

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of L.T. KEMPTON) DOCKET NO. 881594-EU
 against City of Tallahassee regarding)
 duplication of services provided by) ORDER NO. 20883
 Talquin Electric Cooperative, Inc.)
 _____) ISSUED: 3-13-89

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

ORDER DISMISSING COMPLAINT

BY THE COMMISSION:

On December 27, 1988, the Commission received a complaint from Mr. L.T. Kempton. Mr. Kempton objected to proposed construction of overhead electric distribution lines on his street, Hill n Dale South, by the City of Tallahassee ("the City"). Mr. Kempton's residence has electric service from Talquin Electric Cooperative, Inc., which has lines running down the east side of the street. The City's planned construction was to run down the west side of the street. The City has applied to Leon County for a right-of-way permit for the construction.

The City filed an Answer and Motion to Dismiss on January 23, 1989. The answer asserts that construction on Hill n Dale South is one possible route for the electric distribution lines, but that no final decision has been made as to the route. In any event, the purpose of the lines is to serve the Lake Cassie subdivision not the homes located on Hill n Dale South. In the Motion, the City argues that Mr. Kempton lacks standing in that the issue he raises lacks "sufficient immediacy and reality." The Motion also questioned whether Mr. Kempton's concerns were sufficient to invoke the Commission's jurisdiction pursuant to Section 366.04(2), Florida Statutes. Mr. Kempton filed a response on January 31, 1989, pointing to the "grid bill" prohibiting uneconomic duplication of facilities in Section 366.04(3), Florida Statutes.

We do not believe that Mr. Kempton has standing under the standards enunciated in Agrico Chemical Co. v. DER, 406 So.2d 478 (Fla. 2nd DCA 1981). To have standing, a person must demonstrate that: 1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing; and 2) his substantial injury is of a type or nature which the proceeding is designed to protect. Mr. Kempton does not meet the injury in fact test because the lines have not and may never be constructed on Hill n Dale South. His concerns are speculative. The alleged injury for which Mr. Kempton seeks redress (disfigurement of property) is not the sort of injury under Section 364.03, Florida Statutes, that gives rise to standing by an individual. As the Supreme Court noted in Lee County Electric Coop. v. Marks, 501 So.2d 585, 587 (Fla. 1987): "[L]arger policies are at stake than one customer's self-interest, and those policies must be enforced and safeguarded by the PSC."

DOCUMENT NUMBER-DATE

02612 MAR 13 1989

FPSC-RECORDS/REPORTING

ORDER NO. 20883
DOCKET NO. 881594-EU
PAGE 2

Dismissing this complaint for lack of standing does not mean that the Commission will ignore this situation. There is presently a territorial dispute involving these two utilities before the Commission. See Docket No. 881602-EU. We direct that this situation will be included within that case. This will allow the Commission to evaluate this situation in view of statutory requirements, applicable case law and past dealings of these two utilities.

Therefore, in view of the foregoing, it is

ORDERED by the Florida Public Service Commission that the complaint of Mr. L.T. Kempton filed December 29, 1988 is hereby dismissed. It is further

ORDERED that the underlying factual circumstances in Mr. Kempton's complaint be considered in Docket No. 881602-EU, Petition of Talquin Electric Cooperative, Inc. to resolve territorial dispute with the City of Tallahassee. It is further

ORDERED that this docket be and the same is hereby closed.

By ORDER of the Florida Public Service Commission,
this 13th day of MARCH, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RDV

by: Kay Ferguson
Chief, Bureau of Records

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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

ORDER NO. 20883
DOCKET NO. 881594-EU
PAGE 3

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 after the issuance 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.