WILLIAMS, BRYANT & GAUTIER, P.A.
Attorneys At Law

ORIGINAL

FREDERICK M. BRYANT
JOHN H. DELOACH
RUSSELL D. GAUTIER
Board Certified
Real Estate Lawyer
JAMES E. SORENSON
Also Admitted in Georgia
LINDA J. STALVEY
F. PALMER WILLIAMS
L. LEE WILLIAMS, JR.
Board Certified
Civil Trial Lawyer

Of Counsel:

JAMES M. DONOHUE, P.A.
JOHN J. KABBOORD, JR.

2010 Delta Boulevard (32303)
Post Office Box 4128
Tallahassee, Florida 32315

Telephone: (850) 386-3300
Facsimile: (850) 386-3663
E-mail: wbgandd@aol.com

December 17, 1997

970022-EM

BY HAND -DELIVERY

The Honorable Sid J. White
Clerk of the Supreme Court
500 South Duval Street
Tallahassee FL 32399 - 1927

Re: Case No. 91,820, City of Homestead v. Julia L. Johnson, etc., et al.

Dear Mr. White:

Please find enclosed the original and seven copies of City of Homestead's Motion to Strike Response In Opposition to Motion to Reinstate Notice of Administrative Appeal Or, In the Alternative, Leave to File Response in the above-styled cause.

If you have any questions, or if there is anything else I need to provide to you, please contact me.

ACK _____
AFA _____
APP Smith
CAF _____
CMU _____
CTR _____
EAG 1
LEG 1 **FMB/km**
LIN 3 **Enclosure**
OPC _____
RCH _____
SEC 1
WAS _____
OTH _____

Sincerely yours,

L. LEE WILLIAMS, JR.

DOCUMENT NUMBER-DATE
12930 DEC 17 97
FPSC-RECORDS/REPORTING

ORIGINAL

SUPREME COURT OF FLORIDA

CITY OF HOMESTEAD,	**	
Appellant,	**	**CASE NO. 91,820**
v.	**	**PUBLIC SERVICE COMMISSION CASE NO. 970022-EU**
JULIA L. JOHNSON, etc., et al.,	**	
Appellees.	**	

MOTION TO STRIKE RESPONSE IN OPPOSITION TO MOTION TO REINSTATE NOTICE OF ADMINISTRATIVE APPEAL OR, IN THE ALTERNATIVE, LEAVE TO FILE RESPONSE

Appellant, CITY OF HOMESTEAD, pursuant to Fla. R. App. P. 9.300, moves to strike the Response in Opposition to Motion to Reinstate Notice of Administrative Appeal ("Response in Opposition"), filed by the Florida Public Service Commission ("FPSC"). In the alternative, the City of Homestead requests the Court grant it leave to file a response to the Response in Opposition, as set forth herein. This Motion is based on the grounds that the "Response in Opposition" is unauthorized and otherwise inappropriate in that it argues as the sole issue one not authorized by this Court's Order dismissing this administrative appeal and not addressed in the City of Homestead's Motion to Reinstate Notice of Administrative Appeal.

On October 21, 1997, the "Order" issued by the FPSC, which is the subject of this appeal, became a final order by its express terms. A copy of the Order is attached. [1] On November 6, 1997, the City of Homestead timely filed a Notice of Administrative Appeal.

Someone mistakenly interpreted the Order as having become final on the date it was issued, September 29, 1997, instead of the date specified in the Order, October 21, 1997. Thus, on November 21, 1997, this Court "ordered that this cause is hereby dismissed on the Court's own motion, subject to reinstatement if timeliness is established on proper motion filed within fifteen days from the date of this order."

On November 25, 1997, the City of Homestead timely filed its "Motion to Reinstate Notice of Administrative Appeal," addressing solely the issue of timeliness. FPSC filed its Response in Opposition to the Motion to Reinstate Notice of Administrative Appeal.

The Response in Opposition is based on a completely separate and unrelated issue, i.e., that the City of Homestead failed to exhaust its administrative remedies and thereby waived its right to appeal. This totally new issue is in no way related to the timeliness of the filing of the Notice of Administrative Appeal and is not authorized by this Court's November 21, 1997, Order.

---

1 The Order is entitled, "Notice of Proposed Agency Action, Order Granting Enforcement of Territorial Agreement." It was issued on September 29, 1997, however, the Order specifically provides that it did not become a final order until October 21, 1997.

This Court's November 21, 1997, Order only raises the issue of the timeliness of the filing of the Notice of Administrative Appeal, and singly authorizes the filing of a "proper motion" on this issue. Timeliness is therefore the only issue addressed in the City of Homestead's Motion to Reinstate Notice of Administrative Appeal. Nowhere in the Response in Opposition is the timeliness issue responded to. Had the Notice of Administrative Appeal been filed untimely, surely the FPSC would have addressed the issue, since timeliness is jurisdictional. Donin v. Goss, 69 So.2d 316 (Fla. 1954), and Test v. State, 87 So.2d 587 (Fla. 1956). One can logically assume that the FPSC could not refute the fact that the Notice of Administrative Appeal was, in fact, timely filed.

An examination of the "Order" issued by the FPSC, the Florida Rules of Appellate Procedure, the Florida Statutes, and the substantive law makes clear that the Notice of Administrative Appeal was timely filed. FPSC in its Response in Opposition never argues otherwise.

For example, the FPSC Order which is the subject of the appeal contains the following provisions regarding its preliminary nature and the date it became a final order:

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

> 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 this 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 25-22.037 (7) (a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Chambered Oak Boulevard, Tallahassee, Florida, 32399-0850, by the close of business on October 20, 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. . . . .[2]

* * * *

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 . . . by filing a notice of appeal with the Director, Division of Records and Reporting . . . 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. This notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

Pursuant to the express wording of the above FPSC Order, and in accordance with Rule 9.110 (c), Fla. R. App. P., the Notice of Administrative Appeal was timely filed on November 6, 1997. [3]

The timeliness of the filing of the Notice of Administrative Appeal is supported by other provisions of the Florida Rules of Appellate Procedure. For example, the jurisdiction of the Florida Supreme Court to hear this case arises under § 3 (b) (2), Art. V, of the State Constitution, Section 350.128, Florida Statutes (1995), and Rule 9.030 (a) (1) (B) (ii), Fla. R. App. P. This latter Rule of Appellate Procedure has a

---

2 There is nothing in Chapter 25, F.A.C., that would change the date, October 21, 1997, on which the Order became final.

3 Fla. R. App. P. 9.110 (c), reads:

In an appeal to review final orders of lower administrative tribunals, the appellant shall file the original notice with the clerk of the lower administrative tribunal within thirty days of the rendition of the order to be reviewed, and file a copy of the notice accompanied by the filing fees required by law, with the clerk of the court.

footnote 4 at its end in the Rules of Appellate Procedure. Footnote 4 is "4. 9.110: Appeal proceedings: Final Orders . . . ." (emphasis supplied).

Rule 9.110 (m), Fla. R. App. P., provides that "If a notice of appeal is filed before rendition of a final order, the appeal shall be subject to dismissal as premature." This rule clearly provides that the Notice of Appeal could not have been filed before the Order became final.

Florida Statutes and substantive law also require a final order before judicial review is initiated. In Leaf v. Clark, 668 So. 2d 982, 986 (Fla. 1996), this Court ruled: "'[a] party who is adversely affected by final agency action is entitled to judicial review.' Thus, there are four requirements for standing to seek such review: (1) the action is final . . ."

Thus, consistent with the Florida Rules of Appellate Procedure, the Florida Statutes and the rulings of this Court make it clear that the Notice of Administrative Appeal could not have been filed before the FPSC Order became final.

The Response in Opposition, as pointed out above, is not a true response to the City of Homestead's Motion to Reinstate Notice of Administrative Appeal. For the reasons argued above, the Response in Opposition should be stricken. Should this Court deny the Request to Strike the Response in Opposition, then the City of Homestead requests leave to respond to the Response in Opposition and address the issues raised therein.

WHEREFORE, the City of Homestead requests this Court enter its order striking the Response in Opposition to Motion to Reinstate Notice of Administrative Appeal or, in the alternative, granting the City of Homestead leave to file a response.

RESPECTFULLY SUBMITTED on this 17th day of December, 1997.

L. Lee Williams, Jr., Fla. Bar No. 0176926
Frederick M. Bryant, Fla. Bar No. 0126370
WILLIAMS, BRYANT & GAUTIER, P.A.
2010 Delta Boulevard
Post Office Box 4128
Tallahassee, Florida 32315-4128
(850) 386-3300
COUNSEL FOR CITY OF HOMESTEAD

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing **MOTION TO STRIKE RESPONSE IN OPPOSITION TO MOTION TO REINSTATE NOTICE OF ADMINISTRATIVE APPEAL OR, IN THE ALTERNATIVE, LEAVE TO FILE RESPONSE** was furnished to:

Ms. Blanca S. Bayó (by hand-delivery)
Division of Records and Reporting
Florida Public Service Commission
Room 110, Easley Conference Center
2540 Shumard Oak Boulevard
Tallahassee FL 32399 - 0850

Diana W. Caldwell, Esquire (by hand-delivery)
Associate General Counsel
Florida Public Service Commission
Room 370, Gunter Building
2540 Shumard Oak Boulevard
Tallahassee FL 32399 - 0850

Wilton R. Miller, Esquire (by hand-delivery)
Bryant, Miller and Olive, P.A.
201 South Monroe Street, Ste. 500
Tallahassee FL 32301

and **David L. Smith, Esquire** (by U.S. Mail)
Florida Power & Light Company
Post Office Box 029100
Miami FL 33102 - 9100

on this 17th day of December, 1997.

L. Lee Williams Jr.

L L W J R / M 2 S T R I K E . R E S

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-97-1132-FOF-EU ISSUED: September 29, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING ENFORCEMENT OF TERRITORIAL AGREEMENT

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.

On December 1, 1967, we approved the Territorial Agreement between Florida Power & Light Company (FPL or Company) and the City of Homestead (City), Order No. 4285, Docket No. 9056-EU. On January 6, 1997, Florida Power & Light Company filed a Petition For Enforcement of Order 4285. The Petition requests our interpretation and enforcement of the terms of the Territorial Agreement. FPL asserts that the City is violating the Agreement by serving two for-profit businesses in FPL service territory.

The Territorial Agreement (Agreement) entered into on August 7, 1967, delineates the respective service areas of the utilities and provides for the transfer of customers. Two paragraphs of the

A TRUE COPY
ATTEST _____
Chief, Bureau of Records

Agreement are the subject of the current dispute. Paragraph 6 states that if the City limits are extended through annexation into FPL's service territory, FPL would continue to serve the area, notwithstanding that the area would then be within the City. Paragraph 8 carves out the service exception that is the subject of this proceeding. Paragraph 8 states:

> Notwithstanding the provisions of paragraph 6 hereof, it is agreed that the City shall supply power to and, for purposes of this Agreement, shall consider that the Homestead Housing Authority Labor Camp located on the Easterly side of Tallahassee Road (S.W. 137th Avenue) is within the service area of the City, including any additions to or extensions of said facilities of the Homestead Housing Authority. The City's right to furnish service to City-owned facilities, or those owned by agencies deriving their power through and from the City (including but not limited to the Homestead Housing Authority) may be served by the said City, notwithstanding that the said facilities are located within the service area of the Company.

The Agreement's delineation of the utilities' service territories anticipated the City's expansion of its corporate limits by allotting the City an area approximately twice the size of the 1967 corporate limits. The City is now attempting to expand its service territory through ground leases to private enterprises in a corporate park located within FPL's service territory. The City acquired the Park of Commerce with grant money subsequent to Hurricane Andrew.

In 1993, the City leased unimproved real property in the Park of Commerce to a beer distributor, Silver Eagle Distributors, Ltd. The beer distributor has since constructed a warehouse, office and distribution facility on the property. In 1996, the City leased unimproved real property adjacent to the beer distributor in the Park of Commerce to a boat builder, Contender Boats. According to the Petition, Contender was commencing construction on its facility in early 1997. The Park of Commerce is quite a distance from the former Housing Authority Labor Camp and is clearly within the service territory of FPL.

Extensive pleadings have been filed in this docket. Subsequent to the Petition For Enforcement filed by FPL, the City filed a Motion For Leave To Intervene which was granted. In

addition, the City filed three motions to dismiss; one for lack of subject matter jurisdiction, one for failure to join indispensable parties, and one failure to state a cause of action. The City also filed two motions to strike FPL's request for attorneys fees and a request for oral argument. All of the City's motions were denied by the Prehearing Officer except the motion to strike FPL's request for attorneys fees. In response to the ruling on attorneys fees, FPL filed an Amended Petition For Enforcement Of Order which was substantially the same as the original Petition but included more specific allegations with respect to it's request for attorneys fees. Subsequently, the City filed a response to the Amended Petition and a Motion For Judgment On The Pleadings. FPL filed a Memorandum In Response To The City's Motion For Judgment on the Pleadings. The Prehearing Officer denied the Motion For Judgement on the Pleadings.

FPL's position in these proceedings is that the service exception contained in paragraph 8 for city-owned facilities does not apply to the Park of Commerce businesses because the businesses are not proprietary municipal functions. The City's position is that to qualify under the service exception, all that is required is for the City to own the underlying realty. Based on our analysis of the pleadings, and application of the rules of construction, we find that FPL is entitled to serve these customers.

Previous Litigation

The purpose of the Agreement was to settle a prolonged dispute between the parties for service to the area around Homestead.

> I get the impression from the record the private electric company yielded to the demands of the municipality to surrender the subject suburban territory in order to 'keep peace' with the City, since there had been wrangling between the two utilities concerning which should provide utility service in the subject area for a number of years.
>
> Storey v. Mayo, 217 So.2d 304, 309 (Fla. 1968) Justice Ervin's dissent.

Unfortunately, the attempted dispute resolution was unsuccessful. Various aspects of the Agreement have been the subject of four Supreme Court actions.

An overview of the previous litigation regarding the Agreement is instructive in analyzing the positions of the parties in the instant proceedings. The first case, Storey v. Mayo, was an action brought by consumers who had been transferred from FPL to the City challenging our approval of the Territorial Agreement. According to the Courts's opinion, 12 commercial and 66 residential customers were transferred from the City to FPL and 35 commercial and 363 residential customers were transferred from FPL to the City. The customers alleged that the rates and service of FPL were superior to that of the City. In upholding our decision, the Court found that the Agreement reasonably resolved years of competition between the utilities and that Order No. 4285 was based on competent, substantial evidence. Twelve years later, FPL customers again opposed implementation of the Agreement but we found insufficient basis to reconsider the matter and the Supreme Court denied certiorari. Accursio v. Mayo, 389 So. 2d 1002 (Fla. 1980).

In Public Service Commission v. Fuller, 551 So. 2d 1210 (Fla. 1989), we petitioned for a writ of prohibition to the Circuit Court of Dade County to prevent that court from conducting proceedings initiated by the City to modify the Agreement. The City had notified FPL in writing of its intent to unilaterally terminate the Agreement. FPL responded by filing a Petition for Declaratory Statement with us and the City countered by filing a declaratory judgment action in circuit court. The question to be resolved in that proceeding was whether we had exclusive jurisdiction to modify or terminate a territorial agreement that had been approved pursuant to an order of this Commission. The Court found that the purpose of the underlying action was to change the boundaries of the Territorial Agreement. Id. at 1212. The Supreme Court ruled that the Agreement merged with and became a part of Order No. 4285, that the purpose of the circuit court action was to modify the Agreement and that any modification or termination of the Order must first be made by the PSC.

Following the Fuller decision, the City filed a Petition To Acknowledge Termination or in the Alternative, Resolve Territorial Dispute with the Commission. The Commission granted FPL's motion to dismiss and the City appealed. City of Homestead v. Beard, 600 So.2d 450 (Fla. 1992). In this proceeding, the City was continuing its attempt to modify the Agreement by contending that since the Agreement did not contain an express statement regarding duration, it was terminable at will. Employing the rule of law which holds that, absent an express statement, the court should determine the intent of the parties by examining the surrounding circumstances

and by reasonably construing the agreement as a whole, the Court found that the Agreement was intended to be perpetual. The Agreement was executed in order to end the unsatisfactory effects of expensive, competitive activity, not to delay disputes until one of the parties decides it is advantageous to begin competing again. Id. at 454.

> In the instant agreement, FPL refrained from competing with the City for twenty years, transferred a large number of its customers to the City, and made investments in territories in which it believed it had an exclusive franchise. The detriment to FPL as a result of these acts cannot be undone and it is unlikely that FPL intended to place itself in a position in which the City could unilaterally deprive it of its franchised areas under the agreement and, thus, impair its investment in those areas.
>
> Id.

The following is a summary of the parties' positions on the substantive issues.

Florida Power & Light

FPL's Petition alleges that the City is supplying electricity to private, for-profit companies in the Park of Commerce in contravention of the 1967 Territorial Agreement and Order No. 4285. FPL does not dispute that the real property is owned by the City. However, FPL asserts that Silver Eagle and Contender Boats are not "city-owned facilities" as contemplated by the exception to the service area contained in Paragraph 8 of the Agreement. First, FPL submits that "the City cannot legitimately...contend that Silver Eagle's...distribution...facility in the Park of Commerce qualifies as a "city-owned facility"... because all electricity-consuming structures and equipment on the site are owned by, and are the sole responsibility of, Silver Eagle." (Pet., para. 9) Second, FPL argues that the consistent statutory definition of "facility" is not the real estate but rather the activity or purpose that is being performed on the property. (Pet., para. 11) FPL cites 20 Florida Statutes definitions as well as Black's Law Dictionary and an English language dictionary to demonstrate its point. (Amended Pet., para. 11) Finally, citing State v. Town of North Miami, 59 So. 2d 779 (Fla. 1952) FPL supports its argument that the Park of Commerce businesses are not "city-owned

facilities" because the City exercises "*no* control or dominion over the distribution of beer or the manufacturing of boats since neither is a legitimate exercise of municipal power and would, therefore, be an *ultra vires* act violative of the Florida Constitution." (Pet., para. 12)

In addition to contesting the legitimacy of considering beer and boat businesses as city-owned facilities, FPL alleges that the City has deliberately violated the purpose of the Agreement by engaging in uneconomic duplication. The City has constructed electrical infrastructure that is adjacent to FPL facilities in order to serve the Park of Commerce.

> [T]he City built a new feeder extending approximately one-half mile from City-owned distribution facilities located to the east of the Park of Commerce. The City has apparently also installed an underground loop along the perimeter of the Park of Commerce. Both the feeder and underground facilities are uneconomic duplication of FPL facilities located immediately adjacent the Park of Commerce.
> (Pet., para. 5)

Finally, FPL alleges that the terms of the lease between the City and Silver Eagle are tantamount to a contractual admission against interest insofar as the lease recognizes both the probability of a dispute with FPL over electric service and the autonomy of the Silver Eagle's construction and operation. FPL's abbreviated summary of portions of the lease discloses the "*unconvincing nature* of the City's scheme." Silver Eagle must apply for all city permits, licenses and other approvals and conform to all applicable ordinances and regulations and fee payments. The cost of constructing the 53,000 square foot warehouse is solely the responsibility of Silver Eagle and the Silver Eagle is to maintain all insurance on the premises. (Pet., para. 7) FPL also quotes from the indemnity section of the Silver Eagle lease:

> The [City] may have a dispute (the "FPL Dispute") with Florida Power and Light ("FPL") as to whether [the City] or FPL has the right to be the exclusive provider of electrical services to the Property. The FPL Dispute may take many months for resolution, and the outcome probably depends on whether, for purposes of FPL's territorial allocation agreement with [the City], [the City] is

> deemed to be the owner of the Property. Lessor will indemnify and hold harmless the Lessee from any and all claims, damages or losses which Lessee may suffer or incur by reason of the FPL Dispute....
>
> (Pet., para. 6)

City of Homestead

The City's pleadings contain two primary substantive arguments. First, the City alleges that we lack jurisdiction to decide the matter. The City states that we have no statutory authority over the lease agreements between the City and Silver Eagle Distributors and Contender Boats. The City also states that the determination of the ownership of the facilities built on City property is a matter for the courts and not the Commission. Likewise, the City asserts that the constitutional issue of the city's *ultra vires* activities raised by FPL is a matter for the courts. (Motion To Dismiss For Lack of Jurisdiction Over the Subject Matter, paras. 4, 6 & 7) The City's jurisdictional arguments were resolved against the City by the Prehearing Officer in Order No. PSC-97-0487-PCO-EU, issued April 28, 1997. No motion for reconsideration was filed by the City in response to the Order.

Second, the City disputes FPL's interpretation of the phrase "city-owned facilities." The City argues that there can be only one definition of the phrase and that definition relates solely to ownership of the underlying realty. Citing Burbridge v. Therrell, 148 So. 204 (Fla. 1933), the City declares that "[i]t is black letter law that the City therefore owns all buildings, improvements and fixtures situate on the City's real property since 'all buildings and fixtures actually or constructively annexed to the freehold become part of it....'" The City opines that since the Agreement specifically and unequivocally excludes any "city-owned facilities", regardless of their location, therefore "the only logical interpretation of the Territorial Agreement is that the City is to be the sole provider of electrical services to the Park of Commerce."(City's Motion For Judgment on the Pleadings, pgs. 2 & 3)

In addition to its exclusive definition argument, the City takes issue with FPL's interpretation of the word "owned." The City accuses FPL of expanding the contractual use of the word "owned" to "owned and operated" "There is nothing mysterious, complicated or ambiguous about the word "owned." [T]he words in a

contract must be given their natural and most commonly accepted meaning.... Courts simply are not at liberty to "rewrite, alter, or add to the terms of a written agreement between parties...." (Motion For Judgment of the Pleadings, pg.3 citing Jacobs v. Petrino, 351 So.2d 1036 (Fla. 4th DCA 1976))

Discussion

Based on the arguments advanced by FPL and based on the rules of construction, it is apparent that the meaning of the phrase "city-owned facility" implies a requirement of city proprietary function at the facility in order to qualify for the service exemption. Several of the rules of construction aid in discerning the meaning of the ambiguous language relative to the service exception. First, an assessment of the evil to be prevented in entering into the Agreement aids in clarification of the phrase. Ideal Farms Drainage Dist. v. Certain Lands, 19 So.2d 234 (Fla. 1944). The purpose of the Agreement was to *end* the unsatisfactory effects of expensive, competitive activity between the parties. City of Homestead v. Beard, 600 So.2d at 454. If the service area exception were read to allow the City to encroach upon FPL's service territory any time it purchases real property for any purpose, it would only promote expensive, competitive activity, a race to serve, and uneconomic duplication. This result is clearly contrary to the purpose of the Agreement and our mandate, pursuant to Section 366.04, Florida Statutes, to minimize uneconomic duplication.

Second, the rules of construction relating to general and specific terms aid in the interpretation of the Agreement. It is a fundamental principle of construction that the mention of one thing implies the exclusion of another. Thayer v. State, 335 So.2d 815 (Fla. 1976); Ideal Farms Drainage Dist. v. Certain Lands, 19 So.2d 234 (Fla. 1944). The Homestead Housing Authority Labor Camp is specifically named in paragraph 8 as a type of city-owned facility that is to be served by the City notwithstanding its location in FPL's territory. Likewise, the specific location of the Labor Camp is delineated in the Agreement and the supporting maps. Interpreted based on the rule that specific terms imply exclusion of other terms, the meaning of paragraph 8 is that the Labor Camp site, if utilized by the City for a proprietary function, may be served by the City.

Similarly, the rule of construction which states that the meaning of particular terms may be ascertained by reference to

words associated with them, reaches the same conclusion as set forth in the preceding paragraph. "General and specific words that are capable of an analogous meaning when associated together take color from each other." 49 Fla Jur 2d, Statutes § 127. Thus, the general phrase "city-owned facility" is restricted to the narrower meaning of "city-owned facility with a municipal, proprietary function" by the analogous phrase "Homestead Housing Authority Labor Camp." This conclusion is supported by the case law. Orange County Audubon Soc. v. Hold, 276 So.2d 542 (4th DCA 1973).

Finally, the rule of construction that requires harmonizing the different provisions of the Agreement in order to give effect to all portions thereof, supports the interpretation that the location and use of the service exception site are limited. With respect to statutes, courts presume that laws are passed with knowledge of prior laws and will favor a construction that gives a field of operation to both rather than construe one as being meaningless. Oldham v. Rooks, 361 So.2d 140 (Fla. 1978); Ideal Farms Drainage Dist. v. Certain Lands, 19 So.2d 234 (Fla. 1944). In the instant case, acceptance of the City's interpretation of the meaning of "city-owned facility" renders paragraph 6 of the Agreement meaningless. Paragraph 8 is, by its terms, a specific exception to paragraph 6. Paragraph 6 states that if the City limits are extended beyond the service area of the City and into the service area of the Company, the City agrees that the Company will continue to serve such area though it would then be within the City. Acceptance of the City's position that any city-owned land in any location used for any purpose negates the operation of paragraph 6 as well as the purpose of the Territorial Agreement.

In sum, the City of Homestead is attempting to expand its service area by asserting that private, corporate enterprises located in Florida Power & Light's territory are city facilities by virtue of the fact that they are located on city property, the Park of Commerce. The City's interpretation is not supported by the language of the Agreement or the law of construction. Therefore, pursuant to Order No. 4285, Docket No. 9056-EU, issued December 1, 1967, the City of Homestead is hereby ordered to transfer service of Silver Eagle, Ltd. and Contender Boats to Florida Power & Light Company. In addition, the parties are directed to negotiate in good faith to develop a plan for the transfer of customers and the sale of facilities, if appropriate, from the City to FPL, and the plan shall be brought back to this Commission for final approval.

Florida Power & Light has requested attorneys fees in this proceeding. Pursuant to Section 120.69(7), Florida Statutes, attorneys fees may only be awarded, if at all, in a final order. Because the action taken herein is preliminary in nature, attorneys fees are not available until the action becomes final.

Section 120.69(7), Florida Statutes, provides:

> In any final order on a petition for enforcement the court may award to the prevailing party all or part of the attorney's fees and expert witness fees, whenever the court determines that such an award is appropriate.

We have jurisdiction to award fees and costs pursuant the statute but such an award is premature. This order will be issued as proposed agency action. After this order becomes final, FPL may file for attorneys fees and costs along with supporting affidavits and other evidence required by the enabling statute. We hereby reserve jurisdiction in this proceeding over the issue of attorneys fees.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that electric service for Silver Eagle Distributors, Ltd. and Contender Boats shall be transferred from the City of Homestead to Florida Power & Light Company. It is further

ORDERED that the City of Homestead and Florida Power & Light Company shall negotiate in good faith to develop a plan for the transfer of electric service and shall file a petition with the Florida Public Service Commission for approval thereof. It is further

ORDERED that jurisdiction over the issue of attorney's fees is hereby reserved.

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.

By ORDER of the Florida Public Service Commission this 29th day of September, 1997.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(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 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.

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 October 20, 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.