

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Adoption of Rules 25-6.0439, )  
25-6.0440, 25-6.0441, 25-6.0442, )  
Territorial Agreements and Disputes )  
for Electric Utilities. )  
\_\_\_\_\_ )

DOCKET NO. 870372-EU  
ORDER NO. 21776  
ISSUED: 8-23-89

NOTICE OF RULEMAKING

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has initiated rulemaking to adopt Rules 25-6.0439, 25-6.0440, 25-6.0441, and 25-6.0442, relating to territorial agreements and disputes for electric utilities.

The attached Notice of Rulemaking will appear in the August 25, 1989, edition of the Florida Administrative Weekly. If requested, a hearing will be held at the following time and place:

9:30 a.m., Monday, October 30, 1989  
Room 106, Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rules must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL, 32399, no later than September 15, 1989.

By Direction of the Florida Public Service Commission,  
this 23rd day of AUGUST, 1989.

  
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STEVE TRIBBLE, Director  
Division of Records & Reporting

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FLORIDA PUBLIC SERVICE COMMISSION

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RULE TITLE:	RULE NO.:
Territorial Agreements and Disputes	25-6.0439,
for Electric Utilities	25-6.0440,
	25-6.0441,
	25-6.0442

PURPOSE AND EFFECT: These rules are intended to provide guidance to electric utilities and customers regarding territorial agreements and disputes and customer participation in proceedings.

SUMMARY: Proposed Rule 25-6.0439 provides definitions of "territorial agreement" and "territorial dispute" for electric utilities. A territorial agreement is a written agreement between two or more electric utilities which identifies the geographic areas to be served by each electric utility, the terms and conditions pertaining to implementation of the agreement, and any other terms and conditions pertinent to the agreement. Territorial dispute is defined as a disagreement as to which utility has the right and the obligation to serve a particular geographic area.

Proposed Rule 25-6.0440 describes the information which utilities must submit to the Commission in order to get the Commission's approval for an agreement. The agreement must clearly identify the geographic area to be serve by each utility. The submission must include: (a) a map and written description of

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the area; (b) the terms and conditions pertaining to implementation of the agreement, and any other terms and conditions pertaining to the agreement; (c) the number and class of customers to be transferred; (d) assurance that affected customers have been contacted and the difference in rates explained; and (e) information with respect to the degree of acceptance of affected customers. After the Commission approves an agreement, any changes to it must come before the Commission for approval.

Standards are stated which the Commission may consider, but is not limited to considering, in approving these agreements. These are: (a) the reasonableness of the purchase price of any facilities being transferred; (b) the reasonable likelihood that the agreement, in and of itself, will not decrease the reliability of the service to ratepayers; (c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

Territorial disputes are described in proposed Rule 25-6.0441. A dispute proceeding, as set forth in the proposed rule, may be initiated by a petition from a utility or by the Commission on its own motion. Each utility must file certain information with the Commission, including a map and a written description of the area along with the conditions that caused the dispute. Each utility must also provide a description of the existing and planned load to be served in the area of dispute, and

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a description of the type, additional cost, and reliability of the facilities and a description of other services to be provided within the disputed area.

In resolving the disputes, the rule allows the Commission to consider, but not be limited to, consideration of: (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, the degree of urbanization, and the present and reasonably 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 other factors are approximately equal.

Customer participation is set forth in proposed Rule 25-6.0442. It basically tracks the new language in Chapter 89-292, Laws of Florida. However, it clarifies that the participation of customers in proceedings is those "located within the geographic area in question." The rule provides that any customer located within the geographic area in question shall have an opportunity to present oral or written communication in Commission proceedings related to agreements or disputes. If the Commission proposes to consider such material, all parties will be given a reasonable opportunity to cross-examine or challenge or rebut it. Any substantially affected customer has the right to intervene in the proceedings.

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In any Commission proceeding to approve a territorial agreement or resolve a territorial dispute, the Commission shall give notice of the proceeding in the manner provided by Rule 25-22.0405, Florida Administrative Code.

RULEMAKING AUTHORITY: Section 366.05(1), Florida Statutes.

LAW IMPLEMENTED: Sections 366.04(2), 366.04(3), 366.05(7), 366.03, Chapter 89-292, Laws of Florida.

SUMMARY OF THE ESTIMATE OF ECONOMIC IMPACT OF THESE RULES:

Proposed Rules 25-6.0439 through 25-6.0441 would essentially codify existing Commission filing requirements for electric utility territorial boundary agreements and disputes. For this reason, compliance with most provisions of these rules should impose no additional costs on or result in any substantial savings to the Commission.

The Commission would incur minor costs to review customer information required under Proposed Rule 25-6.0440. Also, the provision of proposed Rule 25-6.0441 that would allow Commission identification of disputes and initiation of proceedings could result in net costs to the agency.

Agency costs from customer intervention in disputes are likely to be minimal because Rule 25-6.0442 basically reflects existing Commission procedures and the policy of hearing customer testimony on territorial issues.

No attempt to quantify Commission costs that could arise from adoption of the proposed rules was made. Nonetheless, additional

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costs resulting from the adoption of the proposed rules are expected to be minimal because the rules mostly codify existing practice.

Utilities may incur additional costs associated with data submission for Commission initiated dispute proceedings which would not have otherwise occurred. However, to the extent that Commission identification of a potential dispute would anticipate the reaching of territorial agreements independently by utilities, and since required filings for territorial agreements and disputes are similar, Commission-initiated dispute proceedings would not likely impose significant additional costs of data filings on utilities. No attempt was made to quantify costs of Commission-initiated dispute proceedings because a crucial assumption on which to base cost estimates -- the number of such proceedings that would otherwise not have occurred -- would be highly speculative. The number of such additional proceedings, however, is not expected to be extensive.

Some utilities did report an estimated additional cost due to the rules. FPUC-Marianna and the City of Green Cove Springs estimated that the proposed rules would engender additional costs of \$10,000 and \$30,000 per disputes, respectively. Florida Power and Light estimated \$18,000 per Commission-declared disputes that would not have otherwise occurred.

In general, the proposed rules are not expected to provide significant additional economic benefits to utilities or ratepayers because they largely codify existing Commission practices.

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Commission identification of disputed service areas may provide benefits to utilities and ratepayers by limiting costs of uneconomic duplication of facilities.

The provision regarding customer participation basically codifies existing practice, as well as incorporates the new language in the Chapter 366, Florida Statutes. No attempt was made to quantify the value.

None of the Florida electric utilities qualifies as a small business, pursuant to Section 120.54, Florida Statutes.

The proposed rules are not expected to affect utilities' relative competitive positions because they do not systematically create advantages for specific types of utilities. In the long run, compliance with the proposed rules is expected to result in cost savings to the electric industry and ratepayers as uneconomic duplication of facilities and territorial disputes are avoided.

The above mentioned potential savings, in the long run, could result in savings to the ratepayers. Associated with such savings could be increased ratepayers expenditures. Thus, over time, these general household expenditures on goods and services could theoretically lead to increased employment.

Costs and savings resulting from the adoption of the proposed rules and the effects of compliance on the utilities and their ratepayers, employment, and competition were derived from partial and general equilibrium analyses of the supplied estimates. In addition, a staff workshop was held with interested persons to

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discuss the technical, legal, and economic implication of the proposed rules.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING. IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:30 A.M., SEPTEMBER 29, 1989

PLACE: Room 106, 101 East Gaines Street, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THESE RULES AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399

THE FULL TEXT OF THE RULES IS:

25-6.0439 Territorial Agreements and Disputes for Electric Utilities - Definitions.

(1) For the purpose of Rules 25-6.0440, 25-6.0441, and 25-6.0442, the following terms shall have the following meaning:

(a) "territorial agreement" means a written agreement between two or more electric utilities which identifies the geographical areas to be served by each electric utility party to the agreement, the terms and conditions pertaining to implementation of the agreement, and any other terms and conditions pertinent to the agreement;

(b) "territorial dispute" means a disagreement as to which utility has the right and the obligation to serve a particular geographical area.



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Specific Authority: 366.05(1), Florida Statutes.

Law Implemented: 366.04(2)(d), 366.04(2)(e), 366.05(1), 366.05(7),  
Florida Statutes.

History: New.

25-6.0440 Territorial Agreements for Electric Utilities.

(1) All territorial agreements between electric utilities shall be submitted to the Commission for approval. Each territorial agreement shall clearly identify the geographical area to be served by each utility. The submission shall include: (a) a map and a written description of the area, (b) the terms and conditions pertaining to implementation of the agreement, and any other terms and conditions pertaining to the agreement, (c) the number and class of customers to be transferred, (d) assurance that the affected customers have been contacted and the difference in rates explained, and (e) information with respect to the degree of acceptance by affected customers, i.e., the number in favor of and those opposed to the transfer. Upon approval of the agreement, any modification, changes, or corrections to this agreement must be approved by this Commission.

(2) Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:

(a) the reasonableness of the purchase price of any facilities being transferred;

(b) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical

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service to the existing or future ratepayers of any utility party to the agreement; and

(c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

(3) The Commission may require additional relevant information from the parties of the agreement, if so warranted.  
Specific Authority: 366.05(1), 366.03, 366.04(3), Florida Statutes.  
Law Implemented: 366.04(2)(d), Florida Statutes.

History: New.

25-6.0441 Territorial Disputes for Electric Utilities.

(1) A territorial dispute proceeding may be initiated by a petition from an electric utility requesting the Commission to resolve the dispute. Additionally the Commission may, on its own motion, identify the existence of a dispute and order the affected parties to participate in a proceeding to resolve it. Each utility which is a party to a territorial dispute shall provide a map and a written description of the disputed area along with the conditions that caused the dispute. Each utility party shall also provide a description of the existing and planned load to be served in the area of dispute and a description of the type, additional cost, and reliability of electrical facilities and other utility services to be provided within the disputed area.

(2) In resolving territorial disputes, the Commission may consider, but not be limited to consideration of:

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(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 the present and reasonably 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 other factors are equal.

(3) The Commission may require additional relevant information from the parties of the dispute if so warranted.  
Specific Authority: 366.05(1), 366.03, 366.04(2), Florida Statutes.  
Law Implemented: 366.04(3), 366.05(7), Florida Statutes. Chapter 89-292, Laws of Florida.

History: New.

Rule 25-6.0442 Customer participation.

(1) Any customer located within the geographic area in question shall have an opportunity to present oral or written communications in commission proceedings to approve territorial agreements or resolve territorial disputes. If the commission proposes to consider such material, then all parties shall be given a reasonable opportunity to cross-examine or challenge or rebut it.

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(2) Any substantially affected customer shall have the right to intervene in such proceedings.

(3) In any Commission proceeding to approve a territorial agreement or resolve a territorial dispute, the Commission shall give notice of the proceeding in the manner provided by Rule 25-22.0405, F.A.C.

Specific Authority: 366.05(1), Florida Statutes.

Law Implemented: 366.04(4), Florida Statutes, Chapter 89-292, Laws of Florida.

History: New.

NAME OF PERSON ORIGINATING PROPOSED RULE: Lee Colson

NAME OF SUPERVISOR OR PERSON(S) WHO APPROVED THE PROPOSED RULES:  
Florida Public Service Commission

DATE PROPOSED RULES APPROVED: August 15, 1989.

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.