

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement that, pursuant to Rule 25-6.100(7), F.A.C., and Commission Orders 8035 and 8029, Progress Energy Florida, Inc. is permitted to collect franchise fees from its customers within the town limits of the Town of Belleair to comply with Town's November 15, 2005 demand for payment of franchise fees for period between September 24, 2002 and November 11, 2004, by Progress Energy Florida, Inc.

DOCKET NO. 050925-EI  
ORDER NO. PSC-06-0218-DS-EI  
ISSUED: March 17, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

On December 21, 2005, Progress Energy Florida, Inc. (PEF) filed a Petition for Declaratory Statement, seeking a determination from the Commission that it may recover franchise fees imposed by the Town of Belleair (the "town") from the residents of that municipality, pursuant to Rule 25-6.100(7), Florida Administrative Code. The exact question is whether PEF can collect franchise fees for the time period September 24, 2002 through November 11, 2004, which were not collected from the customer-residents of the town due to a dispute between PEF and the town regarding the franchise agreement, and which are now being demanded by the town.

PEF's petition is filed pursuant to Section 120.565, Florida Statutes, and Rule 25-105.002, Florida Administrative Code, governing declaratory statements. Notice of the Petition for Declaratory Statement was published in the Florida Administrative Weekly on January 6, 2006. We have jurisdiction pursuant to Sections 120.565, 366.04(2) and 366.05(1), Florida Statutes.

On February 10, 2006, attorneys for the town sent a letter addressed to the individual Commissioners, which was copied to the docket file, PEF, and the Office of Public Counsel. The letter lists the town's concerns with PEF's Petition and objects to the Commission issuing the Statement requested by PEF. Subsequent to the filing of the Staff Recommendation, on

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February 27, 2006, the town sent a second letter supporting the staff recommendation but pointing out what the town believed to be a factual error in the Staff Recommendation.

Rule 25-6.100(7), Florida Administrative Code, states in pertinent part:

(a) When a municipality charges a utility any franchise fee, the utility may collect that fee only from its customers receiving service within that municipality.

(d) This subsection shall not be construed as granting a municipality or county the authority to charge a franchise fee. This subsection only specifies the method of collection of a franchise fee, if a municipality or county, having authority to do so, charges a franchise fee.

In the instant case, PEF has asked whether it is permitted to collect from current customers franchise fees which otherwise would have been collected from customers of record during the September 24, 2002 through November 11, 2004 time frame. Subsection (4) of the rule clearly states that the rule is not intended to grant authority to charge a franchise fee; it is only intended to specify the method of collection of an authorized fee. At the February 28, 2006 Agenda Conference, both the town and PEF agreed that the town had the legal right to insist on payment of the franchise fees for the time period in dispute. Both sides further indicated that the only impediment to the retroactive franchise fees being currently due and payable was a ruling from the Circuit Court. It appears that the Circuit Court that issued the initial injunction must take action to reinstate its ruling, following the Supreme Court's decision overturning the District Court of Appeal's Mandate overturning the Circuit Court's order.

The plain language of Rule appears clear that PEF should collect any franchise fees due and owing to the Town of Belleair from its customers resident in that municipality. Staff's recommendation indicates that, but for the uncertainty whether the fees are currently due and payable, staff believes that Rule 25-60100(7) is controlling, and that if the town insisted on retroactive payment of the fees, the fees should in fact be collected from the customer-residents of the town. We agree. Since both PEF and the town represented that the fees are lawfully due and owing, we find it appropriate to issue the declaratory statement requested by PEF, with the provision that all legal impediments to the retroactive collection of the fees must be resolved.

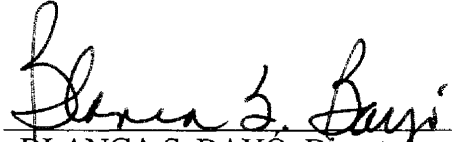
Accordingly, we deny our staff's recommendation and issue a Declaratory Statement that pursuant to Rule 25-6.100(7), F.A.C., once the appropriate court declares franchise fees for the time period September 24, 2002 through November 11, 2004 are due and payable to the Town of Belleair, Progress Energy Florida, Inc. may collect those fees only from its customers resident in the Town of Belleair.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that the Declaratory Statement requested by Progress Energy Florida, Inc. is issued to the extent that once franchise fees for the period September 24, 2002 through November 11, 2004 are found to be legally due and payable, Progress Energy Florida, Inc. may collect those fees only from its customers resident in the Town of Belleair pursuant to Rule 25-6.100(7), Florida Administrative Code. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 17th day of March, 2006.

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

( S E A L )

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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.

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.