

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to Require) DOCKET NO. 940656-EU
Florida Power Corporation to) ORDER NO. PSC-94-1208-S-EU
Comply with Territorial) ISSUED: October 4, 1994
Agreement Approved by Order No.)
6194, by Orlando Utilities)
Commission)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING STIPULATION

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On June 21, 1994, Orlando Utilities Commission (OUC) filed a Petition to require Florida Power Corporation (FPC) to comply with the terms of a territorial agreement with OUC that the Commission had approved in 1974. (Order No. 6194, Docket No. 7329-EU, issued July 19, 1974.) The petition identified several areas of disagreement over the interpretation of the expiration date of the agreement and the applicability of an annexation provision contained in the agreement.

Earlier this year the City of Orlando adopted ordinances that annexed several areas around the City to which FPC provides electric service under the terms of the territorial agreement. FPC has filed lawsuits in Orange County Circuit Court challenging the validity of the annexations. While the annexation provisions of the territorial agreement provide that OUC may request the transfer of customers from FPC in the annexed areas, FPC has refused to make

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FPC-RECORDS/REPORTING

those transfers until the validity of the underlying annexations is determined. FPC has also indicated to OUC that it considers the territorial agreement to have expired on July 19, 1994.

Our staff met with the parties on August 2, 1994, to discuss the conduct of the Commission docket in relation to the Circuit Court case, to address the possibility of further territorial conflict and duplication of facilities while these matters are decided, and to encourage the parties to begin negotiating a new territorial agreement for the future. On August 22, 1994, the parties filed a joint stipulation to govern their relations while the cases are pending that addresses all the issues raised at the meeting. The stipulation is appended to this Order as Attachment 1.

The stipulation provides that the parties will respect each other's present service territories, preserve the status quo, and attempt to reach a new territorial agreement by January 1, 1995. The stipulation establishes a reasonable means by which FPC and OUC can administer their respective service territories in the interim until the pending cases are concluded, and it will prevent the possibility of uneconomic duplication of facilities while the parties' disagreements are resolved. The stipulation provides that the parties will immediately begin negotiations on a new territorial agreement. It appropriately delays Commission consideration of OUC's petition until the circuit court proceedings are concluded, but it acknowledges that if an impasse in territorial agreement negotiations occurs, the Commission may immediately proceed to set territorial boundaries in a dispute proceeding. We approve the stipulation. It is therefore

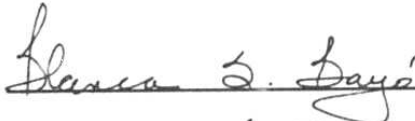
ORDERED by the Florida Public Service Commission that the Stipulation between Florida Power Corporation and The Orlando Utilities Commission is approved. It is further

ORDERED that if no substantially affected person timely files a protest to this Proposed Agency Action Order within the 21-day protest period, this Order shall become final. It is further

ORDERED that this Docket shall remain open until the substantive issues raised by the petition are resolved.

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By ORDER of the Florida Public Service Commission, this 4th
day of October, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MCB

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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 25, 1994.

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 substantially 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 wastewater 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.

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ATTACHMENT 1

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of)
Orlando Utilities)
Commission to)
Require Compliance)
with Order No. 6194)
_____)

Docket No.: 940656-EU

Filed:

STIPULATION

Orlando Utilities Commission (hereinafter OUC) and Florida Power Corporation (hereinafter FPC), in order to govern their relations during the pendency of the proceedings in Docket No. 94656-EU, hereby enter into the following stipulation to be presented to the Commission at the earliest possible Commission Agenda, as determined by the Commission staff:

Recitals

1. On April 1, 1973, OUC and FPC jointly executed a territorial ("Agreement"). The Agreement was approved by the Florida Public Service Commission ("Commission") on July 19, 1974, by Order No. 6194, in Docket No. 73291-EU. Order No. 6194 approved the Agreement for a period of 20 years from the date of Order No. 6194.

2. Under the terms of the Agreement OUC and FPC agreed, among other things, that OUC would acquire the right to serve areas originally allocated by the Agreement to FPC but annexed by the City of Orlando ("City") while the Agreement was in force.

3. On various dates in 1994, all occurring prior to July 19, 1994, the City adopted ordinances annexing certain areas of land within the area originally allocated to FPC by the Agreement. More specifically, the areas annexed are identified as follows:

(a) Areas annexed by Ordinance 94-022 (commonly referred to as "Lake Nona"), consisting of approximately 4570 acres;

(b) Area annexed by Ordinance 94-050 (commonly referred to as the "Lake Nona Golf Course and Estates"), consisting of approximately 342 acres;

(c) Area annexed by Ordinance No. 94-089 (commonly referred to as the "Randall/Johnson and AT&T sites"), consisting of approximately 1334 acres and 1.3 acres, respectively;

(d) Area annexed by Ordinance No. 94-051 (commonly referred to as the "Private Trust/SWISSCO site"), consisting of approximately 426 acres.

4. FPC is challenging the validity of each of the annexations identified above through lawsuits currently pending in Circuit Court in Orange County. No final disposition of those actions has yet occurred.

5. By its petition and supplemental petition in this proceeding, OUC has petitioned the Commission to order FPC to comply with Order No. 5194 in the areas covered by the ordinances identified in paragraph 2 herein. But for the execution of this Stipulation, FPC would immediately move the Commission to stay

this proceeding until there is a final judicial resolution of FPC's challenges to the legality of those annexations. The parties agree that this Stipulation, if approved by the Commission, stays this proceeding until 10 days after the filing of a declaration of impasse under paragraph 8 herein or 10 days after December 31, 1994, whichever is earlier. Should FPC file such a Motion To Stay after the period of this Stipulation, that motion shall not be deemed untimely as a result of it not having been filed during the period of this Stipulation. However, FPC confirms its intention to comply with the provisions of the Agreement and Commission Order No. 6194 concerning the areas identified in paragraph 2 herein in the event FPC's challenges to those annexations are not sustained by a final, nonappealable judgement of the court having jurisdiction thereof.

6. On May 10, 1994, FPC gave written notice to OUC that FPC intended to allow the Agreement to expire or terminate on its twentieth anniversary, July 19, 1994. OUC has advised FPC that, in OUC's view, the termination of the Agreement can not take effect any sooner than January 19, 1995, with which view FPC disagrees.

7. During a meeting with Commission Staff on August 2, 1994, FPC and OUC agreed that it would be desirable for FPC and OUC to attempt to negotiate a new territorial agreement to succeed the Agreement and to attempt thereby to resolve the current disagreements between them concerning:

(a) the effective date of FPC's notice of termination of the Agreement; and

(b) what areas within Orange County each utility will serve in the future.

FPC and OUC wish to undertake such discussions as set forth below.

Terms

8. OUC and FPC agree to meet, beginning immediately, for the purpose of attempting to establish the terms and conditions of a new territorial agreement to succeed the Agreement and with the hope that such negotiations can produce a territorial agreement acceptable to FPC and OUC by no later than December 31, 1994. Except as provided in paragraph 11 herein, pending the approval by the Commission of a territorial agreement negotiated by the parties pursuant to this Stipulation or the resolution by the Commission of a territorial dispute between the parties, as provided in paragraph 8 herein, FPC and OUC agree to maintain the status quo by abiding by the territories allocated to each of them under the Agreement.

9. The parties agree, however, that either party may in its discretion declare that such negotiations are at an impasse at any time. In the event a party declares an impasse, a written declaration to that effect shall be filed by that party with the Clerk of the Commission following 10 days prior written notice to the other party of an intention to file such a declaration. The parties agree that such a declaration will signify that a

territorial dispute then exists and may be immediately addressed by the Commission, the resolution of which shall take effect upon the effective date of FPC's termination of the Agreement. The parties acknowledge that the Commission is the appropriate forum in which to resolve any dispute concerning the effective date of FPC's notice of termination of the Agreement.

10. Each party to this Stipulation agrees not to recommend or support the modification of this Stipulation, other than by joint stipulation, or to discourage its acceptance by the Commission. Neither party shall request reconsideration of or appeal any order which approves this Stipulation without change.

11. In the event this Stipulation is not accepted by the Commission, this Stipulation will have no binding effect on the parties and will not preclude either party from asserting its interests as it sees fit in subsequent proceedings.

12. During the pendency of FPC's challenges to the annexations identified in paragraph 2 herein, OUC and FPC agree that electric service will be provided to certain portions of the areas covered by those annexation resolutions as follows:

(a) FPC presently serves approximately 32 customers in the Lake Nona Golf Course and Estates. FPC will continue to serve those customers and any new customers in the Lake Nona Estates and Golf Course on an interim basis.

(b) OUC has received a request for service to a planned development of approximately 48 residential lots located in Parcels 6, 9B and 11 of Phase 1A of the Lake Nona Planned

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Development (a portion of the area covered by Ordinance 94-050), west of Highway 15 and north of Buck Lake. OUC will serve those customers, as the need for service arises, on an interim basis.

FPC and OUC will cooperate with each other to facilitate the provision of the interim service described above.

13. OUC and FPC agree that at the conclusion of FPC's judicial challenges to the validity of the annexations identified in paragraph 2 herein or upon the settlement thereof, because of the provision of service on an interim basis, it may be necessary to transfer customers and facilities from one utility to the other. In such event, any customers and facilities transferred will be paid for pursuant to the provisions of the Agreement and Order No. 6194 concerning such transfers and the past practices of the parties as to those provisions. The parties further agree to discuss the need, if any, for compensation for lost profits from transferred customers served on an interim basis. If unable to agree, the parties will present the matter to the Commission for resolution.

14. Nothing in this Stipulation is intended to constitute a waiver of, or prejudice, either party's position concerning the effective date of FPC's termination of the Agreement should the parties be unsuccessful in the negotiations contemplated by this Stipulation and it become necessary for Commission to resolve that issue.

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