

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

January 25, 1989

TO: STEVE TRIBBLE, DIRECTOR
DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PALECKI) *M.A.*
DIVISION OF ELECTRIC AND GAS (COLSON, GRAY, KUMMER) *OK J.K. RLT*

RE: ~~DOCKET NO.~~ B90646-ED - PETITION OF TAMPA ELECTRIC
COMPANY FOR RESOLUTION OF A TERRITORIAL DISPUTE WITH
FLORIDA POWER CORPORATION.

AGENDA: FEBRUARY 6, 1990

PANEL: Full Commission

CRITICAL DATES: None

ISSUE AND RECOMMENDATION SUMMARY

ISSUE 1: Should the Commission approve the proposed settlement between Tampa Electric Company (TECO) and Agrico Chemical Company (Agrico) and between Tampa Electric Company and Florida Power Corporation (FPC)?

PRIMARY RECOMMENDATION (PALECKI): Yes. The proposed settlement represents a reasonable compromise between the parties and should be approved.

DOCUMENT NUMBER-DATE

00787 JAN 25 1989

FPSC-RECORDS/REPORTING

RECOMMENDATION
DOCKET NO. 890646-EI
PAGE 2

ALTERNATE RECOMMENDATION (KUMMER): No. The proposed tariff underlying the agreement contradicts cost based rate design and previous Commission decisions, and denial of the tariff negates the settlement agreement.

CASE BACKGROUND

On May 9, 1989, Tampa Electric Company filed a complaint against Florida Power Corporation for resolution of a territorial dispute regarding provision of electricity to Agrico Chemical Company. According to the Complaint, Agrico had requested FPC to provide service to certain of its Polk County facilities then being served by TECO under the terms of a 1960 territorial agreement between TECO and FPC. TECO contended that this would have been in violation of the 1960 agreement.

On June 5, 1989, FPC filed its answer to the complaint. On May 30, 1989 Agrico filed its motion to intervene and its answer to the complaint. A hearing on the complaint was set for November 27, 1989, and in anticipation thereof the parties prefiled the testimony of their witnesses.

On November 16, 1989, TECO filed a Joint Motion for Continuance and Approval of Settlement Agreement. (see Attachment A) There are actually two settlement agreements at

issue, one between TECO and Agrico, and one between TECO and FPC. The settlement agreement between TECO and FPC however essentially provides only that FPC does not oppose the settlement between TECO and Agrico, should it be approved by the Commission.

There are three principal conditions to the proposed settlement between Agrico and TECO:

1. All fixed facilities in TECO's territory, including processing plants and washer facilities will continue to be served by TECO at the applicable TECO rate schedule. Agrico will discontinue its efforts to have these facilities served by FPC.

2. Any Agrico mobile facility having its dragline in FPC's service area shall take service from FPC notwithstanding the fact that a portion of such mobile facility may be located in TECO's service area. The term mobile facility is defined to include slurry pipelines and pumps as well as draglines.

3. Any Agrico mobile facility having its dragline in TECO's service area shall take service from TECO pursuant to the Mobile Facility Adjustment Rider Interruptible (MFI). The proposed tariff would allow a customer's draglines located in TECO territory to be served at FPC rates. The tariff filing resulting from this agreement was assigned Docket No. 891300-EI.

RECOMMENDATION
DOCKET NO. 890646-EI
PAGE 4

At the December 6, 1989 Agenda Conference, staff recommended that the tariff filed in Docket No. 891300-EI be suspended so that both dockets could be considered in more depth and handled at the same time.

DISCUSSION

ISSUE 1: Should the Commission approve the proposed settlement between Tampa Electric Company (TECO) and Agrico Chemical Company (Agrico) and between Tampa Electric Company and Florida Power Corporation (FPC)?

PRIMARY RECOMMENDATION (PALECKI): Yes. The proposed settlement represents a reasonable compromise between the parties and should be approved.

ALTERNATE RECOMMENDATION (KUMMER): No. The proposed tariff underlying the agreement contradicts cost based rate design and previous Commission decisions, and denial of the tariff negates the settlement agreement.

PRIMARY STAFF ANALYSIS (PALECKI): At first blush this docket appears to contain a straightforward territorial violation wherein Agrico has attempted to obtain service from FPC in territory which should clearly be served by TECO. In reality, this docket presents a complicated scenario which, had it gone to hearing, may or may not have been deemed a territorial violation by the Commission. The compromise settlement proposed by the parties appears to be a reasonable and

RECOMMENDATION
DOCKET NO. 890646-EI
PAGE 5

expedient means of resolving the rather unusual factual situation herein.

TERRITORIAL DISPUTE

Under the 1960 territorial agreement the service boundary between FPC and TECO was drawn on the county line between Polk and Hardee Counties. Agrico's Fort Green mine property is essentially split by the line. Twenty-six square miles are within the TECO service area and twenty-five square miles are within the FPC service area. Further to the south four square miles are within FPC's service area, but this property is unaffected by the instant territorial dispute.

FPC provides 69kV interruptible service to Agrico at a metering station in northwestern Hardee County, approximately two miles south of the Polk County line (its own territory). Agrico claims that its mining operations are moving south and will soon be operating predominantly in Hardee County (FPC's territory). According to Agrico it has mined all but 19% (2,990 acres) of the land remaining within TECO's service area. As the mining progresses it follows the phosphate reserves into Hardee County (FPC's territory).

When Agrico answered TECO's complaint on May 30, 1989, it planned to employ FPC's 69kV transmission line to serve all of Agrico's internal electrical distribution system, including the plant (in TECO's service area) as well as any draglines within the TECO service area. According to Agrico, with the

bulk of its mining operations moving into Hardee County, continued use of TECO power would cause an unnecessary duplication of facilities and foster economic waste.

In addition Agrico has claimed that a dual power supply would be dangerous. Typically, phosphate mining facilities consist of draglines; large electrical machines which move about the area (and sometimes over territorial boundaries) and dig ore from the ground. The ore is placed in a pit where it is made into a slurry with high pressure water. The slurry is pumped through a pipeline to the processing plant.

The slurry pipeline is a large, powerful system. The pipe is typically 20 inches in diameter and the pipelines can be from one to ten miles long. Large booster pumps, each driven by a 1,250 hp electric motor, are placed along the pipeline at intervals of approximately 3,000 to 4,000 feet in order to provide sufficient velocity necessary to keep solids in suspension within the pipeline. It is sometimes necessary that these pipelines cross territorial boundaries when the mining operation is located away from the processing plant.

Agrico asserts that all pipelines should be served from a single power source.

According to Agrico's experts, a blink in power due to lightning, which may go unnoticed by other customers, can shut

RECOMMENDATION
DOCKET NO. 890646-EI
PAGE 7

down the phosphate operation. Such a shut-down in the pumps can produce water hammer that can cause pipes and/or pumps to burst, creating a hazard to employees in the vicinity. If some pumps shut down, and others continue to operate (such as those provided electricity from a separate power source), a dangerous situation is created. Graeme R. Addie, Agrico's slurry pump expert from Australia, submitted testimony that no technology available could prevent this type of water hammer and that a dual power supply would significantly increase its likelihood.

LEE COUNTY DISTINGUISHED

Agrico denies that a similar factual circumstance was addressed by the Supreme Court of Florida in Lee County Electric Cooperative v. Marks, 501 So.2d 585 (Fla. 1987). According to Agrico, it seeks services for facilities which it owns and operates on its own property within Hardee County in FPC's service area. The Agrico load moved into Hardee County in order to mine available phosphate, not to switch electric supplies. Here, unlike Lee County Cooperative, the customer has not built a line solely for the purpose of establishing a point of delivery for electric power within one utility's service area to be transmitted to a facility located within

RECOMMENDATION
DOCKET NO. 890646-EI
PAGE 8

another utility's service area. Rather, this situation involves, among other things, contiguous property owned by the customer which crosses the service area boundary between FPC and TECO. Electric service is being provided at a new point of service within FPC's service area for the specific purpose of serving Agrico mining facilities located and operated within FPC's service area. Also, unlike Lee County Cooperative, the electric load in this case moved to a different service area and is expected to stay there on a long-term basis. In Lee County, the Supreme Court found that the "extension cord" transmission line was a "transparent device" to avoid the territorial agreement. Such does not appear to be the case here.

Agrico claims that using power from one utility in another utility's area has been a common practice in the phosphate industry. In fact, Agrico argues, TECO has been a party to this practice. Agrico states that it has operated draglines in Hardee County (south of the territorial dividing line between TECO and FPC) and has paid TECO more than \$9,000,000 for energy consumed by Agrico within FPC's Hardee County territory. According to Don Morrow of Agrico, "TECO was content with Agrico's distributing power purchased from TECO into FPC's territory for almost two decades and protested only

RECOMMENDATION
DOCKET NO. 890646-EI
PAGE 9

when Agrico proposed to distribute power purchased from FPC into TECO's territory."

Staff is unaware of any instance where the Commission has ruled on the unique issues involved in this case. Agrico conducts a bona fide, integrated business operation on contiguous property overlapping the service areas of two utilities. It is therefore clearly entitled to receive service from both utilities within their respective service territories. This factual situation is distinguishable from that involved in the Lee County case. The issue here is whether Agrico should be allowed to consume power within TECO's service territory, which it legally received from FPC in FPC's service territory. While the Commission has not ruled on this exact question, other states under similar facts have held that the customer may choose its utility source. See Peoples Gas Company v. Pennsylvania Public Utility Commission, 554 A.2d 585 (Pa.Cmwth. 1989); Re Cominco American Inc., 92 PUR 4th 438 (Mo. P.S.C. 1988); Re Utah Power & Light Co., Docket No. 88-035-07, July 14, 1988 (Utah P.S.C.). Other courts have used a geographic-load-center test to determine which of the two electric utilities should provide service. O'Brien County Rural Electric Co-op. v. Iowa State Commerce Commission, 352 N.W. 2d 264 (Iowa 1984).

SETTLEMENT AGREEMENT BETWEEN AGRICO AND TECO

There are three principal conditions to the settlement agreement between Agrico and TECO:

1. All fixed facilities to TECO's territory, including processing plants and washer facilities will continue to be served by TECO at the applicable TECO rate schedule. Agrico will then discontinue its efforts to serve these facilities through FPC's 69kV line in Hardee County.

2. Any Agrico mobile facility having its dragline in FPC's service area shall take service from FPC notwithstanding the fact that a portion of such mobile facility may be physically located in TECO's service area. The term mobile facility is defined to include slurry pipelines and pumps as well as draglines. This provision resolves the safety issue raised by Agrico, regarding dual power supply on slurry pipelines which cross over territorial boundaries.

3. Any Agrico mobile facility having its dragline in TECO's service area shall take service from TECO pursuant to the Mobile Facility Adjustment Rider Interruptible (MFI). The intent of the MFI is to allow Agrico and other qualifying customers to pay no more for electricity supplied by TECO and utilized to power a mobile facility, than the cost of FPC supplied electricity. This provision addresses the unique

RECOMMENDATION
DOCKET NO. 890646-EI
PAGE 11

ability of phosphate draglines to move about and cross over territorial boundaries. The proposed MFI rider eliminates the motivation for qualifying customers to migrate between TECO and FPC to achieve rate advantages. In addition, the settlement agreement provides that Agrico will promptly inform FPC and TECO prior to the time an Agrico dragline crosses the Polk/Hardee County line which separates their respective service areas.

ANTI-TRUST PROVISIONS

As a condition of settlement, Agrico agreed to release both FPC and TECO from any past or future, judicial or administrative anti-trust, rate discrimination or other legal claims.

SUMMARY

Staff has gone into considerable detail in outlining Agrico's position with regard to this territorial dispute. This is not because staff necessarily agrees with Agrico's position or would have adopted it had this case not settled. However, this docket contains a complicated factual scenario, the outcome of which after hearing could not be predicted. Put another way, this was a close case which may have been

RECOMMENDATION
DOCKET NO. 890646-EI
PAGE 12

resolved adversely to TECO.

The settlement with Agrico and the implementation of the MFI rider will enable TECO to avoid possible loss of a significant phosphate mining load from its system. This avoidance of risk and retention of load benefits all of TECO's customers. The loss of revenue that TECO may incur with the implementation of the MFI rider is a reasonable trade-off in that it is negligible when compared to the phosphate mining load TECO will retain as a result of this settlement. Thus the compromise settlement proposed by the parties appears to be a reasonable means of resolving this territorial dispute.

ALTERNATE STAFF ANALYSIS (KUMMER): The specific concerns staff has with the proposed Mobile Facilities tariff are addressed in Docket No. 891300-EI. The discussion here is simply to integrate those arguments briefly into the discussion in this docket.

Staff stands by its primary recommendation in Docket No. 891300-EI that the proposed Mobile Facilities rider should be denied. There is no cost basis for discounting the rate to this subset of customers at the expense of the general body of ratepayers. In addition, the Supreme Court decision in the Lee County case reiterates that customers have no inherent

RECOMMENDATION
DOCKET NO. 890646-EI
PAGE 13

right to choose their utility or rates. The customer should take power from the utility which has the primary responsibility for serving that location, based on territorial agreements at the otherwise applicable rates.

There is, however, some merit in the contention that the Mobile Facility as an operating unit is a unique situation. Agreement by the two utilities to separately meter and bill each Mobile Facility, as defined in the proposed tariff in Docket No. 891300-EI, would address two of the main issues raised by Agrico. It solves the issues of taking power for a single mobile facility from two different utilities. It also mitigates the issue of paying for power from one utility when the bulk of the unit's operation is located in a different territory.

The rates paid by the Mobile Facility should, however, be the same as those paid by any other interruptible customer of the given utility. If a discount from tariffed rates is deemed appropriate, it should be absorbed by the utility's stockholders, not the general body of ratepayers, since there is no cost justification for it.

Agrico contends that the bulk of its mining operations is moving into FPC's territory and therefore they should be allowed to take service from FPC. At the current time,

RECOMMENDATION
DOCKET NO. 890646-EI
PAGE 14

however, the point at which the electricity is metered for the both the mobile facilities and processing plant at issue, is at the fixed facility located in TECO's territory. Agrico then distributes that power over its own lines to the respective draglines.

Therefore the request to take power for the processing plant, as well as anything served behind that meter, is in direct contradiction to the Lee County case, where the Supreme Court overturned the Commission's decision to allow a customer to run a line from a service point located in one utility's territory to a service point just inside another utility's territory simply to take service under different rates and conditions.

The utilities apparently had no difficulty isolating the mobile facilities for the purposes of discounting the rate. There should likewise be no difficulty in separately metering and billing each of these facilities as a single entity. If each mobile facility is separately metered, the entire facility could take power from the utility in whose territory the meter is located at the current tariff for that utility as the facility moves.

If however, the individual Mobile Facility continues to be served by customer-owned distribution lines behind a single

RECOMMENDATION
DOCKET NO. 890646-EI
PAGE 15

meter at a processing plant, or any other fixed facility, the Mobile Facility would continue to take service from the utility in whose territory the fixed facilities were located, at that utility's currently tariffed rates. Meters are required on each facility in order to segregate the load.

This approach addresses the essential problems cited by Agrico in the territorial dispute without severely compromising cost of service rate design principles discussed in Docket No. 891300-EI. There is no evidence that the phosphate companies are likely to remove their load from TECO's system, beyond their current co-generation. The proposed discount rate is simply a short term subsidy from the general body of ratepayers to this group of customers. The separate metering approach is a more viable long term solution which can benefit all parties.

(5777L)MAP:bmi