

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Issuance of)	DOCKET NO. 910537-GU
Order Declaring Florida Public)	ORDER NO. 24761
Service Commission Jurisdiction)	ISSUED: 7-5-91
over Sebring Gas System, a)	
Division of Coker Fuels, Inc.)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTIONORDER DECLARING JURISDICTION OVER SEBRING GAS SYSTEM

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 April 30, 1991, Sebring Gas System (Sebring or Company), a division of Coker Fuels, Inc., a Florida corporation, filed a Petition for Issuance of Order Declaring Jurisdiction. In the Petition, Sebring requested this Commission to issue an Order declaring jurisdiction over the Company. Sebring contends that we have jurisdiction by arguing that the Company is a public utility pursuant to Section 366.02(1), Florida Statutes.

Presently, Sebring furnishes propane gas to customers through an underground distribution system in Sebring, Florida. The Company intends to convert its system to natural gas. Sebring anticipates that the conversion will occur on or about January 10, 1992.

We find that Sebring has already embarked on a course of action which will enable the Company to obtain and distribute natural gas in and around the City of Sebring, Florida. Specifically, on November 1, 1983, the City Council of Sebring, Florida, enacted an ordinance which granted the Company a nonexclusive franchise to construct, operate, and maintain a piped gas transmission system in the City of Sebring. On September 16,

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1987, the Company entered into an agreement with the Sebring Utilities Commission which provides for the transportation of natural gas. On August 30, 1988, the Federal Energy Regulatory Commission issued an order directing the Florida Gas Transmission Company to deliver and sell all necessary natural gas to the Company. On November 1, 1989, Sebring entered into a Small General Service Agreement with Florida Gas Transmission Company. Finally, Sebring has solicited informal assistance from Commission Staff concerning its conversion to natural gas.

Sebring sets forth three reasons why this Commission should declare jurisdiction over the Company. First, the Company argues that the rate setting process should begin now, rather than waiting until service has commenced. Second, Sebring states that any safety problems should be resolved now. Lastly, the Company notes that there are benefits to being regulated by this Commission, such as the resolution of territorial disputes.

Pursuant to Section 366.02(1), Florida Statutes, a

'public utility' means every ... corporation ... supplying ... gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term 'public utility' as used herein does not include ... a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, unless such person also supplies electricity or manufactured or natural gas.

The Florida Legislature has also provided a specific definition for natural gas utilities. A "natural gas utility" is defined as

any utility which supplies natural gas or manufactured gas or liquefied gas with air admixture, or similar gaseous substance by pipeline, to or for the public and includes gas public utilities, gas districts, and natural gas utilities or municipalities or agencies thereof.

Section 366.04(3)(c), Florida Statutes. In addition, the Legislature has directed that "The Gas Safety Law of 1967" applies to every corporation

now or hereafter owning, operating, managing, or controlling any gas transmission or distribution facilities or any other facility supplying natural or manufactured gas or liquefied gas with air admixture or any similar gaseous substance by pipeline to or for the

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public within this state; provided, however, that the terms of this law shall not apply to those supplying liquified petroleum gas in either the liquid or gaseous form.

Section 368.021, Florida Statutes.

A strict reading of the above statutory provisions would preclude Sebring from being a "public utility" because the Company is not presently supplying natural gas to its customers. Instead, the Company is currently supplying its customers with liquified petroleum (LP) gas, an activity which the legislature has specifically directed does not make a corporation a "public utility."

However, in addition to the above statutory definitions of a public utility, Florida courts have also adopted the following definition of a public utility:

[t]o constitute a 'public utility,' the devotion to public use must be of such character that the product and service is available to the public generally and indiscriminately, or there must be the acceptance by the utility of public franchises or calling to its aid the police power of the state.

Department of Revenue v. Merritt Square Corp., 334 So.2d 351, 353-54 (Fla. 1st DCA 1976); Village of Virginia Gardens v. City of Miami Springs, 171 So.2d 199, 201 (Fla. 3d DCA 1965); Higgs v. City of Fort Pierce, 118 So.2d 582, 585 (Fla. 2d DCA 1960). See also Fletcher Properties, Inc. v. Florida Public Service Comm'n, 356 So.2d 289, 291, 292 (Fla.1978) ("'utility' is defined by statute and decisional law").

We find that Sebring accepted a franchise from the City of Sebring to construct, operate, and maintain a piped gas transmission system, that Sebring has taken affirmative steps to operate a natural gas distribution system, that Sebring has called the Commission to its aid in establishing the safety and adequacy of its system, that Sebring plans to supply natural gas to its customers, and that Sebring plans to operate for the public. Accordingly, we find that Sebring is a gas public utility, which is within our jurisdiction.

The ultimate question at issue here is whether we can declare jurisdiction over a company that is in the preparatory stages of supplying natural gas. The legislature has mandated no certification requirements on natural gas companies. Therefore, we

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have not traditionally exercised jurisdiction over natural gas companies until customers are actually supplied natural gas. Nonetheless, this should not preclude us from exercising jurisdiction here, especially when Sebring has specifically petitioned us to declare jurisdiction over the Company.

In fact, "The Gas Safety Law of 1967" authorizes this Commission to establish "rules and regulations covering the design, fabrication, installation, inspection, testing and safety standards for installation, operation and maintenance of gas transmission and distribution systems, including gas pipelines... ." Section 368.03, Florida Statutes. By authorizing us to regulate the design, fabrication, and installation of safety standards, the Legislature must have intended that we regulate gas transmission and distribution facilities before they are actually used to provide natural gas to customers. While Sebring is not presently supplying gas to its customers, the Company has taken affirmative steps to supply its customers with natural gas. Some of these steps include the design, fabrication, and installation of safety features. Accordingly, we find that the activities of Sebring fall under those activities which the Legislature intended that we regulate.

The Legislature has declared that the regulation of public utilities is in the public interest, and that the provisions of Chapter 366 "shall be liberally construed for the accomplishment of that purpose." Section 366.01, Florida Statutes. Certainly, it is within the public interest for us to declare jurisdiction over the Company so that we can inspect the books and inspect the safety features of Sebring.

Further, the Legislature declared that any rules and regulations promulgated in accordance with "The Gas Safety Law of 1967" are "in the public interest and are deemed to be an exercise of the police power of the state for the protection of the public welfare and shall be liberally construed for the accomplishment of that purpose." Section 368.03, Florida Statutes. An order conferring jurisdiction over Sebring is a necessary and appropriate means of enabling this Commission to determine whether the Company's safety features meet the appropriate standards. We must have jurisdiction to investigate safety features before a utility begins operating and supplying natural gas to its customers; otherwise, it would be impossible for us to protect the public welfare of the state.

Also, we have implied powers stemming from the express statutory provisions promulgated by the Legislature. See City Gas Co. v. Peoples Gas System, Inc., 182 So.2d 429, 436 (Fla.1965)

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(declaring that this Commission has implied powers to approve, and thus validate, territorial agreements). While there are no express statutory powers which grant us the authority to declare jurisdiction over a utility upon the company's petition, to do otherwise would be directly against the public interest. It would be an anomaly if we were empowered to regulate gas utilities only after the utility was a functioning utility.

One of the reasons that Sebring petitioned this Commission to declare jurisdiction over the company was so that we would be able to resolve any territorial disputes the Company may have with other gas utilities. In fact, Sebring filed a Petition to Resolve Territorial Dispute on June 4, 1991 (Docket No. 910653-GU).

We must not wear blinders to the fact that two companies may be racing to supply the residents of the City of Sebring. This is especially true in light of the fact that the Florida Supreme Court has condemned competitive conduct between utilities, and it "has repeatedly approved the PSC's efforts to end the economic waste and inefficiency resulting from utilities 'racing to serve.'" Lee County Electric Cooperative v. Marks, 501 So.2d 585, 587 (Fla.1987).

We are concerned whether the residents of the City of Sebring have the ability to purchase natural gas. Further, we are aware that Peoples Gas System, Inc. (Peoples) appears to be ready and willing to provide natural gas to 14 commercial customers immediately outside the city limits of the City of Sebring, and that the Company has filed a Petition to Resolve Territorial Dispute with Peoples. Should the Company be unwilling or unable to provide natural gas to the residents of the City of Sebring by the date promised, we will analyze the situation so that the residents of the City of Sebring can benefit from safe and efficient natural gas service as soon as possible.

We find that for the last eight years, Sebring has taken affirmative steps to supply the residents of Sebring with natural gas. The Company has stated that it expects to complete its conversion to natural gas on or about January 10, 1992. Because it is within the public interest that the residents of Sebring have the right to purchase natural gas, because Sebring has stated its intention to supply the residents of Sebring with natural gas by January 10, 1992, and because the Commission has jurisdiction over the Company, we order Sebring to supply natural gas to the residents of Sebring by January 10, 1992.

Finally, we find that this docket shall remain open until the Company is supplying natural gas to the residents of Sebring.

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It is, therefore,

ORDERED by the Florida Public Service Commission that Sebring Gas System, a division of Coker Fuels, Inc., is a public utility, and that it is under our jurisdiction. It is further

ORDERED that Sebring Gas System shall supply its customers with natural gas on or by January 10, 1992. It is further

ORDERED that this docket shall remain open until the residents of the City of Sebring are able to purchase natural gas. It is further

ORDERED that this docket shall become final unless an appropriate petition for a formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this
 5th day of July, 1991.



STEVE TRIBBLE, Director
 Division of Records and Reporting

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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

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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 July 26, 1991.

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.

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.