

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a rate ) DOCKET NO. 920188-TL  
increase by GTE Florida ) ORDER NO. PSC-95-0365-FOF-TL  
Incorporated. ) ISSUED: March 14, 1995  
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The following Commissioners participated in the disposition of this matter:

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

ORDER REQUIRING COMPLIANCE WITH AUDIT REQUESTS

BY THE COMMISSION:

On May 1, 1992, GTE Florida Incorporated (GTEFL or the Company) filed rate case Minimum Filing Requirements in this proceeding. In its original filings, the Company requested an annual revenue increase of \$110,997,618. On September 3, 1992, GTEFL submitted revised testimony and exhibits reducing its request for an increase to \$65,994,207. By Order No. PSC-93-FOF-0108-FOF-TL, the Commission determined that the Company's rates should be reduced by \$14,475,000. GTEFL filed a Motion for Reconsideration of this order on January 21, 1993, and the Commission subsequently (in Order No. PSC-93-0818-FOF-TL, issued May 27, 1993) modified its original order and decreased the Company's revenue reduction to \$13,641,000.

On June 25, 1993 GTEFL gave notice of an administrative appeal to the Florida Supreme Court of the two orders listed above. GTEFL did not request a stay of the orders from either the Commission or the Court. The Company's appeal focused on several issues, including the treatment of certain post-retirement benefits, the appropriate capital structure, and the disallowance of certain costs associated with purchases made by GTEFL from GTE Data Services and GTE Supply. On July 7, 1994, the Supreme Court issued its decision GTE Florida Incorporated v. Deason, 642 So.2d 545 (Fla. 1994). The Court affirmed in part and reversed in part the Commission's orders, and remanded the case to the Commission for further action consistent with the Court's opinion. Both GTEFL and the Office of Public Counsel (OPC) filed motions for rehearing of the Court's decision, which were denied on September 22, 1994.

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FPSC-RECORDS/REPORTING

The Court held that the Commission should not have disallowed certain costs associated with transactions between GTEFL and two of its affiliates, GTE Data Services (GTEDS) and GTE Supply (Supply), and reversed the PSC's findings on these expense items. In its decision the Court announced a new standard for evaluating affiliate transactions in the context of a full revenue requirements rate proceeding. Action to implement the remand is pending.

As part of a program of auditing all utilities with affiliate transactions, a schedule was established to audit each of the utilities over the next three years. By letter dated, November 1, 1994, GTEFL was advised of the initiation of this audit and in January, 1995, the auditors began their preliminary work on the audit. On January 23, 1995, the auditors sent two requests to the utility for electronic data processing records of GTE Data Services and GTE Supply. These requests were for the computerized records of the general ledger master file and the accounting detail activity file. The audit requests established a due date of February 6, 1995.

On the requested due date, GTEFL filed with the Division of Records and Reporting its Objections to Affiliate Audit Requests. Without any citation to procedural or substantive authority, GTEFL declined to make available certain electronically stored computer records related to its affiliates requested in the normal manner during the course of a staff audit. The filing states: "GTEFL objects to initiation of the audit, in general, and also objects to the specific audit requests." No party filed a response.

As to the initiation of the audit in general, GTEFL states:

Initiation of an affiliate audit in association with the remand is inconsistent with the Court's mandate. The audit is ostensibly intended to gather evidence about GTEFL's transactions with Supply and GTEDS. The Supreme Court, however, did not reverse the Commission for insufficiency of evidence. Rather, it held that the Commission had used an incorrect standard to evaluate that evidence. The decision set forth the correct standard, which is "whether the transactions exceed the going market rate or are otherwise inherently unfair." GTE Florida Incorporated v. Deason, 642 So.2d 545, 547 (1994)...the Commission is now obliged to apply the new standard to the already voluminous record before it.

GTEFL further states "The Commission needs no additional information to conclude the remand proceedings, and Staff has set forth absolutely no rationale for the audit."

GTEFL claims that this audit is inconsistent with the Commission's decision in December of 1992 not to open a separate docket to investigate GTEFL's affiliated transactions. GTEFL neglects to mention that at that same TIME, the Commission disallowed \$4,750,000 related to affiliated transactions, thus rendering a separate investigation unnecessary. Further, the disallowance was based on information now nearly three years old and a standard other than the one that now controls. The decision to not "open an investigation" in 1992 is simply not analogous to the "conduct of a staff audit" in 1995.

GTEFL suggests, on pages seven and eight of its filing, that the information sought is "so broad-ranging and undefined that it goes beyond the statutory goal of safeguarding against cross subsidization." Further, GTEFL believes that because of the format and organization of the requested material, staff will be unable "to make any meaningful use of it."

Section 364.183(1), Florida Statutes (1993), provides in pertinent part:

The commission shall have reasonable access to all company records, and to the records of the telecommunications company's affiliated companies, including its parent company, regarding transactions or cost allocations among the telecommunications company and such affiliated companies, and such records necessary to ensure that a telecommunications company's ratepayers do not subsidize the company's unregulated activities.

The Florida Supreme Court, in Southern Bell Telephone and Telegraph Company v. Deason, 632 So.2d 1377 (Fla. 1994) considered this statute and rejected Southern Bell's attempt to limit Commission audit access to affiliate records. "Without ambiguity, the plain language of the governing statute authorizes the PSC to access the records of Southern Bell and its affiliates to ensure compliance with the law. Therefore, Southern Bell and its affiliates are ordered to comply with the audit team's data request." Id at p. 1389. This authority is persuasive and compelling.

The uncontroverted authority of Section 364.183(1), Florida Statutes, Southern Bell v. Deason, and Rule 25-4.0201, F.A.C., leads to the inescapable conclusion that these materials are

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properly subject to audit requests. Proceeding with this audit does not, in any way, prejudice or preclude any action by the Commission deemed appropriate to carry out the Court's mandate. Proceeding with this or any other audit of a regulated utility/affiliate does not prejudice the ability of any party to have audit materials held as confidential. Proceeding with this audit does not prejudice the right of any party to offer or object to the introduction of such materials as evidence in any formal hearing.

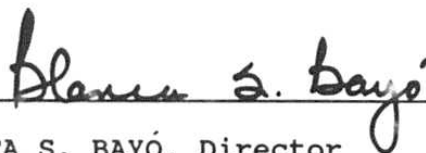
For these reasons, we order GTE Florida Incorporated, to comply with the Commission staff auditor's data requests by February 28, 1995. The requested records are clearly an appropriate inquiry, consistent with Section 364.183(1), Florida Statutes, the Florida Supreme Court's decision in Southern Bell Telephone and Telegraph Company v. Deason, 632 So.2d 1377 (Fla. 1994), and the Commission's newly enacted rule 25-4.0201, Florida Administrative Code.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that GTE Florida Incorporated shall comply with the Commission staff auditor's data requests by February 28, 1995. It is further

ORDERED that this docket shall remain open to determine the appropriate actions to implement the Florida Supreme Court's mandate in GTE Florida Incorporated v. Deason, 642 So.2d. 545 (1994).

By ORDER of the Florida Public Service Commission, this 14th day of March, 1995.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.