

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Modified Minimum Filing)	DOCKET NO. 910927-TL
Requirements Report of ST. JOSEPH)	ORDER NO. 25764
TELEPHONE AND TELEGRAPH COMPANY.)	ISSUED: 2/20/92
)	
)	

Pursuant to Notice, a Prehearing Conference was held on February 17, 1992, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

DAVID B. ERWIN, Esquire, Mason & Erwin, P.A., 1311-A Paul Russell Road, Suite 101, Tallahassee, Florida 32301, on behalf of St. Joseph Telephone and Telegraph Company.

HAROLD McLEAN, Esquire, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400, on behalf of the Citizens of the State of Florida.

ANGELA B. GREEN, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863, on behalf of the Commission Staff.

PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862, on behalf of the Commissioners.

PREHEARING ORDERI. BACKGROUND

St. Joseph Telephone and Telegraph Company (St. Joe or the Company) filed its Modified Minimum Filing Requirements (MMFRs) on September 30, 1991, using a test year ended June 30, 1991. Discovery is presently being conducted in this docket. However, as we noted in Docket No. 910462-TL at our December 17, 1991, Agenda Conference, the Company overearned in 1990 and may overearn in 1991. In that docket, we ordered a cash refund of \$731,340 plus interest for 1990, along with proposed acceptance of the Company's offer to cap its 1991 earnings at its 13.9% return on equity (ROE) ceiling. The overearnings for 1991 are to be trued up after receipt of the 1991 Cost Study. In addition, we directed our staff

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to bring a recommendation to our January 7, 1992, Agenda Conference to address overearnings for 1992.

Our analysis showed that there has been some decline in the level of overearnings since 1990 when calculated at the Company's current equity ratio and ROE ceiling of 13.9%. This decline in earnings is expected to continue into 1992 due to the continued phase down of the interstate subscriber plant factor (SPF) and the effect of a full year's reduction in the Company's busy hour minute of capacity (BHMOC) rate. However, if adjustments are made in this docket to either the equity ratio and/or to the ROE, the Company will again find itself in an overearnings posture in 1992. Therefore, we found it appropriate to place revenues subject to refund for 1992.

When placing revenues subject to refund, Chapter 364.055, Florida Statutes, states that the rate of return shall be calculated "using the company's last authorized rate of return on equity." In addition, subparagraph (5)(b)3 states, "the term 'last authorized rate of return on equity' means the maximum of the range of the last authorized rate of return on equity established in the company's most recent rate case." Accordingly, the ROE we used for placing money subject to refund for this Company was 13.9%. This ROE was approved in Docket No. 891238-TL by Order No. 22284, issued December 11, 1989.

The statute also states in subparagraph (5)(a)1 that "The achieved rate of return shall be calculated by applying appropriate adjustments consistent with those which were used in the company's most recent rate case and annualizing any rate changes occurring during such period." After making such adjustments, we found that the appropriate amount of revenue to be placed subject to refund for 1992, including the above-mentioned adjustments, was \$445,935. Accordingly, the Company was directed to hold such revenue subject to refund, with interest, pending the result of our review of the MMFRs in this docket. These actions are reflected in Order No. 25686, issued February 4, 1992.

Another matter we considered in Order No. 25686 was the issue of an appropriate equity ratio for this Company. St. Joe's current equity ratio is 56% for the year ending December 31, 1991. We expressed our concern that where a utility increases its equity ratio above the level necessary for the provision of local exchange service, it also increases its revenue requirements. For this reason, we found it appropriate to address the issue of an

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adjustment to equity for determining the total amount of revenue to be held subject to refund pending completion of the MMFR review in this docket. We recognized that this adjustment is not consistent with the last rate case. However, we noted that Section 364.055(3) allows us to make such an adjustment, so long as a hearing is held within sixty days. Accordingly, we found it appropriate to set this matter for an expedited hearing pursuant to Section 364.055(3). We believed such action was necessary on our part in order to ensure that only the fair and reasonable cost of providing local exchange service is passed on to the ratepayers.

By Order No. 25654, issued January 29, 1992, we set forth the prehearing procedures to be utilized in this docket, including a schedule of key events and a list of the issues to be addressed in the hearing.

At the Prehearing Conference on February 17, 1992, the procedures to govern the hearing were established. The hearing is scheduled for Thursday, February 27, 1992, in Tallahassee, Florida.

II. TESTIMONY AND EXHIBITS

Upon insertion of a witness's testimony, exhibits appended thereto may be marked for identification. After opportunity for opposing parties to object and cross-examine, the document may be moved into the record. All other exhibits will be similarly identified and entered at the appropriate time during hearing. Exhibits shall be moved into the record by exhibit number at the conclusion of a witness's testimony.

Witnesses are reminded that on cross-examination, responses to questions calling for a yes or no answer shall be answered yes or no first, after which the witness may explain the answer.

III. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>DATE</u>	<u>ISSUES</u>
Beth W. Salak	Staff	2/27	All issues

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IV. BASIC POSITIONS

ST. JOE'S BASIC POSITION: It is not lawful or appropriate for the Commission to require St. Joseph to place subject to refund the amount of \$405,680.00 as the result of a "45% Equity Adjustment" for 1992.

STAFF'S BASIC POSITION: St. Joseph Telephone and Telegraph Company's equity ratio should be adjusted to a level of 45% for holding money subject to refund. The total amount of money being held subject to refund should be increased to \$851,615 after the equity ratio adjustment.

OPC'S BASIC POSITION: OPC agrees with staff's position.

V. ISSUES AND POSITIONS

ISSUE 1: What is the appropriate equity ratio for St. Joseph Telephone and Telegraph Company for the purposes of this limited proceeding?

ST. JOE'S POSITION: The appropriate equity ratio is St. Joseph's current, actual equity ratio.

STAFF'S POSITION: The appropriate equity ratio for St. Joseph Telephone and Telegraph Company for purposes of this proceeding is 45%.

OPC'S POSITION: OPC agrees with staff's position.

ISSUE 2: What is the total amount of revenue to be placed subject to refund?

ST. JOE'S POSITION: The total amount of revenue to be placed subject to refund does not include the \$405,680.00 resulting from the "45% Equity Adjustment," or any portion thereof.

STAFF'S POSITION: The total amount of money being held subject to refund should be increased to \$851,615 after the equity ratio adjustment.

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OPC'S POSITION: OPC agrees with staff's position.

VI. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXH. NO.</u>	<u>TITLE</u>
Beth W. Salak	Staff	BWS-1	Analysis of Dividends
		BWS-2	S & P Guideline

VII. STIPULATIONS

No issues have been stipulated at this time.

VIII. PENDING MOTIONS

On February 7, 1992, St. Joe filed a Motion to Dismiss this proceeding. This Motion will be taken up at the beginning of the hearing.

IX. RULINGS

During the Prehearing Conference, OPC made an oral motion to move two pending discovery requests from Docket No. 910462-TL into this docket. This discovery consists of OPC's Request for Production of Documents served December 11, 1991, covering six (6) categories of documents, and OPC's Request for Production of Documents served December 30, 1991, covering thirteen (13) categories of documents. OPC asked that St. Joe be required to produce all of the requested documents immediately, in light of the short time remaining before the hearing.

The Prehearing Officer determined it was appropriate to move these discovery requests into this docket and established February 11, 1992, as the date the discovery was served in this docket. St. Joe objected to requiring responses on an expedited basis. After hearing from the parties, the Prehearing Officer determined that responses to Items 1-6 of the December 11th Request, and 4-6 of the

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December 30th Request must be produced by February 21, 1992. The balance of the responses are to be provided under normal response deadlines.

X. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. In the event it becomes necessary to handle confidential information during the hearing, the following procedures will be observed:

- 1) It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.
- 2) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

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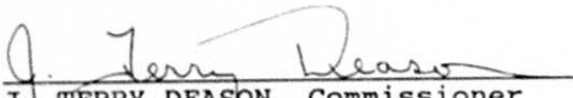
- 3) Failure of any party to comply with 2) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 4) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 5) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 6) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Commissioner J. Terry Deason, as Prehearing Officer,
this 20th day of FEBRUARY, 1992.


J. TERRY DEASON, Commissioner
and Prehearing Officer

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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.