

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company for enforcement of Order 4285, which approved a territorial agreement and established boundaries between the Company and the City of Homestead.

DOCKET NO. 970022-EU
ORDER NO. PSC-97-1111-PCO-EU
ISSUED: September 23, 1997

ORDER DENYING MOTION FOR JUDGMENT ON THE PLEADINGS

On May 20, 1997, the City of Homestead (City) filed a Motion for Judgment on the Pleadings in this Docket. On May 27, 1997, Florida Power & Light (FPL) filed a Memorandum In Response To The City of Homestead's Motion For Judgment On The Pleadings.

The substance of the City's Motion is that the sole issue for determination in this proceeding is the meaning of "city-owned facilities" as that phrase is used in the 1967 Territorial Agreement between the parties. The Territorial Agreement, approved pursuant to Order No. 4285, Docket No. 9056-EU, delineates service areas of the electric utilities and provides a service exception in FPL territory for the City to serve "city-owned facilities."

The City's position is that the phrase is unambiguous and can be given only one meaning. The meaning the City assigns to the phrase is that if the City owns the underlying real estate, a building located thereon becomes a "city-owned facility" and thus may take electric service from the City regardless of the ownership or function of the building. In this instance, the City has ground leases with a beer distributor and a boat builder who have constructed buildings on City property for their business purposes.

FPL does not agree with the City's interpretation of the phrase "city-owned facility." FPL's interpretation is that the defining criteria is not the ownership of the realty but rather the function and management of the facility. In addition, FPL alleges that there are material issues of fact which remain to be resolved.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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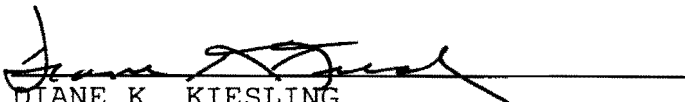
Summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law. If the evidence will permit different, reasonable inferences, it should be submitted to the finder of fact. McCraney v. Barberi, 677 So. 2d 355 (1st DCA 1996).

The interpretation of the Territorial Agreement for the purpose of settling the service area dispute between the parties is a mixed question of fact and law subject to different, reasonable inferences and therefore should be submitted to the Commission for consideration of the relevant evidence. Homeowner's Corporation of River Trails v. Saba, 626 So. 2d 274 (2nd DCA 1993).

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the City of Homestead's Motion for Judgment on the Pleadings is denied.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 23rd day of September, 1997.



DIANE K. KIESLING
Commissioner and Prehearing Officer

(S E A L)

LJP

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

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