

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by TALQUIN ELECTRIC COOPERATIVE, INC.	)	DOCKET NO. 930563-EG
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In Re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by WITHLACOOCHEE RIVER ELECTRIC COOPERATIVE.	)	DOCKET NO. 930564-EG
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In Re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by CLAY ELECTRIC COOPERATIVE, INC.	)	DOCKET NO. 930560-EG
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In Re: Adoption of Numeric Conservation Goals and Consideration of national Energy Policy Act Standards (Section 111) by SUMTER ELECTRIC COOPERATIVE, INC.	)	DOCKET NO. 930562-EG
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In Re: Adoption of Numeric Conservation Goals and Consideration of National Energy Policy Act Standards (Section 111) by FLORIDA KEYS ELECTRIC COOPERATIVE, INC.	)	DOCKET NO. 930922-EG ORDER NO. PSC-96-1517-FOF-EG ISSUED: December 13, 1996

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
JOE GARCIA  
DIANE K. KIESLING

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

NOTICE OF PROPOSED AGENCY ACTION ORDER EXEMPTING CERTAIN  
MUNICIPALITIES AND COOPERATIVES FROM COMPLYING WITH  
FINAL ORDER NO. PSC-95-0461-FOF-EG

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Beginning in 1993, electric municipalities and cooperatives with annual sales of 500 gigawatt hours or more participated in dockets to establish numeric conservation goals (kW and kWh savings). These goals were established in compliance with the requirements of the Florida Energy Efficiency and Conservation Act (FEECA), Sections 366.80-366.85, and 403.519, Florida Statutes. On April 10, 1995, we issued Final Order No. PSC-95-0461-FOF-EG, setting conservation goals for the municipalities and cooperatives subject to FEECA.

The 1996 Legislature passed Chapter 96-321, Laws of Florida, which revised Section 366.82(1), Florida Statutes, and exempted certain electric municipalities and cooperatives from the requirements set forth in FEECA. Revised Section 366.82(1), Florida Statutes, states:

(1) For the purposes of ss. 366.80-366.85 and 403.519, "utility" means any person or entity of whatever form which provides electricity or natural gas at retail to the public, specifically including municipalities or instrumentalities thereof and cooperatives organized under the Rural electric Cooperative Law and specifically excluding any municipality or instrumentality thereof any cooperative organized under the Rural Electric Cooperative Law, or any other person or entity providing natural gas at retail to the public

whose annual sales volume is less than 100 million therms or any municipality or instrumentality thereof and any cooperative organized under the Rural Electric Cooperative Law providing electricity at retail to the public whose annual sales as of July 1, 1993, to end-use customers is less than 2000 gigawatt hours. (New language is underlined).

Pursuant to the revised Section 366.82(1), Florida Statutes, certain municipalities and cooperatives are exempt from the requirements of FEECA. Consequently, if a municipality or cooperative is now exempt pursuant to Section 366.82(1), Florida Statutes, we cannot impose any penalties on the municipalities or cooperatives who fail to create conservation plans pursuant to Final Order NO. PSC-95-0461-FOF-EG. Revised Section 366.82(1), Florida Statutes, is self executing. Therefore, municipalities and cooperatives, who meet the statute's threshold for exemption, are relieved from the requirements of Order No. PSC-95-0461-FOF-EG.

Withlacoochee River Electric Cooperative, Inc., Talquin Electric Cooperative, Inc., Sumter Electric Cooperative, Inc., Florida Keys Electric Cooperative Association, Inc., and Clay Electric Cooperative, Inc., ("Electric Cooperatives") filed a letter petitioning the Commission to rescind Final Order No. PSC-95-0461-FOF-EG. The electric cooperatives contend that the Final Order setting the conservation goals is now moot. The Electric Cooperatives cite DeLa Rama Steamship Co., Inc. v. United States, 344 U.S. 386; 73 S.Ct. 381 (1953). The court in its dicta quoted The Western Maid, 257 U.S. 419, 433: "Legal obligations that exist but cannot be enforced are ghosts that are seen in the law but that are elusive to the grasp." Relying on this quote, the Electric Cooperatives contend that Final Order PSC-95-0461-FOF-EG, which set the electric cooperatives' goals, cannot be enforced because the cooperatives are now exempt from the requirements of FEECA. As stated by the court in DeLa Rama, when the purpose of Congress is to take away jurisdiction, such jurisdiction does not survive even as to pending suits, unless expressly reserved. The Electric Cooperatives argue that the purpose of the amendment to FEECA was to take away regulatory jurisdiction.

Under the principle of "administrative finality," orders of administrative agencies, like those of the courts, must eventually become final and no longer subject to modification. However, the courts have acknowledged that agencies can modify orders still under their control, though that authority is somewhat limited. See Peoples Gas System v. Mason, 187 So.2d 335 (Fla. 1966). The

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a public interest which changes over time as circumstances change. Thus, the analogy between courts and agencies should not be drawn so tightly as to preclude agencies from revisiting subject matter dealt within a prior order. McCaw Communications of Florida, Inc. V. Clark, 21 Fla. L. Weekly S397 (Fla. Sept. 26, 1996); Reedy Creek Utilities Co. V. Florida Public Service Commission, 418 So.2d 249 (Fla. 1982); and Peoples Gas System v. Mason, 187 So.2d at 339.

We believe the Legislature intended revised Section 366.82(1), Florida Statutes, to be applied prospectively to municipalities and cooperatives subject to Final Order PSC-95-0461-FOF-EG. Thus, those municipalities and cooperatives exempt from the requirements of FEECA should no longer be subject to the requirements of Order No. PSC-95-0461-FOF-EG. This is consistent with the Legislature's intent.

For the reasons discussed above, we find it appropriate that the municipalities and cooperatives, who are now exempt from FEECA pursuant to Section 366.82(1), Florida Statutes, are not required to comply with Final Order No. PSC-95-0461-FOF-EG.

Based on the foregoing, it is

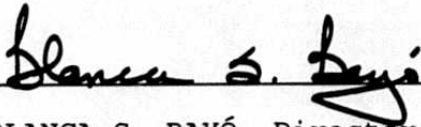
ORDERED by the Florida Public Service Commission that the municipalities and cooperatives, who are now exempt from the Florida Energy Efficiency and Conservation Act pursuant to Section 366.82(1), Florida Statutes, are not required to comply with Final Order No. PSC-95-0461-FOF-EG. It is further

ORDERED that the provisions of this order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this order becomes final, this Docket shall be closed. A protest filed in one docket shall not affect the closing of the other dockets.

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By ORDER of the Florida Public Service Commission, this 13th  
day of December, 1996.

  
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BLANCA S. BAYÓ, 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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 3, 1997.

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.

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 substantially 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.