

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Modified Minimum Filing ) DOCKET NO. 910927-TL  
Requirements Report of ST. ) ORDER NO. PSC-92-0149-FOF-TL  
JOSEPH TELEPHONE AND TELEGRAPH ) ISSUED: 4/02/92  
COMPANY. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

Pursuant to Notice, a Hearing was held on February 27, 1992, in Tallahassee, Florida.

APPEARANCES:

DAVID B. ERWIN, Esquire, Mason & Erwin, P.A., 1311-A Paul Russell Road, Suite 101, Tallahassee, Florida 32301, on behalf of St. Joseph Telephone and Telegraph Company.

HAROLD McLEAN, Esquire, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400, on behalf of the Citizens of the State of Florida.

ANGELA B. GREEN, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863, on behalf of the Commission Staff.

PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862, on behalf of the Commissioners.

FINAL ORDER

BY THE COMMISSION:

I. BACKGROUND

St. Joseph Telephone and Telegraph Company (St. Joe or the Company) filed its Modified Minimum Filing Requirements (MMFRs) on September 30, 1991, using a test year ended June 30, 1991. Discovery is presently being conducted in this docket. However, as

DOCUMENT NUMBER-DATE

03218 APR -2 1992

FPSC-RECORDS/REPORTING

we noted in Docket No. 910462-TL at our December 17, 1991, Agenda Conference, the Company overearned in 1990 and may overearn in 1991. In that docket, we ordered a cash refund of \$731,340 plus interest for 1990, along with proposed acceptance of the Company's offer to cap its 1991 earnings at its 13.9% return on equity (ROE) ceiling. The overearnings for 1991 are to be trued up after receipt of the 1991 Cost Study. In addition, we directed our staff to bring a recommendation to our January 7, 1992, Agenda Conference to address overearnings for 1992. Those decisions are reflected in Order No. 25630, issued January 22, 1992.

Our analysis showed that there has been some decline in the level of overearnings since 1990 when calculated at the Company's current equity ratio and ROE ceiling of 13.9%. This decline in earnings is expected to continue into 1992 due to the continued phase down of the interstate subscriber plant factor (SPF) and the effect of a full year's reduction in the Company's busy hour minute of capacity (BHMOC) rate. However, if adjustments are made in this docket to either the equity ratio and/or to the ROE, the Company will again find itself in an overearnings posture in 1992. Therefore, we found it appropriate to place revenues subject to refund for 1992.

When placing revenues subject to refund, Chapter 364.055, Florida Statutes, states that the rate of return shall be calculated "using the company's last authorized rate of return on equity." In addition, subparagraph (5)(b)3 states, "the term 'last authorized rate of return on equity' means the maximum of the range of the last authorized rate of return on equity established in the company's most recent rate case." Accordingly, the ROE we used for placing money subject to refund for this Company was 13.9%. This ROE was approved in Docket No. 891238-TL, by Order No. 22284, issued December 11, 1989.

The statute also states in subparagraph (5)(a)1 that "The achieved rate of return shall be calculated by applying appropriate adjustments consistent with those which were used in the company's most recent rate case and annualizing any rate changes occurring during such period." After making such adjustments, we found that the appropriate amount of revenue to be placed subject to refund for 1992, including the above-mentioned adjustments, was \$445,935 annually. Accordingly, the Company was directed to hold such revenue subject to refund, with interest, pending the result of our review of the MMFRs in this docket. These actions are reflected in Order No. 25686, issued February 4, 1992.

Another matter we considered in Order No. 25686 was the issue of an appropriate equity ratio for this Company. St. Joe's current equity ratio is 56% for the year ending December 31, 1991. We expressed our concern that when a utility increases its equity ratio above the level necessary for the provision of local exchange service, it also increases its revenue requirements. For this reason, we found it appropriate to address the issue of an adjustment to equity for determining the total amount of revenue to be held subject to refund pending completion of the MMFR review in this docket. We recognized that this adjustment is not consistent with the last rate case. However, we noted that Section 364.055(3) allows us to make such an adjustment, so long as a hearing is held within sixty days. Accordingly, we found it appropriate to set this matter for an expedited hearing pursuant to Section 364.055(3). We believed such action was necessary on our part in order to ensure that only the fair and reasonable cost of providing local exchange service is passed on to the ratepayers.

By Order No. 25654, issued January 29, 1992, we set forth the prehearing procedures to be utilized in this docket, including a schedule of key events and a list of the issues to be addressed in the hearing. At the Prehearing Conference on February 17, 1992, the procedures to govern the hearing were established. The hearing was held on February 27, 1992, in Tallahassee, Florida.

## II. MOTION TO DISMISS

On February 7, 1992, St. Joe filed a Motion to Dismiss this proceeding (Motion). Overall, St. Joe asserts that we lack the authority to address an adjustment to its equity ratio through the interim statute. On February 21, 1992, the Office of Public Counsel (OPC) filed its Response to St. Joe's Motion to Dismiss (Response). OPC's Response supports our authority to proceed to hearing under Section 364.055(3) as we directed in Order No. 25686. At the Prehearing Conference on February 17, 1992, the Prehearing Officer determined that St. Joe's Motion would be addressed at the beginning of the hearing, due to the expedited schedule of events in this docket.

St. Joe argues that the plain language of Section 364.055 does not contemplate an adjustment to its equity ratio, even by holding a hearing prior to doing so, and even if the result of the hearing is only to increase the amount of revenue being held subject to refund. According to the Company, an adjustment to its equity ratio would amount to an impermissible alteration in its required

rate of return, the calculation of which is explicitly set out in Section 364.055(b)2.

In our view, St. Joe's argument requires a hypertechnical reading of the statute that we are not persuaded is appropriate, particularly in light of our belief that we possess the inherent interim authority to address this matter by setting it for hearing. Under the reading urged by St. Joe, subsection 3 of Section 364.055 would be rendered meaningless, a result which we are not prepared to reach. Rather, we read Section 364.055 as a statutory scheme whereby interim rates are normally set in a summary fashion. An exception exists under Section 364.055(3), however, for extraordinary or imprudently incurred expenditures, where we can inquire more thoroughly into the operations of the company in the process of setting interim rates, as long as we do so expeditiously (within 60 days). In so doing, we have the authority to increase the amount of revenue being held subject to refund. Accordingly, we find it appropriate to deny St. Joe's Motion.

### III. DISCUSSION

During the Hearing, we heard testimony from staff witness Salak that St. Joe's actual equity ratio of 56% at the end of 1991 is higher than what is necessary for the provision of telephone service. Witness Salak proposed reducing the Company's equity ratio to 45% by removing some of the Company's temporary cash investments directly from equity. Under Ms. Salak's proposal, the amount of money subject to refund would increase from \$445,935 annually to \$851,615 annually after the equity ratio adjustment.

Witness Salak also testified that the equity ratio guideline established by Standard & Poor's (S&P) for a BBB-rated telephone utility is a range of 38% - 50%. The witness explained that she selected the 45% figure from the range to balance the concern from the Company's perspective of setting the equity ratio too low against the concern from the ratepayers' perspective of not increasing the equity ratio beyond what is necessary for the provision of regulated utility service.

Witness Salak's testimony was uncontroverted by the parties. However, at the conclusion of her testimony, St. Joe made an offer in settlement. St. Joe stated that it was willing to increase the amount of revenue being held subject to refund, with interest, from the current amount of \$445,935 annually to a total of \$700,000 annually. As part of its offer, St. Joe would agree to drop any potential legal recourse from the instant proceeding, including

pursuit of any form of appellate review or Division of Administrative Hearings (DOAH) rule challenge.

We believe that this proceeding is soundly grounded on our legal authority. At the same time, we recognize that a finding based on the evidence presented could fall anywhere within a broad range of figures. While the witness selected 45% as an appropriate equity ratio, that number was taken from a range of 38% - 50%. Notably, the Company's offer would translate to an equity ratio of approximately 48%.

After consideration and extensive deliberation, we find it reasonable and appropriate to accept St. Joe's offer. In so doing, we are making no finding at this time regarding an appropriate equity ratio for this Company. Rather, we are only increasing the total amount of revenue being held subject to refund, effective as of the date of the Hearing, with the issue of whether or not to adjust the Company's equity ratio being postponed until the final disposition of these revenues.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement offer submitted by St. Joseph Telephone and Telegraph Company during this hearing shall be accepted as resolution of the instant matter as set forth in the body of this Order. It is further

ORDERED that St. Joseph Telephone and Telegraph Company shall increase the amount of revenue being held subject to refund, with interest, from \$445,935 annually to \$700,000 annually, as set forth herein. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 2nd day of APRIL, 1992.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )  
ABG

Commissioner Lauredo concurs in the decision of the Commission with the following statement:

It is not my intent to determine a specific equity ratio for this company at this time. Rather, I believe it is most appropriate to address this issue at the time the other financial issues in this case are addressed.

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 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 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 or sewer 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.