

ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 961237-SU

PETITION ON PROPOSED AGENCY ACTION

Petitioner, FOREST UTILITIES, INC. (hereinafter "Forest" 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-97-0007-FOF-SU issued in Docket No. 961237-SU on January 7, 1997 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 961237-SU.

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

FOREST UTILITIES, INC.
6385 Presidential Court
Suite 104
Fort Myers, Florida 33919

(b) By Commission Order No. PSC-97-0007-FOF-SU, the

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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 funded by the Utility. Those costs are appropriately 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 Utility. Any prudent incurred costs

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of the Utility in dealing with regulatory requirements must be recoverable by the Utility. The Commission's previous orders on gross-up clearly find that the Utility should be in the same financial position after gross-up as before the tax was imposed on CIAC. 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. Any suggestion that those costs cannot be recovered from the contributor or the general body of rate payers is plainly confiscatory.

(c) By Order No. PSC-96-1394-FOF-SU, the Commission proposes to include within above-the-line expenses all officer salaries incurred by the utility during the test year, despite the fact that the majority of these salaries have never been recognized by the Commission in rate-setting. The utility had proposed inclusion of the last allowed amount of officer salaries, 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 officer salaries 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 amount of officer salaries and includes them 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, these previously unrecognized officer salaries 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 officer salaries 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 should be recovered from the general body of ratepayers, from anyone other than the contributors, or that such costs are unrecoverable. If these questions include issues of fact, Petitioner disputes the findings of Order No. PSC-97-0007-FOF-SU in its findings on those facts.

(b) Is there any Order of the Commission which authorizes or requires that officer salaries 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, if those expenses are appropriately recoverable from the general body of ratepayers, or if they are unrecoverable. If those issues include issues of fact, Petitioner disputes the findings of Order No. PSC-97-0007-FOF-SU in that regard.

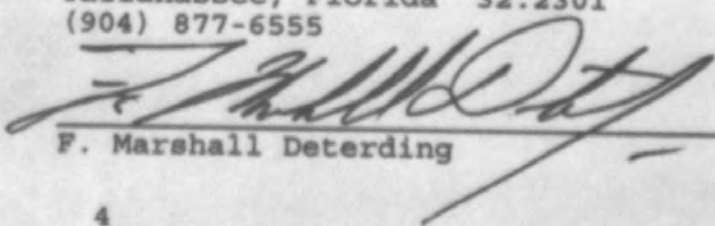
5. Petitioner's undersigned attorneys obtained a copy of Order No. PSC-97-0007-FOF-SU from the PSC's Division of Records and Reporting on January 5, 1997 by U.S. Mail.

6. The treatment given in Order No. PSC-97-0007-FOF-SU to include in above-the-line expenses the entire amount of the officer salaries charged to the utility despite the fact that those have 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 or that such costs are unrecoverable and provides the contributors of gross-up the benefit of that assumption despite the requirements of Order No. 16971 and 23541 to the contrary and/or confiscates the Utility's property as a result.

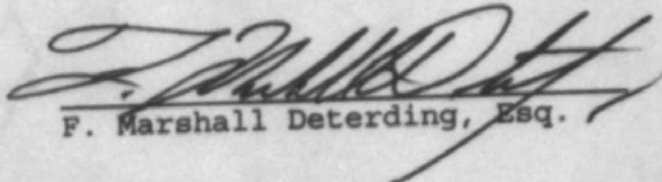
WHEREFORE, based upon the above, FOREST UTILITIES, INC. requests that the Commission grant it a hearing pursuant to the provisions of §120.57(1), Florida Statutes, on each of the factual and legal issues outlined herein.

Respectfully submitted this 17th
day of January, 1997; 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 January, 1997.


F. Marshall Deterding, Esq.

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