

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Citizens of the State of Florida for a limited proceeding to reduce General Telephone Company of Florida's authorized return on equity)	DOCKET NO. 870171-TL
)	
)	
)	
In re: Investigation into the proper application of Rule 25-14.003, F.A.C., relating to tax savings refunds for 1988 and 1989 for GTE Florida Incorporated)	DOCKET NO. 890216-TL
)	
)	ORDER NO. 21757
)	
)	ISSUED: 8-21-89
)	

ORDER DENYING MOTION TO AMEND ORDER ON
PREHEARING PROCEDURE AND MOTION TO HOLD
TWO HEARINGS IN A BIFURCATED MANNER

In Order No. 21369, issued June 12, 1989 (the Procedural Order), the Prehearing Officer established the prehearing procedure to govern the above-captioned proceeding and adopted a tentative list of thirteen issues (the Tentative List) to be addressed. On June 26, 1989, the Office of Public Counsel (OPC) moved to amend the Procedural Order by substituting a list of twenty-six issues proposed by OPC (the OPC Issues) in place of the Tentative List. OPC contends that its efforts on two occasions to persuade the parties to this proceeding to update the Tentative List have been ignored. As a result of the Commission's reliance upon the Tentative List, which contains issues developed several months ago, this proceeding has become disorganized and will remain so, in OPC's opinion. Consequently, OPC urges that the OPC Issues be adopted.

On July 7, 1989, GTE Florida Incorporated (GTEFL) responded in opposition to OPC's motion to amend. GTEFL opposes the OPC Issues because they would expand and complicate this proceeding. In GTEFL's view, the proposed change in the issues list would disrupt the proceeding to the company's prejudice. The company urges that the Tentative List not be amended, except for a rewording of two issues. These issues were taken from the petition by Florida Consumers for Responsible Utilities (FCRU), and GTEFL believes they should be reworded from statements of fact into questions in order to put them into the normal format for issues.

Also on July 7, 1989, GTEFL moved to hold bifurcated hearings in this proceeding. The company asserts that, inasmuch as OPC has alleged that this proceeding is developing

DOCUMENT NUMBER-DATE

08443 AUG 21 1989

FPSC-RECORDS/REPORTING

ORDER NO. 21757
DOCKETS NOS. 870171-TL AND 890216-TL
PAGE 2

in a disorganized manner, our initiation of a two-phase proceeding would simplify and organize it. GTEFL proposes that the first phase of the proceeding should address the threshold question of whether the Commission can set a current return on equity and use it for the purpose of applying the tax rule to 1988 revenues. If the answer to this threshold issue is determined by the Commission to be negative, then the second phase would address the evidentiary question of whether GTEFL has disposed of all its 1988 tax savings. In this manner, the company maintains that a substantial portion of the Tentative List will become moot. On July 19, 1989, OPC filed an opposition to GTEFL's July 7th motion, charging that bifurcation at this juncture would unnecessarily delay this proceeding.

Upon review of the pleadings, the Prehearing Officer denies OPC's motion to amend the Procedural Order. When compared to the Tentative List, the OPC Issues appear to be covered adequately by those on the Tentative List. It has not been shown that the adoption of the OPC Issues would enhance the parties' presentation of their positions in any meaningful manner designed to promote a better understanding by the Commission. All of the concerns which led the Commission to establish this proceeding appear to be addressed in the Tentative List. Moreover, OPC has failed to show how the presentation of its case would be harmed by a failure to substitute its twenty-six issues. For these reasons, OPC's motion to amend will be denied.

The issues which GTEFL seeks to have reworded are Issues 10 and 11 on the Tentative List, which are as follows:

10. The disputed issues of material fact are whether the Commission has properly decided the current cost of equity for GTE-Florida and whether the Commission erred by failing to set a range for authorized return on equity including a minimum, midpoint, and maximum.

ORDER NO. 21757
DOCKETS NOS. 870171-TL AND 890216-TL
PAGE 3

11. The current cost of equity for GTE-Florida is much lower than the earnings cap of 14.25% set forth in the Order No. 20269. The Commission should order a new midpoint, minimum, and maximum authorized return on equity reflecting a much lower cost of equity.

On his own motion, the Prehearing Officer will delete the above two issues from the Tentative List. These issues are found to be subsumed by the first nine issues on the Tentative List and are therefore deemed to be duplicative. Moreover, neither of these two issues is in conformity with earlier rulings in Orders Nos. 20800 and 21208, issued February 23, 1989, and May 9, 1989, respectively. These earlier rulings held that the matters which led up to and were discussed in our Proposed Agency Action in Order No. 20269, issued November 7, 1988, are not appropriate issues to be pursued in this proceeding. For these reasons, Issues 10 and 11 are deleted.

The Prehearing Officer denies GTEFL's motion to hold bifurcated hearings in this proceeding. For the reasons explained in Order No. 20800, in which the Prehearing Officer denied the identical request by GTEFL, a single proceeding will be held to resolve the remaining issues on the Tentative List. In Order No. 21208, the Commission upheld the Prehearing Officer's denial of GTEFL's earlier request.

Therefore, it is

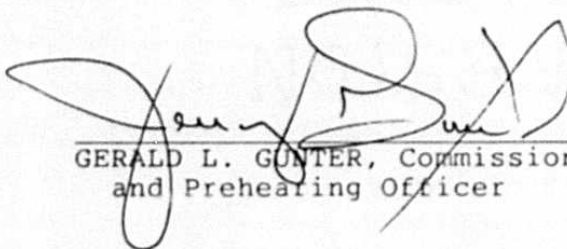
ORDERED by Commissioner Gerald L. Gunter, as Prehearing Officer, that the Motion to Amend Order on Prehearing Procedure filed by the Office of the Public Counsel on June 26, 1989, is hereby denied. It is further

ORDERED that the list of issues approved in Order No. 21369, issued June 12, 1989, is hereby modified by deleting Issues 10 and 11 and affirmed in all other respects. It is further

ORDERED that the Motion to Hold Two Hearings in a Bifurcated Manner filed by GTE Florida Incorporated on July 7, 1989, is hereby denied.

ORDER NO. 21757
DOCKETS NOS. 870171-TL AND 890216-TL
PAGE 4

By ORDER of Commissioner Gerald L. Gunter, this 21st day
of AUGUST, 1989.



GERALD L. GUNTER, Commissioner
and Prehearing Officer

(S E A L)

DLC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 or sewer utility. A motion for reconsideration shall be filed

ORDER NO. 21757
DOCKETS NOS. 870171-TL AND 890216-TL
PAGE 5

with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.