

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of territorial agreement concerning service to two locations in Jackson County, by Florida Public Utilities Company and West Florida Electric Cooperative Association, Inc.

DOCKET NO. 040701-EU
ORDER NO. PSC-04-0991-PAA-EU
ISSUED: October 11, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING TERRITORIAL AGREEMENT BETWEEN FLORIDA PUBLIC UTILITIES
COMPANY AND WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION, INC.

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 28-106.201, Florida Administrative Code.

Background

On July 6, 2004, the West Florida Electric Cooperative Association, Inc. (WFEC) and Florida Public Utilities Company (FPUC) filed a Joint Petition for Approval of Territorial Agreement (Agreement). The Agreement resolves a dispute regarding permanent electric service to two new customers in Jackson County. A copy of the Agreement is appended to this Order as Attachment A.

This Agreement is the first such agreement entered into between WFEC and FPUC. The Agreement provides that it shall remain in effect for an initial term of 30 years and shall automatically renew for successive 10 year periods unless either party gives written notice of its intent to terminate at least one year prior to the end of the initial term or any renewal period, or until modified or vacated by a final and non-appealable order of this Commission or of a court of competent jurisdiction.

DOCUMENT NUMBER-DATE

10937 OCT 11 04

FPSC-COMMISSION CLERK

FPUC serves primarily an area in Jackson County that includes most of the City of Marianna, with some customers located in Calhoun and Liberty Counties. WFEC serves customers in Washington, Holmes, Calhoun, and Jackson Counties. The Agreement currently directly affects only two new customers: Racetrac Petroleum, Inc. (Racetrac), which is constructing a service station located on Highway 231 in Cottondale; and the James Grant Apartments, which are being constructed at 2422 Standfast Lane in Marianna.

The Agreement expressly provides that it shall become effective on the date that this Commission's order approving the Agreement becomes final and effective. We have jurisdiction pursuant to Sections 366.04 and 366.05, Florida Statutes.

Agreement

The parties state that each utility currently has existing equipment in each of the areas at issue to reliably serve the customers. However, they each acknowledge that there is currently uneconomic duplication of facilities in these areas.

Racetrac is located on the southeast corner of the intersection of Highway 231 and Dilmore Road, south of Dilmore Road and East of Highway 231. FPUC is currently providing temporary construction service to Racetrac. The parties agree that Racetrac will receive permanent electric service from an existing WFEC primary power line adjacent to the property, and that FPUC's temporary facilities will be removed at FPUC's expense upon WFEC providing permanent service.

The James Grant Apartments are located at the intersection of Standfast Lane and Highway 90, north of Highway 90. WFEC is currently providing temporary construction service to the James Grant Apartments. The Grant property has historically been served by FPUC, which has an existing primary pole on the site. The parties agree that the Grant property will receive permanent electric service from FPUC, and that WFEC's temporary facilities will be removed at WFEC's expense upon FPUC providing permanent service.

Removal of the duplicative facilities will occur as set forth in the Agreement on a date or dates to be agreed upon by the parties. This is expected to be carried out expeditiously. The parties state that the Agreement will result in elimination of the uneconomic duplication of facilities in the two areas and will result in reliable service for the customers. Both parties support a determination by this Commission that WFEC should provide permanent electric service to Racetrac and that FPUC should provide permanent electric service to the Grant property.

According to the Joint Petition, the differential between FPUC and WFEC's rates has been explained to Racetrac and to James Grant Apartments. Racetrac has agreed to take permanent service from WFEC and James Grant Apartments has agreed to take permanent

service from FPUC. Maps showing the areas affected by the Agreement have been submitted. Our staff has reviewed the existing facilities of each of the companies in these areas.

Rule 25-6.0440(2), Florida Administrative Code, describes the standards of approval for territorial agreements as follows:

- (2) Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:
 - (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.

The Agreement does not establish a traditional “lines-on-the-ground” territorial boundary. However, it addresses all the necessary standards required for approval. The Agreement comports with the requirements of Rule 25-6.0440, Florida Administrative Code. It does not appear to cause a decrease in the reliability of electric service, and it appears to eliminate or minimize existing or potential uneconomic duplication of facilities. Therefore, we find that the Agreement between FPUC and WFEC is in the public interest and it is hereby approved effective on the date that this Order is final.

It is, therefore,

ORDERED by the Florida Public Service Commission that the territorial agreement between Florida Public Utilities Company and West Florida Electric Cooperative Association, Inc., as contained in Attachment A to this Order, is hereby approved. It is further

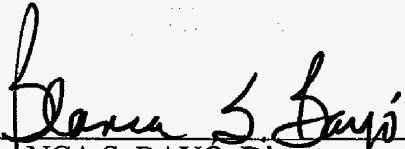
ORDERED that Attachment A to this Order is incorporated herein by reference. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the “Notice of Further Proceedings” attached hereto. If an appropriate petition is filed, the territorial agreement shall remain in effect pending resolution of the protest. It is further

ORDER NO. PSC-04-0991-PAA-EU
DOCKET NO. 040701-EU
PAGE 4

Ordered that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 11th day of October, 2004.



BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

RG

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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 1, 2004.

ORDER NO. PSC-04-0991-PAA-EU
DOCKET NO. 040701-EU
PAGE 5

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.

ORDER NO. PSC-04-0991-PAA-EU
DOCKET NO. 040701-EU
PAGE 6

Territorial Agreement

This Agreement is made between West Florida Electric Cooperative Association, Inc. ("WFEC") and Florida Public Utilities Company ("FPUC") in order to provide electric utility service to two customers in an economical and non-duplicative fashion and to enhance future reliability for each utility's customer base. WFEC and FPUC (the "Parties") hereby agree as follows:

1. FPUC is providing temporary construction service to Racetrac Petroleum, Inc. ("Racetrac"), which is located at 2496 Highway 231, Cottondale, Florida 32431. The Parties agree that Racetrac Petroleum, Inc. will receive permanent electric service from WFEC, and that FPUC's temporary facilities will be removed at FPUC's expense upon WFEC providing permanent service.
2. WFEC is providing temporary construction service to Mr. James Grant's property ("Grant"), which is located at 2422 Standfast Lane, Marianna, Florida 32446. The Parties agree that Grant will receive permanent electric service from FPUC, and that WFEC's temporary facilities will be removed at WFEC's expense upon FPUC providing service.
3. Removal of the facilities as set forth above shall occur on a date or dates to be agreed upon by the Parties.
4. This Agreement shall be submitted jointly by the Parties to the Florida Public Service Commission ("FPSC") for approval. This Agreement shall become effective on the date that the FPSC's order approving the Agreement becomes final and effective, and shall remain in effect (a) for an initial term of thirty (30) years and shall automatically renew for successive ten (10) year periods unless either Party gives written notice of intent to terminate at least one (1) year prior to the end of the initial term or any renewal period, or (b) until modified or vacated by a final and non-appealable order of the FPSC or a court of competent jurisdiction.
5. This Agreement will become void and unenforceable should the FPSC's jurisdiction in service territorial matters be ruled invalid by a court of final appellate jurisdiction.
6. This Agreement may be modified only upon the agreement of the Parties and the approval of the FPSC.

7. The Parties have entered into this Agreement solely for the purpose of adhering to Florida's policy that favors territorial agreements between electric utilities. This Agreement is governed by Section 366.04(2)(d), Florida Statutes, that expressly confers authority on the FPSC to approve territorial agreements between electric utilities. Upon approval by the FPSC, this Agreement will merge into and become part of the FPSC order that approved it.

AGREED this 30th day of June, 2004.

WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION, INC.

BY: Wileen S. Rums

TITLE: Executive Vice President & CEO

DATE: 6-30-04

FLORIDA PUBLIC UTILITIES COMPANY

BY: A. Mark Cutshaw

TITLE: Director, North West Florida

DATE: 6/30/04

EXHIBIT "A"