

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate ) DOCKET NO. 920188-TL  
increase by GTE FLORIDA ) ORDER NO. PSC-92-0945-FOF-TL  
INCORPORATED. ) ISSUED: 9/8/92  
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

ORDER DENYING PETITION FOR FULL COMMISSION ASSIGNMENT

BY THE COMMISSION:

On May 1, 1992, GTE Florida Incorporated (GTEFL) filed its Minimum Filing Requirements (MFRs) in Docket No 920188-TL. On May 22, 1992, Tampa Electric Company (TECO) filed testimony in Docket No. 920324-EI. In order to rule on the two voluminous filings within the statutorily mandated time constraints, the Chairman decided that it was necessary to split the full Commission panel between the two rate cases. Chairman Beard and Commissioner Clark were assigned to the GTEFL rate case. Commissioners Easley, Deason, and Lauredo were assigned to the TECO rate case. As currently scheduled, the cases will be heard by the separate panels simultaneously.

On August 14, 1992, the Office of Public Counsel (OPC) filed a Petition for Full Commission Assignment (Petition) to the GTEFL rate case. The Petition is filed pursuant to Section 350.01(6), Florida Statutes. We considered the matter at the earliest meeting of the full Commission.

In support of its Petition OPC avers that:

- (1) It has standing.
- (2) Only Chairman Beard and Commissioner Clark are assigned to the docket.
- (3) The Application filed in the docket requests more than one hundred and ten million dollars; it affects the entire population of the Tampa Bay area; the applicant is the second largest local exchange company in the state.

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- (4) The applicant provides numerous telephone services both regulated and unregulated in both intra and interstate commerce.
- (5) Regulatory policies established, followed, or reversed in this docket may have an effect on future cases before the Commission.
- (6) Because of the assignment of the Chairman to a panel of two, there is no procedure to comply with Section 350.01(5), Florida Statutes, which provides in part that:  
  
[I]f only two commissioners are assigned to a proceeding requiring hearings and cannot agree on a final decision, the chairman shall cast the deciding vote for final disposition of the proceeding.

On August 18, 1992, The Florida Cable Association (FCTA) filed a Memorandum in support of OPC's Petition. In its Memorandum FCTA asserts that:

- (1) The GTE rate case will be the first time that the Commission will consider certain new provisions of Chapter 364, Florida Statutes.
- (2) Interpretation of the new statutory provisions will impact future rate and depreciation cases.
- (3) Initial consideration of these provisions warrants review by a full Commission panel.
- (4) "Correctly interpreted and applied, Rule 25-22.0355 and Section 350.01(5), Florida Statutes [do] not permit the Chairman to be appointed to a two member panel."

On August 19, 1992, GTEFL, filed a Response to OPC's Petition. In its Response GTEFL asserts that:

- (1) OPC's pleading is deficient for failure to set forth why the public interest requires five Commissioners to decide the GTE rate case.
- (2) OPC's Petition is defective because it is untimely filed pursuant to Rule 25-22.0355, Florida Administrative Code.

- (3) Assignment of the Chairman to a panel of two is appropriate pursuant to Rule 25-21.005, Florida Administrative Code.
- (4) Docket management is statutorily delegated to the office of the Chairman and panel designations should not be changed absent a showing of abuse of discretion.
- (5) OPC has not made a showing of abuse of discretion.

All three parties participated in our consideration of the matter at our September 2, 1992, Agenda Conference.

We agree that the GTEFL rate case is significant in terms of dollar amount, customer impact, precedent, and almost any criteria by which a rate case could be measured. Under ideal circumstances such a case would warrant a full Commission panel. However, the TECO rate case is equally significant. A review of the Commission calendar makes it clear that without splitting the Commission into two panels, it is impossible to schedule both the GTEFL and TECO rate cases to allow adequate time for discovery and still decide the cases within the statutory time constraints. Assignment of less than a full Commission panel is anticipated by Section 350.01, Florida Statutes, and by Rule 25-22.0355, Florida Administrative Code.

The question of how a split vote is to be handled when the Chairman is part of a two member panel is addressed at Rule 25-21.005, Florida Administrative Code. The Rule provides in part that:

[W]here only two commissioners are assigned to a proceeding and they do not agree on a final decision, the chairman of the Commission shall cast the deciding vote. Where the chairman is one of a two-member panel and the panel does not agree on a final decision, the matter shall be referred to the full Commission for disposition. In such an event, the full Commission shall review the record as provided in Section 120.57(1)(b)9. Id.

The vote on the GTE rate case will be in late December and Chairman Beard's term as Chairman ends on December 31. Thus, should there be a tie vote, we may need to decide whether the full

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Commission, or the newly appointed Chairman, should break the tie. In the event of a split vote, GTE-FL has agreed to briefly waive the eight month clock so that either the full Commission, or the new Chairman, can have time to review the record and break the tie in early January.

Upon review, we deny OPC's August 14, 1992, Petition for Full Commission Assignment due to impossibility. Additionally, we note that OPC's Petition was not timely filed and is appropriately denied on that basis pursuant to Rule 25-22.0355(4), Florida Administrative Code.

Therefore, it is

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's August 14, 1992 Petition for Full Commission Assignment is hereby denied.

By ORDER of the Florida Public Service Commission, this 8th day of September, 1992.

  
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STEVE TRIBBLE, Director  
Division of 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.

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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.