

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power)	DOCKET NO. 880986-EU
and Light for a Declaratory)	
Statement Regarding Territorial)	ORDER NO. 20803
Agreement with the City of)	
Homestead.)	ISSUED: 2-24-89

The following Commissioners participated in the disposition of this matter:

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

ORDER ON MOTION FOR RECONSIDERATION AND/OR CLARIFICATION

By the Commission:

On July 2, 1988, Florida Power and Light (FP&L) filed its Request for Declaratory Statement asking this Commission to declare that the August 7, 1967 territorial agreement between FP&L and Homestead is a valid binding agreement. By FPSC Order No. 20400, issued December 2, 1988, we issued a declaratory statement stating that the territorial agreement between the City of Homestead and FP&L is a valid binding agreement according to the Commission's records.

By motion received December 16, 1988, FP&L now seeks reconsideration and/or clarification of Order No. 20400. FP&L requests that the Commission issue the following statements:

- a. That the territorial agreement between the City of Homestead and FP&L constitutes an order of the Commission and is subject to the jurisdiction of the Commission.
- b. That the territorial agreement is only subject to modification by the Commission or by the mutual agreement by the City of Homestead and FP&L with approval of the Commission.
- c. A unilateral termination of the territorial agreement between FP&L and the City of Homestead without the express approval of the Commission is a violation of the Commission's order of approval, Order No. 4285. Such a violation would affect the public interest, which the Commission is charged with protecting.
- d. The Commission has the jurisdiction and authority to determine and find violation of its orders and any provision of Chapter 366, F.S., by entities subject to the Commission's jurisdiction, and order any such entity to cease and desist actions found to constitute a violation of its rules, orders, or provisions of Chapter 366, F.S., and impose penalties for any such violations pursuant to section 366.095, F.S.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORDER NO. 20803
DOCKET NO. 880986-EU
PAGE 2

Upon review of the Motion for Reconsideration and/or Clarification of FPSC Order No. 20400, we find that it is appropriate to clarify as discussed below. Our response will be to each of the four separate paragraphs quoted above.

In response to paragraph a., we find that FPSC Order No. 4285 approved the territorial agreement between Florida Power and Light and the City of Homestead. The Commission's authority to approve territorial agreements is found in the provisions of section 366.04(2)(d), Florida Statutes, which states that the Commission has the authority:

To approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. ...

The Commission also has statutory authority pursuant to section 366.04(2)(e), F.S., which authorizes the Commission:

To resolve any territorial dispute involving service areas between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. ...

Paragraph b. requests that the Commission declare that the territorial agreement is only subject to modification by the FPSC or by mutual agreement of the City of Homestead and FP&L. We find that the territorial agreement is subject to modification by this Commission in a proper proceeding.

The pleadings in this docket indicate that the City of Homestead has filed a petition in the Circuit Court of Dade County seeking modification of the territorial agreement. It is not for this Commission to decide whether the Circuit Court has jurisdiction to resolve a case pending before it. Further, we decline to use a declaratory statement order to advise a Circuit Court as to what we believe its jurisdiction is.

The subject matter in paragraphs c. and d. appears to fall within the definition of a complaint. Pursuant to Rule 25-22.036(5), F.A.C., a complaint is defined as follows:

A complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is a violation of a statute enforced by the Commission or of any Commission order, rule, or order.

If FP&L believes that the actions of the City of Homestead violate the territorial agreement, it could file a complaint. If, in an appropriate proceeding, the FPSC found violations of the territorial agreement, appropriate penalties could be imposed.

ORDER NO. 20803
DOCKET NO. 880986-EU
PAGE 3

Based on the above, the Petition for Reconsideration and/or Clarification be and hereby is granted, as discussed in the body of this Order. It is therefore

ORDERED by the Florida Public Service Commission that the Petition for Reconsideration and/or Clarification be and hereby is granted as discussed hearing. It is further

ORDERED that EP&L's request that we issue the four statements contained in its Motion be and hereby is denied. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission this 24th
day of FEBRUARY, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

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