

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint by Coastal) DOCKET NO. 921128-EC
Lumber Company against Talquin) ORDER NO. PSC-93-0940-FOF-EC
Electric Cooperative, Inc.) ISSUED: 6/23/93
regarding rate structure.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING COASTAL'S MOTION TO EXPEDITE
PROCEEDING AND FOR OTHER RELIEF

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.

On November 2, 1992, Coastal Lumber Company (Coastal or the company) filed a complaint against the Talquin Electric Cooperative (Talquin or the cooperative), which alleged that Talquin's rate structure was not fair, just, and reasonable. Coastal takes service from Talquin at primary voltage under the general service large demand (GSLD) rate schedule, and it believes the GSLD rate is disproportionately high relative to the residential rate (RS). Talquin filed an answer to Coastal's complaint on November 23, 1992. Talquin responded that its charges are in accordance with its GSLD rate schedule as reviewed and approved by the Commission and that Coastal contracted with Talquin to take service under the GSLD rate. Talquin also alleged that it was inappropriate to compare Talquin's rates with Florida Power Corporation (FPC), as Coastal did in its complaint.

At the January 19, 1993 agenda conference, we voted to issue Talquin a comment letter requesting that it either show its rate structure was fair, just, and reasonable, or that it redesign its rate charges to significantly improve the relationship between its rate classes. The comment letter issued by Chairman Deason

DOCUMENT PREPARED BY DATE

06757 JUN 23 93

1993 REGISTRATION UNIT

requested a response by March 15, 1993. By letter dated February 5, 1993, Talquin's counsel wrote Chairman Deason requesting a thirty day extension to respond to the comment letter. Talquin asked for additional time so that it could compile a cost of service study using information from year-end 1992 instead of 1991. Chairman Deason responded that because he believed good cause was shown, Talquin would have until April 15, 1993 to file its response to the Commission's comment letter.

By letter dated April 15, 1993, Talquin responded to the Commission's comment letter stating that it believed its rate design was justified because we approved the rate structure presently in place and because Talquin's revenue requirements have not warranted a rate change. Nevertheless, Talquin stated that since it received the Commission's comment letter, the cooperative began preparing for and performing a cost of service study based on 1992 as the test year. Talquin stated in its letter that the information developed so far indicates that Talquin should now consider a change in rates. To have adequate time to complete a cost of service study, Talquin asked for an additional extension until July 30, 1993 to file a proposed rate change with us. If it has until July 30, 1993, the cooperative stated it can then submit its completed cost of service study and proposed rates addressing the relationships among rate classes.

Coastal filed a reply to Talquin's response to the comment letter and a motion to expedite the proceeding. In Coastal's motion to expedite the proceeding, Coastal argued that Talquin already knew that Coastal believed there were inequities in the cooperative's rate structure before Coastal filed its complaint. The company also argued that with each passing month Coastal continues to be overcharged by Talquin and further delay adds further injury.

In Talquin's memorandum in opposition to Coastal's motion, the cooperative pointed out its willingness to conduct a cost of service study and to submit changes in rates by July 30, 1993. Talquin also pointed out that its decision to voluntarily file a rate change will result in new rates more quickly and less expensively than would any rate change resulting from litigation before the Commission. We agree. We also agree that it could reasonably take until July 30, 1993 for Talquin to complete its cost of service study, design new rates, and have them approved by Talquin's Board of Trustees. Accordingly, we find that Coastal's motion to expedite the proceeding is denied.

Talquin is urged, however, to complete these steps as quickly as possible, and if Talquin completes any of these steps earlier than presently contemplated, then Talquin should submit its proposed rates earlier than July 30, 1993. Talquin is reminded that Rule 26-9.052(2), Florida Administrative Code, requires municipal and cooperative rate schedule revisions to be submitted to the Commission at least 30 days prior to formal adoption by the utility.

In Coastal's motion to expedite the proceeding, Coastal also argued that the Commission should order Talquin to hold \$17,000 of revenues a month subject to refund beginning in May 1993. According to Coastal, this sum represents less than one-half of the disparity in electric payments for electricity paid by Coastal to Talquin as opposed to what it would have paid as a customer of FPC during the twelve month period ending May 1992. Coastal believes this course of action is necessary to help prevent or alleviate the on-going and materially adverse consequences incurred each month Talquin's rate change is delayed.

Talquin responded that Coastal's request to hold revenues subject to refund should be denied. Talquin pointed out that it has not admitted and the Commission has not adjudicated that Talquin's current rate structure is discriminatory, unfair, unjust, or unreasonable. Talquin also pointed out that if the Commission were to grant Coastal's request, this would be inconsistent with our action in Order No. 25645,¹ in which we did not hold the City of Quincy's (Quincy) revenues subject to refund as requested by the Floridin Company (Floridin). In that order, we stated

[p]ursuant to Section 366.04(2)(b), Florida Statutes, we have jurisdiction "[t]o prescribe a rate structure for all electric utilities." There is some question as to whether our authority to order refunds falls within our authority to prescribe rate structures. Section 366.06(4), Florida Statutes, authorizes us to order refunds in cases where there are unjustified charges by utilities. Because Section 366.11(1), Florida Statutes, appears to exempt municipalities from the provisions of Section 366.06, Florida Statutes, we may not have

¹ Order No. 25645 was issued January 27, 1992, in Docket No. 910836-EM - Complaint against Quincy Municipal Electric System by the Floridin Company regarding rate structure.

jurisdiction to order municipalities to make refunds. We do not believe that it is appropriate, in this instance, to test our jurisdiction, because we find that Quincy has acted in good faith to correct the municipality's rate structure problem. Until Floridin's petition was filed, Quincy's rate structure had never been ruled inadequate by us. Accordingly, we deny Floridin's request that the Commission order Quincy to hold \$27,000 of revenue subject to refund per month

Our reasoning in Order No. 25645 is applicable in this case, even though it is arguable that the Commission's general rate-making authority under Chapter 366 may allow us to order cooperatives and municipals to hold money subject to refund in extraordinary circumstances. In this instance, we have not ruled that Talquin's rates are unfair, unjust, and unreasonable. There has been no finding that Talquin has not acted in good faith in this matter. In fact, Talquin has stated it will file revised rates by July 30, 1993. We find that it is inappropriate, under these facts, to hold Talquin's revenues subject to refund. Accordingly, we deny Coastal's motion to do so.

This docket shall remain open until Talquin submits its revised rates by July 30, 1993, and those rates are reviewed by staff and approved by the Commission.

It is, therefore,

ORDERED that Coastal Lumber Company's Motion to Expedite Proceeding and for Other Relief is denied. It is further

ORDERED that this Order shall become final 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.

ORDER NO. PSC-93-0940-FOF-EC
DOCKET NO. 921128-EC
PAGE 5

By ORDER of the Florida Public Service Commission, this 23rd
day of June, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)
MAH: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 14, 1993.

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

ORDER NO. PSC-93-0940-FOF-EC
DOCKET NO. 921128-EC
PAGE 6

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.