

FLORIDA PUBLIC SERVICE COMMISSION

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

MEMORANDUM

November 19, 1990

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF APPEALS (MILLER) *CM DES*
DIVISION OF ELECTRIC AND GAS (COLSON) *KE RY PET*

RE : DOCKET NO.: 900825-EI- PETITION BY FLORIDA POWER AND
LIGHT COMPANY FOR DECLARATORY STATEMENT WITH RESPECT TO
ITS OBLIGATION TO PROVIDE ELECTRIC SERVICE TO H.R.
DRIGGERS IN COLUMBIA COUNTY

AGENDA : 12/4/90 - CONTROVERSIAL AGENDA - PARTIES MAY NOT
PARTICIPATE

PANEL : FULL COMMISSION

CRITICAL DATES: NONE

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission issue a declaratory statement in response to Florida Power and Light Company's (FPL) petition?

RECOMMENDATION: No. A declaratory statement is not the proper forum for resolving a territorial dispute.

STAFF ANALYSIS: The purpose of a declaratory statement is to apply the law, rules, and order to the facts presented and thus answer the question in a petition for a declaratory statement. Here, the facts provided are insufficient for our determination. The fact that there is no existing territorial agreement between FPL and Suwannee Valley Electric Cooperative (SVEC) presents the major obstacle. This is not the forum for resolving a territorial dispute. (See the Proposed Order in Attachment D Dismissing the Petition).

While it is true that there is case law guidance about avoiding uneconomic duplication, it is also true that the statutes and courts look to territorial agreements as the method by which to

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do so. Here, FPL has made no mention of territorial agreements. All we know is that SVEC has distribution lines adjacent to and about the applicant's property. FPL has facilities in the immediate area, but service would require an extension of FPL's distribution facilities approximately 9,000 feet. No electric service is presently being provided to the property. The applicant has demanded that FPL provide service. The location is in Columbia County. FPL does not have a territorial agreement with SVEC.

As we have stated in prior orders dismissing Petitions for Declaratory Statements, a declaratory statement proceeding is not the proper forum within which to resolve territorial disputes. It has the effect of denying due process to the other party of a dispute. 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).

SVEC has filed a response to FPL's petition, in which SVEC urges a Commission order dismissing the petition. SVEC further states that on November 8 it filed a petition for the Commission to resolve the dispute.

ISSUE 2: Should the Commission, upon its own motion, set a date for a hearing to resolve the territorial dispute?

RECOMMENDATION: Yes. The Commission has the authority, on its own motion, to identify and resolve the identification of a territorial dispute.

STAFF ANALYSIS: There is no territorial agreement between FPL and SVEC in Columbia County. If these companies do not themselves work out an agreement to bring before the Commission for approval or modification, the Commission should bring the utilities in for a territorial dispute hearing.

The Commission should declare a dispute and retain this docket to resolve it. A procedural order could be issued setting the matter for hearing, but encouraging the utilities to reach an agreement.

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ISSUE 3: Should the Commission set a deadline for the participants' reaching of an agreement, before the Commission initiates a territorial dispute hearing?

RECOMMENDATION: Yes. The Commission should allow the companies no more than six months to bring a proposed agreement before the Commission. A progress report should be required within 60 days.

STAFF ANALYSIS: The Commission should give the participants no more than six months to come forward with a proposed agreement. A procedural order should establish a future hearing date, should the parties not be able to propose an agreement.

ISSUE 4: While this territorial dispute is being resolved, who should serve the customer requesting service?

RECOMMENDATION: SVEC is closest to the customer and should serve the customer until the matter is resolved through a territorial agreement.

STAFF ANALYSIS: To minimize uneconomic duplication, SVEC should serve this customer until a formal agreement is approved.

According to the petition, FPL received a written request to provide electric service to Mr. H.R. Driggers' property located in Columbia County, Florida and Section 5 and 6, Township 3 south, Range 16 east. Also, according to the petition and staff's investigation, SVEC has distribution facilities on and near Mr. Driggers' property. These facilities are shown on the map attached in Attachment E. According to the map, the previous owners received electric service from SVEC. FPL's nearest facilities that can logically provide the requested service is 9,000 feet away. The cost to provide electric service, the location of the parties' facilities, and the traditional service area would weigh heavily in favor of SVEC in settling a territorial dispute. Therefore, staff recommends that SVEC provide electric service to Mr. Driggers' property until the matter is resolved through a territorial dispute.

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ISSUE 5: Should this docket remain open?

RECOMMENDATION: Yes, this docket should remain open until a final territorial agreement is in place.

STAFF ANALYSIS: As part of the FPSC's "active supervision," in the area of territorial agreements, it is appropriate for the FPSC to require the utilities to come before it in a hearing to resolve the dispute.

Pursuant to section 366.04(2)(e), Florida Statutes, the FPSC has the authority to resolve, upon petition of a utility or on its own motion, any territorial dispute. In resolving territorial disputes, the Commission may consider many factors, including: the ability of utilities to expand services and the nature of the area involved, including population, degree of urbanization, etc. Our FPSC rules implementing the statute define "territorial dispute" in Rule 25-06.0439, F.A.C., as "a disagreement as to which utility has the right and the obligation to serve a particular geographical area."

Rule 25-6.0441, F.A.C., states that the Commission may identify the existence of a dispute and order the affected parties to participate in a proceeding to resolve it. The rule sets forth requirements for the utilities to file a map and other information.

ISSUE 6: Should SVEC's Request for Oral Argument be granted?

RECOMMENDATION: No. There is no need for the granting of oral argument if the Commission dismisses the petition.

STAFF ANALYSIS: Petitions for Declaratory Statement do not normally entail a hearing or oral argument. If the Commission dismisses the petition and identifies a territorial dispute, there will be plenty of opportunity for SVEC to present its views in that proceeding.

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Attachments
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of Florida Power)
 & Light Company for a)
 Declaratory Statement)

Docket No. 900825-ET

PETITION FOR DECLARATORY STATEMENT

COMES NOW Florida Power & Light Company (hereinafter FPL), by and through its undersigned attorneys, pursuant to Sections 25-22.020 and 25-22.021, Florida Administrative Code, and requests that the Florida Public Service Commission (hereinafter Commission) issue a Declaratory Statement with respect to FPL's obligation to serve H. R. Driggers pursuant to Section 366.03, Florida Statutes. In support thereof, the Petitioner states:

1. The name of Petitioner is Florida Power & Light Company. The address of Petitioner is P. O.Box 029100, Miami, Florida 33102-9100.

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2. Petitioner requests a Declaratory Statement with respect to its obligation to serve an applicant for service pursuant to Section 366.03, F.S. Petitioner is affected by, and seeks a Declaratory Statement from the Commission regarding FPL's obligation to serve, because of the Commission's authority to relieve FPL of its obligation to serve under certain circumstances, one of which is the avoidance of uneconomic duplication of distribution facilities.
3. On June 22, 1990, FPL received a written request for service from Mr. H. R. Driggers regarding his property located in Columbia County, Florida at Sections 5 and 6, Township 3 South, Range 16 East. An extension of service by FPL to serve Mr. Driggers' property may result in a duplication of Suwannee Valley Electric Cooperative, Inc.'s (SVEC) distribution lines.
4. FPL does not have a territorial agreement with SVEC.
5. The following particular set of circumstances apply to the instant matter:

- a. SVEC has distribution lines adjacent to and about the applicant's property.
 - b. FPL has distribution facilities in the immediate area from which service could be provided. However, such service would require an extension of FPL's distribution facilities approximately 9,000 feet.
 - c. No electric service is presently being provided to the property in question.
 - d. The applicant's facilities will consist of a residence and office, with plans for an additional residence and a construction firm.
 - e. The applicant has specifically demanded that FPL provide service.
6. FPL stands ready, willing and able to serve the applicant in the event the Commission finds that FPL's obligation to serve should not be limited in this instance.

WHEREFORE, FPL respectfully requests that the Commission issue a Declaratory Statement based on the foregoing factual information and declare that FPL should comply with its obligation to serve Mr. Driggers.

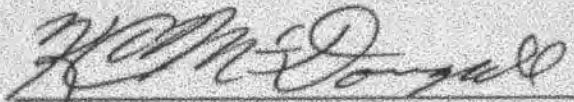
Date: October 12, 1990

Respectfully submitted,



G. Christian Meffert, Esq.
Wilton Miller, Esq.
Bryant, Miller & Olive
201 South Monroe Street
Suite 500
Tallahassee, Florida 32301
(904) 222-8611
Bar No. 0115558

Attorneys for Florida Power &
Light Company



K. Crandal McDougall, Esq.
Attorney
Florida Power & Light Company
P. O. Box 029100
Miami, Florida 33102-9100
(305) 552-3921
Bar No. 0763284

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Declaratory Statement has been furnished to Suwannee Valley Electric Cooperative, Inc., Post Office Box 160, Live Oak, Florida 32060 and James W. Prevatt, Jr., Esq., Post Office Drawer 8, Live Oak, Florida 32060 by U.S. Mail this 12th day of October, 1990.



J. CHRISTIAN MEFFERT

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General Counsel's Office
Florida Public Service Commission

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition of FLORIDA)
POWER & LIGHT CORPORATION)
for a Declaratory Statement.)

DOCKET NO. 900825-EI

RESPONSE TO PETITION FOR DECLARATORY STATEMENT

COMES NOW, SUWANNEE VALLEY ELECTRIC COOPERATIVE, INC., and moves to dismiss FLORIDA POWER & LIGHT CORPORATION's Petition for Declaratory Statement and would show the Florida Public Service Commission as follows:

1. The factual circumstances described in the Petition which form the basis for the request for declaratory statement are actually the description of factual circumstances forming the basis of a territorial dispute between FLORIDA POWER & LIGHT CORPORATION and SUWANNEE VALLEY ELECTRIC COOPERATIVE, INC.

2. SUWANNEE VALLEY ELECTRIC COOPERATIVE, INC. has this date filed a Petition to Resolve territorial Dispute based on the foregoing facts.

3. FLORIDA POWER & LIGHT CORPORATION should not be allowed to try to resolve a territorial dispute by invoking the jurisdiction of the Commission to obtain a declaratory statement when more appropriate avenues are dictated by Florida Statutes.

WHEREFORE, SUWANNEE VALLEY ELECTRIC COOPERATIVE, INC. prays for an order of the Commission dismissing the Petition for Declaratory Statement filed herein.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by United States Mail to J. CHRISTIAN MEPPERT, Esquire, 201 South Monroe Street, Suite 500.

DOCUMENT NUMBER-DATE

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Tallahassee, Florida 32301 and K. CRANDAL MCDUGALL, Esquire,
Post Office Box 029100, Miami, Florida 33102-9100 on this
November 8, 1990.

AIRTH, SELLERS, LEWIS & PREVATT



C. DEAN LEWIS

Fla. Bar No. 047076

JAMES W. PREVATT, JR.

Fla. Bar No. 352012

Post Office Drawer 8

Live Oak, Florida 32060

(904) 362-1411

Attorneys for SUWANNEE VALLEY
ELECTRIC COOPERATIVE, INC.

svfpldis.mot

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General Counsel's Office
Florida Public Service Commission

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition of FLORIDA)
POWER & LIGHT CORPORATION)
for a Declaratory Statement.)
_____)

DOCKET NO. 900825-11

REQUEST FOR ORAL ARGUMENT

Comes now SUWANNEE VALLEY ELECTRIC COOPERATIVE, INC., and requests oral argument of the Response to Petition for Declaratory Statement (requesting dismissal of the Petition) and would show the Commission that oral argument would help the Commission understand the broad nature of the requested statement sought by Florida Power & Light Corporation. The declaratory statement would encompass interpretation of a statutory obligation when in fact the Commissioner's jurisdiction should be limited to determining a factual situation resulting in a territorial dispute.

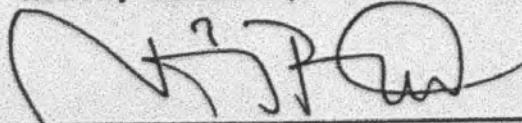
WHEREFORE, SUWANNEE VALLEY ELECTRIC COOPERATIVE, INC., moves for an oral argument of the Response to Petition for Declaratory Statement.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by United States Mail to J. CHRISTIAN MEFFERT, Esquire, 201 South Monroe Street, Suite 500,

Post Office Box 029100, Miami, Florida 33102-9100 on this
November 8, 1990.

AIRTH, SELLERS, LEWIS & PREVATT



C. DEAN LEWIS

Fla. Bar No. 047076

JAMES W. PREVATT, JR.

Fla. Bar No. 352012

Post Office Drawer 8

Live Oak, Florida 32060

(904) 362-1411

Attorneys for SUWANNEE VALLEY
ELECTRIC COOPERATIVE, INC.

svfpldis.mot

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power)	DOCKRT NO. 900825-EI
and Light Company for a Declaratory)	
Statement with respect to its)	ORDER NO.
obligation to provide electric)	
service to H. R. Driggers in)	ISSUED:
Columbia County.)	
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD GUNTER
 FRANK S. MESSERSMITH

ORDER DISMISSING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

On October 12, 1990, Florida Power and Light Company (FPL) filed this Petition for Declaratory Statement in which it asked the Commission to determine its obligation to serve H. R. Driggers in Columbia County. In its petition, it states that both FPL and Suwannee Valley Electric Cooperative (SVEC) serve areas in Columbia County and that there is no territorial agreement.

It is clear from the filings in this case that a dispute exists regarding which utility should serve H. R. Driggers. This declaratory statement proceeding is not the proper forum within which to resolve that dispute. We have previously dismissed other similar petitions for declaratory statements. In Order No. 17637, we dismissed a Petition for Declaratory Statement filed by FPL in a territorial dispute with Clay Electric Cooperative. There, we said, that "[t]o resolve this dispute by issuing a declaratory statement, without a hearing," would deny the other utility involved a 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).

In addition, SVEC has now filed a Petition to Resolve the territorial dispute. The issue of who is to serve H. R. Driggers in Columbia County will be resolved in that adversarial proceeding.

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It is, therefore,

ORDERED by the Florida Public Service Commission, that Florida Power and Light Company's Petition for a Declaratory Statement is hereby dismissed.

By ORDER of the Florida Public Service Commission, this _____ day of _____, _____.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(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

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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.

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