

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation Into) DOCKET NO. 930987-EI
Currently Authorized Return on) ORDER NO. PSC-94-0794-FOF-EI
Equity of Tampa Electric Company) ISSUED: June 27, 1994
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING MOTION FOR RECONSIDERATION

After discussions between Commission Staff (Staff) and Tampa Electric Company (TECO), we accepted TECO's proposal to reduce its ROE to 11.35% and implement a storm damage reserve of \$4 million a year for the next four years at the October 19, 1993 agenda conference. We issued Proposed Agency Action (PAA) Order No. PSC-93-1570-FOF-EI (Order No. 93-1570) on October 27, 1993.

On November 12, 1993, the Office of Public Counsel (OPC) timely filed a petition to officially protest the Commission's action in Order No. 93-1570. In a separate pleading filed on the same date, OPC filed a motion to hold an expedited hearing to set a new ROE for TECO, rescind TECO's 1994 rate increase and order a rate reduction. In the alternative, if a hearing could not be held before January 1, 1994, OPC requested that we order the 1994 rate increase to be held subject to refund pending the outcome of the hearing.

At the December 7, 1993 agenda conference we denied OPC's Motion for an Expedited Hearing and scheduled a hearing for January 21, 1994, pursuant to Section 366.076, Florida Statutes. We identified three specific issues to be considered in that limited proceeding. First, what is the appropriate return on equity (ROE) for Tampa Electric Company (TECO) for all regulatory purposes? Second, what is the appropriate amount, if any, that TECO should accrue for a storm damage reserve? Third, what amount of funds, if any, should be held subject to refund?

The hearing was held on January 21, 1994 and February 3, 1994. After extensive testimony, cross examination and consideration of the exhibits offered by the parties, we voted to establish an

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authorized return on equity for TECO of 11.35%, plus or minus 100 basis points. We also authorized the establishment of a \$4,000,000 annual accrual for a reserve to defray the cost of storm-related damage to TECO's transmission and distribution system. Finally, we voted to not hold any funds subject to refund, as it did not appear that TECO was likely to earn outside its authorized range for 1994.

On April 11, 1994, OPC filed a Motion for Reconsideration of the Commission's Order reflecting these actions (Order No. PSC-94-0337-FOF-EI) and also filed a Request for Oral Argument on its Motion. On April 25, 1994, TECO timely filed a response to the Motion for Reconsideration.

In the interest of granting every possible opportunity for the citizens' representative to be heard on these issues, we granted OPC's Request for Oral Argument. The matter was considered at the June 7, 1994 agenda conference.

The appropriate legal standard for granting a Motion for Reconsideration is a showing that some matter of fact or law which the Commission overlooked, if viewed correctly, would yield a different result Diamond Cab Co. v. King 146 So.2d 889 (Fla. 1962). OPC's motion fails to meet this standard.

The crux of OPC's argument is that our establishment of a newly authorized ROE and a storm damage reserve without resetting rates at the midpoint of the newly authorized range, is inconsistent with our past actions in other dockets, notably TECO's last full revenue requirements rate case (Docket No. 920324-EI).

Public Counsel states that this treatment is violative of Sections 120.68 (12)(c) and (d), Florida Statutes which provide:

- (12) The court shall remand the case to the agency if it finds the agency's exercise of discretion to be:
- (c) Inconsistent with an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained by the agency; or
 - (d) Otherwise in violation of a constitutional or statutory provision;

but the court shall not substitute its judgment for that of the agency on an issue of discretion.

Public Counsel cites our actions in the most recent rate cases of TECO (Docket No. 920324-EI), Florida Power Corporation (Docket No. 910890-EI) and GTE Florida, Inc. (Docket No. 921088-TL), as

instances where we ordered a rate change (step increases for TECO and Florida Power Corporation, and a decrease for GTE Florida, Inc.) even though the record indicated that the companies would earn within the authorized range for ROE without any change in rates.

However, there is a bright line distinction between the dockets cited by OPC and the instant case. All three cases cited by OPC were full revenue requirements rate case proceedings, which included a comprehensive review of the company's projected expenses, capital structure, operations and revenue. Public Counsel's protest of our proposed action in this docket asked for a limited proceeding, pursuant to Section 366.076, Florida Statutes.

Section 366.076 (1) provides:

- (1) Upon petition or its own motion, the commission may conduct a limited proceeding to consider and act upon any matter within its jurisdiction, including any matter the resolution of which requires a public utility to adjust its rates to consist with the provisions of this chapter. The commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters.

While we could use this type of proceeding to adjust rates, it would be virtually impossible to do so on an expedited basis (as requested by OPC) and still comply with the notice requirements of Chapter 366, Florida Statutes, by providing a reasonable opportunity to present testimony, conduct discovery and obtain ratepayer input.

Section 366.076(1), Florida Statutes, expressly grants the Commission authority to "determine the issues to be considered during such a proceeding". In this docket we voted to limit the issues to those which were the subject of our PAA Order (authorized ROE and storm damage reserve) and the appropriate amount of funds to be held subject to refund. Clearly, this is within our discretion.

On numerous occasions we have taken action identical to that ordered in this docket, without resetting rates. We recently reduced the authorized ROE's for many investor-owned natural gas utilities, without resetting rates at the midpoint. See In re: Florida Public Utilities Gas Division, Docket No. 931100-GU; In re: City Gas Company of Florida, Docket No. 931098-GU; In re: Florida

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Division of Chesapeake Utilities Corporation, Docket No. 931099-GU; In re: Peoples Gas System, Inc. Docket No. 931101-GU; In re: St. Joe Natural Gas Company, Docket No. 931102-GU; In re: Sebring Gas System, Inc., Docket No. 931103-GU; and In re: South Florida Natural Gas Company, Docket No. 931104-GU.

We also recently authorized accruals for storm damage reserve for investor-owned electric utilities, without resetting rates. See Petition of Florida Power and Light Company for approval of Storm Damage Reserve, Docket No. 930405-EI; and Petition of Florida Power Corporation for approval of Storm Damage Reserve, Docket No. 930867-EI.

The step increase granted TECO beginning January 1, 1994 was a result of a fully litigated rate proceeding, in which OPC participated to the fullest extent. OPC has not demonstrated any mistake of law in the actions taken by the Commission in this docket. Therefore, OPC's Motion for Reconsideration is denied.

Order No. PSC-94-0337-FOF-EI requires TECO to file a report detailing among other things, its efforts to obtain reasonably priced storm damage insurance for its Transmission and Distribution system. This report is due to be filed within six months of the issuance of our final order, or September 27, 1994. This docket shall remain open pending receipt and analysis of that report.

It is therefore

ORDERED that the Office of Public Counsel's Motion for Reconsideration is denied. It is further

ORDERED that this docket shall remain open pending receipt and analysis of Tampa Electric Company's report required under Order No. PSC-94-0337-FOF-EI.

By ORDER of the Florida Public Service Commission, this 27th day of June, 1994.



BLANCA S. BAYO, Director
Division of Records and Reporting

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NOTICE OF 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 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.