

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of) DOCKET NO. 920202-EU
territorial agreement between) ORDER NO. PSC-93-0459-FOF-EU
Clay Electric Cooperative, Inc.) ISSUED: 3/25/93
and Jacksonville Electric)
Authority.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER DISMISSING PROTEST
AND MAKING ORDER NO. PSC-92-1208-FOF-EU FINAL AND EFFECTIVE

BY THE COMMISSION:

On March 3, 1992, Clay Electric Cooperative, Inc. (Clay) and the Jacksonville Electric Authority (JEA) filed a joint petition seeking approval of a territorial agreement in Clay and Duval Counties. The original staff recommendation was filed June 4, 1992. In response to a motion by the parties, this docket was deferred from the June 16, 1992 agenda. Also, in response to staff's original concerns, the parties filed a second amendment to the agreement on September 4, 1992. On October 6, 1992, the Commission voted to issue a proposed agency action (PAA) order granting approval of the territorial agreement. The PAA Order No. PSC-92-1208-FOF-EU was issued on October 26, 1992. Ms. Marsha Dumler participated in the agenda conference. On November 16, 1992, the last day to file objections to the PAA order, Ms. Dumler filed a protest and petition for formal proceeding, and this matter was then set for a formal hearing. No other substantially affected persons filed objections. On February 17, 1993, Ms. Dumler filed a letter advising that she is withdrawing her protest and petition regarding the PAA order and that she no longer considers herself a party of record in this matter.

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FPSC-RECORDS/REPORTING

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Ms. Dumler has filed a letter withdrawing her petition regarding the PAA order issued on October 26, 1992, and no longer considers herself a party of record in this matter. The question remains of whether the withdrawal of the protest revives Order No. PSC-92-1208-FOF-EU, or whether a new PAA must be issued. Ms. Dumler was the only substantially affected person to file a protest to proposed agency action Order No. PSC-92-1208-FOF-EU. Any affected person had a clear point of entry and an opportunity to request a hearing at the time Order No. PSC-92-1208-FOF-EU was issued and during the ensuing protest period. By failing to timely protest, other persons have waived the right to a hearing. Where persons have not availed themselves of a clear point of entry, they must be considered to have waived their rights to a hearing. Florida Medical Center v. Dept. of H.R.S., 484 So. 2d 1292 (Fla. 1st DCA 1986); NME Hospitals, Inc. v. Dept. of H.R.S., 494 So. 2d 379 (Fla. 1st DCA 1985).

The proposed agency action process was developed for judicial economy as a mechanism to avoid numerous hearings. It is within the Commission's discretion to set aside the proposed agency action process and to conduct a formal hearing on its own motion. However, we find that a formal hearing should not be held in this instance. We have already thoroughly reviewed this agreement between JEA and Clay, including the concerns raised by Ms. Dumler and other customers and voted to approve the agreement. By dismissing Ms. Dumler's protest, and reviving PAA Order No. PSC-92-1208-FOF-EU as a final order, no party's rights would be violated.

It is, therefore,

ORDERED by the Florida Public Service Commission that the protest filed by Ms. Dumler of Order No. PSC-92-1208-FOF-EU is hereby dismissed. It is further

ORDERED that Order No. PSC-92-1208-FOF-EU is hereby revived and is final and effective. It is further

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ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 25th
day of March, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
DLC:bmi

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.