BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Motion for approval of territorial agreement and dismissal of territorial dispute.	DOCKET NO. 891245-EU ORDER NO. PSC-92-1071-FOF-EU ISSUED: 09/28/92

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
BETTY EASLEY

ORDER DENYING APPROVAL OF TERRITORIAL AGREEMENT

BY THE COMMISSION:

On October 23, 1989, Florida Power & Light Company (FPL) filed a petition to resolve a territorial dispute with Fort Pierce Utility Authority (FPUA). The petition stated that FPL provides electric service to areas in and around the corporate limits of Ft. Pierce and that FPUA had extended its service area so as to duplicate FPL's facilities. North Hutchinson Island was not named in the petition as an area subject to dispute or duplication of service.

After several motions were exchanged by the parties, on March 29, 1990 the parties filed a joint motion for suspension of filing dates. The joint motion stated that the parties were negotiating a settlement.

On January 29, 1992, FPL and FPUA filed a joint petition for approval of territorial agreement and dismissal of territorial dispute. According to the petition, the agreement would eliminate duplication that had resulted led to needless and wasteful expenditures. The parties agreed to transfer certain customer accounts and distribution facilities. FPUA proposed to transfer approximately 900 customers to FPL and FPL proposed to transfer approximately 3,200 customers to FPUA, 2,100 of whom were residents of North Hutchinson Island. The agreement included detailed terms and conditions and specifically identified the geographic area to be served by each utility. The agreement also contained a detailed map of the area.

On March 27, 1992, the Commission issued a Notice of Proposed Agency Action Approving Territorial Agreement. Numerous protests to the Proposed Agency Action were filed by customers in the affected areas. A customer hearing was held on June 1, 1992 in Ft. Pierce. Many of the customers who testified were residents of North Hutchinson Island who were happy with the service from FPL and didn't want to be transferred to FPUA. (Customer TR 45, 47, 50, 58, 78, 83, 84, 86). Several customers testified that they benefitted from the numerous conservation programs offered by FPL, that were not available from FPUA. (Customer TR 18, 21, 23, 24, 25, 50, 51, 62, 86, 87). Other customers testified that North Hutchinson Island was not part of the dispute between FPUA and FPL; that there is no duplication of services on North Hutchinson Island, but that the Island was a pawn in the territory swap between the utilities. (Customer TR 20, 22, 65, 66). Several customers complained that if they were transferred to FPUA, they would have no representation on a utility that is not subject to PSC regulation. (Customer TR 22, 52, 55, 77). Other customers testified about a Ft. Pierce Commission meeting at which the director of FPUA stated that FPUA could not handle additional growth. (Customer TR 61, 75, 87) Customers also testified that FPL was better equipped, provided better service, was superior on service calls, could provide service during a hurricane, and was better equipped to fix storm damage (Customer TR 78, 79, 86, 57, 58, 63) Finally customers testified that FPL offered budget billing which was not offered by FPUA. (Customer TR 51).

On June 18, 1992, an evidentiary hearing was held on the issue of whether the territorial agreement should be approved.

We have jurisdiction over both FPL and FPUA for the planning, development, and maintenance of a coordinated electric power grid to avoid uneconomic duplication of distribution, transmission, and generation facilities as provided in Section 366.04(5), Florida Statutes. Furthermore, we have jurisdiction pursuant to Section 366.04(2) to resolve territorial disputes between municipal electric utilities and investor-owned utilities and to approve territorial agreements. Rule 25-6.0440, Florida Administrative Code, states in pertinent part:

> (2) Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:
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> a) the reasonableness of the purchase price of any facilities being transferred;

b) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement; and

c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

Our decision on whether or not to approve a territorial agreement is based on the effect the agreement will have on all affected customers, not just on whether transferred customers will benefit. It is our responsibility to insure that the territorial agreement works no detriment to the public interest. For Commission approval, any customer transfer in a proposed territorial agreement must not harm the public. See Utilities Commission of New Smyrna Beach v. Florida Public Service Commission, 469 So.2d. 731 (Fla. 1985).

In the instant case the record reflects that North Hutchinson Island was not named in the original petition as an area subject to dispute or duplication. In fact, the entire island is served by FPL. FPUA does not have a single customer on the island. While the customers of North Hutchinson Island expressed a strong preference to remain with FPL (see transcript of June 1, 1992 customer hearing, 1-end), we may not consider customer preference in resolving territorial matters unless all other factors are substantially equal. See Rule 25-6.0441, Florida Administrative Code.

In meeting our obligation to determine that an award of territory to a particular utility will not harm the public we may consider the capability of the utility to provide reliable electric service to existing and future ratepayers. One factor we consider in predicting whether a utility will be able to provide reliable service in a new area is whether the utility is providing reliable service in its existing territory. If a utility is doing a good job now in its existing territory, it reflects on it ability to provide reliable service in the territory to be transferred.

Here the record reflects that FPUA does not keep records relating to its reliability (TR 312, 313). At the hearing FPUA was unable to provide any records that would have allowed us to quantify FPUA's reliability, or the number of consumer complaints it may have had over the years due to outages. In fact, at the hearing FPUA was unable to provide data by which its reliability could be judged and compared to that of FPL. (TR 313) While FPUA

does keep records regarding "feeder operations", FPUA's witness testified that it would be "almost impossible" to quantify how customers were affected, using this data. (TR 316) Thus, while the testimony in this docket contains bare assertions regarding FPUA's reliability, the ability of FPUA to provide reliable service to its existing territory has not been demonstrated on the record.

The record also reflects that on November 18, 1991, the Director of FPUA stated at a city commission meeting that FPUA does not have the capacity, without expanding, to meet the projected growth of its existing territory or to meet the growth in North Hutchinson Island (TR 226, 228, Exhibit 12). While the Director of FPUA testified at the hearing that FPUA had extensive plans for expansion, cross-examination by the Commission revealed the testimony to be somewhat misleading. The utility had not yet made a decision to make the improvements that were the subject of FPUA's previous testimony. In fact, the Director was not even sure the improvements were "engineeringly feasible" (TR 413), or that permitting could be obtained (TR 417):

> There has not been a decision, the Utilities Board has not even addressed doing that for sure. We may find that we could not even get permitting to go across the line -- to go across the river with a transmission line.
>
> * * * * *
>
> ....to answer your question, it has not been definitely approved that we're going to be doing that.
>
> (TR 417-418)

The fact that the utility may theorize that under some set of circumstances it could make transmission improvements does not demonstrate the utility's present ability and intent to do so. The utilities intent to further address the plans and to later make a decision on whether they are feasible is not sufficient to convince us that the improvements will reach fruition.

Thus, the record reflects that FPUA has represented at a public forum that it does not have the capacity to meet the growth in North Hutchinson without expanding. The record further reflects that the proposed expansion, which was the subject of extensive testimony, is uncertain at best. Finally, the record reflects that

FPUA was unable to provide records regarding reliability, outages, or consumer complaints in its existing territory. Under these circumstances we find that FPUA has failed to sustain its burden in this proceeding to establish its ability to provide reliable service in either its existing territory, or in the territory proposed to be transferred.

Another factor we may consider in determining whether a transfer of territory is in the public interest is the availability of conservation programs to customers being transferred. In Section 366.81, Florida Statutes, the Florida Legislature found and declared "that it is critical to utilize the most efficient and cost-effective energy conservation systems in order to protect the health, prosperity, and general welfare of the state and its citizens".

The record reflects that FPL makes available numerous conservation programs to its customers. A number of FPL's customers residing on North Hutchinson Island testified that they benefit from these programs. (Customer Hearing TR 18, 21, 23, 24, 25, 50, 51, 62, 86, 87). FPL's exhibit 8 shows that FPL has spent approximately $240 million in the years 1987-1992 on residential conservation programs. This has saved FPL's ratepayers through 1991 approximately $112 million.

The record reflects that FPUA was unable to show a history of benefit to its customers through its conservation programs (TR 282-283). FPUA has only limited conservation programs in place. The only program available until recently was the energy survey program (TR 286, 290). FPUA's other programs (education, air conditioning, and construction design assistance) were just recently approved by FPUA's board (TR 290). Significantly, FPUA's air conditioning program was only approved the week before this hearing, to become effective October 1, 1992. The budgeted funds for the remainder of FPUA's conservation programs are merely for studies to see whether or not these conservation measures are feasible (TR 311).

We find that FPL's 2,100 customers on North Hutchinson Island would suffer a detrimental loss of conservation benefits if were they transferred to FPUA. Since the number of customers who will have their conservation programs reduced or eliminated is greater than the number of customers who reside in areas of duplication, we find that the public interest would not be served by approval of this territorial agreement.

We believe it is important to mention that in reaching our decision to withhold approval of the territorial agreement in this particular case we have given some consideration to the fact that

North Hutchinson Island was not an area that was subject to duplication of facilities. There may, of course, be many situations where it would be in the public interest to approve the transfer of territories not part of an original dispute or actually subject to duplication. Based on the record in this proceeding, as we described earlier, we do not find such a transfer to be in the public interest here.

It is therefore,

ORDERED for the reasons set forth above, that the joint petition of Florida Power and Light Company and Fort Pierce Utility Authority for approval of a territorial agreement and dismissal of a territorial dispute is denied. It is further,

ORDERED that this docket shall remain open to allow the parties to renegotiate a settlement of their dispute. It is further ordered that the parties shall return to the Commission for resolution of the dispute if they are unable to resolve it themselves.

By ORDER of the Florida Public Service Commission this 28th day of September, 1992.

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 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 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.