



4. The disputed issues of material fact are:

(1) Whether Grenelefe Utility ("Utility") had an approved non-potable irrigation rate when Polk County transferred jurisdiction of water and wastewater utilities in that County to the Commission.

(2) Whether the Utility's implementation of a non-potable irrigation rate constitutes a willful violation of Chapter 367, Florida Statutes, and if so, what penalty should be imposed on the Utility.

5. The ultimate facts are as follows:

(1) At the time Polk County transferred jurisdiction over water and wastewater systems in the County, the Utility had no approved rate for non-potable irrigation service.

(2) The revenue requirement established by Polk County in the Utility's most recent rate order includes a rate of return on the non-potable irrigation facilities; and for the operating and maintenance expenses of those facilities. Thus, the establishment of a rate for non-potable irrigation service without a reduction in the Utility's water rates for potable water service would result in a windfall to the Utility and put it in an overearnings position.

(3) The Utility's implementation of an non-potable irrigation rate even though it knew such rate was not authorized constitutes a willful violation of the provision of Chapter 367, Florida Statutes, and a penalty of \$5,000 per violation per day should be imposed.

(4) It is beyond the scope of the Commission's grandfather certification process to set a non-potable irrigation rate for the Utility.

6. The following Commission Rules and Statutes entitle the Association to relief:

- (1) Section 367.171, Florida Statutes
- (2) Section 367.161, Florida Statutes
- (3) Rule 25-30.035, Florida Administrative Code

WHEREFORE, the Association requests that the Commission hold a formal administrative hearing and to thereafter decline to establish a non-potable irrigation rate, require a refund with interest of all revenue collected by imposition of the non-potable irrigation rate, impose a penalty in excess of \$50,000, and grant the Association such other relief as it just and reasonable.

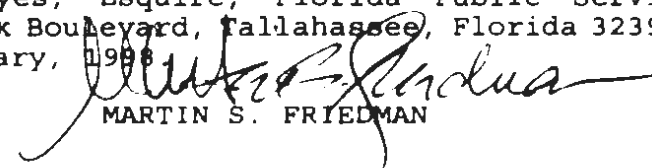
Respectfully submitted on this  
15th day of January, 1998, by:

ROSE, SUNDSTROM & BENTLEY, LLP  
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(850) 877-6555

BY:   
MARTIN S. FRIEDMAN

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Counter-Petition for Formal Administrative Proceeding has been forwarded via U.S. Mail to W. Bruce DelValle, Esquire, Foley & Lardner, 111 North Orange Avenue, Suite 1800, Orlando, Florida 32802-2193 and Bobbie Reyes, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 this 15th day of January, 1998.

  
MARTIN S. FRIEDMAN