

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for permission )	DOCKET NO. 910753-SU
to gross-up contributions-in-aid-of )	ORDER NO. 25011
construction (CIAC) by GULF AIRE )	ISSUED: 9/4/91
WASTEWATER TREATMENT PLANT (Gulf )	
Aire Properties) in Gulf County )	
_____)	

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY

ORDER ON CIAC GROSS-UP

BY THE COMMISSION:

Gulf Aire Wastewater Treatment Plant (Gulf Aire or utility) is a Class C wastewater utility providing service to the public in Gulf County. Gulf Aire's 1990 Annual Report reflects that the utility had 138 wastewater customers as of December 31, 1990. The Annual Report also reflects that Gulf Aire had a net operating income of \$3,948 and gross annual operating revenues of \$39,874 for the wastewater system.

By Order No. 16971, issued December 18, 1986, the Commission granted approval for water and wastewater utilities to amend their service availability policies to meet the tax impact on Contributions-in-aid-of-construction (CIAC) resulting from the amendment of Section 118(b) of the Internal Revenue Code. In Order No. 23541, issued October 1, 1990, we determined that any water and wastewater utilities already collecting the gross-up on CIAC and wishing to continue collecting the gross-up had to file a petition for approval with the Commission on or before October 29, 1990. Further, we ordered that water and wastewater utilities could not begin grossing-up CIAC without first obtaining the approval of this Commission.

Gulf Aire previously had been granted authority from the Commission to gross-up CIAC for the related tax impact. However, Gulf Aire did not file its petition for authority to continue to gross-up in accordance with Order No. 23541. On July 8, 1991, pursuant to Rule 25-22.036, Florida Administrative Code and

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Commission Order No. 23541, Gulf Aire filed its petition for authority to gross-up CIAC.

Section 367.091(5), Florida Statutes, provides that within sixty (60) days of the filing of an application to change a rate or charge other than the monthly rates for service, the Commission may withhold consent to the operation of any or all portions of the new rate schedules, by a vote to that effect giving a reason or statement of good cause for withholding consent. If the Commission does not act within sixty (60) days, the rates become effective. The file-and-suspend statutes have been interpreted by the Florida Supreme Court to provide that rates which become effective upon inaction by the Commission are interim rates pending a final order by the Commission. Citizens of the State of Florida v. Wilson, 568 So.2d 904 (Fla. 1990). The case law also provides that substantially affected persons have the right to a hearing on the interim rates.

In its petition for approval to collect the gross-up on CIAC, Gulf Aire asserts that it needs to collect the gross-up because it anticipates that a substantial portion of its CIAC received in the future will be taxed at federal statutory rates. In addition, Gulf Aire asserts that unless its gross-up authority is effective throughout this period, it will incur a substantial tax liability with no apparent source for the funding of such liability.

Although the information filed makes it appear that Gulf Aire will have a tax liability, additional information is needed before we can determine whether a tax liability exists and other sources of funds are not available at a reasonable cost, as required by Order No. 23541. In consideration of the above, we will not suspend, approve or deny the tariff. Our intention is to allow the proposed tariff to become effective on an interim basis, pending our review of the additional information.

Pursuant to Orders Nos. 16971 and 23541, CIAC tax impact amounts are to be deposited as received in a fully funded interest bearing escrow account and Gulf Aire is required to maintain adequate records to account for the receipt, deposit, and withdrawal of monies in the CIAC tax impact account. Because this CIAC gross-up will be collected on an interim basis and may not be permitted after further examination, no monies shall be withdrawn from the escrow account until a final determination is made in this matter. Pursuant to Rule 25-30.360(6), Florida Administrative

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Code, Gulf Aire shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund.

In the event that CIAC gross-up is permitted after a final determination, all CIAC tax impact monies received during the tax year that are in excess of Gulf Aire's actual tax liability resulting from the collection of CIAC, together with interest on such excess monies, must be refunded on a pro rata basis to the contributors of those amounts. Further, all provisions of Orders Nos. 16971 and 23541 not addressed in this Order are incorporated herein by reference.

The tariff proposed by Gulf Aire in its petition will become effective, but not final, on or after August 28, 1991. However, substantially affected persons shall have 21 days from the date of this Order to request a hearing.

It is therefore,

ORDERED by the Florida Public Service Commission that the tariff filed by Gulf Aire Wastewater Treatment Plant for CIAC gross-up are neither approved, suspended nor denied. It is further

ORDERED that the tariff filed by Gulf Aire Wastewater Treatment Plant is effective on or after August 28, 1991, but is interim in nature, pending a final order by the Commission. It is further

ORDERED that Gulf Aire Wastewater Treatment Plant shall deposit all of the collected gross-up on CIAC into a fully funded interest bearing escrow account and the funds collected are subject to refund in accordance with the provisions of Rule 25-30.360, Florida Administrative Code. It is further

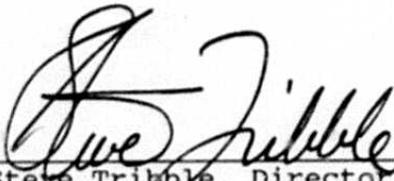
ORDERED that Gulf Aire Wastewater Treatment Plant shall make no withdrawals from the escrow account until a final determination to approve or deny the tariff is made in this matter. It is further

ORDERED that a substantially affected person may file a petition for a formal proceeding, with the Director, Division of Records and Reporting, by the date set forth in the Notice of Further Proceedings below. It is further

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ORDERED that this docket shall remain open.

BY ORDER of the Florida Public Service Commission, this 4th  
day of SEPTEMBER, 1991.

  
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Steve Tribble, Director  
Division of Records and Reporting

(S E A L)

LAJ

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The tariff is interim in nature. A person whose substantial interests are affected by the action may file a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 9/25/91.

Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or sewer utility, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.