

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve territorial dispute with Clay Electric Cooperative, Inc. in Baker County by Florida Power & Light Company

DOCKET NO. 970512-EI
ORDER NO. PSC-97-1235-PCO-EI
ISSUED: October 13, 1997

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
JOE GARCIA

ORDER DENYING FLORIDA POWER & LIGHT COMPANY'S MOTION TO AWARD INTERIM SERVICE

BY THE COMMISSION:

On April 29, 1997, Florida Power & Light Company (FPL) filed a petition to resolve a territorial dispute between FPL and Clay Electric Cooperative, Inc. (Clay) in Baker County. FPL alleges that both FPL and Clay currently provide retail electric service to customers within an area of Baker County where River City Plastics Inc. (River City) is in the process of constructing a manufacturing facility. FPL states that the River City plant will be located immediately adjacent to an existing FPL industrial customer. FPL asserts that its distribution facilities, which can serve River City, are closer than comparable facilities owned by Clay.

On July 10, 1997, FPL filed a Motion to Award Interim Service during the pendency of the dispute proceeding. In its motion, FPL alleges that the interim service currently provided by Clay is or will be insufficient to meet the demands of the customer when River City begins operations. FPL asserts that it should be awarded the interim service to River City in order to give the customer more reliable electric service at less cost. On July 17, 1997, Clay filed a Motion in Response to Florida Power & Light's Motion to Award Interim Service. In this motion, Clay denied that its service is insufficient to accommodate River City's needs at the start-up date. Clay also claims that FPL's motion sought to have the Commission order interim service which could effectively amount to a de facto Commission award of the customer to FPL.

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In this case, there is no territorial agreement between Clay and FPL in the service area in dispute. However, by analogizing this dispute to disputes involving territorial agreements, it is clear that when a customer builds along a territorial boundary the utility with the closest lines may not be the utility in whose service area the customer built. Interim service may be necessary to provide service to such a customer quickly and efficiently. Interim service, however, must be temporary in nature. It must end at a time certain.

In resolving territorial disputes, the Commission may consider the capability of each utility to provide service within the disputed area with its existing facilities and the extent to which additional facilities are needed. Granting FPL's request would cause unnecessary additional expense both to Clay and to FPL and their respective customers. Clay would have to remove their facilities. FPL would have to install a new temporary service line. Additionally, there is no benefit in granting FPL's request. Even if FPL ultimately prevails in this case they would have to install a temporary service which will have to be removed when the site is ready for commercial operation. Should this dispute continue past the time when the site requires permanent service, then Clay should continue to provide service, on a temporary basis, until the Commission resolves this territorial dispute.

In paragraph two of its Motion to Award Interim Service, FPL claims that Clay can not provide adequate interim electrical service to the River City facility as economically as can FPL.

In paragraph three of its Motion, FPL claims that it can supply interim service to River City by "simply constructing a short overhead line" approximately $\frac{1}{2}$ mile at a cost of \$51,936.00. To change from Clay Electric Cooperative which is already serving the temporary needs of the site by a basic service line to FPL would incur a cost of \$51,936.00, an unnecessary expense under the circumstances.

Further, FPL claims that should River City require more than basic service, FPL would require CIAC based on the incremental cost of the facilities to be installed. FPL justifies this cost by suggesting that it is "substantially below" the similar costs of Clay to provide the same service to River City. Not only does this argue facts which the Commission does not have before it, it ignores the fact that Clay is providing basic service now. To order a change to FPL for temporary and/or interim service would

likely result in CIAC charges in anticipation of an outcome yet to be determined at hearing. Any utility awarded interim service must absorb the cost of providing the service to the customer and must absorb the cost of removing the service if the utility does not retain the customer permanently.

In paragraph four, FPL claims that whoever is awarded temporary service should install transformer pads which will accommodate the differences between the two utilities' transformer standards. Clay has advised staff that the concrete pads which have been installed are standard pad mounts which will accommodate any transformer for the load required by River City. This issue is, therefore, moot. As a result, either utility can install their transformers if awarded service. FPL's attempt to require Clay to install transformers identical to those FPL intends to install if it is awarded the contract is tantamount to requiring FPL be awarded permanent service.

In its response to FPL's Motion to Award Interim Service, Clay asserts that FPL attempts to resolve the question of who will ultimately serve River City. Clay further alleges that FPL's motion ignores the character and quality of service required by River City.

The issue of which utility will serve River City is the subject of the Hearing set for October 27, 1997. FPL has not shown in its motion that the temporary service provided to this customer is inadequate. We note that River City initially requested service from Clay and has not sought any transfer to FPL. Granting the motion tends to presume the resolution of several issues which will be decided at the Hearing.

In this situation, as Clay asserts, "the customer is not suffering for want of electric service." As the site is already electrified, there is no benefit to be gained by requiring a change in interim service provider from Clay to FPL. Therefore, FPL's Motion to Award Interim Service is denied.

Because the territorial dispute in this case is set for hearing October 27, 1997, there is no danger of the interim service lasting more than one year. The customer is currently served by Clay Electric Cooperative. In the interest of avoiding uneconomic duplication of electric facilities until the dispute can be resolved, we find that Clay Electric Cooperative shall retain the interim service.

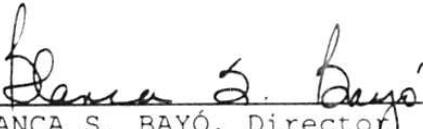
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In consideration of the foregoing it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Motion to Award Interim Service is denied. It is further

ORDERED that this docket shall remain open pending the Prehearing set for October 15, 1997, and the Hearing set for October 27, 1997.

By ORDER of the Florida Public Service Commission this 13th day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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.