

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of gross-up)
funds collected by HYDRATECH) Docket No. 961076-WS
UTILITIES, INC. in Martin County.)
_____)

PETITION ON PROPOSED AGENCY ACTION

Petitioner, HYDRATECH UTILITIES, INC. (hereinafter "Hydratech" or "Petitioner"), by and through its undersigned attorneys, files this Petition for Formal Proceedings pursuant to § 120.57(1), Fla. Stat., and pursuant to Order No. PSC-96-1352-FOF-WS issued in Docket No. 961076-WS on November 18, 1996 and says:

1. This Petition is filed pursuant to the applicable provisions of Rule 25-22.36(7)(a) and (f), Florida Administrative Code (F.A.C.).

2. (a) The name of the Commission is the Florida Public Service Commission ("PSC").

(b) The docket number is 961076-WS.

3. (a) The name and address of the Petitioner is:

HYDRATECH UTILITIES, INC.
6570 S.E. Federal Highway
Stuart, Florida 34997-8383

ACK _____
AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG 1 _____
LIN 3 _____
OPC _____
RCH _____
SEC 1 _____
WAS Debra _____
OTH _____

(b) By Commission Order No. PSC-96-1352-FOF-WS, the Commission proposed to increase the amount of refund of gross-up monies based upon its failure to offset refunds due for the legal and accounting costs associated with the preparation and filing of the gross-up reports. Instead, the Commission order finds that those fees should be recovered through general rate-setting from the general body of ratepayers. Those costs are appropriately

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applicable to the gross-up process and, therefore, should be used to reduce the amount of gross-up refundable rather than being charged to the general body of ratepayers through the rate-setting process. The Staff's reasoning would require that recovery of those costs come from the general body of ratepayers which is directly contrary to the requirements of Commission Order Nos. 16971 and 23541 issued to govern the filing and processing of gross-up reports.

(c) The Commission's order also proposes to include in above-the-line expenses, substantial legal fees incurred by the Utility in efforts to sell its system, which the Utility contends have never been considered as appropriate operating expenses for rate setting and would not likely be considered as such in any future rate setting proceeding. Such action by the Commission is plainly contrary to the intent of Order Nos. 23541 and 16971 in that those costs are not imbedded in rates. As such, those expenses are below-the-line items and have been funded in the past (and even after any appropriate rate setting would likely continue to be) by the shareholders. For these reasons, those expenses should have been treated as below-the-line items.

4. Petitioner, at this point, knows of several areas which may include combinations of disputed issues of material fact, law or policy:

(a) Is there any duly authorized or adopted rule which requires that the cost of gross-up processing be recovered from anyone other than the contributors of gross-up (specifically the

general body of ratepayers), or is there any such rule which requires above-the-line treatment for expenses not previously imbedded in nor likely to be imbedded in the rates of the Utility? If these questions include issues of fact, Petitioner disputes the findings of Order No. PSC-96-1352-FOF-WS and its findings on those facts.

(b) Is there any Order of the Commission which authorizes or requires that the cost of processing gross-up filings should be included as above-the-line expenses for the purpose of determining an appropriate refund of gross-up monies or if those expenses are appropriately recoverable from the general body of ratepayers. Is there any order of the Commission which authorizes or requires that the cost, never before recognized by the Commission in rate setting and not likely to be recognized by the Commission as cost of operation in future proceedings, should be considered as above-the-line expenses for the purposes of calculating gross-up refunds? If these issues include issues of fact, Petitioner disputes the findings of Order No. PSC-96-1352-FOF-WS in that regard.

5. Petitioner's undersigned attorneys obtained a copy of Order No. PSC-96-1352-FOF-WS from the PSC's Division of Records and Reporting on November 21, 1996 by U.S. Mail.

6. The treatment given in the Commission's Order to recognize costs of preparing and processing the gross-up refund reports and other costs not currently imbedded in rates or likely to be so recognized in the future, inappropriately assumes that the

general body of ratepayers are responsible for such costs and provides the contributors of gross-up the benefit of that assumption despite the requirements of Order No. 16971 and 23541 to the contrary.

WHEREFORE, based upon the above, HYDRATECH UTILITIES, INC. requests that the Commission grant it a hearing pursuant to the provisions of §120.57(1), Florida Statutes, on each of the factual and legal and policy issues outlined herein.

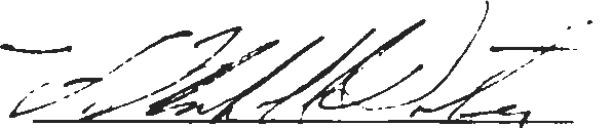
Respectfully submitted this 9th
day of December, 1996; by:
ROSE, SUNDSTROM & BENTLEY
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(904) 877-6555



F. Marshall Deterding

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by Hand Delivery or U.S. Mail to RALPH JAEGER, Esquire, Florida Public Service Commission, Division of Legal Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399, this 9th day of December, 1996.



F. Marshall Deterding, Esq

hydra\petition.paa

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