

## 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
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	)	
In re: Investigation into the proper application of Rule 25-14.003, F.A.C., relating to tax savings refund for 1988 and 1989 for GTE FLORIDA, INC.	)	DOCKET NO. 890216-TL
	)	ORDER NO. 22733
	)	ISSUED: 3-26-90
	)	

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  
AND  
ORDER ON LITIGATION EXPENSE

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 substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

By Order No. 22352, issued December 29, 1989, dealing with GTE Florida Incorporated's (GTEFL's) 1988 tax savings, we directed our Staff to investigate further the costs and the settlement amount related to a lawsuit brought by Home Shopping Network (HSN). GTEFL was a defendant in the HSN litigation. Another defendant, GTE Communications Corporation (GTECC), is an affiliate of GTEFL but is not regulated by the Commission.

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We have obtained and reviewed additional information which we believe represents the complete amounts paid by GTEFL and GTECC to outside professionals for services in connection with this litigation. The total expense for such services during 1987, 1988 and 1989 appears to be \$15,836,110. This amount represents the total expense before any allocations between either regulated and non-regulated operations or intrastate and interstate jurisdictions. The total settlement amount paid to the defendants by HSN appears to be \$4,500,000, which was assigned 50% to GTEFL and 50% to GTECC.

When a utility incurs expense in defending a lawsuit, one policy that we have applied is to treat the costs as expenses of the periods in which they were incurred. In some cases, we have applied an alternative policy of deferring the expense and amortizing it over some future period. In this case, we believe that a portion of the total professional fees are related to utility operations because GTEFL was a defendant in a lawsuit which dealt in part with the telephone service rendered to a customer. We accept as reasonable the allocation of these expenses between the regulated and non-regulated operations in the 50:50 ratio and approve the 50% allocation to the regulated operations of GTEFL.

We find that \$3,129,870 was the total amount which should be assigned to 1988 and that one-half of this amount, \$1,564,935, should be allocated to GTEFL as a regulated expense. We find that a portion of the settlement payment should be distributed to 1988 on the same basis that the costs are assigned. After allocating the payment in this way, we find that \$444,693 of the settlement payment should be assigned to GTEFL, which represents 50% of the portion applicable to 1988. Offsetting this 1988 settlement payment with this 1988 expense would lead to a net regulated expense of \$1,120,242. GTEFL actually expensed \$1,653,227 during 1988, which is \$532,985 more than we find appropriate. Excluding the interstate portion, a decrease in intrastate expenses of \$354,254 is required to implement our decision.

In Order No. 22352, we ordered a preliminary reduction of the HSN litigation expense recorded by GTEFL for 1988. On an intrastate basis, this reduction was \$390,608. Based on the foregoing computations, our preliminary decision reduced GTEFL's allowable 1988 expenses by \$36,354 -- the difference between \$390,608 and 354,254 -- more than necessary to

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implement our final conclusion. The effect on the refund would be \$7,111 because it was based only on the tax savings related to the expense disallowance. Our final determination of the proper allocation of the HSN litigation cost and settlement payment results in GTEFL's over-refunding of 1988 tax savings by \$7,111, which we judge to be an immaterial amount. Based on this conclusion, we will direct GTEFL to make no further adjustment to the 1988 refund. However, because the material that we reviewed is not part of the record of this proceeding, we issue this decision as Proposed Agency Action.

We intend to address pending matters in these consolidated dockets at a later time. Accordingly, these dockets will remain open for those purposes.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that no further adjustment shall be made to the refund amount for 1988 tax savings related to the Home Shopping Network litigation. It is further

ORDERED that the above-referenced dockets remain open.

By ORDER of the Florida Public Service Commission,  
this 26th day of MARCH, 1990.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

CWM/DLC

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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 April 16, 1990.

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.