

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Citizens of)	DOCKET NO. 891281-EI
the State of Florida for a Limited)	ORDER NO. 22700
Proceeding to Reduce Tampa Electric)	ISSUED: 3-19-90
Company's Authorized Return on)	
Equity.)	
)	

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 TO DISMISS

BY THE COMMISSION:

On November 13, 1989, the Office of Public Counsel filed a Petition in this docket on behalf of the Citizens of the State of Florida, seeking a limited proceeding to reduce Tampa Electric Company's (TECO's) authorized rate of return to 11.2%. TECO filed a Motion to Dismiss, in which the utility argued that the limited scope proceeding requested by Public Counsel is not only inappropriate, but further, that it would lead to future limited proceedings in which equity returns should be increased. However, TECO admitted that the Commission has the authority to order such a proceeding.

TECO's motion should be granted if the Citizen's petition fails to state a cause of action upon which the Commission can grant relief. Because a Motion to Dismiss is intended to test the legal sufficiency of a pleading, all facts pled by Public Counsel must be assumed to be true for the purpose of ruling on the motion.

Section 366.076, Florida Statutes, provides that the Commission may use a limited proceeding "to consider and act

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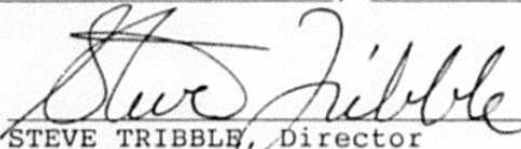
ORDER NO. 22700
 DOCKET NO. 891281-EI
 PAGE 2

upon any matter within its jurisdiction, including any matter the resolution of which requires a public utility to adjust its rates...." Thus, by its terms, the petition requests relief which the Commission can grant. We therefore find that TECO's Motion to Dismiss the Citizen's Petition should be denied.

IT IS THEREFORE

ORDERED by the Florida Public Service Commission that Tampa Electric Company's Motion to Dismiss the petition herein is hereby denied.

BY ORDER of the Florida Public Service Commission,
 this 19th day of MARCH, 1990.


 STEVE TRIBBLE, Director
 Records and Reporting

(S E A L)

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial

ORDER NO. 22700
DOCKET NO. 891281-EI
PAGE 3

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.