

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of the Potential) Overearnings of St. Joe Natural) Gas Company.)))))	DOCKET NO. 870986-GU
In re: Petition of St. Joe Natural) Gas Co. for Approval of Calculation) of and Method for Collecting Tax) Deficiency for Four-Month Period) Ending 12/31/88.)))	DOCKET NO. 890620-GU ORDER NO. 22199 ISSUED: 11-20-89

The following Commissioners participated in the disposition of this matter:

- MICHAEL McK. WILSON, Chairman
- THOMAS M. BEARD
- BETTY EASLEY
- GERALD L. GUNTER
- JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION

ORDER ON OVERTHEARNINGS AND REQUIRING TAX REFUND

By the Commission:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Dockets Nos. 870986-GU and 890620-GU were combined due to the interrelationship of overearnings and tax savings for disposition by this Order.

BACKGROUND INFORMATION

DOCKET NO. 870986-GU

As part of the Commission's continuing surveillance program, an investigation was initiated on September 15, 1987

DOCUMENT NUMBER-DATE
 11308 NOV 20 1989
 FDCC-RECORDS/REPORTING

DOCKET NOS. 870986-GU and 890620-GU
ORDER NO. 22199
Page 2

into the apparent excess earnings of St. Joe Natural Gas Company (St. Joe or Company). According to utility-submitted monthly surveillance reports, the utility's earned return was in excess of the maximum last authorized by this Commission. The utility agreed and entered into a Stipulation which was subsequently approved by this Commission by Order No. 19793 issued August 11, 1988.

The following represent the major issues addressed in the Stipulation:

- 1) The utility agreed to reduce rates for its large interruptible class customers from 5.85 to 4.85 cents per therm.
- 2) The utility agreed to refund any overearnings to its single interruptible customer for the balance of 1988 and refund any overearnings for 1989 to all of its customers.
- 3) The utility agreed that its cost of equity will be set at 13.70 percent within a range of 12.70 to 14.70 percent. This cost of equity will be considered the utility's last authorized return on equity.
- 4) The utility agreed to revoke its "S" corporation status and change to a "C" corporation as soon as possible.
- 5) The utility agreed to refund any difference between federal income tax reported in the monthly surveillance reports and the actual federal income tax liability for the period August 1 through December 31, 1988.

DOCKET NO. 890690-GU

On May 1, 1989, St. Joe filed a petition for approval of its calculation and method for collection of a tax deficiency for the four-month period ending December 31, 1988. The Company petitioned for collection of the 4 months ending December 31, 1988 because it was a "C" corporation for that period. In

DOCKET NOS. 870986-GU and 890620-GU
ORDER NO. 22199
Page 3

response to the Company's petition, Docket No. 890620-GU was opened.

In its petition, the Company stated that the current effective corporate income tax expense rate embedded in the existing gas rates was set by the Commission in Order No. 4138, Docket No. 8702-GU, February 16, 1967. The Company also states that it has not had an adjustment in income tax expense rate in a rate case or show cause proceeding, or had a tax expense adjustment made by the Commission at any time subsequent to the issuance of Order No. 4138.

Although the Company has never completed a full revenue requirements case subsequent to 1967, a reverse make whole proceeding was initiated in 1982. (Docket No. 820490-GU) In that docket, the Commission determined that the Company had earned in excess of its last authorized rate of return. As a result of its findings, the Commission ordered a refund of the excess earnings to one customer (Sylvachem) and a restructure of its rates. Rates were reduced to Sylvachem and increased to the other customer classes, but the level of total revenues was not adjusted from the amount established in Docket No. 8702-GU. (1967)

Even though the level of total revenues was not changed, the calculation of net operating income included tax expense based on a 46 percent tax rate. We agree with Staff's recommendation that a tax rate of 46 percent was embedded in the rates until August of 1988, thereby subjecting the Company to Rule 25-14.003, F.A.C., for the effect of the Tax Reform Act of 1986.

The current rates agreed to as a result of the 1988 stipulation approved by the Commission in Order No. 19793, have an embedded tax rate of 34%.

FINDINGS AND CONCLUSIONS

DOCKET NO. 870986-GU

In Docket No. 870986-GU the Company agreed to refund overearnings for the period August 1 through December 31, 1988, and to refund any difference between the amount of taxes reported in the surveillance report and the actual tax expense

DOCKET NOS. 870986-GU and 890620-GU
ORDER NO. 22199
Page 4

for the period August 1 through December 31, 1988. The Company became a "C" corporation effective September 1, 1988, and became liable for corporate income taxes for the period September 1, 1988 through December 31, 1988. According to our staff's investigation the books and records of the Company are not completely closed monthly, and it was not possible to calculate actual earnings for a period shorter than a year. However, the Company agreed that an even flow of revenues could be assumed; i.e., calculations would be based on a 12-month earnings period and then multiplied through by 5/12.

Our Staff calculated an adjusted rate base, net operating income, and capital structure for the calendar year 1988. Staff used the Company's audited December 1988 surveillance filing and made a number of adjustments that are shown on Attachments 1, 2, and 3 to this order.

Based on the above adjustments, our Staff calculated a 13-month average rate base of \$1,426,869, a net operating income of \$267,729 after income taxes (\$306,287 before income taxes), and a maximum overall rate of return of 14.5915 percent. After applying the adjusted rate base, net operating income, overall rate of return, and the adjustment for tax savings, St. Joe was below the maximum overall rate of return of 14.5915 percent for the period August 1 through December 31, 1989. Therefore we agree with our Staff that no refund is due to overearnings.

DOCKET NO. 890620-GU

Docket No. 890620-GU was instituted on May 1, 1989, by St. Joe filing a petition for approval of its calculation and method for collection of a tax deficiency for the four-month period ending December 31, 1988. The Company petitioned for collection of the four months ending December 31, 1988 because it was a "C" corporation for that period.

In its petition, the Company further stated that the current effective corporate income tax expense rate embedded in the existing gas rates was set by the Commission in Order 4138, Docket No. 8702-GU on February 16, 1967. St. Joe also states

DOCKET NOS. 870986-GU and 890620-GU
ORDER NO. 22199
Page 5

that it has not had an adjustment in income tax expense rate in a rate case or show cause proceeding, or had a tax expense adjustment made by the Commission at any time subsequent to the issuance of Order No. 4138.

A review of Order No. 4138 determined that an income tax rate of approximately 7% was embedded in the base rates fixed at that time.

In 1979, Docket No. 790297-GU was opened to review the level of earnings of St. Joe. Two orders were issued in that docket, Order No. 8838, and Order No. 11374. Order No. 8838, issued on April 19, 1979, stated that the Company (which was then a sub-chapter "S" corporation) proposed to revoke its sub-chapter "S" election for the taxable year 1980 so that a realistic corporate tax rate would be applied to its earnings in the future. Order No. 11374, issued on December 3, 1982, closed Docket No. 790297-GU and ordered that Docket No. 820490-GU be instituted to determine whether the Company had been earning in excess of its last authorized rate of return. The 12-month period ending December 31, 1982 was considered to be an appropriate test period used to determine the level of achieved earnings.

In Docket No. 820490-GU, the Commission determined that St. Joe had achieved a 15.44 percent return on average investment for the test period. That amount was in excess of the 15.00 percent return on investment authorized by the Commission as stated in Order No. 12372, which closed Docket No. 820490-GU on August 16, 1983. Although the amount of rate base or net operating income is not directly stated in the order, our Staff audit workpapers indicate a rate base of \$992,110 and a net operating income of \$153,490. The return on investment based on those numbers is 15.44 percent. The then current income tax expense of \$64,299 was included in these audit calculations. These reveal that a federal income tax rate of 46 percent was applied. We agree with our Staff that the tax expense amount used to determine the earnings of St. Joe was not that which is found in Order No. 4138, but a 46 percent tax rate thereby making Rule 25-14.003, Florida Administrative Code, applicable to the Company for 1988.

DOCKET NOS. 870986-GU and 890620-GU
 ORDER NO. 22199
 Page 6

As shown on Attachment 4 to this Order, the tax expense for calendar year 1988 is calculated using on a 46 percent and 34 percent tax rate. The results were then multiplied by 8/12 and the difference of the two results was determined. Our Staff multiplied the tax expense by 8/12 because in the overearnings calculation, in Docket No. 870986-GU, the Company was allowed four months of tax expense at 34 percent. The difference between the tax expense at the embedded 46 percent and the tax expense at 34 percent was \$24,340. We find that this amount should be refunded to all customers.

After consideration of the foregoing, it is

Ordered by the Florida Public Service Commission that no refund is due in Docket No. 870986-GU due to overearnings as shown on Attachment 5 to this Order. However, the docket shall remain open through 1990 in order to determine if a refund is due for excess earnings for the calendar year 1989. It is further

ORDERED that St. Joe Natural Gas Company shall refund to all classes of its customers the \$24,340 described in the body of this Order. It is further

ORDERED that Docket No. 890620-GU shall remain open until the Commission receives a report detailing that the tax savings refund has been accomplished. At that the time the docket may be closed administratively. It is further

ORDERED that this Order shall become final unless a petition for formal proceeding is received by the close of business on December 11, 1989.

By ORDER of the Florida Public Service Commission,
 this 20th day of NOVEMBER, 1989.

 STEVE TRIBBLE, Director
 Division of Records and Reporting

(S E A L)

MRC

by: Kay Flynn
 Chief, Bureau of Records

DOCKET NOS. 870986-GU and 890620-GU
ORDER NO. 22199
Page 7

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 11, 1989.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.

DOCKET NOS. 870986-GU and 890620-GU
 ORDER NO. 22199
 PAGE 8

ATTACHMENT 1

ST. JOE NATURAL GAS CO.
 OVER-EARNING ANALYSIS - RATE BASE
 FOR CALENDAR YEAR 1988
 DOCKET NO. 870986-GU

ADJ NO.	PER BOOKS	COMPANY ADJUSTMENTS	COMPANY ADJUSTED	ADJUSTMENTS	COMMISSION VOTE
	\$2,019,759				
PLANT IN SERVICE	2,019,759	0	2,019,759	0	2,019,759
	673,692				
ACCUMULATED DEPRECIATION	1,346,067	0	1,346,067	0	1,346,067
NET PLANT IN SERVICE	244,532			(140,922)	
WORKING CAPITAL				(99)	
1 ADJ OUT INTEREST BEARING ACCTS.				(22,709)	
2 TO CORRECT ACCRUED TAXES					
3 REMOVE NON-UTILITY INVENTORY	244,532	0	244,532	(163,730)	80,802
TOTAL RATE BASE	\$1,590,599	\$0	\$1,590,599	(\$163,730)	\$1,426,869

DOCKET NOS. 870986-G and 890620-GU
 ORDER NO. 22199
 PAGE 9

ATTACHMENT 2

ST. JOE NATURAL GAS CO.
 OVER-EARNING ANALYSIS - NOI
 FOR CALENDAR YEAR 1988
 DOCKET NO. 870986-GU

ADJ NO.	PER BOOKS	COMPANY ADJUSTMENTS	COMPANY ADJUSTED	ADJUSTMENTS	COMMISSION VOTE
	4,580,014				
	OPERATING REVENUES				
	CO ADJ TO REMOVE FLEX DISCOUNTS	(29,948)		133	
4	ADJ FOR DISC. SALES TAX COLLECT.			(99,127)	
4A	ADJ INTER REVS TO 4.85 CENTS PER THERM				
	4,580,014	(29,948)	4,550,066	(98,994)	4,451,072
	3,980,889				
	OPERATING EXPENSES				
5	ADJ FOR DONATIONS			(205)	
6	ADJ METER TESTING EXPENSES			(14,155)	
7	ADJ FOR NON-UTILITY EXPENSES-ACCT 930			(344)	
8	REMOVE OUT-OF-PERIOD EXPENSE			(644)	
9	REMOVE NON-SUPPORTED EXPENSES			(1,889)	
10	ADJ FOR NON-UTILITY ITEM - DUES			(360)	
11	REMOVE HOUSE PIPING EXPENSE			(18,223)	
	3,980,889	0	3,980,889	(35,820)	3,945,069
	91,164				
	DEPRECIATION/AMORTIZATION				
	91,164	0	91,164	0	91,164
	110,160				
	TAXES OTHER THAN INCOME				
	ADJ FOR THE EFFECT OF ABOVE			(1,609)	
	110,160	0	110,160	(1,609)	108,551
	121,895				
	INCOME TAXES - CURRENT				
11	ADJ TAXES PER STIPULATION			(83,337)	
	121,895	0	121,895	(83,337)	38,558
	\$4,304,108	\$0	\$4,304,108	(\$120,766)	\$4,183,342
	TOTAL OPERATING EXPENSES				
	275,906	(29,948)	245,958	21,771	267,729
	NET OPERATING INCOME				

ATTACHMENT 3

ST. JOE NATURAL GAS CO.
 OVER-EARNING ANALYSIS - CAPITAL STRUCTURE
 FOR CALENDAR YEAR 1988
 DOCKET NO. 870986-GJ

COMMISSION VOTE

AVERAGE	PER BOOKS	SPECIFIC	PRO RATA	ADJUSTED	RATIO	LOW POINT		MID POINT		HIGH POINT	
						COST RATE (%)	WEIGHTED CST (%)	COST RATE (%)	WEIGHTED CST (%)	COST RATE (%)	WEIGHTED CST (%)
LONG TERM DEBT	0			0	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
SHORT TERM DEBT	0			0	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
CUSTOMER DEPOSITS	19,899			17,838	1.25%	8.00%	0.10%	8.00%	0.10%	8.00%	0.10%
COMMON EQUITY	1,569,156			1,406,633	98.58%	12.70%	12.52%	13.70%	13.51%	14.70%	14.49%
DEFERRED INCOME TAXES	2,675			2,398	0.17%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
TAX CREDITS - ZERO COST	0			0	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
TOTAL AVERAGE	1,591,730	0	0	1,426,869	100.00%		12.62%		13.61%		14.59%

DOCKET NOS. 870986-G and 890620-GU
 ORDER NO. 22199
 PAGE 11

ATTACHMENT 4

ST. JOE NATURAL GAS CO.
 TAX SAVINGS CALCULATION
 FOR THE 8 MONTH PERIOD ENDED AUGUST 31, 1988
 DOCKET NO. 890620-GU

INCOME TAXES BASED ON 46% RATE

	TAX CALCULATIONS		COMMISSION VOTE	
OPERATING INCOME	\$4,550,199			
OPERATING EXPENSES	4,146,393			
NET INCOME BEFORE INC. TAXES	\$403,806			
STATE TAX EXEMPTION	5,000			
STATE TAXABLE BASE	\$398,806			
TIMES STATE TAX RATE	5.50%			
STATE TAXES	\$21,934	X 8/12	\$14,623	
NET INCOME BEFORE INC. TAXES	\$403,806			
LESS STATE TAXES	21,934			
TAXABLE INCOME	\$381,872			
SURTAX EXEMPTION	(20,250)			
FEDERAL TAXABLE BASE	361,622			
TIMES FEDERAL TAX RATE	46.00%			
FEDERAL TAXES	\$166,346	X 8/12	\$110,897	
TOTAL INCOME TAX EXPENSE BASED ON 46% RATE			\$125,520	125,520

INCOME TAXES BASED ON 34% RATE

	TAX CALCULATIONS		COMMISSION VOTE	
OPERATING INCOME	\$4,550,199			
OPERATING EXPENSES	4,146,393			
NET INCOME BEFORE INC. TAXES	403,806			
STATE TAX EXEMPTION	5,000			
STATE TAXABLE BASE	398,806			
TIMES STATE TAX RATE	5.50%			
STATE TAXES	\$21,934	X 8/12	14,623	
NET INCOME BEFORE INC. TAXES	403,806			
LESS STATE TAXES	21,934			
FEDERAL TAXABLE BASE	381,872			
TIMES FEDERAL TAX RATE	34.00%			
FEDERAL TAXES	\$129,836	X 8/12	86,558	
TOTAL INCOME TAXES FOR 1988 AT 34% RATE			\$101,180	101,180
TOTAL TAX SAVINGS FOR CALENDAR YEAR 1988			\$24,340	

ST. JOE NATURAL GAS CO.
 OVER-EARNING & TAX SAVINGS REFUND CALCULATION
 FOR CALENDAR YEAR 1988
 DOCKET NO. 870986-GJ AND DOCKET NO. 890620-GJ

	COMMISSION VOTE

ADJUSTED NET OPERATING INCOME BEFORE INCOME TAXES	\$306,287
ADJUSTED RATE BASE	1,426,869
CALCULATED EARNED OVERALL RATE OF RETURN	----- 21.4657%
MAXIMUM ALLOWED RATE OF RETURN	14.5915%
PERCENT ABOVE THE MAXIMUM ALLOWED	----- 6.8742%
TIMES ADJUSTED RATE BASE	1,426,869
DOLLARS ABOVE THE MAXIMUM FOR ENTIRE YEAR BEFORE INCOME TAXES	----- \$98,085
LESS TAX SAVINGS PER ATTACHMENT 5	24,340
DOLLARS ABOVE THE MAXIMUM AFTER TAX SAVINGS	----- \$73,745
MULTIPLIED BY 5/12 FOR AUG. - DEC. 1988	41.6667%
DOLLARS ABOVE THE MAXIMUM FOR AUG. 1 - DEC. 31, 1988	----- \$30,727
LESS INCOME TAXES FOR PERIOD SEPT. 1 - DEC. 31, 1988	38,558
DOLLARS BELOW THE HIGH POINT	----- (\$7,831) =====
AMOUNT OF REFUND FOR TAX SAVINGS (ALL CUSTOMERS)	\$24,340
AMOUNT OF REFUND FOR OVERTAXING (INTERRUPTIBLE CUSTOMER)	\$0
TOTAL REFUND DUE	----- \$24,340 =====