

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

MEMORANDUM

April 30, 1998

RECEIVED

APR 30 1998

11:35  
FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (GILCHRIST)  
DIVISION OF LEGAL SERVICES (JABER)

RE: DOCKET NO. 961076-WS - DISPOSITION OF GROSS-UP FUNDS  
COLLECTED BY HYDRATECH UTILITIES, INC.  
COUNTY: MARTIN

AGENDA: MAY 12, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\961076A.RCM  
DOCKET NOS. 961076-WS AND 970275-WS,  
SHOULD BE SCHEDULED CONSECUTIVELY IN  
NUMERICAL ORDER.

---

CASE BACKGROUND

Hydratech Utilities, Inc. (Hydratech or utility) is a Class A water and wastewater utility providing service to approximately 5,301 water and 4,499 wastewater customers in Martin County. According to its 1996 annual report, the utility reported gross operating revenues of 1,330,262 and \$1,058,728 for water and wastewater, respectively, and net operating income of \$182,542 for water and net operating income of \$793 for wastewater.

By Order No. PSC-97-0657-AS-WS, issued on June 9, 1997, the Commission required Hydratech to refund a total of \$16,534 contributions-in-aid-of-construction (CIAC) gross-up for the fiscal year ended December 31, 1994. On December 15, 1997, Hydratech implemented the refund and, to date, \$9,641.07 of the refunds remain unclaimed. By correspondence dated March 18, 1998, Hydratech requested that it be allowed to treat the unclaimed refunds as cash CIAC. The utility's request to dispose of the unclaimed refunds is the subject of this recommendation.

DOCUMENT NUMBER-DATE

04864 APR 30 98

FPSC-RECORDS/REPORTING

DISCUSSION OF ISSUES

ISSUE 1: Should Hydratech Utilities, Inc., be allowed to credit its CIAC account with the amount of unclaimed refunds?

RECOMMENDATION: Yes, the utility should be allowed to credit CIAC in the amount of \$9,641.07, in unclaimed refunds. Of this amount, \$4,820.50 should be allocated to water and \$4,820.50 should be allocated to wastewater, based on the ratio of water service availability charges to wastewater service availability charges in the utility's approved tariff. Further, the refund period should be extended an additional 90 days to honor any additional refund claims. Each refund made within the 90-day time period shall be accompanied by an appropriate reduction to the CIAC account. (GILCHRIST)

STAFF ANALYSIS: In compliance with Commission Order No. PSC-97-0657-AS-WS, Hydratech implemented the refund and submitted copies of the canceled checks to the Commission. By correspondence dated March 18, 1998, Hydratech requested that it be allowed to treat the unclaimed refunds as cash CIAC. The total amount of unclaimed refunds for 1994 is \$9,641.07, which represents 54.27% of the refunds ordered. The unclaimed refunds includes a check for \$29.88, payable to Mildred Tubridy, a check for \$2,670.94 and \$6,940.25, both payable to Mobile Land Development, Inc (MLDI).

As directed by staff, Hydratech provided a list of each individual check, payee and amount remaining unclaimed. Further, the utility provided an explanation of the efforts undertaken to complete the refund. Hydratech advised that it mailed the refund check to the last known mailing address known for Ms. Tubridy and that all means to locate Ms. Tubridy have been exhausted. As for MLDI, the utility explained that the two checks were sent by certified mail to the last known address and although a return receipt for one of the checks was received, the check has never been cashed. The second check was returned as undeliverable. Further, the utility explains that it tried contacting the development's office, however, MLDI sold its interest in the property serviced by Hydratech several months ago and no address or phone numbers other than that to which the checks were sent is known by the current owner of that property and development. Moreover, the current Developer promised approximately six to seven weeks ago that it would send Hydratech a letter making a claim to those refunds under its contract with the original developer. To

DOCKET NO. 961076-SU  
APRIL 30, 1998

date, Hydratech has not received or heard anything further from the current developer or the original developer.

In any case, it is Hydratech's position, that under previous Commission precedent and general gross-up theory, a subsequent purchaser of land is not entitled to gross-up monies paid by a previous property owner, even if such a claim is made by the current developer. In addition, Hydratech advises that both developers have sold lots to individuals to which that gross-up relates and that booking these monies to CIAC will benefit those customers, whereas, paying the refund to either developer will not. Based upon the facts stated above, Hydratech requests that it be allowed to credit CIAC in the amount of \$9,641.07 in unclaimed refunds. Pursuant to Rule 25-30.360(8), Florida Administrative Code, any unclaimed refund is to be treated as CIAC.

Although Order No. 23541 requires that all gross-up amounts in excess of a utility's actual tax liability resulting from its collection of CIAC should be refunded on a pro rata basis to those persons who contributed the taxes, staff is not aware of any previous Commission precedent or provision that would preclude the refund of gross-up money to a subsequent purchaser, if that purchaser could show that by contract the purchaser is entitled to the refund. The utility has stated that booking the gross-up to CIAC would benefit the customers, whereas, paying the developer would not. However, staff believes the customers of the utility would not be harmed if the current developer can prove that according to the sales contract, he is entitled to the refund, and thus, the refund was made to him.

According to the utility's 1996 annual report, the utility is 74.40% contributed for the water system and 70.75% contributed for the wastewater system. Based on the foregoing, staff recommends that Hydratech be allowed to credit CIAC in the amount of \$9,641.07 in unclaimed refunds. Of this amount, \$4,820.50 should be allocated to water and \$4,820.50 should be allocated to wastewater, based on the ratio of water service availability charges to wastewater service availability charges in the utility's approved tariff. As previously stated, the total amount of unclaimed refunds represents 54.27% of the refunds ordered, which is unusually high. In addition, since the current developer indicated that it would send Hydratech a letter making claim to \$9,611.19 of the refund under its contract with MLDI, for this particular case, staff is recommending an additional 90-day period in which to honor any additional refund claims. Each refund made within the 90-day

DOCKET NO. 961076-SU  
APRIL 30, 1998

time frame shall be accompanied by an appropriate reduction to the  
CIAC account.

DOCKET NO. 961076-SU  
APRIL 30, 1998

ISSUE 2: Should the docket be closed?

RECOMMENDATION: Yes, the docket should be closed. (JABER)

STAFF ANALYSIS: There is no further action required in this docket, therefore, this docket should be closed.



FLORIDA PUBLIC SERVICE COMMISSION - RECORDS AND REPORTING

Request for Records Copying and Mailing

Date 1/11/97  
Number of Originals 7 Copies Per Original 1  
Requested By Brad W

Item Presented

Agenda For (Date) \_\_\_\_\_ Order No. 12345 In Docket No. 1234  
Notice of \_\_\_\_\_ For (Date) \_\_\_\_\_ In Docket No. \_\_\_\_\_  
Other \_\_\_\_\_

Special Handling Instructions

Distribution/Mailing

Number	Distributed/Mailed To	Number	Distribution/Mailed To
<u>13</u>	<u>Commission Offices</u>	<u>--</u>	_____
<u>112</u>	<u>Docket Mailing List - Mailed</u>	_____	_____
<u>(6)</u>	<u>Docket Mailing List - Faxed</u>	_____	_____

Note: Items must be mailed and/or returned within one working day after issue unless specified here:

Print Shop Verification

Job Number \_\_\_\_\_ Verified By \_\_\_\_\_  
Date and Time Completed \_\_\_\_\_ Job Checked For Correctness and Quality (Initial) \_\_\_\_\_

Mall Room Verification

Date Mailed \_\_\_\_\_ Verified By \_\_\_\_\_