

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of City of Tallahassee for Interpretation of Its Rights and Duties Pursuant to Chapter 366, F.S.	)	DOCKET NO. 890326-EU
_____	)	
Petition of Talquin Electric Cooperative, Inc. to Resolve Territorial Disputes with City of Tallahassee.	)	DOCKET NO. 881602-EU
_____	)	ORDER NO. 22506
	)	ISSUED: 2-7-90

The following Commissioners participated in the disposition of this matter:

- MICHAEL MCK. WILSON, Chairman
- THOMAS M. BEARD
- BETTY EASLEY
- GERALD L. GUNTER
- JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION

ORDER GRANTING JOINT AMENDED PETITION TO APPROVE 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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On October 23, 1989, Talquin Cooperative, Inc. (Talquin), an electric cooperative, and the City of Tallahassee (City), a municipal electric utility, filed a Joint Petition to Approve Territorial Agreement bringing to rest both a patchwork of petitions, motions, and responses, and an unprecedented subsumption of territorial disputes. The legal relationship between Talquin and the City began ironically in 1970 when the City filed a complaint for injunction and damages against Talquin. The City alleged that Talquin, by providing electricity to the headquarters building of the Florida Electric Cooperative Association, of which Talquin is a member, was violating the City's exclusive right to serve within its

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corporate limits and within the zone three miles wide outside the corporate limits, as provided by the Special Act, Chapter 13439, Laws of Florida, 1929. After many constitutional challenges, equitable considerations, and multi-count counterclaims, the parties, by stipulation dated October 30, 1973, agreed to divide Leon County into two distinct retain electric service zones; Zone 1 to be served primarily by the City and Zone 2 to be primarily served by Talquin. The stipulation established exclusive service areas and provided for the transfer of customers and facilities. By its own terms the stipulation expired in 15 years, October 30, 1988, and directed the parties "well in advance of the term of this agreement" to negotiate a new agreement. As the expiration date approached, the parties met repeatedly. On September 15, 1988, Talquin, "extremely doubtful" a new agreement would be reached before the expiration date of the 1973 agreement, successfully moved the circuit court to enjoin the parties from departing from the terms of the expired agreement. On November 23, 1988, the City filed a Notice of Appeal of a Non-Final Order which operated to invoke the automatic stay provision of Rule 9.310(b)(2), Florida Rules Appellate Procedure.

Prior to the entry of the injunction, the parties met to negotiate a new agreement 17 times between March 27, 1987, and October 11, 1988. They met an additional three times subsequent to the expiration date but were unable to reach an accord. On December 9, 1988, the City, finding "the prospects of reaching accord on a new territorial agreement...extremely unlikely," filed a report to the court. The report advised that during October and November, 1988, the City had received numerous requests for electrical service relating to properties located in areas included in Zone 2, Talquin's primary service area under the expired stipulation, and that, because the stipulation had expired and the temporary injunction had been stayed, the City intended to honor those requests. Specifically, the City intended to serve five developments, McBride Estates, Sandstone Ranch, Quail Rise, Summerbrooke, and Tharpe Street Commercial.

On December 29, 1988, Talquin petitioned the Commission pursuant to Section 366.04(e), Florida Statutes, to resolve in its favor the territorial disputes relating to the five developments. Talquin essentially argued that service by the City in Talquin's former service area would result in an uneconomic duplication of Talquin's facilities by the City.

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On January 23, 1989, the City filed an Answer and Affirmative Defenses relating to the five original disputed areas, and a Counter-Petition adding two more developments, Rose Hill and Ox Bottom Manor. The Commission, in response to a consumer complaint, added an eighth area, Lake Cassie, to the dispute by Order No. 20883, issued March 13, 1989. Talquin moved to dismiss the City's petition for a declaratory statement. On March 21, 1989, the City moved to strike Talquin's motion to dismiss. On March 27, 1989, the City moved for a stay and requested oral argument. On April 5, 1989, Talquin replied.

This legal collage of petitions, motions, and responses resulted in Order No. 20995, issued April 7, 1989, wherein the prehearing officer granted the motion for consolidation and denied the motions for stay and oral argument. The full Commission affirmed that ruling in Order No. 21256 issued May 19, 1989.

On June 26, 1989, a prehearing conference was held to isolate issues and identify witnesses and exhibits. Between June 19 and July 27, 1989, both Talquin and the City conducted many lengthy depositions. Hearing on the territorial disputes was originally scheduled for July 17, 18, and 19, 1989. On August 3, 1989, the hearing was postponed to October 18, 19, and 20, 1989, to allow the parties to narrow the issues to be presented and resolved at hearing. Prior to that date, the parties indicated that they were near settlement and Notice of Cancellation of the scheduled hearing was filed on October 17, 1989. On October 23, 1989, Talquin and the City filed a Joint Petition to Approve Territorial Agreement requesting the Commission enter an order approving the agreement. On January 9, 1990, the parties filed an Amended Joint Petition to Approve Territorial Agreement and Addendum I to Agreement. On October 11, 1989, the parties had entered into a thirty year territorial agreement. Subsequent to the execution of the agreement but prior to the Commission's consideration of the agreement, the parties, after further negotiations, mutually determined that five minor modifications to the agreement would be appropriate. Accordingly, the parties executed the addendum.

The proposed Agreement and Addendum expressly provide that it is the intent of the parties to avoid further territorial disputes and the uneconomic duplication of electric service and facilities. The Agreement divides Leon County into two

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electric service area rings, Zone A, the inner ring, to be served by the City, and Zone B, the outer ring, to be served by Talquin, for a thirty year period. The Agreement describes both the contemplated retail electric service areas and the provision of interim service therein. The provision relating to the transfer of customers into the intended service areas bifurcates the 30-year term of the Agreement into two 15-year periods. During the first 15 years, service to a new customer at an existing service location is to be provided by the utility in whose zone the customer is located, regardless of who owns the service facilities or distribution lines. The Agreement provides for the amount payable for the transferred customers based on an annually descending multiplier and the adjusted annual revenue. Solicitation of customers of the other party is expressly prohibited and no customers of either utility is forced to transfer and take retail service from the other utility.

The Agreement also provides for the transfer of service facilities from one zone to the other over a 15-year period. Provisions in the Agreement address appraisal and arbitration in the event of disagreement concerning fair market value, and the manner and time of payment and conveyance. We note that the Agreement does not provide a definition of fair market value. Were the Agreement between investor-owned utilities which are subject to rate base regulation, we would, in performing our responsibility to ratepayers, look with more specificity at the methodology used to value facilities subject to transfer. Because the Agreement is between a cooperative and a municipal-owned utility over which we have no ratemaking jurisdiction, our role is not to pass on the wisdom of the elected methodology, but to assure the methodology used does not adversely affect the public interest. The Agreement also addresses service to new and remaining customers and various miscellaneous issues, including eminent domain. Further, Talquin promises not to oppose annexation efforts by the City in consideration for the City's agreement that annexation will not affect Talquin's right to serve, to repeal by ordinance City charter provisions granting the City exclusive electric service rights within its corporate limits and within a zone three miles outside the corporate limits, and to use its best efforts to repeal similar state provisions. The City has also resolved the citizen's complaint by agreeing not to construct overhead distribution lines along Hill N' Dale South to supply power to its underground distribution system in

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the Lake Cassie subdivision. Finally, the Agreement expressly requires Commission approval of any amendment to the Agreement.

Addendum I to the Agreement expressly excludes surcharges from the determination of "Adjusted Annual Revenue" as defined in Section 2.12 and the determination of either party's tariff rates and charges under Sections 6.1 and 6.2. The Addendum also modifies the amount of payment upon the transfer of customers required by Section 4.5 by increasing the applicable multiplier of annual revenue for the years 2001 - 2004 amends Section 5.7 to require compensation only for remaining customers who voluntarily transfer to the other party after the expiration of the Agreement.

Our express statutory authority to consider proposed territorial agreements is derived from Sections 366.04(2)(c) and (d), Florida Statutes:

- (2) In the exercise of its jurisdiction, the commission shall have power over rural electric cooperatives and municipal electric utilities for the following purposes:
  - (c) to require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.
  - (d) to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. However, nothing in this chapter shall be construed to alter existing territorial agreements as between the parties to such an agreement.

Additional authority is impliedly provided by Section 366.04(3), Florida Statutes, which states:

- (3) The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for

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operational and emergency purposes in Florida and avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

The proposed Agreement comports with our mandate to oversee a coordinated electric grid throughout Florida which both assures adequate and reliable energy in Florida and avoids uneconomic duplication of facilities by utilities to the benefit of the ratepayer. The parties, by agreement entered into on October 11, 1989, have divided Leon County into clearly defined service areas in the form of two rings, Zone A, the inner ring, to be served by the City and Zone B, the outer ring, to be served by Talquin. The Agreement serves the public interest by coordinating another fragment of the ever denser Florida grid. The Agreement allows each utility to make economical long-range plans for the expansion of its facilities as necessary while preventing the uneconomic duplication of facilities by utilities racing to serve.

We further find that the Petition of Talquin Electric Cooperative, Inc., to Resolve Territorial Disputes with the City of Tallahassee should be dismissed because the territorial disputes are rendered moot by the parties' Petition for Approval of Territorial Agreement.

We further find that the Petition of the City of Tallahassee for Interpretation of its Rights and Duties pursuant to Chapter 366, et. al, Florida Statutes, should be dismissed because the issue is resolved by Section 7.5 of the proposed Agreement whereby the parties expressly agree that the City use its best efforts to secure repeal of the Special Acts.

In consideration of the foregoing, it is

ORDERED that the Amended Joint Petition to Approve Territorial Agreement and Addendum I are approved. It is further

ORDERED that the Petition of Talquin Electric Cooperative, Inc. to Resolve Territorial Disputes with the City of Tallahassee is dismissed. It is further

ORDERED that the Petition of the City of Tallahassee for Interpretation of its Rights and Duties pursuant to Chapter 366, et. al, Florida Statutes, is dismissed. It is further

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ORDERED that these dockets be closed if a timely protest is not filed.

By ORDER of the Florida Public Service Commission,  
 this 7th day of FEBRUARY, 1990.

  
 STEVE TRIBBLE, Director  
 Division of Records and Reporting

( S E A L )

BAB

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 February 28, 1990.

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, and as reflected in a subsequent order.

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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 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 sewer 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.