

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Citizens of the)	DOCKET NO.870171-TL
State of Florida for a limited)	
proceeding to reduce GENERAL TELEPHONE)	
COMPANY OF FLORIDA'S authorized return)	
on equity)	
)	
In re: Investigation into the proper)	DOCKET NO. 890216-TL
application of Rule 25-14.003, F.A.C.,)	
relating to tax savings refund for)	ORDER NO.22811
1988 and 1989 for GTE FLORIDA, INC.)	
)	ISSUED: 4-12-90
)	

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

ORDER DENYING MOTION FOR RECONSIDERATION
AND MOTION TO STRIKE

BY THE COMMISSION:

By Order No. 22352, issued December 29, 1989 (the Order), we ordered GTE Florida Incorporated (GTEFL) to refund \$21,387,000 in 1988 tax savings and \$3,258,000 in interest. Additionally, the Order established a 13.2% return on equity (ROE) for purposes of applying Rule 25-14.003, Florida Administrative Code (the Tax Rule), to GTEFL's 1989 earnings. Finally, the Order prescribed a 12.3% midpoint within a range of 11.3% to 13.3% ROEs for all prospective regulatory purposes.

On January 16, 1990, GTEFL filed a Motion for Reconsideration (GTEFL's Motion) of the Order. First, GTEFL's Motion argues that the Order contains inadequate findings of fact. Additionally, GTEFL requests us to reconsider our prescription of a 12.3% midpoint ROE for GTEFL in light of our recent prescription of a 12.8% midpoint ROE for United Telephone Company of Florida (United). Next, GTEFL complains that we ignored errors by Witness Seery regarding the growth

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rate employed in his Discounted Cash Flow (DCF) model, which led to his recommendation of a too-low ROE. Finally, GTEFL's Motion charges that, in deciding that all of non-regulated investments should be removed directly from the company's equity, we ignored GTEFL's treatment of such investments in its rate base and capital structure.

On January 26, 1990, the Office of the Public Counsel (OPC) filed a Motion to Strike (OPC's Motion) portions of GTEFL's Motion. OPC's Motion contends that GTEFL has failed to satisfy the standard for reconsideration because the United ROE prescription is a different matter and, as such, is not a part of the record in this proceeding. OPC asserts that there is a lack of record support or Commission discussion at the Agenda Conference for GTEFL's criticism of Witness Seery's testimony regarding both his DCF model and the removal of all non-regulated investments directly from the company's equity.

On February 7, 1990, GTEFL filed an Opposition to OPC's Motion. The Opposition claims that those portions of GTEFL's Motion complained of by OPC properly bring to our attention a new precedent and subsequent decision. Moreover, the Opposition asserts that GTEFL and United are equivalent in risk for ROE prescription purposes.

Upon review of the arguments, OPC's Motion is denied because it fails to show that GTEFL's Motion is so meritless on its face that we should not even reach the procedural issue of whether the company has alleged adequate grounds in support of reconsideration. We will consider the company's arguments and then assign them the weight deemed appropriate in light of the substantive allegations raised in OPC's Motion.

In response to the company's complaint, we have reviewed the Order and find that it adequately explains the rationale for our decision in this proceeding. In our opinion, the decision explained in the Order is based on substantial and competent record evidence compiled in this proceeding. Further, we believe that the Order reflects sufficient findings of fact to support this decision and contains the requisite specificity to inform parties of its underlying rationale. The Florida Supreme Court said in Occidental Chemical Company v. Mayo, 351 So.2d 336, 341 (Fla. 1977) that "the Commission is not required to include in its order a summary of the evidence it heard or a recitation of every evidentiary fact on which it

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ruled." The Court upheld an order in that case because it contained a "succinct and sufficient statement of the ultimate facts," including "commentary expressly directed to [the] contentions," that did not justify remand for greater specificity. As a result, the company's constitutional rights are not violated by this alleged failure of the Order to furnish a sufficiently comprehensive explanation of the particular record evidence on which the Commission's conclusion was based. Accordingly, we deny GTEFL's request for the issuance of an order containing "appropriate findings of fact and conclusions of law."

As a matter of procedure, we find no grounds for reconsidering our ROE decision here in light of the recent ROE prescription for United. The United ROE prescription is a matter entirely different from the action of prescribing a ROE for GTEFL. These two decisions were rendered in two separate proceedings, and each prescription is based on its own record evidence supporting that specific ROE. We do not agree with GTEFL's claim that the United decision is a new precedent compelling us to alter the ROE set for GTEFL. Therefore, we find adequate procedural grounds for denying GTEFL's Motion.

GTEFL's Motion with respect to the ROE prescribed in this proceeding shall also be denied on substantive grounds. To satisfy the requirements for reconsideration, a motion must concisely state grounds in support thereof, see Rule 25-22.060(2), Florida Administrative Code. The grounds stated must bring to the Commission's attention some matter of law or fact which the Commission failed to consider or overlooked in its prior decision, Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962), Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). The motion may not be used as an opportunity to re-argue matters previously considered, Diamond Cab, supra.

Upon review, we find that we neither overlooked nor failed to consider any matter of fact or law in reaching our decision. Further, we hold that the ROE midpoint prescribed for GTEFL is reasonable, having been based on substantial and competent evidence compiled in the record of this proceeding. During the hearing we heard extensive cost-of-equity (COE) testimony, and the COE witnesses were rigorously cross-examined. In reaching our decision on these issues, we weighed all of this evidence and no witness's recommendation was adopted in toto. The company's allegations that Witness

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Seery committed errors regarding the growth rate used in his DCF model, that his risk premium method is unsound and that we did not consider these alleged errors, are not supported by the record. The 12.3% midpoint ROE set for GTEFL is a reasonable measure of investor return requirements and meets the capital attraction and maintenance of financial integrity standards required by legal precedence. GTEFL's claims to the contrary are not justified.

The second substantive matter raised by the company in seeking reconsideration is the removal of 100% of non-regulated investments directly from equity. In arriving at our decision, we ignored, according to the company, the following facts: the company has removed all non-utility investments from its regulated rate base, it has removed such property from its capital structure and it has removed all common costs associated with GTE Communications Corporation (GTECC). Accordingly, GTEFL claims that the removal of GTECC from equity is improper because investments cannot be traced to specific sources of funds. Upon review of the evidence and the arguments presented, we find that we considered all of the relevant facts in determining that the company's non-regulated investment should be removed from equity. Our decision to remove GTEFL's non-regulated investment from equity is supported by the record evidence and consistent with financial theory. Accordingly, we will not alter our decision to remove 100% of GTEFL's non-regulated investments directly from equity.

In light of our prescription of a lower ROE for GTEFL, the issues raised in OPC's petition for a limited proceeding to reduce the company's authorized ROE filed by OPC have been resolved. Since we have prescribed an ROE for GTEFL in this consolidated proceeding which is lower than the ROE formerly authorized for the company, we believe that the matters raised by OPC in its petition have been adequately addressed. Accordingly, Docket No. 870171-TL is closed.

Docket No. 890216-TL shall remain open for our later consideration of three pending matters. Our Staff is continuing to investigate the transfer of the Quad Block property, the destruction of Quad Block property records and the reasonableness of rent paid by GTEFL on One Tampa City Center. When these investigations have been concluded, Staff shall submit appropriate recommendations for our consideration.

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Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the Motion to Strike filed by the Office of the Public Counsel on January 26, 1990, is hereby denied. It is further

ORDERED that the Motion for Reconsideration filed by GTE Florida Incorporated on January 16, 1990, is hereby denied. It is further

ORDERED that Docket No. 870171-TL is hereby closed. It is further

ORDERED that Docket No. 890216-TL shall remain open for further proceedings.

By ORDER of the Florida Public Service Commission,
this 12th day of April, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DLC

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

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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.