

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory)	Docket No. 900169-EI
Statement with respect to Florida Power)	
& Light Company's obligation to serve)	Order No.: 22917
E.I. Du Pont De Nemours & Company's)	
Maxville mine sites.)	Issued: 5-9-90
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The following Commissioners participated in the disposition of this matter:

MICHAEL WILSON, CHAIRMAN
 BETTY EASLEY
 GERALD L. GUNTER

ORDER DISMISSING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

On March 5, 1990, Florida Power and Light (FPL) filed this Petition for Declaratory Statement in which it asked the Commission to determine its obligation to serve E.I. Du Pont De Nemours & Company's (Du Pont) Maxville mine site. In its petition, FPL stated that it wished to serve the Maxville mine site, and was seeking a declaratory statement from the Commission ". . . upon information and belief that Clay Electric Cooperative will file a territorial dispute in the event FPL incurs the expense of extending its facilities and accepts the application for service described below . . ." (FPL's Petition at pps. 1-2).

On March 20, 1990, Clay Electric Cooperative (Clay Electric) filed a Response and a Motion to Dismiss FPL's Petition for Declaratory Statement. Clay Electric claims a substantial interest in the determination of who should serve the Maxville site, and states in its Motion to Dismiss that; "[i]t was not the intent of the Commission in adopting the declaratory statement rule to allow matters involving substantial interests of opposing parties to be decided by the expediency of a declaratory statement proceeding which does not provide for a hearing under section 120.57, Florida Statutes." (Motion to Dismiss at p.2).

It is clear from the pleadings filed in this case that a dispute exists regarding which utility should serve the Maxville mine site. We agree with Clay Electric, that this declaratory

DOCUMENT NUMBER-DATE

04019 MAY -9 1990

-PSC-RECORDS/REPORTING

ORDER NO.: 22917
DOCKET NO.: 900169-EI
PAGE 2

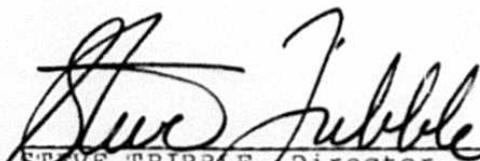
statement proceeding is not the proper forum within which to resolve that dispute. In Order No. 17637, we dismissed another Petition for Declaratory Statement filed by FPL in a territorial dispute with Clay Electric. There we said, that, "[t]o resolve this dispute by issuing a declaratory statement, without a hearing, would deny Clay Electric its right to due process. The Florida Supreme Court has already ruled that it is improper to circumvent a territorial dispute by means of a declaratory statement". Lee County Electric Cooperative v. Marks, 501 So.2d 585, (Fla. 1987). Our views on this question have not changed, particularly in view of the fact that Clay Electric has filed a Petition to Resolve a Territorial Dispute in this case. See In Re: Territorial Dispute Between Clay Electric Cooperative Inc. and Florida Power and Light Company in Clay County, Florida., Docket No. 900284-EU. The issue of who is to serve Du Pont's Maxville mine site will be decided in that adversarial proceeding. Du Pont's Motion to Intervene in the declaratory statement proceeding, is, therefore moot; but Du Pont can seek to participate in the territorial dispute pursuant to our new rule 25-6.0442, Florida Administrative Code.

For the reasons stated above, it is, therefore,

ORDERED by the Florida Public Service Commission that the Motion to Dismiss filed by Clay Electric Cooperative, Inc., is granted. It is further

ORDERED that this docket be closed upon issuance of this Order.

By Direction of the Florida Public Service Commission,
this 9th day of MAY, 1990.


STEVE TRIBBLE, Director
Division of Records and Reporting

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ORDER NO.: 22917
DOCKET NO.: 900169-EI
PAGE 3

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 Records and Reporting 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 or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.