

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company for enforcement of Order 4285, which approved a territorial agreement and established boundaries between the Company and the City of Homestead.

DOCKET NO. 970022-EU
ORDER NO. PSC-97-1552-PCO-EU
ISSUED: December 10, 1997

ORDER DISPOSING OF MOTION FOR FINAL SUMMARY JUDGMENT

On September 19, 1997, the City of Homestead (City) filed a Motion for Final Summary Judgment with supporting affidavits. The staff recommendation in this docket was filed on September 11, 1997, and heard by the Commission on September 23, 1997. Florida Power and Light did not file a response to the City's Motion.

In its motion, the City asserts that the phrase "city owned facility" is unambiguous and can be given only one meaning. In addition, the City states that the Commission lacks authority to interpret the phrase as it is used in the Territorial Agreement between the parties.

The principles which govern summary judgment are well settled. Summary judgment cannot be granted unless it is conclusively shown that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law. Rule 1.510(c), Florida Rules of Civil Procedure.

In addition, if the evidence raises any issues of material fact, or if the evidence is conflicting or will permit different reasonable inferences, summary judgment cannot be granted. McDonald v. Florida Department of Transportation, 655 So.2d 1164 (4th DCA 1995). Every possible inference in favor of the party against whom summary judgment is sought must be drawn. Moore v. Morris, 475 So.2d 666 (Fla. 1985).

In this case, the extensive pleadings of the parties clearly demonstrate that conflicting reasonable inferences may be drawn from the facts giving rise to the territorial dispute. As such, summary judgement is not appropriate.

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The service territory which is the subject of this docket was granted to FPL pursuant to proposed agency action Order No. PSC-97-1132-FOF-EU, issued September 29, 1997. The proposed agency action was not protested by the City and the Order became final on October 20, 1997. The Motion for Final Summary Judgment has been rendered moot by the final agency action in this docket.

In addition, the City's Motion for Final Summary Judgment was not timely. Florida Rule of Civil Procedure 1.510 requires that the motion "shall be served at least 20 days before the time fixed for the hearing." The City's motion was filed eight days after the staff recommendation was issued and just four days before the matter was considered at Agenda Conference.

It is therefore,

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that the City of Homestead's Motion for Final Summary Judgment is moot.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 10th Day of December, 1997.


DIANE K. KIESLING
Commissioner and Prehearing Officer

(S E A L)

LJP

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

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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.

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