered into.

4 Staff believes that CIAC is income in the year received and "Receipt"
5 occurs when the entity knows it has a legal right to the money and the
6 amount of money is known. The amount to which NFMU is entitled
7 to is established by tariff and by the installment contract agreements
8 it made with the customers of NFMU. CIAC is a "condition
9 precedent" to the receipt of service, which means CIAC must be paid
10 before a customer will be served. The payment may be a lump sum
11 or by installments. Staff believes NFMU must have been certain that
12 it had a right to the CIAC or it would not have provided service to
13 those who are paying by installment. Based on the reasoning above,
14 staff plans to treat the installment contracts as "income" in the year
15 the contracts were entered into.

16
17 Staff's analysis of 1994 CIAC, pending receipt of information concerning the
18 installment plan customers' CIAC and gross-up payments, showed taxable income
19 (Form 1120, line 30) of \$865,768, CIAC of \$590,150, gross-up of \$338,017, and an
20 over collection of gross-up of \$20,488. Staff noted that NFMU requested that \$9,351
21 in legal and accounting fees incurred in preparing the CIAC report be offset against
22 the refund for 1994. Staff found \$8,952 of these expenses prudent, but did not reflect
23 any offset in its analysis. Staff's analysis of fiscal year 1995 showed taxable gross
24 income of \$1,429,893, CIAC of \$1,068,861, gross-up of \$402,740, and an under
25 collection of gross-up of \$33,352, thus no refund was proposed.

26
27 On October 23, 1997, following receipt of additional information concerning
28 installment plan customers from the utility, Staff submitted its recommendation to

1 the Commission for refunds required in 1994 and 1995. The calculation of taxable
2 income and gross-up collected had not changed from Staff's estimate as submitted
3 to the utility with its May 14 letter. However, Staff made adjustments to CIAC to
4 reflect installment contract CIAC being credited in the year in which the contracts
5 were entered into. Furthermore, the legal and accounting fee expenses which had
6 been estimated at \$9,351 by the utility in May, were now calculated by NFMU to be
7 \$15,398. Staff determined \$11,808 of these fees to be legitimate expenses, and
8 recommended that 50% of these expenses, or \$5,904 be offset against the 1994
9 refund. With these changes, the 1994 refund was calculated to be \$14,520. Similar
10 adjustments to CIAC were made in the fiscal year 1995 analysis, but the resulting
11 under collection of gross-up showed that no refund was required for fiscal year 1995.

12
13 In this October 1997 recommendation, Staff also addressed the issue of whether
14 NFMU should be granted its request for a variance from Order No. PSC-96-1180-
15 FOF-SU. Staff argued that NFMU should be granted a variance to allow it to
16 continue to collect gross-up on CIAC from installment plan customers who entered
17 into their contracts prior to June 12, 1996. Shortly after having filed this
18 recommendation, Staff apparently realized that its treatment of installment payments
19 as income in the year in which the contract was entered into, did not agree with the
20 utility's treatment of the installment payments for income tax purposes. In a letter
21 to the utility dated November 14, 1997, Staff noted:
22

1 Subsequent to the filing of our recommendation, we realized that
2 since the utility is not treating installment payments received after
3 June 12, [1996] as taxable income on its tax return, staff's treating the
4 installment contracts as "income" in the year the contracts were
5 entered into, would give the utility gross-up on CIAC which may not
6 be taxable income.

7
8 Staff included revised calculations for 1994 and 1995 refunds, which mirrored those
9 it had submitted to the utility with its May 14 letter, before it had adjusted CIAC to
10 reflect installment contract payments in the year of the alleged contract. In these
11 calculations Staff included the \$5,904 offset for legal and accounting fees calculated
12 in October. This offset against the 1994 over collection of gross-up of \$20,488,
13 resulted in a proposed refund of \$14,584 for fiscal year 1994. Again, similar
14 adjustments were made to the fiscal year 1995 analysis, but no refund was calculated
15 to be due for 1995.

16
17 In this November 1997 letter Staff also noted that "for 1996, (ends May 31, 1997)
18 it would not be calculating income taxes on post June 12, CIAC since the utility is
19 treating those amounts as CIAC instead of income. As a result, in calculating refunds
20 for fiscal year 1996 (ends May 31, 1997) staff will recommend that the utility be
21 required to refund all post June 12, 1996 gross-up installment payments to the
22 contributors."

23
24 Apparently unhappy with the Staff's suggestion that NFMU would have to refund
25 all post June 12, 1996 gross-up installment collections, in February 1998, NFMU

1 filed revised CIAC Gross-Up Disposition Reports for fiscal years 1994 and 1995
2 with the Commission. These reports were filed to reflect the amended tax returns the
3 utility had filed with the IRS on December 10, 1997. The tax returns had been
4 amended to include additional CIAC and gross-up (payments not received in those
5 years from installment plan contributors, but which the utility reflected as taxable
6 income) as taxable income in both 1994 and 1995.

7
8 Accepting the utility's amendment of its tax returns to reflect CIAC in the year the
9 installment arrangement was effective, in February 1998, Staff sent the utility revised
10 calculations of its 1994 and 1995 gross-up refund amounts. These Staff analyses used
11 data from the amended CIAC reports the utility had filed to reflect its amended tax
12 returns. Staff's estimate of the utility's gross-up refunds differed from those
13 calculated by the utility because of several adjustments Staff made to NFMU's
14 taxable income figures. In particular, while the utility had been recording certain
15 expenses below-the-line for CIAC gross-up purposes, these same expenses were
16 reported above-the-line for annual report purposes and for price-indexing
17 adjustments.

18
19 In its amended 1994 CIAC Report the utility had allocated \$184,651 of Cost-of-
20 Goods-Sold (COGS) expenses below-the-line; in 1995 \$186,807 of COGS had been
21 allocated below-the-line. As the utility had not allocated the associated revenues
22 below-the-line, Staff allocated all COGS above-the-line. In both years the utility had

1 allocated the entire amount of Officers' Compensation (\$199,940 in 1994 and
2 \$224,952 in 1995) below-the-line. As these amounts in each year were similar to the
3 actual amounts shown for Officers' Compensation in the Company's annual reports,
4 Staff moved these expenses above-the-line. In each year's analysis, Staff reflected
5 first year's depreciation of CIAC above-the-line. And in each year, the utility had
6 allocations of "Other Deductions" (\$161,218 in 1994 and \$317,615 in 1995) which
7 it placed below-the-line. Of these "Other Deductions," Staff reallocated the legal
8 expenses and amortization of plant retirement above-the-line, to agree with the
9 expenses shown in the utility's annual reports. Legal and accounting fees incurred
10 in processing the CIAC reports for both 1994 and 1995 were now reported by
11 NFMU as \$37,811, but Staff noted that documentation to support \$4,984 of the legal
12 fees had not been provided.

13
14 Using the new income and expense data from the amended CIAC reports, with the
15 adjustments noted above, Staff recalculated the 1994 and 1995 CIAC gross-up
16 refunds. For 1994, gross income (Form 1120, line 30 of the CIAC reports) was now
17 shown to be \$391,432 (down from \$845,768 in Staff's previous analyses) while
18 CIAC had risen from \$590,150 to \$619,015, with adjusted income after CIAC
19 falling from \$526,289 to \$34,539. Staff's analysis of 1994 gross-up showed an over
20 collection of \$334,592. For 1995, Staff's analysis showed gross income totaling
21 \$1,245,464, CIAC of \$1,434,249, adjusted income after CIAC of \$400,880,
22 (compared with \$722,786 in the previous analysis) and an over collection of gross-up

1 of \$304,239. Staff's previous calculations of 1995 gross-up had shown an under
2 collection of (\$33,352), with no refund required.

3
4 In response to the Staff's letter of February 20, 1998, NFMU sent Staff a letter taking
5 serious exception to the Staff's treatment of certain expenses above-the-line which
6 the utility had allocated below-the-line for CIAC gross-up purposes only. NFMU
7 wrote: "The simplistic idea that any expenses on the Annual Report are automatically
8 above-the-line expense on the tax return for gross-up purposes is ludicrous." NFMU
9 explained why it believed these expenses should be recorded below-the-line for
10 CIAC gross-up purposes. Concerning COGS, the expenses included in this category
11 include engineering and testing expenses of \$69,542 for 1994 and \$45,100 for 1995,
12 which NFMU admitted should be considered above-the-line for CIAC gross-up
13 purposes. However, the remaining \$115,109 (for 1994) and \$141,707 (for 1995)
14 relates to the salary of Mr. Reeves, who according to the utility was not employed by
15 the utility at the time rates were established. Apparently, NFMU believes that if
16 expenses were not included in its cost of service at the time rates were set, these
17 expenses should likewise not be included in developing the taxable income used for
18 developing CIAC gross-up refunds. Like the salary of Mr. Reeves, the utility also
19 claimed it unfair to include the compensation of officers because these costs were not
20 "materially" embedded in the rates established for NFMU. The amount of officers
21 compensation included above-the-line by the Staff, but below-the-line by the utility,
22 amounted to \$199,940 and \$224,952 in 1994 and 1995, respectively. Finally, with

1 respect to the "Other Deductions", these expenses consisted of legal expenses
2 \$128,509 (for 1994) and \$151,518 (for 1995) incurred over an agreement with a
3 consulting firm for assistance in refinancing the Company's Industrial Development
4 Revenue Bonds. According to NFMU, these amounts are non-utility in nature and
5 are far in excess of what the Commission would allow for legal expenses in a rate
6 proceeding.

7
8 In May 1998, Staff modified its February 1998 analysis to adjust the amount of plant
9 amortization included as an above-the-line expense and to derive the amount of
10 officers compensation based upon the amount filed in the utility's annual reports as
11 opposed to that in the tax returns. As depicted on Schedules 1 and 2 these
12 modifications reduced the amount of refunds from \$334,592 to \$250,235 in 1994
13 and from \$304,239 to \$97,167 in 1995.

14
15 Apparently after meeting with the Commission's Staff, NFMU sent the Staff a letter
16 showing them what the revised annual report would look like if the expenses the
17 utility claims should be recorded below- the-line for CIAC gross-up purposes were
18 recorded below-the-line for annual report purposes. The utility also informed the
19 Staff at this time that it did not believe it was worthwhile to modify its annual report.

20 As we at are our recent meeting discussed, we do not believe it is
21 worthwhile to go through the cost of revising the annual report to
22 reflect these changes unless that is absolutely necessary for the staff
23 to recognize those expenses which the Utility contends are below the

1 line. [Letter from Marshall Deterding to Connie McCaskill, June 11,
2 1998.]
3

4 In July of 1998 Staff notified NFMU by letter that it had made corrections to its
5 earlier analyses and had calculated new refund amounts for 1994 and 1995. The letter
6 sent to NFMU did not detail the individual adjustments Staff made to its previous
7 calculations.
8

9 On October 2, 1998 NFMU sent a letter to the Staff outlining an offer for settlement
10 of the 1994 and 1995 gross-up refund amount. The utility settlement offer consisted
11 of the following:

- 12 1) The Utility will treat, solely for the purposes of gross-up disposition, certain
13 expenses as below-the-line which were originally reported on the Utility's
14 annual report as above-the-line expenses. ... The Utility maintains its position
15 that those expenses are appropriately above-the-line for rate analysis and
16 annual reporting purposes.
17
- 18 2) To the extent the Utility is required to refund overpayment of gross-up funds
19 to those who paid gross-up monies and service availability charges on
20 installment basis, the Utility will apply those as credits including interest at
21 the installment contract rate to those customers in the form of a reduction to
22 the amount owed under those installment contracts. To the extent a refund is
23 still owed after such reduction, it will be provided in the form of all others
24 not on the installment basis. All other refunds of gross-up due will be
25 refunded utilizing the interest earned on the gross-up escrow account.
26
- 27 3) Certain of these expenses which the Utility contends are below-the-line for
28 gross-up purposes have been utilized in index calculations for the years 1994,
29 1995, and 1996....Because of the substantial cost of implementing a rate
30 reduction or a refund, which costs benefit neither the Utility nor its
31 customers, the Utility instead proposes to forego implementation of indexing
32 expenses for the years 1997, 1998, and 1999 as an alternative to the refund
33 and rate reduction of the prior indexes.
34

1 4) The Utility will not seek to recover the additional gross-up costs which it has
2 incurred (totally approximately \$20,000) since the last time the Utility
3 reported to the Commission on the total of such costs in February of
4 1998.[Letter from Marshall Deterding to Ralph Jaeger, October 2, 1998.]
5

6 On December 3, 1998 Staff filed its second formal recommendation with the
7 Commission. In that recommendation Staff addressed all changes and adjustments
8 Staff had made to the utility's income and expense data relative to what the utility
9 had filed. In the analyses presented with its December 3 recommendation Staff also
10 included offsets to the gross-up over collections representing 50% of the legal and
11 accounting costs incurred by the utility in preparing each year's CIAC reports. The
12 1994 over collection of \$322,070 was reduced by an offset of \$8,408 for a proposed
13 refund of \$314,022. For 1995, Staff calculated an over collection of \$229,958, an
14 offset of legal and accounting fees of \$9,101, and a proposed refund of \$220,857.

15
16 Staff recommended that these be paid as cash refunds based on customers' pro rata
17 shares of the over collection amounts. For installment plan customers who "have
18 not paid the full amount of gross-up that the utility is entitled to collect for fiscal
19 years 1994 and 1995," however, Staff recommended that their pro rata share of the
20 gross-up over collection be credited to the principal amount remaining on their
21 installment contracts. Installment plan contributors who had paid their full amount
22 of gross-up for 1994 and 1995 would receive a cash refund of any excess gross-up.
23

1 In discussing how it had arrived at these proposed refund amounts, Staff explained
2 the above- and below-the-line expense allocations NFMU had proposed in its revised
3 CIAC Reports, and the adjustments Staff had made to those allocations. In its
4 calculation of CIAC gross-up refunds, NFMU allocated \$115,529 of COGS above-
5 the-line. These expenses consisted of engineering and testing expenses, plant supply
6 expenses, and 40% of the General Manager's salary. Staff concurred in its allocation
7 of the engineering and testing and plant supply expenses, but also placed 100% of
8 the General Manager's salary above-the-line, resulting in an additional \$68, 982 in
9 above-the-line expenses. Staff noted that its allocations of Cost-of-Goods-Sold
10 expenses was in agreement with the utility's annual report.

11
12 The utility had also allocated all Officer's Compensation, or \$199,940, below-the-
13 line. Staff moved this above-the-line, in agreement with the utility's annual reports.
14 Staff also adjusted above-the-line depreciation to reflect first year depreciation of
15 CIAC. And of the \$161,218 of "Other Deductions" that the company had classified
16 below-the-line, Staff moved the entire \$128,509 of legal expenses above-the-line.
17 (In contrast to its preliminary analysis of February 1998, however, Staff did not
18 allocate the \$20,615 of amortization of plant retirement or the \$140 in security
19 expenses above-the-line.)

20
21 These adjustments resulted in gross income of \$412,187 for 1994 and an over
22 collection of CIAC of \$322,070. As explained above, Staff included an offset to the

1 over collection of \$8,048, representing 50% of legal and accounting fees incurred
2 in filing CIAC reports, as NFMU had requested. This resulted in a proposed refund
3 for fiscal year 1994 of \$314,022.

4
5 Staff made similar adjustments to NFMU's proposed allocation of expenses in its
6 analysis of the gross-up refund for fiscal year 1995. For 1995, NFMU again
7 proposed that only 40% of the General Manager's salary be above-the-line. Staff
8 allocated the entire salary, \$141,613, above-the-line. Staff also allocated the entire
9 amount of Officers' Compensation, or \$224,952, as an above-the-line expense. This
10 was in agreement with the company's annual report, although for gross-up purposes
11 NFMU had classified the entire amount as below-the-line. Again, as in its analysis
12 of 1994 gross-up, Staff allocated first year depreciation of CIAC, \$25,196, above-
13 the-line. And again placed the entire amount of legal expenses, \$151,518, above-the-
14 line as well. The sole difference from its preliminary analysis sent to the utility in
15 February 1998 was that Staff now left the \$123,118 of amortization of plant
16 retirement as a below-the-line expense, as NFMU had classified it.

17
18 The resulting income calculated by Staff was \$1,368,582, with an over collection of
19 gross-up calculated to equal \$229,958. Allowing for an offset of 50% of legal and
20 accounting fees incurred in the preparation of CIAC reports, of \$9,101, as NFMU
21 had requested, resulted in a proposed refund for 1995 of \$220,857.

1 In addition to the calculation of any over or under collection of gross-up for 1994 and
2 1995, there were 3 other items Staff discussed in its recommendation: the utility's
3 request for a variance from Order No. PSC-96-1180-FOF-WS, which had revoked
4 all utilities' authority to collect gross-up, the utility's request that 50% of its legal
5 and accounting fees be offset against the refunds, and the informal Settlement Offer
6 that NFMU had filed on October 2, 1998.

7
8 In response to the first issue, Staff repeated its position first stated in its
9 recommendation of October 3, 1997, that it believed the utility should be granted a
10 variance to Order No. PSC-96-1180-FOF-WS to allow "for the continued collection
11 of gross-up taxes on CIAC that is paid in installments from customers that entered
12 into installment contracts prior to June 12, 1996." Staff stated that NFMU, in a letter
13 dated February 28, 1997, said that it had not originally filed for a variance because
14 it believed that "for those customers who chose to pay the amount owing over time,
15 it became simply an installment debt authorized by tariff from the date that those
16 individuals became customers of NFMU and agreed to make the installment
17 payments." Staff reiterated that its position was that "NFMU should be allowed to
18 collect from the customers the gross-up portion of the installment payment that it was
19 entitled to receive prior to the change in the tax law."

20
21 On the issue of whether an offset of legal and accounting fees should be made against
22 any refund amount, Staff cited other dockets in which the Commission had accepted

1 a utility's settlement offer and allowed such an offset. In reply to the utility's
2 argument that the contributors are the cost causers of these legal and accounting fees,
3 Staff stated that it "does not believe that the contributors should be held responsible
4 for the legal and accounting costs incurred to determine whether they are entitled to
5 a refund." Staff also noted, however, that the dollar amounts of the proposed offsets
6 were less than the probable cost of a hearing on the issue, and so Staff did reflect
7 legal and accounting cost offsets in its calculation of gross-up refunds.

8
9 Lastly, Staff also addressed the utility's informal Settlement Offer, and OPC's
10 response to that offer. The utility's proposals, as described by Staff were to: 1) Treat,
11 solely for the purposes of gross-up, certain expenses as below-the-line which were
12 originally reported on the utility's annual reports as above-the-line expenses; 2) To
13 the extent the utility is required to refund overpayments of gross-up funds to those
14 who paid by installment, the utility is willing to apply those refunds as credits
15 including interest at the installment contract rate; 3) To forego the implementation of
16 indexing expenses for the years 1997, 1998 and 1999; and 4) The utility will not seek
17 to recover the additional gross-up costs which it has incurred since February, 1998.

18
19 In its recommendation, Staff noted that on October 21, 1998, OPC filed a response
20 to this settlement offer, arguing that it should be rejected. OPC objected to the
21 utility's allocation of expenses as below-the-line for gross-up purposes, while
22 treating those same expenses as above-the-line expenses for rate making purposes.

1 OPC also pointed out that the below-the-line allocation of these expenses resulted in
2 an understatement of the CIAC gross-up refunds due contributors and, in addition,
3 resulted in a return on rate base in excess of any authorized return on rate base. This,
4 OPC believed, would lead the Commission to open an earnings investigation of the
5 utility . OPC further argued that the Commission should not allow NFMU to treat
6 any refunds as a credit to installment plan balances, and counseled the Commission
7 to reject NFMU's offer to forego index increases for 1997 through 1999.

8
9 Staff noted it agreed with OPC's position that expenses cannot be considered below-
10 the-line for one purpose, and above-the-line for another. Staff also expressed
11 agreement with OPC on rejecting the utility's offer to forego rate index increases.
12 But Staff agreed with NFMU that it should be allowed to collect gross-up on
13 installment plan payments.

14
15 Apparently, again not satisfied with the Staff's recommendation, in February 1999,
16 NFMU revised its annual reports to the Commission for the years 1994-1997. These
17 annual reports reflected the removal of \$438,272 and \$374,018 of operating and
18 maintenance expenses, in 1994 and 1995 respectively, from the above-the-line
19 expenses. The annual report expenses were thus allegedly brought into line with the
20 classification of expenses the utility had proposed for gross-up purposes in its June
21 1998 letter to Staff. Staff used these restated annual reports to calculate revised
22 refund amounts, which it reported to the utility in a letter of March 4, 1999 and

1 presented to the Commission in its recommendation dated April 8, 1999 and
2 amended April 22, 1999.

3
4 In the recommendation containing these revised refund estimates, Staff discussed the
5 utility's apparent failure to file accurate annual reports and noted that it "is seriously
6 troubled by what appears to be a manipulation by the utility of the CIAC gross-up
7 disposition procedures in an attempt to maximize the amount of CIAC gross-up
8 collections retained."

9
10 The reclassification of expenses and resulting change in gross income not only
11 caused revisions to Staff's gross-up refund calculations, it also called into question
12 the price index rate increases the utility had implemented in 1995, 1996 and 1997.
13 These increases had all been predicated on the utility's earnings as reported in the
14 now discarded annual reports first filed for those years. As the income in the reports
15 as originally filed had been considerably less than that shown in the revised reports,
16 the rate increases had been proportionately greater. Staff recommended that the
17 price index rate increases for the years in question be recalculated using the revised
18 annual reports, with refunds made for any over collection. Staff stated that it
19 believed that the administrative burden of recalculating increases and refunds would
20 be penalty enough, and NFMU should not have to show cause why it should avoid
21 penalties for filing inaccurate annual reports.

1 Staff used the revised income figures, reflecting the reclassification of expenses, to
2 recalculate the gross-up refunds for 1994 and 1995. As shown on Schedule 1, the
3 proposed 1994 refund, previously calculated by Staff to be \$314,022, was now
4 estimated to be just \$74,239. As shown on Schedule 2, Staff's proposed refund for
5 1995 decreased from \$220,857 to only \$51,999, using the revised annual report data.

6
7 In its recommendation dated April 22, 1999, Staff submitted revisions to its April 8,
8 1999 recommendation. In this recommendation Staff addressed the issue whether
9 NFMU should be ordered to refund a portion of the revenues it received from the
10 price indexes it implemented in 1995, 1996 and 1997. Staff recommended that the
11 Commission reject the utility's settlement offer to forego indexed rate increases for
12 the next three years and recommended that a portion of the 1995-97 price indexes,
13 which it calculated to be approximately \$69,589, be refunded to ratepayers. Staff
14 also recommended that the utility be ordered to lower its rates by 1.5% , a price index
15 adjustment calculated by Staff.

16
17 Finally, on November 4, 1999, Staff again submitted a recommendation to the
18 Commission. At the May 4, 1999 Agenda the Commission voted that the utility
19 should show cause why it should not be fined \$15,000 for having improperly
20 implemented price index rate increases. The utility filed its response to the Show
21 Cause order on June 15, 1999, stating that it was not in violation of any Commission
22 rule, statute or order. Staff's November 4 memorandum was filed in answer to

1 NFMU's Show Case response. Staff recommended that NFMU not be fined, but that
2 the Commission should "strongly admonish the utility to provide the most accurate
3 information possible in future annual reports and price-index rate increase
4 applications."

5 **Q. WHAT DID THE COMMISSION FINALLY ORDER AFTER ALL OF**
6 **THESE VARIOUS STAFF RECOMMENDATIONS?**

7 A. The Commission essentially adopted the Staff recommendation, with one exception.
8 Rather than adopt the Staff recommendation to not require the payment of penalties
9 for the failure to file accurate price indexed increases, the Commission found that this
10 issue should be addressed in the formal hearing set to decide the issues surrounding
11 the gross-up refunds.

12 **Q. WOULD YOU PLEASE COMMENT ON THE UTILITY'S AMENDMENT**
13 **OF TAX RETURNS, THE COMMISSION'S ENDORSEMENT OF THE**
14 **AMENDMENTS, AND THE COMMISSION'S ORDER GRANTING NFMU**
15 **A WAVIER FROM ORDER NO. PSC-96-1180-FOF-WS (ISSUES C AND E**
16 **IN OPC'S PROTEST OF THE COMMISSION'S ORDER)?**

17 A. Yes. Order No. PSC-96-1180-FOF-WS canceled water and wastewater utilities'
18 authority to collect gross-up taxes of CIAC. By granting NFMU a waiver from this
19 order the Commission is giving NFMU the authority to continue to collect CIAC
20 gross-up on CIAC received after enactment of the Small Business Protection Act of
21 1996. The Small Business Job Protection Act of 1996 changed the status of a water
22 and/or wastewater utility's obligation to pay taxes on the cash CIAC collected from

1 customers. According to the Act, a water and/or wastewater utility is no longer
2 required to pay taxes on CIAC received after June 12, 1996.

3
4 The Staff in one of its earlier recommendations took the position that all of the
5 utility's customers that pay CIAC by installment, both customers which signed
6 agreements prior to the effective date of the Act, and customers which have not
7 signed agreements, are obligated to continue to pay the tax on CIAC despite the clear
8 statement of the Act which states that no taxes are due on amounts received after
9 June 12, 1996.

10
11 As discussed above, the Staff's rationale for endorsing this treatment of CIAC
12 collected after June 12, 1996 is contained in its October 23, 1997 recommendation.

13 Here Staff explained its reasoning.

14 Although the Act provided for the non-taxability of CIAC collected
15 by water and wastewater utilities for amounts received after June 12,
16 1996, several of the contractual agreements between the customers
17 and the utility continue to be outstanding and require payments after
18 June 12, 1996.

19
20 Staff believes that CIAC is income in the year received and
21 "receipt" occurs when the entity knows it has a legal right to the
22 money and the amount of money is known. The amount to which
23 NFMU is entitled is established by tariff and by the installment
24 contract agreements it made with its customers. CIAC is a
25 "condition precedent" to the receipt of service, which means CIAC
26 must be paid before a customer will be served. The payment may be
27 a lump sum or by installments. Staff believes NFMU must have
28 been certain that it had a right to the CIAC or it would not have
29 provided service to those who are paying by installment. Based on

1 the reasoning above, staff has treated the installment contracts as
2 "income" in the year the contracts were entered into.

3
4 The Staff's interpretation and recommendation are in contrast to at least an initial
5 interpretation of the utility. On February 28, 1997 NFMU explained to the Staff how
6 it treated CIAC collected under the installment method. In this letter the utility wrote:

7 After extensive review of tax returns, North Fort Myers has come to
8 the conclusion that these installment contracts were not booked as
9 income in the year entered into, but instead have been treated for the
10 most part as income in the year in which the payments themselves
11 were received. Therefore, installment payments received after June
12 12, 1996, are not being treated as taxable income on the Utility's tax
13 return. This is the one distinction between North Fort Myers's
14 situation and that of the recently processed Hudson Utilities case,
15 where the utility was allowed to continue to collect the full amount of
16 the installment payments. We believe that this difference should not
17 represent the basis for a different conclusion in the case of North Fort
18 Myers Utility, Inc.

19
20 Despite the utility's original treatment of collections of CIAC under the installment
21 method, after the Staff's recommendation of October 23, 1997, the utility amended
22 its tax returns to reflect as taxable income the CIAC and gross-up due from
23 customers paying by installment. The effect of the Staff's October 23, 1997
24 recommendation and advice to the utility and the Commission's waiver of Order No.
25 PSC-96-1180-FOF-WS is to essentially require customers to pay taxes on CIAC
26 collected after June 12, 1996, when under the utility's original tax treatment of this
27 CIAC, no taxes would have been due or should have been collected.

28
29 In my opinion, the Staff and the Commission have allowed the utility to manipulate
30 its tax returns so that it can retain the maximum amount of CIAC gross-up collected

1 from customers. There are several problems with the Staff and the Commission's
2 endorsements of NFMU's manipulation of its tax returns.

3
4 First and foremost, while there might be some possibility that the IRS would deem
5 that monies collected in the future under the installment method were taxable in some
6 prior year, neither the utility, the Staff, nor the Commission sought advice from the
7 IRS on this matter. Instead, all assumed that to amend the tax returns, despite how
8 these funds had been treated in past tax returns, and despite the passage of the Small
9 Business Job Protection Act of 1996, was the prudent course of action.

10
11 I disagree. Rather than blatantly accept the Staff's arguments as to the taxability of
12 CIAC collected after June 12, 1996 and allow the utility to amend its tax returns, the
13 Commission should have ordered the utility to seek an opinion from the IRS. No
14 such advice was ever sought. In OPC's Production of Documents No. 5 OPC
15 requested NFMU to: "Provide any and all correspondence between the Company and
16 the IRS seeking an opinion as to the taxability of CIAC collected under installment
17 contact after the enactment of the Small Business Job Protection Act of 1996." The
18 utility produced no documents responsive to this POD. Again, the effect of the
19 Staff's arguments, the utility's amendment of its tax returns, and the Commission's
20 endorsement of both, is to cause NFMU's customers to pay CIAC gross-up which
21 may not have been deemed taxable by the IRS.

1 Second, the Staff's interpretation of why CIAC collected after June 12, 1996 should
2 be considered taxable is questionable as it relates to the majority of customers paying
3 under the installment method. The Staff recommendation and the Commission's
4 Order granting a waiver from Order No. PSC-96-1180-FOF-WS treat all customers
5 paying under installments the same, even though the majority of the customers that
6 elected to pay by installment did not sign a contract obligating them to pay either the
7 CIAC or the gross-up. In response to OPC's Document Request No. 2, the utility
8 indicated that it estimated that less than 10% of the customers paying under the
9 installment method signed a contract. The Commission's Order granting NFMU a
10 waiver from Order No. PSC-96-1180-FOF-WS specifically refers to customers that
11 signed installment contracts prior to June 12, 1996. The Order reads:

12 Based on the above, NFMU shall be allowed to collect from the
13 customers, the gross-up portion of the installment payment that it was
14 entitled to receive prior to the change in the tax law. Therefore, the
15 request by NFMU for a variance from Order No. PSC-96-1180-FOF-
16 WS is granted, and NFMU's tariffs for gross-up authority shall not be
17 canceled. The utility shall file revised tariff sheets to allow for the
18 continued collection of gross-up taxes on CIAC that is paid in
19 installments from customers that entered into the installment
20 contracts prior to June 12, 1996. Once the utility has collected the
21 entire amount of taxes on the CIAC installment agreements it is
22 entitled to receive, the utility shall submit canceled tariff sheets to the
23 Commission. [Order No. PSC-99-1068-PAA-SU, p. 11, emphasis
24 added.]
25

26 While one could interpret the Commission's Order to require only those customers
27 that entered into the installment contracts prior to June 12, 1996 to pay gross-up after
28 that date, this was apparently not the intent of the Order. Because the Commission
29 did not order refunds of CIAC gross-up collected after June 12, 1996 for customers

1 not signing an installment agreement, one must interpret the Commission's order as
2 applying to all customers paying under the installment method. It is unclear if the
3 Commission understood that most customers did not sign an installment agreement,
4 or if it simply accepted the recommendation of its Staff and the amended tax returns
5 of the utility.

6 **Q. OPC ALSO DISAGREED WITH THE COMMISSION'S DECISION TO**
7 **ALLOW NFMU TO AMEND ITS ANNUAL REPORTS, ULTIMATELY**
8 **RESULTING IN CUSTOMERS NOT RECEIVING REFUNDS IN EXCESS**
9 **OF \$500,000. (OPC PROTEST ISSUES A, G, AND I). WOULD YOU**
10 **PLEASE COMMENT?**

11 A. Yes. It is amazing to me that the Staff and the Commission acquiesced to the utility's
12 manipulation of its annual reports for purposes of substantially reducing the amount
13 of CIAC gross-up that should be refunded to customers. If the Staff and the
14 Commission had not endorsed the utility changing its annual reports to move
15 substantial expenses below-the-line, (\$437,968 and \$374,019 of operating and
16 maintenance (O&M) expenses for the years 1994 and 1995, respectively) the refund
17 due to customers would have been substantially more than recommended by the
18 Staff and ordered by the Commission. As depicted on Schedules 1 and 2, if the
19 Commission had not allowed the utility to manipulate its annual reports, customers
20 would have been entitled to a refund of \$322,070 for 1994 and \$229,958 for the year
21 1995. Instead, because the Commission endorsed the utility's manipulation of its

1 annual reports, customers are only entitled to a refund of \$82,286 and \$61,100,
2 respectively.

3
4 While the Commission expressed concern over the utility's manipulation of its
5 annual reports, it nevertheless allowed it, and declined to initiate a show cause
6 proceeding.

7 We are seriously troubled by what appears to be a
8 manipulation by the utility of the CIAC gross-up disposition
9 procedures in an attempt to maximize the amount of CIAC
10 gross-up collections retained. The manipulation has occurred
11 through revisions to its annual reports in this case. We are
12 further troubled by the inference made at a past agenda
13 conference that the effort necessary to prepare the most
14 accurate annual report was not initially made. However, we
15 are concerned in another regard as to the wisdom of invoking
16 the penalties set forth in Rule 25-30.110(7) and (9), Florida
17 Administrative Code. This Commission has had a long
18 standing practice to encourage corrections and revisions to
19 annual reports when inaccuracies are discovered, and we have
20 never invoked this provision when revisions have been filed.
21 To do so may discourage, and perhaps eliminate, the
22 correction and revision of the information contained in annual
23 reports.

24 I can sympathize with the Commission's desire to encourage utilities to file
25 corrections to their annual reports. Nevertheless, I seriously question the
26 Commission's endorsement of the "manipulation by the utility of the CIAC gross-up
27 disposition procedures in an attempt to maximize the amount of CIAC gross-up
28 collections retained." I don't view NFMU's changes to its annual report as
29 corrections. Instead, like the Commission, I view these changes as an effort, and a
30 successful one at that, to retain the maximum amount of CIAC gross-up possible. In

1 my opinion, the Commission's endorsement of this manipulation sends the wrong
2 signal to utilities. That is, it's acceptable for utilities to manipulate their annual
3 reports to maximize the benefits to stockholders at the expense of ratepayers.

4
5 The issue of the utility changing its annual reports came about as a result of the
6 Commission Staff's recommendation in December 1998. In that recommendation,
7 the Staff developed the calculations for the amount of CIAC gross-up refunds based
8 upon the above-the-line and below-the-line information filed in the utility's annual
9 reports for the years 1994 and 1995. In contrast, the utility did not utilize the above-
10 the-line and below-the-line distinction shown in its annual reports. Instead, for CIAC
11 gross-up refund purposes only, it classified as below-the-line substantial operating
12 expenses. After discussions and letters between the utility and the Staff, the utility
13 changed its annual report to report below-the-line, expenses which it reported below-
14 the-line for CIAC gross-up purposes only. The Staff accepted this modification and
15 revised the amount of recommended CIAC gross-up refunds due customers.

16 **Q. HAS THE COMMISSION ADDRESSED OTHER UTILITIES' EFFORTS TO**
17 **MOVE NORMAL UTILITY OPERATING EXPENSES FROM ABOVE-THE-**
18 **LINE FOR ANNUAL REPORT AND EARNINGS PURPOSES TO BELOW-**
19 **THE-LINE FOR CIAC GROSS-UP REFUND PURPOSES?**

20 A. Yes. As depicted on Schedule 3, the Commission has addressed this issue in several
21 recent CIAC gross-up proceedings in 1996, 1997, 1998 and 1999. In every instance
22 where a utility attempted to move expenses recorded above-the-line for annual report

1 purposes to below-the-line for CIAC gross-up purposes the Commission rejected
2 such requests. For example, in Docket No. 931065-WS concerning Martin Downs
3 Utilities, Inc. the Commission found that expenses recorded above-the-line for annual
4 report purposes should likewise be reported above-the-line for CIAC gross-up refund
5 purposes:

6 In its January 12, 1995 filing, for each year under consideration for
7 gross-up refund disposition, the utility made adjustments to
8 management fees, accounting, legal, and engineering expenses to
9 reflect the amount that was established in its last rate case in Order
10 No. 22869, issued April 27, 1990. In response, we note that the
11 utility's annual reports for the period ended 1990 and 1991 show that
12 the utility included the entire amount as regulatory expense. Further,
13 upon review of the utility's annual report to determine whether it was
14 overearning, the entire amount was considered to be utility related
15 and used and useful. For annual report review purposes, these
16 expenses were included and considered when determining the utility's
17 net income. The utility's officer attests to the accuracy of the annual
18 reports by signing them each year. Therefore, we find that the entire
19 amount shall be included as above-the-line expense in calculating the
20 utility's taxable income.

21
22 Based on the above, we have adjusted the above-mentioned expenses
23 to reflect the amount that is consistent with the amount reported in the
24 annual report for each period. This adjustment changed the utility's
25 reported above-the-line taxable income/loss for both periods. [Order
26 No. PSC-97-1147-FOF-WS, P. 9.]
27

28 Similarly, in Docket No. 940097-WS concerning Clay Utilities, Inc., the
29 Commission denied the Clay Utilities request to include certain expenses below-the-
30 line for CIAC gross-up purposes, but above-the-line for annual report and earnings
31 purposes.

32 In its Revised Gross-up Refund Proposal, for 1990, the utility reduced
33 the above-the-line "Compensation of Officers" to reflect the level

1 approved in its last rate case, adjusted for the impact of indexing for
2 1989 and 1990. For 1991 through 1993, the utility included 100
3 percent of the deductions taken on its federal income tax returns.
4

5 The utility argues that, for the year 1990, it was earning substantially
6 less than the authorized rate of return allowed by this Commission,
7 and that, even with the below-the-line amount for officers added back
8 in, it would still be earning below its authorized rate of return.
9 Therefore, the utility concludes that that portion of the officers'
10 salaries was funded by the stockholders, and was not funded by the
11 ratepayers or embedded in the company's rates. However, for the
12 years 1991 through 1993, Clay acknowledges that its earnings were
13 within the range of its authorized rate of return, and has included all
14 officers' compensation in above-the-line expenses.
15

16 However, we find that, unless there is evidence that the amounts in
17 the annual reports are unreasonable or an annual report for that year
18 does not exist, the above-the-line amounts for CIAC refund purposes,
19 should mirror the amounts reflected in the utility's annual reports for
20 those years. We believe the annual reports to be an objective measure
21 of expenses and that the level of above-the-line expenses for gross-up
22 refunds should not be altered, based on a utility's level of earnings.
23 Further, the utilities' annual reports contain the financial information
24 that we rely upon to determine the utility's achieved rate of return.
25

26 In the CIAC gross-up disposition for Eagle Ridge Utilities, Inc.
27 (Docket No. 961077-SU, Orders Nos. PSC-96-1394-FOF-SU and
28 PSC-97-0647-FOF-SU), we used the management fees in the utility's
29 annual report and not the management fees proposed by the utility.
30 The management fees proposed by the utility were the management
31 fees upon which rates were set in 1985, adjusted for customer growth
32 and the change in the Consumer Price Index. Additionally, in the
33 disposition of CIAC gross-up funds for Forest Utilities, Inc. (Docket
34 No. 961237-SU, in Orders Nos. PSC-97-0007-FOF-SU and PSC-97-
35 0648-FOF-SU), we also used the entire amount of officers' salaries
36 included in its annual report. In both cases, we determined that
37 because the level of expenses in the annual report were used to
38 determine earnings, that level should also be used for CIAC gross-up
39 disposition purposes and reflected as an above-the line expense.
40

41 Therefore, we have adjusted the above-the-line "Compensation of
42 Officers" to the amounts reported in the 1990 and 1992 annual reports
43 filed by the utility. For 1991, book and tax "Compensation of

1 Officers” were the same. For 1993, we used the deduction taken on
2 the utility’s federal income tax return as a surrogate, as no annual
3 report was filed for that year. [Order No. PSC-97-1364-FOF-WS, Pp.
4 5-6.]
5

6 As shown on Schedule 3, in every instance where there was a disagreement about
7 expenses recorded above-the-line for annual report and earnings purposes, but below-
8 the-line for CIAC gross-up refund purposes, the Commission found that the utility
9 should keep these classifications consistent.

10
11 Unlike the case of NFMU, in these other cases the Commission did not allow the
12 utilities to manipulate the amount of expenses used to calculate the amount of CIAC
13 gross-up relative to the expenses used for annual report and earnings purposes so as
14 to enhance the amount of CIAC gross-up retained by the utility. One could argue that
15 because NFMU changed its annual report, the Commission did not allow NFMU to
16 manipulate the amount of expenses used to calculate CIAC gross-up refund relative
17 to expenses used for annual report and earnings purposes so as to enhance the
18 amount of CIAC gross-up retained by NFMU. This distinction, however, is without
19 a difference. Rather than allowing NFMU to manipulate expenses used to calculate
20 CIAC gross-up refunds, the Commission merely allowed NFMU to manipulate its
21 annual report.

22 **Q. EXACTLY WHAT OPERATING EXPENSES DID THE UTILITY MOVE**
23 **BELOW-THE-LINE FOR ANNUAL REPORT PURPOSES?**

1 A. According to the Company's response to OPC's Interrogatories 4 through 8, in 1994,
2 the utility moved \$178,734 of officers' salaries below-the-line, \$152,480 of legal
3 expenses, and \$107,058 of contractual services-others, which is the salary of Mr.
4 Reeves. In 1995, the utility moved below-the-line \$173,907 of officers' salaries,
5 \$136,417 of legal expenses, and \$63,694 of Mr. Reeves' salary. In 1996, NFMU
6 moved below-the-line \$205,854 of officers' salaries and \$90,987 of Mr. Reeves'
7 salary. In 1997, the utility moved below-the-line \$204,544 of officers' salaries and
8 \$74,548 of Mr. Reeves' salary. For the year ending 1998, the utility did not file
9 revised annual reports, but did record below-the-line \$355,160 of officers' salaries.

10 **Q. DOES THE UTILITY BELIEVE THESE EXPENSES TO BE NORMAL**
11 **UTILITY OPERATING EXPENSES?**

12 A. In general, yes. In OPC's Interrogatories 4 through 8, the utility was asked to
13 indicate if the Company would include such expenses as legitimate utility expenses
14 if it filed a rate case during the year in question. With respect to the year 1994, the
15 utility responded to this question as follows: "Yes for officers' salaries and contract
16 services (Mr. Reeves). Probably yes for legal, although amortization over some
17 period of time may have been appropriate. I would need more information before
18 giving a definitive answer. However, management has elected to keep its rates
19 artificially low to foster system growth, and to subsidize utility operations to achieve
20 this objective. Therefore, no rate case would ever have been filed for this year."
21 Concerning the expenses moved below-the-line for 1995, the utility's response was
22 essentially the same. For the years 1996 and 1997 the utility indicated that all

1 expenses would have been considered legitimate utility expenses if a rate case were
2 filed. For the year 1998, the utility indicated that a significant portion of officers'
3 salaries would be included as a legitimate utility expenses for rate making purposes.
4 As with all of the other years, the utility gave its same caveat that management has
5 elected to keep its rates artificially low and no rate case would have been filed in that
6 year.

7
8 **Q. DID YOU REVIEW THE LEGAL EXPENSES WHICH WERE MOVED**
9 **BELOW-THE-LINE?**

10 A. No. OPC requested copies of the invoices in its production of documents number 9,
11 but the utility only provided a summary of the amount of charges. It did not provide
12 copies of the legal invoices so that I could review if they would be considered normal
13 operating expenses.

14 **Q. DID THE UTILITY MAKE ADJUSTMENTS TO ITS ANNUAL REPORT**
15 **OTHER THAN THOSE YOU JUST DISCUSSED?**

16 A. Yes. For the years 1994, 1995, 1996, and 1997, NFMU made two other adjustments
17 to its annual reports. First, it moved below-the-line approximately \$19,000 of
18 abandoned plant amortization expense. Second, it moved below-the-line \$(132,288),
19 \$(130,098), \$(288,444), and \$(301,954) of deferred taxes, respectively for 1994,
20 1995, 1996, and 1997.

21 **Q. IS THERE ANYTHING SIGNIFICANT ABOUT THESE OTHER**
22 **ADJUSTMENTS THE UTILITY MADE TO ITS ANNUAL REPORT?**

1 A. Yes. In almost every year, the movement of negative deferred taxes from above-the-
2 line to below-the-line for annual report purposes caused NFMU to go from an
3 overearnings situation to an underearnings situation.

4 **Q. DID THE UTILITY EXPLAIN WHY IT MOVED THE NEGATIVE**
5 **DEFERRED TAXES FROM ABOVE-THE- LINE TO BELOW-THE-LINE?**

6 A. Only in a letter to the attorney representing the utility in this proceeding. In that
7 letter, Mr. Nixon, the utility's accountant, indicated that the benefit of deferred taxes
8 were recorded below-the-line because these tax benefits arise from interest in excess
9 of rate base, non-used and useful depreciation, and other expenses in excess of those
10 being recovered in rates. [Letter to Mr. Deterding from Mr. Nixon, dated June 8,
11 1998.]

12 **Q. DO YOU AGREE WITH THE ADJUSTMENT TO NEGATIVE DEFERRED**
13 **TAXES?**

14 A. Not at this time. The utility has not justified or shown that these negative deferred
15 taxes related to expenses that it expressly moved below-the-line for annual report
16 purposes. OPC has discovery outstanding on this issue.

17 **Q. ONE OF THE ISSUES PROTESTED BY OPC CONCERNED WHETHER**
18 **THE MOVEMENT OF EXPENSES FROM ABOVE-THE-LINE TO BELOW-**
19 **THE-LINE CAUSED THE UTILITY TO EXCEED ITS AUTHORIZED RATE**
20 **OF RETURN. (ISSUE F.) DID YOU EXAMINE WHETHER THE CHANGES**
21 **TO THE ANNUAL REPORT CAUSE THE UTILITY TO EXCEED ITS**
22 **AUTHORIZED RATE OF RETURN?**

1 A. Yes. The analysis that I performed is shown on Schedules 4 and 5. These schedules
2 show the results of NFMU's operations for the years ending 1994, 1995, 1996, and
3 1997 as originally filed by NFMU in the annual reports filed with the Commission,
4 the revised results of operations based upon the changed annual reports, and OPC's
5 calculations of the revised results of operations. For 1998, because the utility did not
6 revise its annual report, Schedules 4 and 5 show the results as filed by NFMU and
7 as modified by OPC.

8 **Q. WHAT MODIFICATIONS DID YOU MAKE TO THE REVISED RESULTS**
9 **OF OPERATIONS THAT WERE NOT MADE BY NFMU WHEN IT FILED**
10 **ITS REVISED ANNUAL REPORTS WITH THE COMMISSION?**

11 A. For the years 1994-96 I have four changes to the utility's revised annual reports.
12 These changes were made to be consistent with the expenses which the utility
13 reported below-the-line for CIAC gross-up refund purposes, but which were not
14 reported below-the-line in the revised annual reports. As shown on Schedule 4, I
15 moved below-the-line the payroll taxes associated with the officers' salaries and
16 property taxes and depreciation expense associated with non-used and useful plant.
17 In developing the revisions to its annual reports, the utility failed to report these items
18 below-the-line, however, when developing the calculation to determine if refund of
19 gross-up was needed these expenses were reported below-the-line. In my opinion, if
20 the purpose of revising the annual reports was to make them consistent with the
21 above and below-the-line distinction made for gross-up purposes then these three
22 other adjustments must be made as well. I also moved back above-the-line the

1 negative deferred taxes which the utility reported below-the-line in its revised annual
2 reports. (As indicated above, OPC has discovery outstanding on the rationale for this
3 change.) For 1997 I made the same four adjustments just discussed, but I also
4 moved below-the-line a loss the utility recorded on the disposition of assets. If the
5 utility filed CIAC gross-up reports for 1997, it should have recorded these expenses
6 below-the-line for the same reasons it reported officers salaries and the general
7 managers salary below-the- line. For 1998, I made the same adjustment as I did to
8 1997, except there were no negative deferred taxes in 1998. In addition, I also moved
9 below-the-line the salary for the general manager. It is unclear why the utility did not
10 report a portion of the general managers salary below-the-line for 1998 when it had
11 in the four previous years. In my opinion, if a portion of the general manager's salary
12 was reported below-the-line in the years 1994-97, it should also be reported below-
13 the-line in 1998. (OPC has discovery outstanding on this issue.)

14 **Q. AFTER MAKING THE ADJUSTMENTS THAT YOU RECOMMEND DID**
15 **THE UTILITY OVEREARN DURING THE YEARS IN WHICH IT**
16 **ALLEGEDLY FILED INCORRECT ANNUAL REPORTS?**

17 A. Yes, it did. I determined the amount of overearnings in each year under two
18 scenarios. The first uses the utility's actual cost of capital during the year in question.
19 For NFMU this is essentially its cost of debt as the utility had no equity. I also made
20 the same calculations using NFMU's last authorized rate of return of 10.81%. As
21 shown on page 2 of Schedule 4, using NFMU's cost of capital in each year, the
22 utility overearned in every year. The total amount of overearning for the five-year

1 period was \$973,000 in net operating income. Using NFMU's last authorized rate of
2 return as a measure of overearnings, the utility overearned in 1994, 1995, 1996, and
3 1997. The total amount of overearnings was \$721,000.

4 **Q. THE COMMISSION'S ORDER INDICATES THAT EVEN WITH THE**
5 **REVISIONS TO THE ANNUAL REPORT, THE UTILITY DID NOT**
6 **OVEREARN IN THE YEARS IN QUESTION. WHY IS YOUR**
7 **CONCLUSION DIFFERENT?**

8 A. The utility submitted information to the Staff of the Commission which suggested
9 that it did not overearn during the years in which it changed its annual report. The
10 utility, however, did not report below-the-line all of the expenses it reported below-
11 the-line for gross-up purposes. In addition, as addressed above, the utility moved all
12 of its negative deferred taxes below-the-line with little explanation. In my opinion,
13 if the utility is going to be allowed to manipulate its annual report to maximize the
14 amount of CIAC gross-up that it can retain, then the Commission should ensure that
15 all expenses recorded below-the-line for gross-up purposes should also be reported
16 below-the-line for earnings purposes. Otherwise, there is an inconsistency between
17 reported earnings and the disposition of CIAC gross-up.

18 **Q. IF THE COMMISSION DISAGREES WITH OPC THAT THE ORIGINAL**
19 **ANNUAL REPORTS FILED WITH THE COMMISSION WERE VALID AND**
20 **SHOULD NOT HAVE BEEN ALTERED, WHAT IS YOUR**
21 **RECOMMENDATION?**

1 A. I recommend that the Commission either require NFMU to refund the amount of
2 overearnings that I have identified on Schedule 5, or open an overearning
3 investigation. Under the theory that the utility filed inaccurate information with the
4 Commission, all overearnings should be refunded to customers retroactively. In
5 addition, the Commission should reevaluate the amount of the price index refunds
6 that are necessary given the adjustments which I have made to the annual report data
7 as well as the amount of rate reduction which is required because the utility
8 improperly implemented price indexes.

9
10 In addition, if the Commission does not accept OPC's primary recommendation as
11 set forth below, I recommend that the Commission fine the Company for filing
12 inaccurate annual reports which resulted in inaccurate price indexed rate increases.
13 Likewise, as described above, the revised annual reports filed by the utility still did
14 not reflect the above-the-line and below-the-line distinctions used in the CIAC gross-
15 up refund calculations. If it did, the Commission would have found that during many
16 of the years in question the utility was overearning. Unless the Commission penalizes
17 the utility for its failure to provide accurate annual reports and price indexed
18 increases, it sends the wrong signal to utilities.

19 **Q. BUT THE ABOVE IS NOT OPC'S PRIMARY RECOMMENDATION. WHAT**
20 **IS OPC'S PRIMARY RECOMMENDATION?**

21 A. OPC's primary recommendation is that the Commission accept the annual reports as
22 originally filed by the utility and calculate the CIAC gross-up refunds in accordance

1 with the expenses reflected above and below-the-line in those annual reports. (Issues
2 H and J of OPC's Protest.) In addition, under this recommendation, there would be
3 no refund of excess price index increases awarded the utility or of a reduction in rates
4 due to the overstated price index increases. (OPC Protest Issues K, L and M.)

5
6 In addition, OPC believes the Commission should reject the utility's amended
7 income tax returns and determine the amount of refund as if CIAC received from
8 customers paying under the installment method were taxable in the year the CIAC
9 was received. Similarly, the Commission should order the utility to refund to
10 customers all CIAC collected after June 12, 1996 and to discontinue collecting all
11 CIAC gross-up from NFMU's customers. In the alternative, the Commission could
12 require NFMU to record all CIAC gross-up collected from customers after June 12,
13 1996 as CIAC. The Commission should not endorse the utility's actions of
14 manipulating its income tax returns. As indicated above, the prudent course of action
15 for the utility was to seek an opinion from the IRS prior to amending its income tax
16 returns. The utility, however, did not seek such an opinion, resulting in customers
17 paying CIAC gross-up that may not have been required. Because the utility failed
18 to act prudently, the Commission should require a refund of CIAC gross-up collected
19 after June 12, 1996 and to discontinue any further collection. Alternatively, the
20 Commission could require that the utility record this gross-up as CIAC, which
21 would serve to reduce rate base and lower rates if and when the utility seeks a rate

1 increase. The amount of CIAC gross-up collected from customers after June 12, 1996
2 is approximately \$121,000 as depicted on Schedule 6.

3 **Q. HAVE YOU CALCULATED THE AMOUNT OF CIAC GROSS-UP**
4 **REFUNDS THAT WOULD BE REQUIRED UNDER YOUR**
5 **RECOMMENDATION?**

6 A. Yes. These calculations are shown on Schedule 7. These calculations essentially use
7 the above and below-the-line distinctions made by the utility in its original annual
8 reports. In addition, these calculations do not reflect CIAC and CIAC gross-up in the
9 year the installment plan was effective, but in the year collected. This is consistent
10 with the income tax returns originally filed with the IRS.

11
12 As shown on Schedule 7, for 1994 my recommendation produces a refund of
13 \$331,208. For the fiscal year ending 1995 my recommendation produces a refund
14 of \$309,136. These refunds are in stark contrast to the ones ordered by the
15 Commission and clearly emphasize the impact of the utility's manipulation of its
16 income tax returns and its annual reports.

17 **Q. WHAT ABOUT OPC'S PROTEST ISSUE D, WHICH TAKES EXCEPTION**
18 **TO THE COMMISSION OFFSETTING CIAC GROSS-UP REFUNDS WITH**
19 **50% OF THE LEGAL AND ACCOUNTING FEES? WHAT IS YOUR**
20 **OPINION ON THIS ISSUE?**

21 A. In my opinion, the Commission should not offset the amount of the refund with 50%
22 of the legal and accounting fees allegedly incurred to process the CIAC gross-up

1 proceeding. The Commission's rules have no provisions for this offset. In addition,
2 because the filing of the CIAC reports with the Commission is an annual event, the
3 costs incurred should be considered a normal cost of doing business and not afforded
4 special treatment. Furthermore, were it not for the utility's continual manipulation
5 of its financial documents, the costs incurred would have been substantially less.
6 Finally, the customers do not cause these costs to be incurred. Therefore, they should
7 not be required to pay for them by reducing the amount of refund they receive.

8 **Q. DO YOU HAVE ANY OTHER RECOMMENDATIONS?**

9 A. Yes. The utility should not be permitted to modify the financial information that it
10 submits to the Commission to enhance the wealth of its stockholders. The utility has
11 claimed that its officers' salaries and a portion of its general managers' salary should
12 be recorded below- the-line for CIAC gross-up and annual report purposes. If the
13 Commission does not accept OPC's primary recommendation, then these expenses
14 should be considered below-the-line in all future price indexed increases as well as
15 all future rate requests. To do otherwise would be to allow NFMU to "have its cake
16 and eat it, too."

17 **Q. DOES THIS COMPLETE YOUR TESTIMONY PREFILED ON JANUARY**
18 **7, 2000?**

19 A. Yes, it does.
20
21
22

EXHIBIT

OF

KIMBERLY H. DISMUKES

North Fort Myers Utility, Inc.

Staff Calculations of NFMU CIAC Gross-up Refunds - Fiscal Year 1994

Fiscal Year 1994	Staff Letter to	Jul98: Staff Letter	Mar99: Staff				
	NFMU	NFMU and Staff	NFMU	NFMU	NFMU	to NFMU	Letter to NFMU
	May-97	Oct-97	Nov-97	Feb-98	May-98	Dec98: Staff	Apr99: Staff
						Recommendation	Recommendation
						Jul-98 & Dec-98	Mar-99 & Apr-99
1 Form 1120. Line 30 (Line 15)	\$ 865,768	\$ 865,768	\$ 865,768	\$ 391,432	\$ 531,251	\$ 412,187	\$ 809,618
2 Less CIAC (Line 7)	\$ (590,150)	\$ (590,150)	\$ (590,150)	\$ (619,015)	\$ (619,015)	\$ (619,015)	\$ (619,015)
3 Less Gross-up collected (Line 19)	\$ (338,017)	\$ (338,017)	\$ (338,017)	\$ (355,431)	\$ (355,431)	\$ (355,431)	\$ (355,431)
4 Add First Year's Depr on CIAC (Line 8)	\$ 21,090	\$ 21,090	\$ 21,090	\$ 22,120	\$ 22,120	\$ 22,120	\$ 22,120
5 Add/Less Other Effects (Lines 20 & 21)	\$ (1,462)	\$ (1,462)	\$ (1,462)	\$ (1,462)	\$ (1,462)	\$ (1,462)	\$ (1,462)
6							
7 Adjusted Income Before CIAC and Gross-up	\$ (42,771)	\$ (42,771)	\$ (42,771)	\$ (562,356)	\$ (422,537)	\$ (541,601)	\$ (144,170)
8							
9a Actual CIAC Collected		\$ 590,150					
9b Add Installment Contracts - Carriage Village		\$ 41,736					
9c Add Installment Contracts - Tamiami Village							
9d Add Installment Contracts - Lake Arrowhead							
9e Add Installment Contracts - Lazy Days							
9f Less CIAC received from Forest Park		\$ (28,676)					
9g Less CIAC received from Carriage Village							
9 Taxable CIAC	\$ 590,150	\$ 560,439	\$ 590,150	\$ 619,015	\$ 619,015	\$ 619,015	\$ 619,015
10 Less first years depr. (Line 8)	\$ (21,090)	\$ (21,090)	\$ (21,090)	\$ (22,120)	\$ (22,120)	\$ (22,120)	\$ (22,120)
11 Less CIAC associated with purchase of existing systems not grossed-up							
12 Adjusted Income After CIAC	\$ 526,289	\$ 581,529	\$ 526,289	\$ 34,539	\$ 174,358	\$ 55,294	\$ 452,725
13 Less: NOL Carry Forward	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
14							
15 Net Taxable CIAC	\$ 526,289	\$ 539,349	\$ 526,289	\$ 34,539	\$ 174,358	\$ 55,294	\$ 452,725
16 Combined Marginal state & federal tax rates	37.63%	37.63%	37.63%	37.63%	37.63%	37.63%	37.63%
17							
18 Net Income tax on CIAC	\$ 198,043	\$ 202,957	\$ 198,043	\$ 12,997	\$ 65,611	\$ 20,807	\$ 170,360
19 Less ITC Realized	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
20							
21 Net Income Tax	\$ 198,043	\$ 202,957	\$ 198,043	\$ 12,997	\$ 65,611	\$ 20,807	\$ 170,360
22 Expansion Factor for gross-up taxes	1.6033349	1.6033349	1.6033349	1.6033349	1.6033349	1.6033349	1.6033349
23							
24 Gross-up Required to pay tax effect	\$ 317,529	\$ 325,408	\$ 317,529	\$ 20,839	\$ 105,196	\$ 33,361	\$ 273,145
25a Actual Gross-up Collected		\$ 338,017					
25b Add Installment Contracts - Carriage Village		\$ 25,116					
25c Add Installment Contracts - Tamiami Village							
25d Add Installment Contracts - Lake Arrowhead							
25e Add Installment Contracts - Lazy Days							
25f Less Gross-up Received from Forest Park		\$ (17,301)					

North Fort Myers Utility, Inc.

Staff Calculations of NFMU CIAC Gross-up Refunds - Fiscal Year 1994

Fiscal Year 1994	Staff Letter to NFMU	Staff Letter to NFMU and Staff Recommendation	Staff Letter to NFMU	Staff Letter to NFMU	Staff Letter to NFMU	Jul98: Staff Letter to NFMU	Mar99: Staff Letter to NFMU
	May-97	Oct-97	Nov-97	Feb-98	May-98	Dec98: Staff Recommendation	Apr99: Staff Recommendation
	May-97	Oct-97	Nov-97	Feb-98	May-98	Jul-98 & Dec-98	Mar-99 & Apr-99
25g Less Gross-up Received from Carriage Village							
25 less Gross-up Collected	\$ (338,017)	\$ 345,832	\$ (338,017)	\$ (355,431)	\$ (355,431)	\$ (355,431)	\$ (355,431)
26							
27 (OVER) OR UNDER COLLECTION	\$ (20,488)	\$ (20,424)	\$ (20,488)	\$ (334,592)	\$ (250,235)	\$ (322,070)	\$ (82,286)
28							
29 TOTAL YEARLY REFUND	\$ (20,488)	\$ (20,424)	\$ (20,488)	\$ (334,592)	\$ (250,235)	\$ (322,070)	\$ (82,286)
30							
31 Offset of Legal and Accounting Fees	\$ -	\$ 5,904	\$ 5,904	not available	\$ 8,575	\$ 8,048	\$ 8,048
32							
33 PROPOSED REFUND (excluding interest)	\$ (20,488)	\$ (14,520)	\$ (14,584)		\$ (241,660)	\$ (314,022)	\$ (74,238)
	<u>May-97</u>	<u>Oct-97</u>	<u>Nov-97</u>	<u>Feb-98</u>	<u>May-98</u>	<u>Jul-98 & 12/98</u>	<u>Mar-99 & Apr-99</u>
	Preliminary analysis with Staff request for details of CIAC and gross-up collected from installment plan customers	Staff adjusts CIAC to treat installment payments as income in year of contract	Staff revises analysis to reflect NFMU treatment of installment contracts as income in year payment received	Staff revised analysis reflects NFMU's Amended 1994 & 1995 CIAC Reports & Amended Tax Returns	Staff revised analysis reflects a change in the amount of Amortization of Retired Plant from Feb 98; Revisions to officers compensation to reflect annual report averages	Staff analysis with corrections from May 98 - Security expenses of \$140 and Amort - Plant Retirement of \$20,615 moved back below-the-line; officers compensation changed to amounts on tax return.	Income (line 1) reflects NFMU's revised annual reports, removing \$438,272 of Operating and Maintenance expense from above the-line expenses.
	Staff states it will treat installment payments as income in year contract entered into when it receives data	Legal and accounting fees offset reflects 50% of fees associated with CIAC reports.	Legal and accounting fees offset reflects 50% of fees associated with CIAC reports.	Legal and accounting fees offset not available pending receipt of documentation	Legal and accounting fees offset reflects 50% of fees associated with CIAC reports.	Legal and accounting fees offset reflects 50% of fees associated with CIAC reports.	Legal and accounting fees offset reflects 50% of fees associated with CIAC reports.
				Staff Above-the Line Expense Adjustments			
			COGS	\$ 184,651	\$ 184,651	\$ 184,511	
			Officers' comp	\$ 199,940	\$ 176,321	\$ 199,940	
			First years depr	\$ 22,120	\$ 22,120	\$ 22,120	
			Legal expense	\$ 128,509	\$ 128,509	\$ 128,509	
			Amort of Plnt Retrmt	\$ 20,615	\$ 19,524	\$ -	

North Fort Myers Utility, Inc.
Staff Calculations of NFMU CIAC Gross-up Refunds - Fiscal Year 1994

	<u>Staff Letter to NFMU May-97</u>	<u>Staff Letter to NFMU and Staff Recommendation Oct-97</u>	<u>Staff Letter to NFMU Nov-97</u>	<u>Staff Letter to NFMU Feb-98</u>	<u>Staff Letter to NFMU May-98</u>	<u>Jul98: Staff Letter to NFMU Dec98: Staff Recommendation Jul-98 & Dec-98</u>	<u>Mar99: Staff Letter to NFMU Apr99: Staff Recommendation Mar-99 & Apr-99</u>
Fiscal Year 1994				\$ 555,835	\$ 531,125	\$ 535,080	

North Fort Myers Utility, Inc.

Staff Calculations of NFMU CIAC Gross-up Refunds - Fiscal Year 1995

Fiscal Year 1995	Staff Letter to	Staff	Staff Letter to	Staff Letter to	Staff Letter to	Jul98: Staff Letter	Mar99: Staff
	NFMU	Recommendation	NFMU	NFMU	NFMU	to NFMU	Letter to NFMU
	May-97	Oct-97	Nov-97	Feb-98	May-98	Dec98: Staff	Apr99: Staff
						Recommendation	Recommendation
						Jul-98 & Dec-99	Mar-99 & Apr-99
1 Form 1120. Line 30 (Line 15)	\$ 1,429,893	\$ 1,429,893	\$ 1,429,893	\$ 1,245,464	\$ 1,588,677	\$ 1,368,582	\$ 1,830,114
2 Less CIAC (Line 7)	(\$1,068,861)	\$ (1,068,861)	\$ (1,068,861)	\$ (1,434,249)	\$ (1,434,249)	\$ (1,434,249)	\$ (1,434,249)
3 Less Gross-up collected (Line 19)	(\$402,730)	\$ (402,730)	\$ (402,730)	\$ (546,104)	\$ (546,104)	\$ (546,104)	\$ (546,104)
4 Add First Year's Depr on CIAC (Line 8)	\$15,966	\$ 15,966	\$ 15,966	\$ 25,196	\$ 25,196	\$ 25,196	\$ 25,196
5 Add/Less Other Effects (Lines 20 & 21)	(\$2,296)	\$ (2,296)	\$ (2,296)	\$ (2,296)	\$ (2,296)	\$ (2,296)	\$ (2,296)
6							
7 Adjusted Income Before CIAC and Gross-up	\$ (28,028)	\$ (28,028)	\$ (28,028)	\$ (711,989)	\$ (368,776)	\$ (588,871)	\$ (127,339)
8							
9a Actual CIAC Collected		\$ 1,068,861					
9b Add Installment Contracts - Carriage Village							
9c Add Installment Contracts - Tamiami Village		\$ 114,333					
9d Add Installment Contracts - Lake Arrowhead		\$ 173,904					
9e Add Installment Contracts - Lazy Days		\$ 56,855					
9f Less CIAC received from Forest Park		\$ (14,738)					
9g Less CIAC received from Carriage Village		\$ (10,639)					
9 Taxable CIAC	\$1,068,861	\$ 1,360,548	\$ 1,068,861	\$ 1,434,249	\$ 1,434,249	\$ 1,434,249	\$ 1,434,249
10 Less first years depr. (Line 8)	(\$21,863)	\$ (21,863)	\$ (21,863)	\$ (25,196)	\$ (25,196)	\$ (25,196)	\$ (25,196)
11 Less CIAC associated with purchase of existing systems not grossed-up	(\$296,184)	\$ (296,184)	\$ (296,184)	\$ (296,184)	\$ (296,184)	\$ (296,184)	\$ (477,842)
12 Adjusted Income After CIAC	\$ 722,786	\$ 1,042,501	\$ 722,786	\$ 400,880	\$ 744,093	\$ 523,998	\$ 803,872
13 Less: NOL Carry Forward	\$0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
14							
15 Net Taxable CIAC	\$ 722,786	\$ 1,042,501	\$ 722,786	\$ 400,880	\$ 744,093	\$ 523,998	\$ 803,872
16 Combined Marginal state & federal tax rates	37.63%	37.63%	37.63%	37.63%	37.63%	37.63%	37.63%
17							
18 Net Income tax on CIAC	\$271,984	\$ 392,293	\$ 271,984	\$ 150,851	\$ 280,002	\$ 197,180	\$ 302,497
19 Less ITC Realized	\$0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
20							
21 Net Income Tax	\$271,984	\$ 392,293	\$ 271,984	\$ 150,851	\$ 280,002	\$ 197,180	\$ 302,497
22 Expansion Factor for gross-up taxes	1.6033349	1.60333	1.6033349	1.6033349	1.6033349	1.6033349	1.6033349
23							
24 Gross-up Required to pay tax effect	\$436,082	\$ 628,977	\$ 436,082	\$ 241,865	\$ 448,937	\$ 316,146	\$ 485,004
25a Actual Gross-up Collected		\$ 402,730					
25b Add Installment Contracts - Carriage Village							
25c Add Installment Contracts - Tamiami Village		\$ 68,802					
25d Add Installment Contracts - Lake Arrowhead		\$ 104,654					
25e Add Installment Contracts - Lazy Days		\$ 34,211					
25f Less Gross-up Received from Forest Park		\$ (8,868)					

North Fort Myers Utility, Inc.

Staff Calculations of NFMU CIAC Gross-up Refunds - Fiscal Year 1995

Fiscal Year 1995	Staff Letter to NFMU	Staff Recommendation	Staff Letter to NFMU	Staff Letter to NFMU	Staff Letter to NFMU	Jul98: Staff Letter to NFMU	Mar99: Staff Letter to NFMU
	May-97	Oct-97	Nov-97	Feb-98	May-98	Dec98: Staff Recommendation	Apr99: Staff Recommendation
						Jul-98 & Dec-99	Mar-99 & Apr-99
25g Less Gross-up Received from Carriage Village		\$ (6,402)					
25 less Gross-up Collected	(\$402,730)	\$ 595,127	\$ (402,730)	\$ (546,104)	\$ (546,104)	\$ (546,104)	\$ (546,104)
26							
27 (OVER) OR UNDER COLLECTION	\$33,352	\$ 33,850	\$ 33,352	\$ (304,239)	\$ (97,167)	\$ (229,958)	\$ (61,100)
28							
29 TOTAL YEARLY REFUND	\$ -	\$ -	\$ -	\$ (304,239)	\$ (97,167)	\$ (229,958)	\$ (61,100)
30							
31 Offset of Legal and Accounting Fees	\$ -	\$ -	\$ -	not available	\$ 8,574	\$ 9,101	\$ 9,101
32							
33 PROPOSED REFUND (excluding interest)	\$ -	\$ -	\$ -		\$ (88,593)	\$ (220,857)	\$ (51,999)
	<u>May-97</u>	<u>Oct-97</u>	<u>Nov-97</u>	<u>Feb-98</u>	<u>May-98</u>	<u>Jul-98</u> <u>Jul-98 & 12/98</u>	<u>Mar-99</u> <u>Mar-99 & Apr-99</u>
	Preliminary analysis with Staff letter requesting details of CIAC and gross-up collected from installment plan customers	Staff adjusts CIAC to treat installment payments as income in year of contract	Staff revises analysis to reflect NFMU booking installment contracts as income in year payment received	Staff revised analysis reflects NFMU's Amended 1994 & 1995 CIAC Reports & Amended Tax Returns	Staff revised analysis reflects a change in the amount of Amortization of Retired Plant from Feb 98; Revisions to officers compensation to reflect annual report averages	Staff analysis with corrections from May 98 - Security expenses of \$140 and Amort - Plant Retirement of \$20,615 moved back below-the-line; officers compensation changed to amounts on tax return.	Income (line 1) reflects NFMU's revised annual reports, removing \$374,018 of Operating and Maintenance expense from above the-line expenses.
	Staff states it will treat installment payments as income in year contract entered into.			Legal and accounting fees offset not available pending receipt of documentation from NFMU	Legal and accounting fees offset reflects 50% of fees associated with CIAC reports.	Legal and accounting fees offset reflects 50% of fees associated with CIAC reports.	Legal and accounting fees offset reflects 50% of fees associated with CIAC reports.
				Staff Above-the Line Expense Adjustments			
			COGS	\$ 186,807	\$ 186,807	\$ 186,807	
			Officers' comp	\$ 224,952	\$ 189,881	\$ 224,952	
			First years depr	\$ 25,196	\$ 25,196	\$ 25,196	

North Fort Myers Utility, Inc.

Staff Calculations of NFMU CIAC Gross-up Refunds - Fiscal Year 1995

Fiscal Year 1995	Staff Letter to NFMU	Staff Recommendation	Staff Letter to NFMU	Staff Letter to NFMU	Staff Letter to NFMU	Jul98: Staff Letter to NFMU	Mar99: Staff Letter to NFMU
	May-97	Oct-97	Nov-97	Feb-98	May-98	Dec98: Staff Recommendation	Apr99: Staff Recommendation
						Jul-98 & Dec-99	Mar-99 & Apr-99
			Legal expense	\$ 151,518	\$ 88,677	\$ 151,518	
			Amort of Plnt Retrmt	\$ 123,118	\$ 19,524		
				\$ 711,591	\$ 510,085	\$ 588,473	

Docket No. 971179-SU
 Kimberly H. Dismukes
 Exhibit No. ___(KHD-1)
 Schedule No. 3

North Fort Myers Utility, Inc.
FPSC Orders on Disposition of CIAC Gross-Up

Docket No.	Order No.	Date of Order	Utility	Description	Issues and Decisions
960397-WS	PSC-96-0686-FOF-WS	May 24, 1996	all water/wastewater	Review of Florida PSC policy concerning collection and refund of CIAC	FPSC has no rule on gross-up calculation, but orders 19671 and 23541 develop "incipient policy." FL Supreme Court, in SoBell vs FPSC (1983) noted that PSC is not required to institute a rulemaking every time a new policy is developed.
960965-WS	PSC-96-1180-FOF-WS	September 20, 1996	all water/wastewater	Cancellation of authority to gross-up contributions in aid of construction	Revocation of authority to collect gross-up and notice of need to file for variance. Attachment A is list of all utilities with authority to collect gross up that would be affected by order.
961151-WU	PSC-96-1351-FOF-WU	November 18, 1996	East Central Florida, Services, Inc.	Disposition of gross-up funds 1993-94	Staff and utility agreed on calculations. Staff based calculations on CIAC reports. No discussion of any above/below-the-line issues. Refund: 1993: \$ 664 1994: \$16,280

Docket No. 971179-SU
 Kimberly H. Dismukes
 Exhibit No. __ (KHD-1)
 Schedule No. 3

North Fort Myers Utility, Inc.
FPSC Orders on Disposition of CIAC Gross-Up

961076-WS	PSC-96-1352-FOF-WS	November 18, 1996	Hydratech Utilities, Inc.	Disposition of gross-up funds 1991-94	<p>1991: PCS adjusted calculations to include first year depreciation of CIAC.</p> <p>1992: PSC denied utility's classification of some legal fees below-the line (utility claimed they were related to efforts to sell utility.) PSC reclassified these expenses above-the-line citing their classification as such in the company's annual report used for net income and ROR determination. Also, PSC cited fact that total legal expenses were included in calculation of '93 price index rate increase.</p> <p>1993: Overage credited to CIAC instead of refunded because of size. But PSC denied utility request to deduct cost of filing gross-up reports from refund.</p> <p>1994: PSC denied utility's request to deduct legal & accounting costs of filing gross-up reports from refund.</p> <p>Refund: 1991-92: no refund 1993: \$340 credited to CIAC 1994: \$21,500</p> <p>HYDRATECH PROTESTED THIS ORDER</p>
961076-WS	PSC-97-0657-AS-WS	June 9, 1997	Hydratech Utilities, Inc.	Acceptance of Settlement of protested Order No. 96-1352- FOF-WS	<p>PSC accepted deduction of 50% of accounting and legal expenses associated with CIAC from refund and utility's waiver of other issues.</p> <p>Refund: 1991-93: no refund 1994: \$16,534</p>
961072-WS	PSC-96-1353-FOF-WS	November 18, 1996	Rolling Oaks Utilities, Inc.	Disposition of gross-up funds 1993-94	<p>Staff calculations based on CIAC reports. No discussion of any above-the-line/below-the-line adjustments.</p> <p>Refund: 1993: \$1,220 credited to CIAC 1994: \$3,105 credited to CIAC</p>

Docket No. 971179-SU
 Kimberly H. Dismukes
 Exhibit No. ___(KHD-1)
 Schedule No. 3

**North Fort Myers Utility, Inc.
 FPSC Orders on Disposition of CIAC Gross-Up**

961077-SU	PSC-96-1394-FOF-SU	November 20, 1996	Eagle Ridge Utilities, Inc.	Disposition of gross-up funds 1993-94	1993: PSC denied utility's request to classify some management fees as below-the-line. Utility had calculated its below-the-line amount by indexing the fees approved in its 1985 rate case. PSC noted that entire amount of actual fees were used to determine income and were in annual report. 1994: Utility again classified some management fees below-the-line. PSC ruled all should be above-the-line. Refund: 1993: \$14,589 1994: \$ 5,655 EAGLE RIDGE PROTESTED THIS ORDER
961077-SU	PSC-96-0647-FOF-SU	June 6, 1997	Eagle Ridge Utilities, Inc.	Acceptance of Settlement of protested Order No. 96-1394-FOF-SU	PSC accepted deduction of 50% of legal and accounting expenses associated with CIAC from refund and utility's waiver of other issues Refund: 1993: \$10,738 1994: \$ 3,138
961211-WS	PSC-96-1471-FOF-WS	December 3, 1996	Sunray Utilities-Nassau, Inc.	Disposition of gross-up funds 1993-94	Staff and utility agreed on calculations. Staff calculations based on CIAC reports. No discussion of any above/below-the-line issues. Refund: 1993-94: no refund

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**North Fort Myers Utility, Inc.
 FPSC Orders on Disposition of CIAC Gross-Up**

961237-SU	PSC-97-0007-FOF-SU	January 2, 1997	Forest Utilities, Inc.	Disposition of gross-up funds 1990-95	PSC denied request to deduct legal and accounting fees from CIAC refund. PSC ruled that cash CIAC should be depreciated. PSC ruled officer salaries should all be treated as above-the-line expenses. PSC noted that for annual report review purposes, the entire amount of salary expenses were included and considered for net income, ROR, and 1995 price index rate increase determinations.. Refund: 1990: \$ 3,372 1991: \$ 2,183 1992: \$ 549 credited to CIAC 1993: \$16,946 1994: \$ 3,287 1995: no refund FOREST PROTESTED THIS ORDER
961237-SU	PSC-97-0648-FOF-SU	June 6, 1997	Forest Utilities, Inc.	Acceptance of Settlement of protested Order No. 97-0007- FOF-SU	PSC accepted deduction of 50% of legal and accounting expenses associated with CIAC from refund and utility's waiver of other issues Refund: 1990: \$ 2,248 1991: \$ 924 1992: no refund 1993: \$14,946 1994: \$ 1,941 1995: no refund

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North Fort Myers Utility, Inc.
FPSC Orders on Disposition of CIAC Gross-Up

961415-WS	PSC-97-0038-FOF-WS	January 8, 1997	Lake Groves Utilities, Inc.	Disposition of gross-up funds 1993-94	Staff and utility agreed on 1993 calculations. For 1994 refund, Staff adjusted expenses shown in CIAC report (\$20,770 above-the-line, \$84,306 below-the-line) to agree with those in annual report (\$102,944 above-the-line) Refund: 1993: \$ 3,203 1994: \$21,596
961270-SU	PSC-97-0040-FOF-WS	January 9, 1997	Hudson Utilities, Inc.	Request for variance from PSC 96-1190	Request to collect remaining installment CIAC payments and gross-up. Order contains explanation of how CIAC and gross-up are treated as income on tax return in year contract is initiated and that utility is seeking reimbursement for taxes already paid
961263-SU	PSC-97-0062-FOF-SU	January 17, 1997	No. Ft. Myers Utilities, Inc.	Disposition of gross-up funds 1992-93	PSC ruled first year depreciation should be above-the-line expense. Refund: 1992-93: no refund
940076-WS	PSC-97-0147-FOF-WS	February 11, 1997	Sunbelt Utilities, Inc.	Disposition of gross-up funds 1987-93	PSC ruled officers salaries & professional fees should be above-the-line expenses. Refund: 1987-93: no refund
961277-WS	PSC-97-0185-FOF-WS	February 18, 1997	Palm Coast Utility Corporation	Disposition of gross-up funds 1992-94	Staff and utility agreed on calculations. Staff based calculations on CIAC reports. No discussion of any above/below-the-line issues. Refund: 1992-94: no refund

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**North Fort Myers Utility, Inc.
 FPSC Orders on Disposition of CIAC Gross-Up**

961152-SU	PSC-97-0197-FOF-SU	February 19, 1997	Hudson Utilities, Inc.	Disposition of gross-up funds 1993-94	1993 & 1994: PSC denied utility's request to deduct accounting costs of preparing refund report from refund. 1994: PSC recalculated refund to those customers who paid gross-up in full vs those still owing gross-up through installment plan. Refund: 1993: \$ 1,817 1994: \$47,052 HUDSON PROTESTED THIS ORDER
961152-SU	PSC-97-0656-AS-SU	June 9, 1997	Hudson Utilities, Inc.	Acceptance of Settlement of protested Order No. 97-0197-FOF-SU	PSC accepted deduction of 50% of accounting expenses associated with CIAC from refund Refund: 1993: no refund 1994: \$44,920
970113-WS	PSC-97-0255-FOF-WS	March 7, 1997	Lake Groves Utilities, Inc.	Disposition of gross-up funds 1995	Annual report and tax return indicated CIAC collected, but utility did not collect gross-up as no gross-up due on meters and utility had treated backflow prevention devices same as meters. Refund: 1995: no refund
970121-SU	PSC-97-0329-FOF-SU	March 25, 1997	Eagle Ridge Utilities, Inc.	Disposition of gross-up funds 1995	PSC noted that for 1995 Eagle Ridge did not request that legal and accounting expenses be deducted from refund (as it did in other years) Refund: 1995: \$1,131
970204-WS	PSC-97-0383-FOF-WS	April 7, 1997	Rolling Oaks Utilities, Inc.	Disposition of gross-up funds 1995	Staff and utility agreed on calculations. Staff calculations based on CIAC report. No discussion of any above/below-the-line issues. Refund: 1995: no refund

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North Fort Myers Utility, Inc.
FPSC Orders on Disposition of CIAC Gross-Up

970275-WS	PSC-97-0454-FOF-WS	April 21, 1997	Hydratech Utilities, Inc.	Disposition of gross-up funds 1995	PSC calculated refund from utility's CIAC report - no mention of Hydratech's calculations -- Refund: 1995: \$71,902 HYDRATECH PROTESTED THIS ORDER
970275-WS	PSC-97-0816-FOF-WS	July 7, 1997	Hydratech Utilities, Inc.	Acceptance of Settlement of protested Order No. 97-0454-FOF-WS	PSC accepted deduction of 50% of accounting and legal expenses associated with CIAC from refund Refund: 1995: \$66,091
970402-SU	PSC-97-0548-FOF-SU	May 13, 1997	Gulf Aire Wastewater Treatment Plant	Disposition of gross-up funds 1995	Utility collected no gross-up in 1995 as it was operating at a loss due to debt requirements. Staff agreed with utility position. Refund: 1995: no refund
970562-WS	PSC-97-0770-FOF-WS	June 30, 1997	Sunray Utilities-Nassau, Inc.	Disposition of gross-up funds 1995	Staff and utility agreed on calculations. Staff calculations based on CIAC report. No discussion of any above/below-the-line issues. Refund: 1995: no refund

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FPSC Orders on Disposition of CIAC Gross-Up

931065-WS	PSC-97-1147-FOF-WS	September 30, 1997	Martin Downs Utilities, Inc.	Disposition of gross-up funds 1990-93	<p>1) PSC ruled that all management fees, accounting, legal & engineering expenses should be classified above-the-line. Utility's annual reports for 1990 and 1991 show entire amount as regulatory expense. For CIAC refund calculations, utility adjusted these expenses to equal amount established in its last rate case (Order No. 22869, 4/27/90) PSC stated "The utility's officer attests to the accuracy of the annual reports by signing them each year. Therefore, we find that the entire amount shall be included as above-the-line expenses in calculating the utility's taxable income."</p> <p>2) PSC ruled utility should depreciate cash CIAC. Prior year CIAC depreciation reclassified below-the-line.</p> <p>Refund: 1990: \$32,361 1991: \$22,064 1992-93: no refund</p>
970832-WS	PSC-97-1266-FOF-WS	October 14, 1997	Palm Coast Utility Corporation	Disposition of gross-up funds 1995	<p>Staff and utility agreed on calculations. Staff calculations based on CIAC report. No discussion of any above/below-the-line issues.</p> <p>Refund: 1995: no refund</p>

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FPSC Orders on Disposition of CIAC Gross-Up

970559-SU	PSC-97-1349-FOF-SU	October 27, 1997	Hudson Utilities, Inc.	Disposition of gross-up funds 1995	PSC accepted Hudson's request to deduct 50% of legal and accounting fees incurred in CIAC filings from refund -- PSC noted that accepting settlement offer was cheaper than going to hearing. Contains explanation of how customers on installment plan had not paid entire gross-up amount although the total amount was shown on utility's tax returns. Refund: 1995: \$38,535
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FPSC Orders on Disposition of CIAC Gross-Up

940097-WS	PSC-97-1364-FOF-WS	October 28, 1997	Clay Utility Company	Disposition of gross-up funds 1990-93	<p>1) PSC moved all officers salaries above-the-line. Utility had adjusted to level at last rate case, adjusted for inflation. PSC: ". . . unless there is evidence that the amounts in the annual reports are unreasonable or an annual report for that year does not exist, the above-the-line amounts for CIAC refund purposes should mirror the amounts reflected in the utility's annual reports for those years." PSC cited Eagle Ridge orders 96-01394 and 97-0647, also Forest Utilities orders 97-0007 and 97-0648 stating "In both cases, we determined that because the level of expenses in the annual report were used to determine earnings, that level should also be used for CIAC gross-up disposition purposes and reflected as an above-the line expense."</p> <p>2) PSC moved amortization of debt issuance costs that support rate based above-the-line.</p> <p>3) PSC agreed to request to deduct 50% of legal and accounting costs from refund.</p> <p>Refund: 1990: \$67,042 1991: no refund 1992: \$ 2,515 1993: no refund</p>
971524-WS	PSC-98-0020-FOF-WS	January 5, 1998	Sunray Utilities-Nassau, Inc.	Disposition of gross-up funds 1996	<p>Staff and utility agreed on calculations. Staff calculations based on CIAC report. No discussion of any above/below-the-line issues.</p> <p>Refund: 1996: \$28 credited to CIAC</p>

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931228-WS	PSC-98-0031-FOF-WS	January 5, 1998	Poinciana Utilities, Inc.	Disposition of gross-up funds 1987-96.	PSC accepted deduction of 50% of legal and consulting costs from 1987-93 refund calculations to avoid more costly hearing. PSC adjusted calculations to include first year depreciation of CIAC PSC adjusted calculations to account for net operating losses and denied utility's request to offset taxable income with NOLs. Refund: 1987: \$228,934 1988: \$ 95,945 1989: \$ 62,324 1990: \$ 30,129 1991-94: no refund 1995: \$ 8,224 1996: \$ 3,043
980061-SU	PSC-98-0315-FOF-SU	February 23, 1998	South Seas Utility Company	Disposition of gross-up funds 1989-94	Staff and utility agreed on calculations. Staff calculations based on CIAC report and tax returns. No discussion of any above/below-the-line issues. Refund: 1989: no refund as no gross-up collected 1990: \$4,720 1991: \$1,888 1992: \$4,720 1993: \$7,552 1994: \$ 940
980076-SU	PSC-98-0316-AS-SU	February 23, 1998	Hudson Utilities, Inc.	Disposition of gross-up funds 1996	PSC agreed to deduction of 50% of legal and accounting costs from refund noting it had done so in previous Hudson cases. Refund: 1995: \$10,592

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FPSC Orders on Disposition of CIAC Gross-Up

980077-WU	PSC-98-0317-FOF-WU	February 1998	Lake Hills Utilities, Inc.	Disposition of gross-up funds 1989-94	Staff and utility made several revisions to refund calculations using both CIAC reports and tax returns -- no details discussed in order. Refund: 1989: \$ 5,814 1990: \$23,032 1991: \$ 3,479 1992: \$18,483 1993: \$15,689 1994: \$53,384 1995: no refund as no CIAC collected
971529-WS	PSC-98-0319-AS-WS	February 23, 1998	Aloha Utilities, Inc.	Disposition of gross-up funds 1993-96	1996: PSC allowed utility's 50% of legal and accounting fees to avoid more costly hearing. Utility's preliminary calculations included officer salaries classified below-the-line. Utility disagreed with, but accepted, PSC classification of these expenses above-the-line but no details in order as to what years, or what % of salary expense was involved. Refund: 1993-96: no refund
971658-SU	PSC-98-0320-AS-SU	February 23, 1998	Forest Utilities, Inc.	Settlement of disposition of gross-up funds 1996	PSC allowed utility to deduct 50% of legal and accounting costs to avoid more costly hearing. Refund: 1996: no refund
980062-SU	PSC-98-0356-FOF-SU	March 4, 1998	Gulf Air Wastewater Treatment Plant	Disposition of gross-up funds 1996	Utility collected no gross-up in 1996 as it was operating at a loss due to debt requirements. Staff agreed with utility position. Refund: 1996: no refund

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 FPSC Orders on Disposition of CIAC Gross-Up**

980178-SU	PSC-98-0370-FOF-SU	March 6, 1998	Eagle Ridge Utilities, Inc.	Settlement of disposition of gross-up funds 1996	PSC allowed utility to deduct 50% of legal and accounting costs to avoid more costly hearing. (refund was \$361 total, 50% of fees were \$2,619) Refund: 1996: no refund
931141-WS	PSC-98-0445-AS-WS	March 30, 1998	Parkland Utilities, Inc.	Settlement of disposition of gross-up funds collected 5-31-94 to 12-31-95	1) PSC ruled all utility operating expenses should be above-the-line because they are used in earnings determinations. utility had adjusted O&M expenses to reflect those approved in last rate case, adjusted for growth. PSC stated above-the-line amounts for CIAC gross-up should "reasonably mirror" the tax return and annual report amounts. 2) PSC accepted utility's request to deduct 50% of legal, accounting, and management costs from refund to avoid more costly hearing. 3) PSC adjusted calculations for first year depreciation classified above-the-line. 4) NOL and forgiveness of debt issues. Refund: 1994-95: no refund
980182-WS	PSC-98-0507-FOF-WS	April 13, 1998	Palm Coast Utility Corporation	Disposition of gross-up funds 1996	Staff and utility agreed on calculations. Staff calculations based on CIAC report. No discussion of any above/below-the-line issues. Refund: 1996: no refund

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FPSC Orders on Disposition of CIAC Gross-Up

980504-WS	PSC-98-0750-AS-WS	June 1, 1998	Hydratech Utilities, Inc.	Disposition of gross-up funds 1996	PSC ruled first year depreciation should be above-the-line expense. PSC agreed to deduction of 50% of legal and accounting costs from refund, as less expensive than a hearing to settle the issue. Cited other years Hydratech had done the same thing. Refund: 1996: no refund
980695-WS	PSC-98-1245-FOF-WS	September 21, 1998	Lake Groves Utilities, Inc.	Disposition of gross-up funds 1996	Staff adjusted utility's above-the-line O&M expenses to agree with those shown in annual report. Utility said AR had \$44,000 overstatement of O&M and filed amended AR. Staff used amended AR to calculate revised gross-up refund amount. Refund: 1996: \$16,654
980943-WS	PSC-98-1626-FOF-WS	December 7, 1998	Gulf Utility Company	Disposition of gross-up funds 1992-96	Staff and utility agreed on calculations. Staff calculations based on CIAC report. No discussion of any above/below-the-line issues. Refund: 1992: \$ 5,724 1993: \$11,643 1994: \$23,102 1995: no refund 1996: no refund
981070-WS	PSC-99-0151-FOF-WS	January 25, 1999	Sanlando Utilities Corporation	Disposition of gross-up funds 1992-96	Staff and utility agreed on calculations. Staff calculations based on CIAC report. No discussion of any above/below-the-line issues. Refund: 1992-94: no refund 1995: \$1,329 1996: no refund

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FPSC Orders on Disposition of CIAC Gross-Up

981797-WS	PSC-99-0250-FOF-WS	February 9, 1999	Indiantown Company, Inc.	Disposition of gross-up funds 1991-96	Staff and utility agreed on calculations. Staff calculations based on CIAC report. No discussion of any above/below-the-line issues. Refund: 1991-94: no refund 1995: \$22,102 1996: \$ 9,169
990744-SU	PSC-99-1748-PAA-SU	September 7, 1999	Fountain Lakes Sewer Corporation	Disposition of gross-up funds 1990-96	PSC and utility agreed on refund calculations in all years. For 1990-95 refunds were payable to customers. For 1996, utility requested, and was allowed, to deduct 50% of legal and accounting fees from refund, resulting in no refund for 1996. Refund: 1990: \$6,688 1991: \$6,358 1992: \$4,945 1993: \$2,233 1994: \$1,024 1995: \$1,203 1996: no refund

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FPSC Orders on Disposition of CIAC Gross-Up

980954-WS	PSC-99-2369-PAA-WS	December 6, 1999	JJ's Mobile Homes, Inc.	Disposition of gross-up funds 1992-96	Staff adjusted utility's amounts shown in CIAC reports to reconcile them to amounts in annual reports. Staff classified as an above-the-line expense \$7,695 of O&M expenses the utility had erroneously so classified in 1992, as this classification had been reflected in the price index rate increases from 1992 forward. Staff classified first year's depreciation as an above-the-line expense. Staff disallowed \$10,046 of legal and accounting fees noting costs were incurred to correct and revise reports and tax returns. Allowed offset of 50% of remaining fees to avoid cost of hearing. Refund: 1992: \$3,387 1993: \$1,559 1994: \$6,070 1995: \$ 448 1996: no refund
991576-WS	PSC-99-2370-PAA-WS	December 6, 1999	Parkland Utilities, Inc.	Disposition of gross-up funds 1996	Utility requested offset of 50% of \$22,602 of legal fees. Staff disallowed \$7,725 of legal fees, but accepted offset of 50% of remaining fees as less expensive than hearing on the issue. Offset applied to \$10,358 overcollection less \$2,949 of excess gross-up related to contributed property. Refund 1996: \$2,949 for gross-up related to contributed property

North Fort Myers Utility, Inc.
Operating Income

Account Name	Original December 31, 1994	Revised December 31, 1994	OPC Revised December 31, 1994	Original December 31, 1995	Revised December 31, 1995	OPC Revised December 31, 1995	Original December 31, 1996	Revised December 31, 1996	OPC Revised December 31, 1996	Original December 31, 1997	Revised December 31, 1997	OPC Revised December 31, 1997	Revised December 31, 1998	OPC Revised December 31, 1998
Utility Operating Income														
Operating Revenues	\$ 1,184,121	\$ 1,184,121	\$ 1,184,121	\$ 1,493,279	\$ 1,493,279	\$ 1,493,279	\$ 1,740,435	\$ 1,740,435	\$ 1,740,435	\$ 1,958,553	\$ 1,958,553	\$ 1,958,553	\$ 2,267,252	\$ 2,267,252
Operating Expenses	1,277,054	838,782	838,782	1,310,530	936,512	936,512	1,271,708	974,867	974,867	1,278,915	999,823	999,823	1,074,496	999,496
Depreciation Expense	164,690	164,690	103,359	252,167	252,167	180,975	284,185	284,185	215,414	324,745	324,745	303,246	289,463	288,121
Amortization of Utility Plant														
Acquisition Adjustment														
Amortization Expense	19,524			19,524			19,524			19,524				
Taxes Other Than Income	109,965	109,965	94,347	172,481	172,481	147,771	233,891	233,891	197,036	190,961	190,961	176,990	211,761	199,438
Income Taxes													365,096	394,068
Deferred Federal Income Taxes	(132,288)		(132,288)	(130,098)		(130,098)	(288,444)		(288,444)	(301,954)		(301,954)		
Utility Operating Expenses	\$ 1,438,945	\$ 1,113,437	\$ 904,200	\$ 1,624,604	\$ 1,361,160	\$ 1,135,160	\$ 1,520,864	\$ 1,492,943	\$ 1,098,873	\$ 1,512,191	\$ 1,515,529	\$ 1,178,105	\$ 1,940,816	\$ 1,881,123
Utility Operating Income (Loss)	\$ (254,824)	\$ 70,684	\$ 279,921	\$ (131,325)	\$ 132,119	\$ 358,119	\$ 219,571	\$ 247,492	\$ 641,562	\$ 446,362	\$ 443,024	\$ 780,448	\$ 326,436	\$ 386,129
Income from Utility Plant Leased to Others														
Gains (Losses) From Disposition of Utility Property										\$ (27,790)	\$ (27,790)	\$ -	\$ (1,349)	\$ -
Total Utility Operating Income (Loss)	\$(254,824.0)	\$ 70,684.0	\$ 279,920.6	\$(131,325.0)	\$ 132,119.0	\$ 358,119.0	\$ 219,571.0	\$ 247,492.0	\$ 641,561.9	\$ 418,572.0	\$ 415,234.0	\$ 780,447.9	\$ 325,087.0	\$ 386,129.1
Other Income and Deductions														
Interest and Dividend Income	\$ 33,825	\$ 33,825	\$ 33,825	\$ 119,166	\$ 119,166	\$ 119,166	\$ 196,560	\$ 196,560	\$ 196,560	\$ 159,155	\$ 159,155	\$ 159,155	\$ 162,534	\$ 162,534
Allowance Funds Used During Construction	16,055	16,055	16,055	7,363	7,363	7,363	37,341	37,341	37,341	181	181	181	\$ 16,221	\$ 16,221
Nonutility Income	9,047	9,047	9,047	4,126	4,126	4,126	20,276	20,276	20,276	3,080	3,080	3,080	\$ 35,850	\$ 35,850
Nonused and Useful Depreciation			(61,331)			(71,192)			(68,771)			(21,499)		(1,342)
Income Taxes														\$ 61,042
Misc. Nonutility Expenses	-	(457,796)	(457,796)	(12,597)	(406,139)	(406,139)	(190,008)	(506,373)	(506,373)	(19,476)	(318,092)	(318,092)	\$ (376,335)	\$ (451,335)
Total Other Income and Deduct.	\$ 58,927	\$ (398,869)	\$ (460,200)	\$ 118,058	\$ (275,484)	\$ (346,676)	\$ 64,169	\$ (252,196)	\$ (320,967)	\$ 142,940	\$ (155,676)	\$ (177,175)	\$ (161,730)	\$ (177,030)
Taxes App. to Other Income														
Taxes Other than Income Taxes			\$ (15,618)			\$ 24,710			\$ 36,855		\$ 13,971		\$ 12,323	
Provision for Def. Income Taxes	748,255	880,543	748,255	-	130,098	-	-	288,444	-	-	301,954			
Provision for Def. Income Taxes Credit (Adoption of FASB 109)	934,878	934,878	934,878											
Investment Tax Credits - Net														

North Fort Myers Utility, Inc.
Operating Income

Account Name	Original December 31, 1994	Revised December 31, 1994	OPC Revised December 31, 1994	Original December 31, 1995	Revised December 31, 1995	OPC Revised December 31, 1995	Original December 31, 1996	Revised December 31, 1996	OPC Revised December 31, 1996	Original December 31, 1997	Revised December 31, 1997	OPC Revised December 31, 1997	Revised December 31, 1998	OPC Revised December 31, 1998
Investment Tax Credits Restored to Operating Income														
Total Taxes Applicable to Other Income	\$ 1,683,133	\$ 1,815,421	\$ 1,667,515	\$ -	\$ 130,098	\$ (24,710)	\$ -	\$ 288,444	\$ (36,855)	\$ -	\$ 301,954	\$ (13,971)	\$ -	\$ (12,323)
Interest Expense														
Interest Expense	\$ 868,508	\$ 868,508	\$ 868,508	\$ 1,008,104	\$ 1,008,104	\$ 1,008,104	\$ 1,195,653	\$ 1,195,653	\$ 1,195,653	\$ 1,110,332	\$ 1,110,332	\$ 1,110,332	\$ 1,117,125	\$ 1,117,125
Amortization of Debt Discount & Expense	337,978	337,978	337,978	172,438	172,438	172,438	52,696	52,696	52,696	49,400	49,400	49,400	\$ (38,321)	\$ (38,321)
Amortization of Premium on Debt														
Total Interest Expense	\$ 1,206,486	\$ 1,206,486	\$ 1,206,486	\$ 1,180,542	\$ 1,180,542	\$ 1,180,542	\$ 1,248,349	\$ 1,248,349	\$ 1,248,349	\$ 1,159,732	\$ 1,159,732	\$ 1,159,732	\$ 1,078,804	\$ 1,078,804
Extraordinary Items														
Extraordinary Income														
Extraordinary Deductions													(27,790)	(1,349)
Income Taxes, Extraordinary Items														
Total Extraordinary Items														
NET INCOME:	\$ 280,750	\$ 280,750	\$ 280,750	\$ (1,193,809)	\$ (1,193,809)	\$ (1,193,809)	\$ (964,609)	\$ (964,609)	\$ (964,609)	\$ (598,220)	\$ (598,220)	\$ (598,220)	\$ (915,447)	\$ (883,377)
Below-the-Line Allocations														
Officers Salary BTL			\$ 178,430			\$ 173,907			\$ 205,854			\$ 204,544		\$ 355,160
Officers Salary subject to SS Taxes			\$ 111,120			\$ 111,120			\$ 111,120			\$ 111,120		\$ 111,120
Social Security Tax Rate			6.20%			6.20%			6.20%			6.20%		6.20%
Medicare Tax Rate			1.45%			1.45%			1.45%			1.45%		1.45%
Below the Line Payroll Taxes			\$ 9,477			\$ 9,411			\$ 9,874			\$ 9,855		\$ 12,039
Total Payroll Taxes BTL			\$ 9,477			\$ 9,411			\$ 9,874			\$ 9,855		\$ 12,039
Total Property Taxes			\$ 16,490			\$ 54,189			\$ 111,494			\$ 62,166		\$ 61,251
Percent Non-Used and Useful Plant (1)			37.24%			28.23%			24.20%			6.62%		0.46%
Property Taxes BTL			\$ 6,141			\$ 15,299			\$ 26,981			\$ 4,116		\$ 284

(1) Non-Used and Useful Plant is as stated by the Utility. This would not necessarily be endorsed by OPC in a rate proceeding.

North Fort Myers Utility, Inc.
Rate Base

Account Name	Original December 31, 1994	Revised December 31, 1994	OPC Revised December 31, 1994	Original December 31, 1995	Revised December 31, 1995	OPC Revised December 31, 1995	Original December 31, 1996	Revised December 31, 1996	OPC Revised December 31, 1996	Original December 31, 1997	Revised December 31, 1997	OPC Revised December 31, 1997	Revised December 31, 1998	OPC Revised December 31, 1998
Utility Plant in Service	\$ 9,581,111	\$ 9,581,111	\$ 9,581,111	\$ 10,845,332	\$ 10,845,332	\$ 10,845,332	\$ 12,599,596	\$ 12,599,596	\$ 12,599,596	\$ 14,295,801	\$ 14,295,801	\$ 14,295,801	\$ 14,563,263	\$ 14,563,263
Less:														
Nonused and Useful Plant (1)	3,051,593	3,051,593	3,051,593	2,500,924	2,500,924	2,500,924	2,441,405	2,441,405	2,441,405	742,235	742,235	742,235	50,983	50,983
Accumulated Depreciation	1,386,780	1,386,780	1,386,780	1,986,906	1,986,906	1,986,906	2,510,856	2,510,856	2,510,856	3,084,248	3,084,248	3,084,248	3,567,955	3,567,955
Accumulated Amortization CIAC	3,560,123	3,560,123	3,560,123	4,018,713	4,018,713	4,018,713	6,046,955	6,046,955	6,046,955	7,192,123	7,192,123	7,192,123	7,944,820	7,944,820
Advances for Construction														
Subtotal	\$ 1,582,615	\$ 1,582,615	\$ 1,582,615	\$ 2,338,789	\$ 2,338,789	\$ 2,338,789	\$ 1,600,380	\$ 1,600,380	\$ 1,600,380	\$ 3,277,195	\$ 3,277,195	\$ 3,277,195	\$ 2,999,505	\$ 2,999,505
Additions:														
Accumulated Amortization CIAC	409,034	409,034	409,034	638,851	638,851	638,851	924,922	924,922	924,922	1,155,127	1,155,127	1,155,127	1,349,897	1,349,897
Subtotal	\$ 1,991,649	\$ 1,991,649	\$ 1,991,649	\$ 2,977,640	\$ 2,977,640	\$ 2,977,640	\$ 2,525,302	\$ 2,525,302	\$ 2,525,302	\$ 4,432,322	\$ 4,432,322	\$ 4,432,322	\$ 4,349,402	\$ 4,349,402
Plus or Minus:														
Acquisition Adjustments														
Accumulated Amortization Acquisition Adjustments														
Working Capital Allowance	159,632	104,848	104,848	163,816	117,064	117,064	158,964	121,858	121,858	159,864	124,978	124,978	134,312	124,937
Rate Base	\$ 2,151,281	\$ 2,096,497	\$ 2,096,497	\$ 3,141,456	\$ 3,094,704	\$ 3,094,704	\$ 2,684,266	\$ 2,647,160	\$ 2,647,160	\$ 4,592,186	\$ 4,557,300	\$ 4,557,300	\$ 4,483,714	\$ 4,474,339
Utility Operating Income	\$ (254,824)	\$ 70,684	\$ 279,921	\$ (131,325)	\$ 132,119	\$ 358,119	\$ 219,571	\$ 247,492	\$ 641,562	\$ 418,572	\$ 415,234	\$ 780,448	\$ 325,087	\$ 386,129
Achieved Rate of Return	-11.85%	3.37%	13.35%	-4.18%	4.27%	11.57%	8.18%	9.35%	24.24%	9.11%	9.11%	17.13%	7.25%	8.63%
Cost of Capital	12%	12%	12%	9%	9%	9%	8%	8%	8%	8%	8%	8%	8%	8%
Excess NOI	\$ (510,732)	\$ (178,707)	\$ 30,530	\$ (424,774)	\$ (156,962)	\$ 69,037	\$ 1,258	\$ 32,197	\$ 426,267	\$ 45,087	\$ 44,587	\$ 409,801	\$ (24,141)	\$ 37,631
Authorized Rate of Return	10.80%	10.80%	10.80%	10.80%	10.80%	10.80%	10.80%	10.80%	10.80%	10.80%	10.80%	10.80%	10.80%	10.80%
Excess NOI	\$ (487,162)	\$ (155,738)	\$ 53,499	\$ (470,602)	\$ (202,109)	\$ 23,891	\$ (70,330)	\$ (38,401)	\$ 355,669	\$ (77,384)	\$ (76,954)	\$ 288,259	\$ (159,154)	\$ (97,100)

(1) Non-Used and Useful Plant is as stated by the Utility. This would not necessarily be endorsed by OPC in a rate proceeding.

North Fort Myers Utility, Inc.
CIAC Collected Under Installment Method

	12 Months Ending				12 Months Ending					
	05/31/1995	05/31/1996	05/31/1997	05/31/1998	10/31/1999	05/31/1997	05/31/1998	10/31/1999	Total	
CIAC Collected Under Installment Method #1						CIAC Gross-up Collected Under Installment Method After 5-31-96				
Forest Park	\$ 14,738	\$ 15,101	\$ 6,509	\$ 6,936		Forest Park	\$ 9,087	\$ 3,917	\$ 4,174	\$ 17,178
Lake Arrowhead	27,066	70,694	64,725	27,013		Lake Arrowhead	42,544	\$ 38,951	\$ 16,255	\$ 97,750
Carriage Village	10,639	8,413	11,345	10,662		Carriage Village	5,062	\$ 6,828	\$ 6,537	\$ 18,427
Tamiami Village	4,863	27,400	23,730	32,357		Tamiami Village	16,489	\$ 14,280	\$ 19,472	\$ 50,241
Lazy Days	3,667	26,353	11,239	10,730		Lazy Days	15,859	\$ 6,764	\$ 6,457	\$ 29,080
Total	\$ -	\$ 60,973	\$ 147,961	\$ 117,548	\$ 87,698	Total	\$ 89,041	\$ 70,740	\$ 52,895	\$ 212,676

Customers Paid #2

IC Full	1995	1996	1997	1998	1999
Forest Park	342	357	372	414	429
Lake Arrowhead	-	108	148	310	362
Carriage Village	330	334	348	372	416
Tamiami Village	-	479	481	491	528
Lazy Days	-	289	328	341	362
Total	672	1,567	1,677	1,928	2,097

Customers Paying

Installment Method	1995	1996	1997	1998	1999
Forest Park	95	80	65	23	8
Lake Arrowhead	-	426	386	224	172
Carriage Village	104	100	86	62	18
Tamiami Village	-	258	256	246	209
Lazy Days	-	131	92	79	58
Total	199	995	885	634	465

Total Customers

	1995	1996	1997	1998	1999
Forest Park	437	437	437	437	437
Lake Arrowhead	-	534	534	534	534
Carriage Village	434	434	434	434	434
Tamiami Village	-	737	737	737	737
Lazy Days	-	420	420	420	420
Total	871	2,562	2,562	2,562	2,562

North Fort Myers Utility, Inc.
OPC Recommended Gross-up Refunds

	Fiscal Year Ended 1994	Fiscal Year Ended 1995
1 Taxable Income	\$ 350,764	\$ 560,153
2 Less CIAC	\$ (590,150)	\$ (817,955)
3 Less Gross-up collected	\$ (338,017)	\$ (402,730)
4 Add First Year's Depr on CIAC	\$ 21,090	\$ 18,727
5 Add/Less Other Effects	\$ (1,462)	\$ (2,296)
6		
7 Adjusted Income Before CIAC and Gross-up	\$ (557,775)	\$ (644,101)
8		
9 Taxable CIAC	\$ 590,150	\$ 817,955
10 Less first years depr.	\$ (21,090)	\$ (18,727)
11 Less CIAC associated with purchase of existing systems not grossed-up		
12 Adjusted Income After CIAC	\$ 11,285	\$ 155,127
13 Less: NOL Carry Forward	\$ -	\$ -
14		
15 Net Taxable CIAC	\$ 11,285	\$ 155,127
16 Combined Marginal state & federal tax rates	37.63%	37.63%
17		
18 Net Income tax on CIAC	\$ 4,246	\$ 58,374
19 Less ITC Realized	\$ -	\$ -
20		
21 Net Income Tax	\$ 4,246	\$ 58,374
22 Expansion Factor for gross-up taxes	1.6033349	1.6033349
23		
24 Gross-up Required to pay tax effect	\$ 6,809	\$ 93,594
25 Less Gross-up Collected	\$ (338,017)	\$ (402,730)
26		
27 (OVER) OR UNDER COLLECTION	\$ (331,208)	\$ (309,136)
28		
29 TOTAL YEARLY REFUND	\$ (331,208)	\$ (309,136)
30		

APPENDIX
OF
KIMBERLY H. DISMUKES

1 **APPENDIX I**

2 **QUALIFICATIONS**

3

4 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

5 A. I graduated from Florida State University with a Bachelor of Science degree in Finance in
6 March, 1979. I received an M.B.A. degree with a specialization in Finance from Florida
7 State University in April, 1984.

8 **Q. WOULD YOU PLEASE DESCRIBE YOUR EMPLOYMENT HISTORY IN THE**
9 **FIELD OF PUBLIC UTILITY REGULATION?**

10 A. In March of 1979 I joined Ben Johnson Associates, Inc., a consulting firm specializing in
11 the field of public utility regulation. While at Ben Johnson Associates, I held the
12 following positions: Research Analyst from March 1979 until May 1980; Senior Research
13 Analyst from June 1980 until May 1981; Research Consultant from June 1981 until May
14 1983; Senior Research Consultant from June 1983 until May 1985; and Vice President
15 from June 1985 until April 1992. In May 1992, I joined the Florida Public Counsel's
16 Office, as a Legislative Analyst III. In July 1994 I was promoted to a Senior Legislative
17 Analyst. In July 1995 I started my own consulting practice in the field of public utility
18 regulation.

19 **Q. WOULD YOU PLEASE DESCRIBE THE TYPES OF WORK THAT YOU HAVE**
20 **PERFORMED IN THE FIELD OF PUBLIC UTILITY REGULATION?**

21 A. Yes. My duties have ranged from analyzing specific issues in a rate proceeding to
22 managing the work effort of a large staff in rate proceedings. I have prepared testimony,

1 interrogatories and production of documents, assisted with the preparation of cross-
2 examination, and assisted counsel with the preparation of briefs. Since 1979, I have been
3 actively involved in more than 170 regulatory proceedings throughout the United States.

4 I have analyzed cost of capital and rate of return issues, revenue requirement
5 issues, public policy issues, market restructuring issues, and rate design issues, involving
6 telephone, electric, gas, water and wastewater, and railroad companies.

7 In the area of cost of capital, I have analyzed the following parent companies:
8 American Electric Power Company, American Telephone and Telegraph Company,
9 American Water Works, Inc., Ameritech, Inc., CMS Energy, Inc., Columbia Gas System,
10 Inc., Continental Telecom, Inc., GTE Corporation, Northeast Utilities, Pacific Telecom,
11 Inc., Southwestern Bell Corporation, United Telecom, Inc., and U.S. West. I have also
12 analyzed individual companies like Connecticut Natural Gas Corporation, Duke Power
13 Company, Idaho Power Company, Kentucky Utilities Company, Southern New England
14 Telephone Company, and Washington Water Power Company.

15 **Q. HAVE YOU PREVIOUSLY ASSISTED IN THE PREPARATION OF**
16 **TESTIMONY CONCERNING REVENUE REQUIREMENTS?**

17 A. Yes. I have assisted on numerous occasions in the preparation of testimony on a wide
18 range of subjects related to the determination of utilities' revenue requirements and
19 related issues.

20 I have assisted in the preparation of testimony and exhibits concerning the
21 following issues: abandoned project costs, accounting adjustments, affiliate transactions,
22 allowance for funds used during construction, attrition, cash flow analysis, conservation

1 expenses and cost-effectiveness, construction monitoring, construction work in progress,
2 contingent capacity sales, cost allocations, decoupling revenues from profits, cross-
3 subsidization, demand-side management, depreciation methods, divestiture, excess
4 capacity, feasibility studies, financial integrity, financial planning, gains on sales,
5 incentive regulation, infiltration and inflow, jurisdictional allocations, non-utility
6 investments, fuel projections, margin reserve, mergers and acquisitions, pro forma
7 adjustments, projected test years, prudence, tax effects of interest, working capital, off-
8 system sales, reserve margin, royalty fees, separations, settlements, used and useful,
9 weather normalization, and resource planning.

10 Companies that I have analyzed include: Alascom, Inc. (Alaska), Arizona Public
11 Service Company, Arvig Telephone Company, AT&T Communications of the Southwest
12 (Texas), Blue Earth Valley Telephone Company (Minnesota), Bridgewater Telephone
13 Company (Minnesota), Carolina Power and Light Company, Central Maine Power
14 Company, Central Power and Light Company (Texas), Central Telephone Company
15 (Missouri and Nevada), Consumers Power Company (Michigan), C&P Telephone
16 Company of Virginia, Continental Telephone Company (Nevada), C&P Telephone of
17 West Virginia, Connecticut Light and Power Company, Danube Telephone Company
18 (Minnesota), Duke Power Company, East Otter Tail Telephone Company (Minnesota),
19 Easton Telephone Company (Minnesota), Eckles Telephone Company (Minnesota), El
20 Paso Electric Company (Texas), Florida Cities Water Company (North Fort Myers, South
21 Fort Myers and Barefoot Bay Divisions), General Telephone Company of Florida,
22 Georgia Power Company, Jasmine Lakes Utilities, Inc. (Florida), Kentucky Power

1 Company, Kentucky Utilities Company, KMP Telephone Company (Minnesota), Idaho
2 Power Company, Oklahoma Gas and Electric Company (Arkansas), Kansas Gas &
3 Electric Company (Missouri), Kansas Power and Light Company (Missouri), Lehigh
4 Utilities, Inc. (Florida), Mad Hatter Utilities, Inc. (Florida), Mankato Citizens Telephone
5 Company (Minnesota), Michigan Bell Telephone Company, Mid-Communications
6 Telephone Company (Minnesota), Mid-State Telephone Company (Minnesota),
7 Mountain States Telephone and Telegraph Company (Arizona and Utah), North Fort
8 Myers Utilities, Inc., Northwestern Bell Telephone Company (Minnesota), Potomac
9 Electric Power Company, Public Service Company of Colorado, Puget Sound Power &
10 Light Company (Washington), Sanlando Utilities Corporation (Florida), Sierra Pacific
11 Power Company (Nevada), South Central Bell Telephone Company (Kentucky), Southern
12 Union Gas Company (Texas), Southern Bell Telephone & Telegraph Company (Florida,
13 Georgia, and North Carolina), Southern States Utilities, Inc. (Florida), Southern Union
14 Gas Company (Texas), Southwestern Bell Telephone Company (Oklahoma, Missouri,
15 and Texas), St. George Island Utility, Ltd., Tampa Electric Company, Texas-New Mexico
16 Power Company, Tucson Electric Power Company, Twin Valley-Ulen Telephone
17 Company (Minnesota), United Telephone Company of Florida, Virginia Electric and
18 Power Company, Washington Water Power Company, and Wisconsin Electric Power
19 Company.

20 **Q. WHAT EXPERIENCE DO YOU HAVE IN RATE DESIGN ISSUES?**

21 A. My work in this area has primarily focused on issues related to costing. For example, I
22 have assisted in the preparation of class cost-of-service studies concerning Arkansas

1 Energy Resources, Cascade Natural Gas Corporation, El Paso Electric Company,
2 Potomac Electric Power Company, Texas-New Mexico Power Company, and Southern
3 Union Gas Company. I have also examined the issue of avoided costs, both as it applies
4 to electric utilities and as it applies to telephone utilities. I have also evaluated the issue of
5 service availability fees, reuse rates, capacity charges, and conservation rates as they
6 apply to water and wastewater utilities.

7 **Q. HAVE YOU TESTIFIED BEFORE REGULATORY AGENCIES?**

8 A. Yes. I have testified before the Arizona Corporation Commission, the Connecticut
9 Department of Public Utility Control, the Florida Public Service Commission, the
10 Georgia Public Service Commission, Louisiana Public Service Commission, the Missouri
11 Public Service Commission, the Public Utility Commission of Texas, and the
12 Washington Utilities and Transportation Commission. My testimony dealt with revenue
13 requirement, financial, policy, rate design, and cost study issues concerning AT&T
14 Communications of Southwest (Texas), Cascade Natural Gas Corporation (Washington),
15 Central Power and Light Company (Texas), Connecticut Light and Power Company, El
16 Paso Electric Company (Texas), Florida Cities Water Company, Kansas Gas & Electric
17 Company (Missouri), Kansas Power and Light Company (Missouri), Houston Lighting &
18 Power Company (Texas), Lake Arrowhead Village, Inc. (Florida), Lehigh Utilities, Inc.
19 (Florida) Jasmine Lakes Utilities Corporation (Florida), Mad Hatter Utilities, Inc.
20 (Florida), Marco Island Utilities, Inc. (Florida), Mountain States Telephone and
21 Telegraph Company (Arizona), North Fort Myers Utilities, Inc. (Florida), Southern Bell
22 Telephone and Telegraph Company (Florida, Louisiana and Georgia), Southern States

1 Utilities, Inc. (Florida), St. George Island Utilities Company, Ltd. (Florida), Puget Sound
2 Power & Light Company (Washington), and Texas Utilities Electric Company.

3 I have also testified before the Public Utility Regulation Board of El Paso,
4 concerning the development of class cost-of-service studies and the recovery and
5 allocation of the corporate overhead costs of Southern Union Gas Company and before
6 the National Association of Securities Dealers concerning the market value of utility
7 bonds purchased in the wholesale market.

8 **Q. HAVE YOU BEEN ACCEPTED AS AN EXPERT IN THESE JURISDICTIONS?**

9 A. Yes.

10 **Q. HAVE YOU PUBLISHED ANY ARTICLES IN THE FIELD OF PUBLIC
11 UTILITY REGULATION?**

12 A. Yes, I have published two articles: "Affiliate Transactions: What the Rules Don't Say",
13 Public Utilities Fortnightly, August 1, 1994 and "Electric M&A: A Regulator's Guide"
14 Public Utilities Fortnightly, January 1, 1996.

15 **Q. DO YOU BELONG TO ANY PROFESSIONAL ORGANIZATIONS?**

16 A. Yes. I am a member of the Eastern Finance Association, the Financial Management
17 Association, the Southern Finance Association, the Southwestern Finance Association,
18 and the Florida and American Water Association.

19

20

21

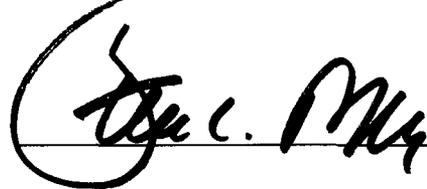
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CERTIFICATE OF SERVICE
DOCKET NO. 971179-SU

I HEREBY CERTIFY that a true and exact copy of the foregoing DIRECT TESTIMONY OF KIMBERLY H. DISMUKES has been furnished by U.S. Mail or *hand delivery to the following party representatives on this 7th day of January, 2000.

F. Marshall Deterding, Esquire*
Rose Law Firm
2548 Blirstone Pines Drive
Tallahassee, FL 32301

Ralph Jaeger, Esquire*
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

A handwritten signature in black ink, appearing to read "Stephen C. Reilly", is written over a horizontal line. The signature is stylized and cursive.

Stephen C. Reilly
Associate Public Counsel