

MEMORANDUM

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28
May 27, 1998

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10:32
FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (JABER) *JAS*
RE: DOCKET NO. 961076-WS - DISPOSITION OF GROSS-UP FUNDS
COLLECTED BY HYDRATECH UTILITIES, INC. IN MARTIN COUNTY.

98-0736-FOF

Attached is an ORDER GRANTING UTILITY'S REQUEST TO CREDIT UNCLAIMED REFUNDS TO CIAC AND CLOSING DOCKET, to be issued in the above-referenced docket.

(Number of pages in order - *5/4*)

See!

LAJ/dr

Attachment

cc: Division of Water and Wastewater (Gilchrist)

I:961076or.laj

*6 folders
1 marked
5/28/98
GWR
to mail
5/28/98
all copies made*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of gross-up
funds collected by Hydratech
Utilities, Inc. in Martin
County.

DOCKET NO. 961076-WS
ORDER NO. PSC-98-0736-FOF-WS
ISSUED: May 28, 1998

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA

ORDER GRANTING UTILITY'S REQUEST TO
CREDIT UNCLAIMED REFUNDS TO CIAC AND CLOSING DOCKET

BY THE COMMISSION:

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 June 9, 1997, Hydratech
was required to refund a total of \$16,534 in 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
Order.

CREDIT OF UNCLAIMED REFUNDS

In compliance with 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 funds
as cash CIAC. The total amount of unclaimed refunds for 1994 is
\$9,641.07, which represents 54.27 percent of the refunds ordered.
The unclaimed refunds includes a check for \$29.88, payable to

DOCUMENT NUMBER-DATE

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FILED-RECORDS SECTION

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Mildred Tubridy, a check for \$2,670.94 and \$6,940.25, both payable to Mobile Land Development, Inc (MLDI).

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 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, we are 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

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utility has stated that booking the gross-up to CIAC would benefit the customers, whereas, paying the developer would not. However, 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 should be made to him.

According to the utility's 1996 annual report, the utility is 74.40 percent contributed for the water system and 70.75 percent contributed for the wastewater system. Based on the foregoing, we find it appropriate to allow Hydratech to credit the CIAC account in the amount of \$9,641 in unclaimed refunds. Of this amount, \$4,820.50 shall be allocated to water and \$4,820.50 shall 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 percent 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, we find that an additional 90-day period in which to honor any additional refund claims is warranted. Each refund made within the 90-day time frame shall be accompanied by an appropriate reduction to the CIAC account.

CLOSING OF DOCKET

There is no further action to be taken in this docket, and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Hydratech Utilities, Inc.'s request to credit contributions-in-aid-of-construction in the amount of \$9,641 for unclaimed refunds is granted as set forth in the body of this order. It is further

ORDERED that \$4,820.50 of this amount shall be allocated to water and \$4,820.50 to wastewater. It is further

ORDERED that the refund period shall be extended an additional 90 days to honor any additional refund claims, and any refund made within the 90-day time period shall be accompanied by an appropriate reduction to the contributions-in-aid-of-construction account. It is further

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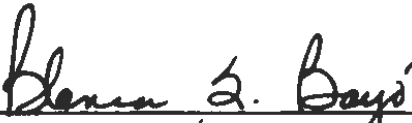
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ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission this 28th
day of May, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)
LAJ

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/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 after the issuance 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.