

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Suwannee) DOCKET NO. 910991-EU
Valley Electric Cooperative, Inc.) ORDER NO. PSC-92-0630-FOF-EU
to resolve a territorial dispute) ISSUED: 07/07/92
with Florida Power and Light)
Company (Live Oak Innkeepers,)
Inc. - Best Western Motel).)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK

NOTICE OF PROPOSED AGENCY ACTION

ORDER RESOLVING TERRITORIAL DISPUTE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

On September 25, 1991, Suwannee Valley Electric Cooperative, Inc. (SVEC) filed with this Commission a petition to resolve a territorial dispute with Florida Power and Light Company (FPL). The petition alleged that on or about July 1, 1991, FPL constructed a service lift pole, a temporary power pole and added a transformer to serve the construction of a motel to be located on the south side of Badcock Road in Suwannee County, Florida. The petition stated that "the area south of Badcock Road, including the motel construction site has traditionally been served by SVEC. SVEC stated it has maintained a distribution line on the subject property since 1954." The petition included, a diagram depicting the recent construction by FPL crossing under SVEC lines. The petition requested that SVEC be directed to serve the disputed area and FPL be directed to dismantle and remove its poles, distribution line and transformer.

On October 15, 1991, FPL answered SVEC's petition denying most of its assertions, but admitted they had crossed under the distribution line of SVEC to provide service to a portion of the

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property that SVEC had previously served. FPL stated it provided service to the customer "pursuant to its statutory obligation to serve as set forth in Section 366.03. Florida Statutes."

On December 18, 1991, the parties requested a delay in order to have an opportunity to resolve the dispute. Failing to resolve the dispute, they filed a Stipulation of Facts and a Joint Motion for Resolution of Territorial Dispute requesting that the Commission resolve the dispute without a hearing.

RESOLUTION OF DISPUTE

Rule 25-6.0441 Florida Administrative Code outlines the criteria to be analyzed when resolving a territorial dispute. They are:

- (a) the capability of each utility to provide reliable electric service within the disputed area with its existing facilities and the extent to which additional facilities are needed;
- (b) the nature of the disputed area including population and the type of utilities seeking to serve it, and degree of urbanization of the area and its proximity to other urban areas, and present and foreseeable future requirements of the area for other utility services;
- (c) the cost of each utility to provide distribution and subtransmission facilities to the disputed area presently and in the future; and
- (d) customer preference if all factors are substantially equal.

Stipulation of Facts filed by the parties indicate:

- 1. Both utilities are capable of providing service to the disputed area.
- 2. The disputed area is rural and will be used by Innkeepers of Live Oak, Inc. to operate a Best Western Motel.
- 3. FPL crossed under SVEC's overhead lines by installing an overhead triplex cable service from existing FPL facilities to the customer-owned service pole to provided temporary service. SVEC can serve the hotel without crossing or interfering with any of FPL's distribution facilities.

4. The approximate cost for SVEC and FPL to provide permanent service to the area in dispute is \$3,154 and \$7,877 respectively.

The parties did not take a position on the issue of whether customer preference should be considered in this matter. As indicated above, in order to consider customer preference in resolving a territorial dispute all other factors should be substantially equal. From the stipulated facts we cannot find that all factors are substantially equal, therefore customer preference will not be a factor in resolving this dispute.

We find from the stipulated facts that we should grant the parties' Joint Motion Resolution of Territorial Dispute without the necessity of hearing. In making this determination we find that the facts indicate that SVEC distribution lines on Badcock Road have been there since 1950; that FPL will have to cross SVEC's facilities to provide permanent service to the motel; and that FPL's cost to provide service is \$7,877.00 compared to \$3,154.28 for SVEC. We therefore conclude that permitting FPL to continue to serve the customer in question would allow the uneconomical duplication of SVEC's facilities.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Resolution of Territorial Dispute is hereby granted consistent with the findings in the body of this Order. It is further

ORDERED that Florida Power and Light Company is ordered to cease and desist providing electric service to Live Oak Innkeepers, Inc., Best Western Motel, as a practicable and that electric service shall be provided by Suwannee Valley Electric Cooperative, Inc. It is further

ORDERED that this Order shall become final and the docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

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By ORDER of the Florida Public Service Commission, this 7th
day of July, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MRC:bmi

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on July 28, 1992.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.