

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of
contributions-in-aid-of-
construction (CIAC) gross-up
funds received by POINCIANA
UTILITIES, INC. in Osceola and
Polk Counties.

DOCKET NO. 931228-WS
ORDER NO. PSC-98-0031-FOF-WS
ISSUED: January 5, 1998

The following Commissioners participated in the disposition of
this matter:

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

NOTICE OF PROPOSED AGENCY ACTION ORDER REQUIRING REFUNDS FOR THE
YEARS 1987, 1988, 1989, 1990, 1995 and 1996, BUT NOT FOR THE YEARS
1991, 1992, 1993, AND 1994

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Poinciana Utilities, Inc., is a Class A utility providing
service to approximately 5,582 water customers and 5,269 wastewater
customers in Osceola and Polk Counties. According to their 1996
annual report, operating revenue of \$1,077,631 for water and
\$2,289,922 for wastewater was reported. The utility reported net
operating income of \$132,952 for water and \$474,539 for wastewater.

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

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utilities to collect the gross-up on CIAC in order to meet the tax impact resulting from the inclusion of CIAC as gross income.

Orders Nos. 16971 and 23541, issued December 18, 1986 and October 1, 1990, respectively, require that utilities annually file information which would be used to determine the actual state and federal income tax liability directly attributable to the CIAC. The information would also determine whether refunds of gross-up would be appropriate. These orders also require that all gross-up collections for a tax year, which are in excess of a utility's actual tax liability for the same year, should be refunded on a pro rata basis to those persons who contributed the taxes.

In Order No. 23541, we required any water and wastewater utility already collecting the gross-up on CIAC and wishing to continue, to file a petition for approval with the Commission on or before October 29, 1990. Poinciana filed for authority to continue to gross-up on December 18, 1990. By Order No. 25174, issued October 8, 1991, Poinciana was granted authority to continue to gross-up using the full gross-up formula.

On September 9, 1992, we issued Proposed Agency Action (PAA) Order No. PSC-92-0961-FOF-WS, which clarified the provision of Orders Nos. 16971 and 23541 for the calculation of refunds of gross-up of CIAC. On September 14, 1992, we issued PAA Order No. PSC-92-0961A-FOF-WS. This order included Attachment A which reflected the generic calculation form. No protests were filed, and the Orders became final.

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

However, on August 1, 1996, Congress passed the Small Business Job Protection Act of 1996 (the Act), and the President signed the law on August 20, 1996. The Act provided for the non-taxability of CIAC collected by water and wastewater utilities, effective retroactively for amounts received after June 12, 1996. As a result, on September 20, 1996, in Docket No. 960965-WS, we issued Order No. PSC-96-1180-FOF-WS revoking the authority of utilities to collect gross-up of CIAC and canceling the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Since there was no longer a need to review our policy on the gross-up of CIAC, we issued, on October 8, 1996, Order No. PSC-96-1253-FOF-WS, which closed Docket No. 960397-WS. However, as established in PAA Order No. PSC-96-0686-FOF-WS, all pending CIAC gross-up refund cases are being processed pursuant to Orders Nos. 16971 and 23541.

The purpose of this Order is to address the disposition of CIAC refunds for the years 1987 through 1996.

MOTION AND SETTLEMENT OFFER

On July 21, 1997, the utility filed a motion for recovery of legal and consultant costs. The utility later indicated verbally that it would be willing to accept recovery of 50 percent of those costs.

Acceptance of the utility's offer could avoid the substantial costs associated with a hearing, which may in fact exceed the amount of the legal and accounting costs to be recovered. We further note that the actual costs associated with implementing the refunds have not been included in these calculations and will be absorbed by the utility. Therefore, we believe the utility's settlement proposal is a reasonable "middle ground" that effectively gives the utility an offset substantially less than that which it had originally proposed. Therefore, while not adopting the utility's position, we find it appropriate to accept Poinciana's settlement proposal. Based on this motion and offer of settlement, we have offset 50 percent of the preparation costs against the refund amount which is consistent with our actions in Orders Nos. PSC-97-0363-PCO-SU and PSC-97-1349-FOF-SU.

The utility has proposed legal fees of \$12,646 and consulting (accounting) fees of \$13,777, for a total request of \$26,423. Upon reviewing these costs, we have determined \$7,988 in legal fees and \$13,777 in consulting fees, for a total of \$21,766, to be legitimate expenses for preparation of the CIAC reports. We have allocated 50 percent of this amount, or \$10,882, as set forth below.

Because the consulting fees were incurred for the review of the 1987 through 1993 CIAC gross-up reports, only these years will be used for recovery of the consulting fees. This equates to \$984 each year for those years for consulting costs. Also, the legal fees for each year for the years 1987 through 1996 were \$400 per year. Therefore, the recoverable costs are \$1,384 per year, for the years 1987 through 1993, and \$400 for the years 1994 through 1996. The recoverable costs are netted against the CIAC gross-up collected each year.

CALCULATION OF FIRST YEAR DEPRECIATION

The utility reported the collection of cash and property CIAC. The utility's calculation of first year depreciation expenses is calculated based on the contributed property, and does not include the cash capacity fees. The utility argues that cash should not be included in the calculation of depreciation, because cash is not depreciable property.

Rule 25-30.515(3), Florida Administrative Code, defines CIAC as:

any amount or item of money, services, or property received by a utility, from any person or governmental agency, any portion of which is provided at no cost to the utility, which represents an addition or transfer to the capital of the utility, and which is utilized to offset the acquisition, improvement, or construction costs of the utility's property, facilities, or equipment used to provide utility services to the public. The term includes . . . system capacity charges, main extension charges and customer connection charges.

By definition, CIAC charges are intended for plant and are to be utilized for the acquisition, or construction of utility property; therefore, it is appropriate to assume that the cash CIAC was converted into property and that depreciation expense is applicable.

Also, to further support the conversion of cash to property, it appears that the utility has plant additions for each year 1987 through 1995 that significantly exceed the amount of property and cash CIAC collections. This bolsters the assumption that the cash CIAC (the capacity fees) was converted to plant. We also used this method of calculating depreciation on capacity fees assumed to be converted to plant in the gross-up disposition case of Florida Cities Water Company, Docket No. 921240-WS, Order PSC-94-0213-WS-FOF, issued February 23, 1994. Therefore, we have calculated first year depreciation expense based on the total reported CIAC amount. The depreciation rate used was .0375, which is consistent with the utility.

NET OPERATING LOSS CARRY FORWARDS

The utility did not include the net operating losses (NOLs) in their calculation of the refund, and disagrees with offsetting taxable income with NOLs. As of December 31, 1986, the utility had accumulated a total of \$1,701,703 in NOLs, of which \$259,152 of the NOLs are above-the-line. The utility contends that we have not allowed them to recover income taxes in the cost of service in prior rate cases. Therefore, the utility argues that if we offset taxable income with NOLs, then the NOLs would have been used twice. First, through reduced rates to customers and, second, by using the NOLs to determine the CIAC refund amount to the developers. The utility states that it has not earned sufficient revenues to cover operating expense, much less the depreciation and property taxes for the past sixteen years.

The treatment of NOLs in relation to CIAC has frequently been a point of dispute. In Order No. 23541, issued after hearing, we stated that: "As a threshold, a utility should be able to demonstrate the existence of an actual tax liability on a regulated above-the-line basis. Unless there is a stand-alone tax liability, there is no need for additional funds to pay for the tax on CIAC."

Further, recognition of the effect of net operating loss carry backs or carry forwards is an integral part of the calculation of both a company's tax liability and its tax expense. Recognition in the calculations shows that taxes previously paid or to be paid have been recovered or will be reduced.

Orders Nos. 16971 and 23541, require that utilities annually file information which would be used to determine the actual state and federal income tax expense directly attributable to the CIAC. When a utility has an above-the-line loss, the amount of taxable CIAC collected for the year must be netted against the above-the-line loss to determine the net amount of taxable CIAC. If a utility has above-the-line income, the total amount of CIAC collected was taxable prior to June 13, 1996, and should be used to calculate the tax liability.

The tax liability resulting from the collection of taxable CIAC must be looked at separately. Otherwise, it would appear that the developer or individual customer who pays gross-up is paying for the income taxes associated with the utility's overall operations, which are recoverable through service rates. Therefore, it is appropriate to use the total amount of taxable CIAC to calculate the actual tax liability attributable to the CIAC when a utility has an above-the-line taxable income and the amount of taxable CIAC should be reduced by the amount of the above-the-line loss when an above-the-line loss exists.

Order No. 23541 requires utilities to offset CIAC income against their above-the-line NOLs. The utilities must refund all amounts of gross-up collected in excess of their actual tax liabilities resulting from their collection of CIAC.

Because the utility is not 100 percent used and useful, only the used and useful CIAC and corresponding gross-up and depreciation amounts were used to calculate the adjusted income before CIAC and gross-up. The appropriate used and useful amounts used to determine the adjusted income were provided by the utility. However, when determining the appropriate amount of taxable CIAC and depreciation and the resulting tax liability, the total amount of each component was used to determine the amount of the refund. This is appropriate, because for tax purposes the entire annual amount of CIAC collected is taxed. Therefore, the entire amount of

gross-up collected must be used to determine the appropriate refund.

ANNUAL GROSS-UP REFUND AMOUNTS FOR THE YEARS 1987 THROUGH 1996

In compliance with Order No. 16971, Poinciana filed its 1987 through 1996 annual CIAC reports regarding its collection of gross-up for each year. By letter dated March 9, 1993, our staff submitted the preliminary refund calculation numbers for the preceding years to the utility. After a prolonged dialog, the utility, by letter dated April 19, 1995, responded with a revised calculation of the CIAC refund amounts. Finally, in November of 1997, our staff provided the utility with the refund calculations for the years 1987 through 1996. Also, on December 4, 1997, staff filed its recommendation for our consideration at the December 16, 1997 Agenda Conference.

Upon review of this recommendation, we have calculated the amount of refund per year which is appropriate. Our calculations, taken from the information provided by the utility in its gross-up reports filed each year, are reflected on the schedule attached to and made a part of this Order. A summary of each year's refund calculation follows.

1987

The utility proposes a refund of \$39,741 for 1987 excess gross-up collections. We calculate a refund of \$228,934.

The utility's refund is based on an above-the-line loss of \$50,070, before the inclusion of the taxable CIAC in income. The report indicates a total of \$230,318 in gross-up collections were received, with first year's depreciation of \$2,087 associated with \$301,711 in taxable CIAC.

As discussed above, we have assumed cash CIAC was converted to plant, which is consistent with Order No. PSC-94-0213-FOF-WS. Order No. 23541 states that the full gross-up formula takes into account the first year's depreciation. The depreciation is an expense item which reduces the amount of CIAC which is taxable. Based on the foregoing, we have included first year's depreciation in the calculation of the net taxable amount of CIAC. Using the

composite depreciation rate of .0375, which was provided by the utility, the first year's depreciation was calculated to be \$11,314, instead of \$2,087 as determined by the utility.

Based upon our review of the utility's 1987 filing, the utility incurred an above-the-line loss of \$50,070 prior to the inclusion of the taxable CIAC in income. Consistent with Order No. 23541, this loss was offset against the CIAC income of \$290,397, resulting in taxable CIAC of \$240,327. The remaining taxable CIAC of \$240,327 was offset against \$240,327 of net operating loss carry forwards. As a result, the utility had no taxable CIAC income for 1987. However, the utility is allowed recovery of \$1,384 in preparation costs, and the amount of the refund shall be the amount of gross-up collected (\$230,318) less the \$1,384. Based upon the foregoing, the utility should refund \$228,934 for 1987. This amount does not include the accrued interest as of December 31, 1987, which must also be refunded through the date of the refund.

1988

The utility proposes a refund of \$41,944 for 1988 excess gross-up collections. We calculate a refund of \$95,945 for 1988.

Based upon our review of the utility's 1988 filing, the utility incurred an above-the-line loss of \$52,342 prior to the inclusion of taxable CIAC in income. The report indicates a total of \$1,465,601 in gross-up collections were received, with first year's depreciation of \$18,157 associated with \$2,430,146 in taxable CIAC.

As discussed above, we have assumed cash CIAC was converted to plant, which is consistent with Order No. PSC-94-0213-FOF-WS. Using the composite depreciation rate of .0375, which was provided by the utility, we calculate first year's depreciation to be \$91,130, instead of \$18,157 as determined by the utility.

Because the utility incurred an above-the-line loss of \$52,342 prior to the inclusion of the taxable CIAC in income, all of the CIAC collected would not be taxed. Offsetting this above-the-line loss against the CIAC income of \$2,430,146, results in taxable CIAC of \$2,377,804. Deducting first year's depreciation of \$91,130, results in net taxable CIAC of \$2,286,674. However, Poinciana had

\$18,625 of net operating loss carry forwards, and this reduced the taxable CIAC income level to \$2,267,849 for 1988.

Using the 37.63 percent combined federal and state tax rate as provided in the CIAC report, we calculate the tax effect to be \$853,391. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$1,368,272. The required gross-up of \$1,368,272 and the preparation costs of \$1,384, results in total recoverable costs of \$1,369,656. Subtracting this amount from the \$1,465,601 collected by the utility results in a refund requirement of \$95,945 for 1988. This amount does not include the accrued interest as of December 31, 1988, which must also be refunded through the date of the refund.

1989

The utility proposes a refund of \$11,949 for 1989 excess gross-up collections. We calculate a refund of \$62,324 for 1989.

Based upon our review of the utility's 1989 filing, the utility incurred an above-the-line loss of \$9,737 prior to the inclusion of taxable CIAC in income. The report indicates a total of \$1,552,095 in gross-up collections were received, with first year's depreciation of \$10,706 associated with \$2,573,164 in taxable CIAC.

As discussed above, we have assumed cash CIAC was converted to plant. Using the composite depreciation rate of .0375, which was provided by the utility, we calculate first year's depreciation to be \$96,494, instead of \$10,706 as determined by the utility.

Because the utility incurred an above-the-line loss of \$9,737 prior to the inclusion of the taxable CIAC in income, all of the CIAC collected would not be taxed. Offsetting this above-the-line loss against the CIAC income of \$2,573,164, results in taxable CIAC of \$2,563,427. Deducting first year's depreciation of \$96,494 results in net taxable CIAC of \$2,466,933.

Using the 37.63 percent combined federal and state tax rate as provided in the CIAC report, we calculate the tax effect to be \$928,307. When this amount is multiplied by the expansion factor

for gross-up taxes, the amount of gross-up required to pay the tax effect on the CIAC is calculated to be \$1,488,387. The required gross-up of \$1,488,387 and the preparation costs of \$1,384, results in total recoverable costs of \$1,489,771. The utility collected \$1,552,095 in gross-up monies. Subtracting \$1,489,771 from the \$1,552,095 results in a refund requirement of \$62,324 for 1989. This amount does not include the accrued interest as of December 31, 1989, which must also be refunded through the date of the refund.

1990

The utility proposes a refund of \$4,780 for 1990 excess gross-up collections. We calculate a refund of \$30,129 for 1990.

Based upon our review of the utility's 1990 filing, the utility was in a taxable position with \$149,308 in above-the-line income prior to the inclusion of taxable CIAC in income.

As discussed above, we have assumed cash CIAC was converted to plant. Using the composite depreciation rate of .0375, which was provided by the utility, we calculate first year's depreciation to be \$51,908, instead of \$7,600 as determined by the utility.

Because the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income, all taxable CIAC received would be taxed net of first year's depreciation. The 1990 CIAC report indicates that a total of \$835,335 in gross-up collections were received, with \$1,384,207 in taxable CIAC. Subtracting first year's depreciation of \$51,908 from the taxable CIAC income of \$1,384,207 results in net taxable CIAC of \$1,332,299.

Using the 37.63 percent combined marginal federal and state tax rates as provided in the 1990 CIAC Report, we calculate the tax effect to be \$501,344. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$803,822. The utility collected \$835,335 in gross-up taxes. The required gross-up of \$803,822 and the preparation costs of \$1,384, results in total recoverable costs of \$805,206. Based upon the foregoing, the utility collected \$30,129 more in gross-up than was

required to pay the taxes, and this amount shall be refunded. This amount does not include the accrued interest as of December 31, 1990, which must also be refunded through the date of the refund.

1991

The utility proposes that no refund is appropriate. We agree that no refund for 1991 is required.

The 1991 CIAC report indicates that a total of \$434,989 in gross-up collections were received. Based upon our review of the utility's 1991 filing, the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income.

As discussed above, we have assumed cash CIAC was converted to plant. Using the composite depreciation rate of .0375, which was provided by the utility, we calculate first year's depreciation to be \$30,108, instead of \$3,509 as determined by the utility.

Because the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income, all taxable CIAC received would be taxed net of first year's depreciation. The 1991 CIAC report indicates that a total of \$434,989 in gross-up collections were received, with \$802,893 in taxable CIAC. Subtracting first year's depreciation of \$30,108 from the taxable CIAC income of \$802,893 results in net taxable CIAC of \$772,785.

Using the 37.63 percent combined marginal federal and state tax rates as provided in the 1991 CIAC Report, we calculate the tax effect to be \$290,799. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$466,248. The required gross-up of \$466,248 and the preparation costs of \$1,384, results in total recoverable costs of \$467,632. However, the utility only collected \$434,989 in gross-up monies; therefore, the utility did not collect enough in gross-up to pay the tax impact and no refund is necessary.

1992

The utility proposes that no refund is appropriate. We agree that no refund for 1992 is required.

The 1992 CIAC report indicates that a total of \$1,459,660 in gross-up collections were received. Based upon our review of the utility's 1992 filing, the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income.

As discussed above, we have assumed cash CIAC was converted to plant. Using the composite depreciation rate of .0375, which was provided by the utility, we calculate first year's depreciation to be \$100,805, instead of \$17,851 as determined by the utility.

Because the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income, all taxable CIAC received would be taxed net of first year's depreciation. The 1992 CIAC report indicates that a total of \$1,459,660 in gross-up collections were received, with \$2,688,121 in taxable CIAC. Subtracting first year's depreciation of \$100,805 from the taxable CIAC income of \$2,688,121 results in net taxable CIAC of \$2,587,316.

Using the 37.63 percent combined marginal federal and state tax rates as provided in the 1991 CIAC Report, we calculate the tax effect to be \$973,607. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$1,561,402. However, the utility only collected \$1,459,660 in gross-up monies; therefore, the utility did not collect enough in gross-up to pay the tax impact and no refund is necessary for this year.

1993

The utility proposes that no refund is appropriate. We agree that no refund for 1993 is required.

The 1993 CIAC report indicates that a total of \$526,804 in gross-up collections were received. Based upon our review of the

utility's 1993 filing, the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income.

As discussed above, we have assumed cash CIAC was converted to plant. Using the composite depreciation rate of .0375, which was provided by the utility, we calculate first year's depreciation to be \$35,303, instead of \$5,714 as determined by the utility.

Because the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income, all taxable CIAC received would be taxed net of first year's depreciation. The 1993 CIAC report indicates that a total of \$526,804 in gross-up collections were received, with \$941,406 in taxable CIAC. Subtracting first year's depreciation of \$35,303, from the taxable CIAC income of \$941,406, results in net taxable CIAC of \$906,103.

Using the 37.63 percent combined marginal federal and state tax rates as provided in the 1993 CIAC Report, we calculate the tax effect to be \$340,967. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$546,684. The required gross-up of \$546,684 and the preparation costs of \$1,384, results in total recoverable costs of \$548,068. However, the utility only collected \$526,804 in gross-up monies; therefore, the utility did not collect enough in gross-up to pay the tax impact and no refund is necessary for this year.

1994

The utility proposes that no refund is appropriate. We agree that no refund of gross-up collections for 1994 is required.

The 1994 CIAC report indicates that a total of \$661,475 in gross-up collections were received. Based upon our review of the utility's 1994 filing, the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income.

As discussed above, we have assumed cash CIAC was converted to plant. Using the composite depreciation rate of .0375, which was

provided by the utility, we calculate first year's depreciation to be \$42,703, instead of \$7,305 as determined by the utility.

Because the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income, all taxable CIAC received would be taxed net of first year's depreciation. The 1994 CIAC report indicates that a total of \$661,475 in gross-up collections were received, with \$1,138,752 in taxable CIAC. Subtracting first year's depreciation of \$42,703, results in net taxable CIAC of \$1,096,049.

Using the 37.63 percent combined marginal federal and state tax rates as provided in the 1994 CIAC Report, we calculate the tax effect to be of \$412,443. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$661,284. The required gross-up of \$661,284 and the preparation costs of \$400, results in total recoverable costs of \$661,684. However, the utility only collected \$661,475 in gross-up taxes; therefore, the utility required more in gross-up to pay the tax impact and the preparation costs than the utility collected, and no refund is necessary.

1995

The utility proposes a refund of \$627 for 1995 excess gross-up collections. We calculate a refund of \$8,224 for 1995.

Based upon our review of the utility's 1995 filing, the utility was in a taxable position with \$392,313 in above-the-line income prior to the inclusion of taxable CIAC in income.

As discussed above, we have assumed cash CIAC was converted to plant. Using the composite depreciation rate of .0375, which was provided by the utility, we calculate first year's depreciation to be \$78,612, instead of \$16,209 as determined by the utility.

Because the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income, all taxable CIAC received would be taxed net of first year's depreciation. The 1995 CIAC report indicates that a total of \$1,225,980 in gross-up collections were received, with \$2,096,325

in taxable CIAC. Subtracting first year's depreciation of \$78,612 from the taxable CIAC income of \$2,096,325, results in net taxable CIAC of \$2,017,713.

Using the 37.63 percent combined marginal federal and state tax rates as provided in the 1995 CIAC Report, we calculate the tax effect to be \$759,265. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$1,217,356. The required gross-up of \$1,217,356 and the preparation costs of \$400, results in total recoverable costs of \$1,217,756. The utility collected \$1,225,980 in gross-up taxes. Based upon the foregoing, the utility shall refund \$8,224, for 1995. This amount does not include the accrued interest as of December 31, 1995, which must also be refunded through the date of the refund.

1996

The utility proposes a refund of \$788 for 1996 excess gross-up collections. We calculate a refund of \$3,043 for 1996.

Based upon our review of the utility's 1996 (through June 12, 1996) filing, the utility was in a taxable position with \$621,965 in above-the-line income prior to the inclusion of taxable CIAC in income.

As discussed above, we have assumed cash CIAC was converted to plant. Using the composite depreciation rate of .0375, which was provided by the utility, we calculate first year's depreciation to be \$17,241, instead of \$3,608 as determined by the utility.

Because the utility was in a taxable position on an above-the-line basis prior to the inclusion of taxable CIAC in income, all taxable CIAC received would be taxed net of first year's depreciation. The 1996 CIAC report indicates that a total of \$270,429 in gross-up collections were received, with \$459,758 in taxable CIAC. Subtracting first year's depreciation of \$17,241, from the taxable CIAC income of \$459,758, results in net taxable CIAC of \$442,517.

Using the 37.63 percent combined marginal federal and state tax rates as provided in the 1996 CIAC Report, we calculate the tax effect to be \$166,519. When this amount is multiplied by the expansion factor for gross-up taxes, the amount of gross-up required to pay the tax effect of the CIAC is calculated to be \$266,986. The required gross-up of \$266,986 and the preparation costs of \$400, results in total recoverable costs of \$267,386. The utility collected \$270,429 in gross-up taxes. Based upon the foregoing, the utility shall refund \$3,043 for 1996. This amount does not include the accrued interest as of June 12, 1996, which must also be refunded through the date of the refund.

Based on all the above, Poinciana Utilities, Inc., shall refund \$228,934 for 1987, \$95,945 for 1988, \$62,324 for 1989, \$30,129 for 1990, \$8,224 for 1995 and \$3,043 for 1996, for a total of \$428,599. For the years 1991, 1992, 1993, and 1994, no refunds are required.

For all the years above which require refunds, the refunds shall be completed within 6 months of the effective date of the order. Within 30 days from the date of the refund, the utility shall submit copies of canceled checks, credits applied to monthly bills or other evidence that verifies that the utility has made the refunds. Within 30 days from the date of the refund, the utility shall also provide a list of unclaimed refunds detailing the contributor and the amount, and an explanation of the efforts made to make the refunds.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket shall remain open pending completion and verification of the refunds. Upon verification that the refunds have been made, the docket shall be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Poinciana Utilities, Inc., shall make refunds totalling \$428,599 as set forth in the body of this Order. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that, pursuant to Orders Nos. 16971 and 23541, all refund amounts shall be refunded on a pro rata basis to those persons who contributed the funds. It is further

ORDERED that the refunds required herein shall be completed within six months of the effective date of this Order, and that Poinciana Utilities, Inc., shall submit copies of canceled checks, credits applied to monthly bills or other evidence verifying that the refunds have been made within 30 days of completion of the refund. It is further

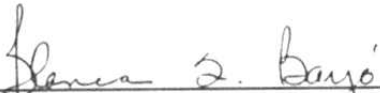
ORDERED that within 30 days of completion of the refund, Poinciana Utilities, Inc., shall provide a list of unclaimed refunds detailing the contributor and the amount, and an explanation of the efforts made to make the refunds. It is further

ORDERED that the attached Schedule detailing our calculations is incorporated and made a part of this Order. It is further

ORDERED that the docket shall be administratively closed upon expiration of the protest period, if no timely protest is filed, and upon our staff's verification that the refunds have been made.

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By ORDER of the Florida Public Service Commission this 5th
day of January, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and

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Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 26, 1998.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

