

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of TALQUIN ELECTRIC)	DOCKET NO. 881602-EU
COOPERATIVE, INC. to resolve)	
territorial disputes with CITY OF)	
TALLAHASSEE.)	
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In re: Petition of CITY OF TALLAHASSEE)	DOCKET NO. 890326-EU
for interpretation of its rights and)	
duties pursuant to Chapter 366, et al.,)	ORDER NO. 20995
Florida Statutes.)	
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	ISSUED: 4-7-89

ORDER GRANTING MOTION FOR CONSOLIDATION AND
DENYING MOTIONS FOR STAY AND ORAL ARGUMENT

On December 29, 1988 Talquin Electric Cooperative, Inc. (Talquin) filed a Petition to Resolve Territorial Disputes. The City of Tallahassee filed an Answer, Affirmative Defenses and Counter-Petition on January 23, 1989. The disputes concerned seven areas in Leon County, Florida. The Commission added an eighth area by Order No. 20883, issued March 13, 1989. The City filed a Petition for Declaratory Statement on these same facts on March 2, 1989. This petition was assigned Docket No. 890236-EU. At that time, the City also filed a Motion for Consolidation of the territorial disputes and the declaratory statement. Talquin filed a Response and Motion to Dismiss the declaratory statement on March 13, 1989. The City filed a Motion to Strike and Response in Opposition to Dismiss the Declaratory Statement on March 21, 1989. The parties have also filed numerous other motions to strike and responses which will not be addressed here. On March 27, 1989 the City filed a Motion for Stay and Supporting Memorandum of Law as well as a Request for Oral Argument. Talquin replied on April 5, 1989.

The amount of paper already filed in these dockets bespeaks a degree of legal maneuvering that is not always conducive to a prompt and fair resolution of the substantive issues. The goal of this Order is to put this matter in a posture so that the Commission can decide these important issues. Briefly stated, there is no need for two separate dockets on the same facts and there is no need to bifurcate this proceeding to hear legal issues first. The volume of paper on these points convinces me that oral argument would not enhance my understanding of these issues. The rationale for these decisions follow.

MOTION FOR CONSOLIDATION

The City's Motion for Consolidation is succinct, pointing out that the issues of law contained in the declaratory statement have a direct impact on territorial disputes. Moreover, the issues of law are similar and consolidation will promote the just, speedy and inexpensive resolution of this case. Talquin filed a response to the motion and a Motion to Dismiss the declaratory statement on March 13, 1989. Talquin basically objected to the procedural vehicle of a declaratory statement to deal with the "serious and substantial" issues involved in the dispute. The following excerpt from the Motion to Dismiss fairly states Talquin's position:

These matters will best be heard as part of the territorial dispute docket, in a reasoned and deliberate manner and should be addressed at the final hearing in Docket No. 881602-EU set for July 17, 1989, and the post-hearing briefs of the parties filed thereafter. (Motion to Dismiss at page 7)

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Since the filing of these motions, an Order on Prehearing Procedure has been issued. See Order No. 20973, issued April 3, 1989. The issues delineated there, particularly issues 14, 15 and 16 are broad issues that generally cover the issues raised in the declaratory statement petition. The legal issues can be briefed by the parties at the conclusion of the case and the factual matters will allow the Commission to ascertain the context of those legal issues. The evidentiary proceeding pursuant to Section 120.57, Florida Statutes, will allow all parties the opportunity to fully develop these issues. The two dockets will thus be consolidated and the Commission can move forward on all these disputed issues.

MOTION FOR STAY

The City's Motion for Stay seeks for the Commission to decide the legal issues presented in the City's Petition for Declaratory Statement before dealing with the factual issues involved in the dispute. Putting aside the apparent inconsistency of asking for consolidation in one pleading and then asking to bifurcate the proceeding in another, I do not believe it is good policy to decide the legal issues first.

The gist of the City's position is that disposition of the legal issues may result in less discovery, issues and testimony. The principal problem with the City's position is that they assume that the legal issues will be decided in favor of the City. The City asserts that a Special Act of the Legislature, Chapter 24910, Laws of Florida (1947), grants the City the exclusive right to serve all disputed territory. Talquin disputes this position. However this issue is ultimately decided, at the present time there is no territorial agreement in effect between these utilities. Thus the "range wars" which both this Commission and the Florida Supreme Court have sought to prevent are present in this case. A delay in the hearing will effectively push the hearing dates into 1990 given the Commission calendar. This is too long a period of time for this situation to go on. I am unwilling to delay the hearing upon the possibility of lessening the burdens upon the parties.

Both parties have presented disputed territory for this Commission to rule upon. It is my belief that the fairest and most expeditious course is for the Commission to rule upon these issues in a Section 120.57 proceeding as soon as possible. This will serve to avoid any further uneconomic duplication of facilities. Accordingly, the Motion for Stay is denied.

ORAL ARGUMENT

Oral Argument is used to aid the Commission in comprehending and evaluating issues. See Rule 25-22.058, Florida Administrative Code. The City's Motion for Stay alone covers fifteen pages, exclusive of attachments. The Petition for Declaratory Statement, which was attached to the Motion for Consolidation covered twenty-one pages. Talquin's Motion to Dismiss ran to eight pages. These various pleadings with attachments adequately cover the subject matter. I do not believe oral argument will aid in my comprehension of this material. Oral Argument is therefore denied.

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Therefore, based on the foregoing, it is

ORDERED that Dockets Nos. 881602-EU and 890326-EU be and the same are hereby consolidated. It is further

ORDERED that the City of Tallahassee's Motion for Consolidation filed March 2, 1989, is hereby granted. It is further

ORDERED that Talquin Electric Cooperative, Inc.'s Motion to Dismiss filed March 13, 1989, is hereby denied. It is further

ORDERED that the City of Tallahassee's Motion for Stay filed March 27, 1989, is hereby denied. It is further

ORDERED that the City of Tallahassee's Motion for Oral Argument dated March 27, 1989, is hereby denied.

By ORDER of Thomas M. Beard, Commissioner and Prehearing Officer, this 7th day of APRIL, 1989.


THOMAS M. BEARD, Commissioner and
Prehearing Officer

RDV