

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Assistance to  
 Resolve Impending Territorial )  
 Dispute Between Florida Public )  
 Utilities Company and Palm Beach )  
 County Utilities Company. )

DOCKET NO. 900700-GU  
 ORDER NO. 23788  
 ISSUED: 11-21-90

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 FRANK S. MESSERSMITH

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING REQUEST TO WITHDRAW PETITION  
FOR ASSISTANCE IN RESOLVING TERRITORIAL DISPUTE AND  
SCHEDULING A HEARING TO REVIEW 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 August 17, 1990, The Florida Public Service Commission (the Commission) received a letter from Florida Public Utilities Company (FPUC) requesting that the Commission assist them in resolving a territorial dispute with Palm Beach County Utility Company (PBCUC). The request was taken as a petition to resolve a territorial dispute and docketed as Docket No. 900700-GU. Subsequent to the filing date, FPUC and PBCUC met with the Commission Staff to discuss the issues and determine whether the parties could resolve the dispute and avoid going to hearing on the matter.

On October 18, 1990, the Commission received a letter from FPUC informing staff that the parties had reached an agreement on

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the issues and requested that they be allowed to withdraw their petition to resolve the territorial dispute. FPUC also informed the Commission that "submission of a written territorial agreement, as requested by the Public Service Commission staff members, would be premature at this time and not in the best interests of our respective companies." FPUC and PBCUC decided that it would be more prudent to forego developing definitive territorial agreements until a decision or opinion had been rendered in the En Banc hearing of Consolidated Gas Company of Florida, Inc. v. City Gas Company of Florida - No. 87-6108, being heard in the United States Court of Appeals for the Eleventh Circuit. Unbeknownst to FPUC, however, that case had already been decided and had been sent up on a writ of certiorari to the United States Supreme Court where it is still pending at this time.

A party has a right to withdraw a petition filed with the Commission. Pursuant to Section 366.4(3)(a) of the Florida Statutes, however, the Florida Public Service Commission has the authority to approve territorial agreements between and among natural gas utilities. The Commission, both in the past and present, has taken an active role in reviewing and approving territorial agreements and it fully intends to continue playing such a role in the future. Consequently, we will allow FPUC to withdraw their petition but we choose to exercise our authority under Section 366.4(3)(a), Florida Statutes by scheduling a hearing where we will review and approve or disapprove the territorial agreement in Palm Beach County between FPUC and PBCUC.

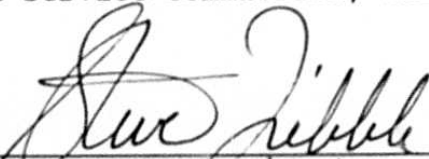
In consideration of the foregoing, it is

ORDERED that Florida Public Utilities Company's request to withdraw their petition for assistance in resolving a territorial dispute is hereby granted. It is further

ORDERED that the Florida Public Service Commission will schedule a hearing so that it may review the recent Florida Public Utilities Company and Palm Beach County Utility Company territorial agreement for Palm Beach County.

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By ORDER of the Florida Public Service Commission, this 21st  
day of NOVEMBER, 1990.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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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 December 17, 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.

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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.