

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Company.

DOCKET NO. 930885-EU
ORDER NO. PSC-98-0793-PCO-EU
ISSUED: June 8, 1998

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
SUSAN F. CLARK

ORDER GRANTING MOTION FOR STAY PENDING APPEAL

BY THE COMMISSION:

CASE BACKGROUND

On January 28, 1998, the Commission issued Order Resolving Territorial Dispute Between Gulf Coast Electric Cooperative, Inc. and Gulf Power Company, Order No. PSC-98-0174-FOF-EU, in this Docket (Order). The sixth and seventh ordering paragraphs require the parties, Gulf Coast Electric Cooperative, Inc. (Gulf Coast) and Gulf Power Company (Gulf Power), to establish procedures and guidelines addressing subtransmission, distribution, and requests for new electric service and submit the procedures and guidelines to the Commission for review on or before July 31, 1998.

On February 26, 1998, Gulf Coast filed a Notice of Appeal of PSC Order No. 98-0174-FOF-EU with the Florida Supreme Court, Case No. 92,479. The appeal is currently pending before the Court. On March 11, 1998, Gulf Coast filed a Motion For Stay Pending Judicial Review with the Commission. The subject of the Motion For Stay is the requirement that the parties develop procedures and guidelines by July 31, 1998. Gulf Power did not file a response to the Motion. This order addresses Gulf Coast's Motion.

DECISION

DOCUMENT NUMBER-DATE

06111 JUN-88

1998-06-08/08/REPORTING

DECISION

Rule 25-22.061(2), Florida Administrative Code, provides that we may exercise our discretion to grant a stay of an order pending judicial review. The rule states that we may, among other things, consider three factors in determining whether to grant a stay:

- (a) Whether the petitioner is likely to prevail on appeal;
- (b) Whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and
- (c) Whether the delay will cause substantial harm or be contrary to the public interest.

In addition to the three factors enumerated in Rule 25-22.061(2), Florida Administrative Code, we have discretion to grant the stay for other reasons. A stay in this instance will further the goal of administrative efficiency and will not be contrary to the public interest or the utilities. Based on the application of Rule 25-22.061(2), Florida Administrative Code, and other considerations set forth below, we find that a stay until six months subsequent to the date a final order on Gulf Coasts's appeal is rendered by the Supreme Court in Case No. 92,479 is appropriate.

A. Whether the petitioner is likely to prevail on appeal

In its Motion, Gulf Coast addresses the three factors we may consider when determining whether to grant a stay. With respect to the likelihood of prevailing on appeal, Gulf Coast states that it has a "reasonable chance" to prevail on appeal because the "Commission's Order is contrary to the Commission's prior two (2) Orders in this case, PSC-95-0271-FOF-EU and PSC-95-0913-FOF-EU". (Motion pg. 2) Gulf Coast states that the prior two orders required us to establish delimiting geographic boundaries between the two utilities in those areas where the facilities of the electric utilities are in close proximity and where further conflict is likely to occur. Gulf Coast's position is that our finding that the facilities are in close proximity required us also to establish a territorial boundary. That we declined to establish a geographic boundary, Gulf Coast opines, renders the instant order in conflict with the prior orders and increases the likelihood of Gulf Coast's success on appeal.

We disagree with Gulf Coast's analysis of the law of the case. Gulf Coasts's analysis fails to address the second requirement for drawing a territorial boundary. The facilities must be commingled or in close proximity and further conflict must be likely to continue to occur. We found that the facilities are commingled but that future conflict is not likely to occur: "the evidence in the record is that while the facilities are commingled, *further conflict is not likely because the facilities are already in place.*" (Order pg. 10) (emphasis added) As such, a territorial boundary is not required. For this reason, we do not believe that Gulf Coast has a 'reasonable chance' to prevail on appeal.

B. Whether the petitioner has demonstrated that it is likely to suffer irreparable harm if the stay is not granted

Gulf Coast admits that it "is not likely to suffer significant irrevocable harm if the stay is not granted...." (Motion pg. 3) However, the petitioner states that it should not be required "to spend resources in attempting to work out procedures and policies with Gulf Power that as past practice has shown will result in fruitless...efforts" (Motion pg. 3) Such a requirement will harm Gulf Coast's members because of the costs associated with the wasted effort, petitioner states. We agree that Gulf Coast is not likely to suffer irreparable harm if it is required to develop procedures and guidelines with Gulf Power for future utility expansion pursuant to the terms and conditions of the Order.

C. Whether the delay will cause substantial harm or be contrary to the public interest

Gulf Coast argues that neither Gulf Power nor the public interest will be harmed if the stay is granted:

Because the Commission has in essence ruled that there can be no uneconomic duplication in the identified areas because the two utilities are already there, the current practices of the parties will not result in harm to the parties or to the public. While those practices may be subject to refinement if the Order were not stayed, staying the Order will not change the status quo and will allow both utilities to avoid what may be unnecessary expenses, pending the outcome of the appeal.

(Motion pgs. 3 - 4)

We agree that neither Gulf Power nor the public interest will be harmed if the stay is granted. The areas of commingling in south Washington and Bay Counties have been identified and the Order does not require transfer of service in those areas. As such, existing ratepayers and members should not be harmed by a stay and it is unlikely that either utility will suffer detriment if the stay is granted.

D. Other considerations

Pursuant to Rule 25-22.061(2), Florida Administrative Code, we have discretion to consider matters other than those enumerated within the rule. In this instance, considerations of administrative efficiency also affect the decision on whether a stay should be granted. The intent of the requirement for establishing procedures to address future growth is to encourage a cooperative, creative effort between the utilities that would provide them with flexibility and would result in the most economic method of providing service. (Order pg. 10) The parties have diametrically opposed positions on whether a territorial boundary between the utilities is necessary. Gulf Coast's position is that a territorial boundary should be established. Gulf Power's position is that a territorial boundary is not necessary.

During the pendency of the appeal, it is unlikely that mandated negotiation between parties will be productive. Thus, for reasons of administrative efficiency, we find that it would be in the best interests of the parties and this Commission, which must review the results of the negotiations, to grant the stay during the pendency of the appeal. In addition, we hold that the deadline for Gulf Coast and Gulf Power to establish procedures and guidelines addressing subtransmission, distribution, and requests for new electric service as set forth in the Order shall be revised to a date no later than six months following the date the final order of the Supreme Court of Florida in Case No. 92,479 is rendered.

Based on the foregoing, it is

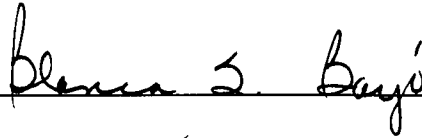
ORDERED by the Florida Public Service Commission that Gulf Coast Electric Cooperative's Motion For Stay Pending Appeal is granted. It is further,

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ORDERED that the deadline for Gulf Coast and Gulf Power to establish procedures and guidelines addressing subtransmission, distribution, and requests for new electric service as set forth in Order No. PSC-98-0174-FOF-EU shall be revised to a date no later than six months following the date the final order of the Supreme Court of Florida in Case No. 92,479 is rendered. It is further

ORDERED that this docket shall remain open pending the Supreme Court's disposition of the appeal and thereafter for the purpose of reviewing the procedures and guidelines developed by the two utilities as set forth in Order No. PSC-98-0174-FOF-EU, issued January 28, 1998, in the event that the Order is upheld.

By ORDER of the Florida Public Service Commission this 8th day of June, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

LJP

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.

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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 25-22.038(2), 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.