

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Adoption of Rules)	DOCKET NO. 870372-EU
25-6.0439, 25-6.0440, 25-6.0441,)	
and 25-6.0442, F.A.C., relating)	ORDER NO. 22572
to territorial agreements and)	
disputes.)	ISSUED: 2/19/90
)	

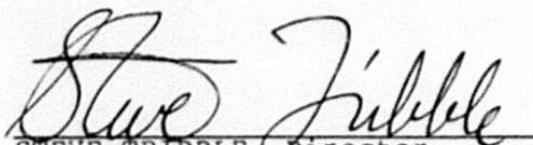
NOTICE OF ADOPTION OF RULE

NOTICE is hereby given that the Commission, pursuant to Section 120.54, Florida Statutes, has adopted Rules 25-6.0439, 25-6.0440, 25-6.0441, and 25-6.0442, F.A.C., relating to territorial agreements and disputes with changes.

The rule was filed with the Secretary of State on February 12, 1990, and will be effective on March 4, 1990. A copy of the relevant portions of the certification filed with the Secretary of State is attached to this Notice.

This docket is closed upon issuance of this notice.

By Direction of the Florida Public Service Commission,
this 19th day of FEBRUARY, 1990.


STEVE TRIBBLE, Director
Division of Records & Reporting

(S E A L)

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CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES
FILED WITH THE
DEPARTMENT OF STATE

I do hereby certify:

(1) The time limitations prescribed by paragraph 120.54(11)(a), F.S., have been complied with; and

(2) There is no administrative determination under section 120.54(4), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(11)(b), F.S. They are filed not less than 28 days after the notice required by subsection 120.54(1), F.S., and;

(a) And are filed not more than 90 days after the notice; or

(b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

(c) Are filed within 21 days after the adjournment of the final public hearing on the rule; or

(d) Are filed within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

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/ / (e) Are filed within 21 days after the date the transcript was received by this agency.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No.	Specific Rulemaking Authority	Law Being Implemented, Interpreted or Made Specific
25-6.0439	366.05(1), F.S.	366.04(2), 366.04(4), F.S.
25-6.0440	366.05(1), F.S.	366.04(2), 366.04(4), 366.05(7), F.S.
25-6.0441	366.05(1), F.S.	366.04(2), 366.04(4), 366.05(7), F.S.
25-6.0442	366.05(1), F.S.	366.04(2), 366.04(4), 366.05(7), F.S.

Under the provision of paragraph 120.54(12)(a), F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
 (month) (day) (year)

 Steve Tribble

 Director, Division of Records & Reporting
 Title

 Number of Pages Certified

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25-6.0439 Territorial Agreements and Disputes for Electric Utilities - Definitions.

(1) For the purpose of Rules 25-6.0440, 25-6.0441, and 25-6.0442, the following terms shall have the following meaning:

(a) "territorial agreement" means a written agreement between two or more electric utilities which identifies the geographical areas to be served by each electric utility party to the agreement, the terms and conditions pertaining to implementation of the agreement, and any other terms and conditions pertinent to the agreement;

(b) "territorial dispute" means a disagreement as to which utility has the right and the obligation to serve a particular geographical area.

Specific Authority: 366.05(1), F.S.

Law Implemented: 366.04(2), 366.04(4), F.S.

History: New.

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25-6.0440 Territorial Agreements for Electric Utilities.

(1) All territorial agreements between electric utilities shall be submitted to the Commission for approval. Each territorial agreement shall clearly identify the geographical area to be served by each utility. The submission shall include: (a) a map and a written description of the area, (b) the terms and conditions pertaining to implementation of the agreement, and any other terms and conditions pertaining to the agreement, (c) the number and class of customers to be transferred, (d) assurance that the affected customers have been contacted and the difference in rates explained, and (e) information with respect to the degree of acceptance by affected customers, i.e., the number in favor of and those opposed to the transfer. Upon approval of the agreement, any modification, changes, or corrections to this agreement must be approved by this Commission.

(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

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(c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

(3) The Commission may require additional relevant information from the parties of the agreement, if so warranted.

Specific Authority: 366.05(1), F.S.

Law Implemented: 366.04(2), 366.04(4), 366.05(7), F.S.

History: New.

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25-6.0441 Territorial Disputes for Electric Utilities.

(1) A territorial dispute proceeding may be initiated by a petition from an electric utility requesting the Commission to resolve the dispute. Additionally the Commission may, on its own motion, identify the existence of a dispute and order the affected parties to participate in a proceeding to resolve it. Each utility which is a party to a territorial dispute shall provide a map and a written description of the disputed area along with the conditions that caused the dispute. Each utility party shall also provide a description of the existing and planned load to be served in the area of dispute and a description of the type, additional cost, and reliability of electrical facilities and other utility services to be provided within the disputed area.

(2) In resolving territorial disputes, the Commission may consider, but not be limited to consideration of:

(a) the capability of each utility to provide reliable electric service within the disputed area with its existing facilities and the extent to which additional facilities are needed;

(b) the nature of the disputed area including population and the type of utilities seeking to serve it, and degree of urbanization of the area and its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services;

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(c) the cost of each utility to provide distribution and subtransmission facilities to the disputed area presently and in the future; and

(d) customer preference if all other factors are substantially equal.

(3) The Commission may require additional relevant information from the parties of the dispute if so warranted.

Specific Authority: 366.05(1), F.S.

Law Implemented: 366.04(2), 366.04(4), 366.05(7), F.S.

History: New.

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Rule 25-6.0442 Customer participation.

(1) Any customer located within the geographic area in question shall have an opportunity to present oral or written communications in commission proceedings to approve territorial agreements or resolve territorial disputes. If the commission proposes to consider such material, then all parties shall be given a reasonable opportunity to cross-examine or challenge or rebut it.

(2) Any substantially affected customer shall have the right to intervene in such proceedings.

(3) In any Commission proceeding to approve a territorial agreement or resolve a territorial dispute, the Commission shall give notice of the proceeding in the manner provided by Rule 25-22.0405, F.A.C.

Specific Authority: 366.05(1), F.S.

Law Implemented: 366.04(20), 366.04(4), 366.05(7), F.S.

History: New.

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Rules 25-6.0439
25-6.0440
25-6.0441
25-6.0442
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SUMMARY OF RULE

Proposed Rule 25-6.0439 provides definitions of "territorial agreement" and "territorial dispute" for electric utilities. A territorial agreement is a written agreement between two or more electric utilities which identifies the geographic areas to be served by each electric utility, the terms and conditions pertaining to implementation of the agreement, and any other terms and conditions pertinent to the agreement. Territorial dispute is defined as a disagreement as to which utility has the right and the obligation to serve a particular geographic area.

Proposed Rule 25-6.0440 describes the information which utilities must submit to the Commission in order to get the Commission's approval for an agreement. The agreement must clearly identify the geographic area to be served by each utility. The submission must include: (a) a map and written description of the area; (b) the terms and conditions pertaining to implementation of the agreement, and any other terms and conditions pertaining to the agreement; (c) the number and class of customers to be transferred; (d) assurance that affected customers have been contacted and the difference in rates explained; and (e) information with respect to the degree of acceptance of affected customers. After the Commission approves

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an agreement, any changes to it must come before the Commission for approval.

Standards are stated which the Commission may consider, but is not limited to considering, in approving these agreements. These are: (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 decrease the reliability of the service to ratepayers; (c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

Territorial disputes are described in proposed Rule 25-6.0441. A dispute proceeding, as set forth in the proposed rule, may be initiated by a petition from a utility or by the Commission on its own motion. Each utility must file certain information with the Commission, including a map and a written description of the area along with the conditions that caused the dispute. Each utility must also provide a description of the existing and planned load to be served in the area of dispute, and a description of the type, additional cost, and reliability of the facilities and a description of other services to be provided within the disputed area.

In resolving the disputes, the rule allows the Commission to consider, but not be limited to, consideration of: (a) the capability of each utility to provide reliable electric service within the disputed area with its existing facilities and the

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extent to which additional facilities are needed; (b) the nature of the disputed area including population, the degree of urbanization, and the present and reasonably foreseeable future requirements of the area for other utility services; (c) the cost of each utility to provide distribution and subtransmission facilities to the disputed area presently and in the future; and (d) customer preference, if all other factors are substantially equal.

Customer participation is set forth in proposed Rule 25-6.0442. It basically tracks the new language in Chapter 89-292, Laws of Florida. However, it clarifies that the participation of customers in proceedings is those "located within the geographic area in question." The rule provides that any customer located within the geographic area in question shall have an opportunity to present oral or written communication in Commission proceedings related to agreements or disputes. If the Commission proposes to consider such material, all parties will be given a reasonable opportunity to cross-examine or challenge or rebut it. Any substantially affected customer has the right to intervene in the proceedings.

In any Commission proceedings to approve a territorial agreement or resolve a territorial dispute, the Commission shall give notice of the proceeding in the manner provided by Rule 25-22.0405, Florida Administrative Code.

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SUMMARY OF HEARINGS ON THE RULE

At the August 15, 1989, Agenda Conference, the Commission voted to propose the rules. At that public forum, there was much discussion on Rule 25-6.0441(2)(d) regarding customer preference. The rule now states that when the Commission is resolving territorial disputes, it may consider "customer preference if all other factors are substantially equal." There was debate as to whether it should read "approximately equal" or "equal." At that point, the Commission voted to use the term "equal" alone.

The rulemaking hearing was held before the full Commission October 30, 1989. Participants included the Florida Rural Electrification Cooperative Association, Gulf Power Company, the City of Tallahassee, IMC Fertilizer, the Florida Municipal Electric Association, Florida Power and Light Company, and Tampa Electric Company. Generally, the issues could be categorized as five areas:

- whether the Commission should be mandated to consider certain factors in approving territorial agreements and resolving territorial disputes or the factors should remain discretionary;
- whether the language about territorial disputes should be limited to disputes over "geographic areas" or should make reference to disputes over facilities and customers;
- whether "customer preference" is a factor for consideration, and, if so, how should it be applied;
- whether customer "polling" is appropriate before submitting new territorial agreements; and
- what type of customer participation is envisioned by the 1989 legislative changes.

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Other issues were addressed in this rulemaking. There was much discussion at the hearing on the "no detriment" test in the New Smyrna case. The Florida Municipal Electric Association urged that such a test be included in the rules. The ensuing discussion showed there is some ambiguity and confusion regarding such a test. In Utilities Commission of New Smyrna Beach v. Florida Public Service Commission, 469 So.2d 731 (Fla. 1985), the FPSC had disapproved a proposed territorial agreement based on a "substantial benefit" test. The Court held that such a test ran counter to the "principle favoring settlement of utilities' territorial disputes."

Post-hearing comments were received by some of the participants. Again, they focused on the issues described above.

Final Commission action was taken at the public agenda January 30, 1990. There was discussion regarding the issue of mandatory criteria versus discretionary criteria for the Commission to consider in resolving territorial disputes and approving territorial agreements. The Commission voted to make such criteria discretionary in view of the authorizing statute applying the discretionary language. The Commission also voted to add "substantially" before the term "equal" in Rule 25-6.0441(2)(d) because it is difficult to envision a situation where all other factors are exactly equal.

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FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

These proposed rules are intended to provide guidance to electric utilities regarding territorial agreements and disputes and customer participation in proceedings. They are also intended to implement 1989 legislation regarding territorial agreements and disputes for electric utilities.

The Commission has for many years been active in approving territorial agreements and resolving territorial disputes. Primarily, these rules are intended to codify existing practice as well as to reflect new statutes. They provide guidance as to the type of information the Commission needs to receive from the utilities in order for the Commission to approve agreements and resolve disputes. The proposed rules also address the factors to be customarily applied in the approval of agreements and in resolving disputes.

Customer participation is also covered by these proposed rules.