

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of gross-up funds collected by EAGLE RIDGE UTILITIES, INC. in Lee County.

Docket No. 961077-SU

PETITION ON PROPOSED AGENCY ACTION

Petitioner, EAGLE RIDGE UTILITIES, INC. (hereinafter "Eagle Ridge" or "Petitioner"), by and through its undersigned attorneys, files this Petition for Formal Proceedings pursuant to § 120.57(1) and (2), Fla. Stat., and pursuant to Order No. PSC-96-1394-FOF-SU issued in Docket No. 961077-SU on November 20, 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 961077-SU.

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

EAGLE RIDGE UTILITIES, INC.
14589 Eagle Ridge Drive
Ft. Myers, Florida 33912

ACK
AFA
APP
CAF
CMU
CTR
EAG
LEG
LIN
OPC
RCH
SEC
WAS
OTH

(b) By Commission Order No. PSC-96-1394-FOF-SU, the Commission proposed to increase the amount of refund of gross-up monies based on 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 applicable to the gross-up process and, therefore, should be

RECEIVED & FILED

DOCUMENT NUMBER-DATE

13196 DEC 11 96

utilized 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 Orders issued to govern the filing and processing of gross-up.

(c) By Order No. PSC-96-1394-FOF-SU, the Commission proposes to include within above-the-line expenses all management fees incurred by the utility during the test year, despite the fact that the majority of these fees have ever been recognized by the Commission in rate-setting. The utility had proposed inclusion of the last allowed management fee, increased for customer growth and changes in the *Consumer Price Index*. This constitutes a reasonable basis upon which to determine the appropriate above-the-line charge applicable to the general body of ratepayers. By including the entire management fee above-the-line in the calculation of the appropriate gross-up refund the Commission by definition is stating those charges are appropriately charged to the general body of ratepayers. The utility is not entitled to recover those charges at all unless and until the Commission recognizes the entire management fee and includes it in above-the-line expenses for rate-setting purposes. Therefore, these costs should not be considered an above-the-line charge for the purposes of determining loss funded by the utility and that funded by the customers. Because the utility operated at a loss, this previously unrecognized

management fee should not be assigned to the benefit of the gross-up contributor.

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 and adopted Rule which specifies that Petitioner incurred costs for management fees which have not been recognized in rate setting are appropriately included in above-the-line expenses for determination of gross-up disposition, or is there such a rule that requires that the cost of gross-up processing be recovered from the general body of ratepayers or appropriately recovered from anyone other than the contributors. If either of these questions include issues of fact, Petitioner disputes the findings of Order No. PSC-96-1394-FOF-SU in its findings on those facts.

(b) Is there any Order of the Commission which authorizes or requires that management fees not previously recognized in rates, or the cost of processing gross-up filings and refunds, 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. If those issues include issues of fact, Petitioner disputes the findings of Order No. PSC-96-1394-FOF-SU in that regard.

5. Petitioner's undersigned attorneys obtained a copy of Order No. PSC-96-1394-FOF-SU from the PSC's Division of Records and Reporting on November 22, 1996 by U.S. Mail.

6. The treatment given in Order No. PSC-96-1394-FOF-SU to include in above-the-line expenses the entire amount of the management fee charged to the utility despite the fact that it has never been recognized in rate-setting (nor in this proceeding agreed that it should be recognized in rate-setting), improperly assumes that the utility would be able to recover such costs in a rate-setting proceeding and provides the contributors of gross-up monies the benefit of that assumption.

7. The treatment given in the Commission's Order to recognize costs of preparing and processing the gross-up refund reports 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.

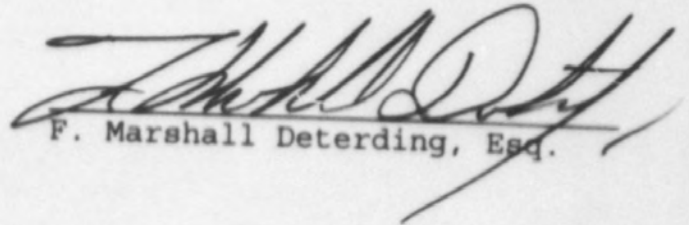
WHEREFORE, based upon the above, EAGLE RIDGE UTILITIES, INC. requests that the Commission grant it a hearing pursuant to the provisions of §120.57(1), Florida Statutes, on each of the factual and legal issues outlined herein.

Respectfully submitted this 11/4/96
day of December, 1996; by:
ROSE, SUNDSTROM & BENTLEY
2548 Blairstone Pines Drive
Tallahassee, Florida 32.2301
(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 17th day of December, 1996.


F. Marshall Deterding, Esq.

eagle\petition.paa