

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition for Approval) DOCKET NO. 870816-EU
of Territorial Agreement between)
Florida Power & Light Company and) ORDER NO. 19140
Peace River Electric Cooperative, Inc.)
ISSUED: 4-13-88

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
JOHN T. HERNDON

ORDER DISMISSING PETITION AND FINALIZING ORDER NO. 18332

BY THE COMMISSION:

On October 22, 1987, this Commission issued Order No. 18332 proposing to approve a territorial agreement between Florida Power & Light Company (FPL) and Peace River Electric Cooperative, Inc. (Peace River). That agreement delineates the utilities' respective service territories in Manatee, Sarasota, DeSoto, and Hardee Counties.

On November 10, 1987, Schroeder-Manatee, Inc. (Schroeder-Manatee or petitioner) objected to the agreement and requested a formal hearing under Subsection 120.57(1), Florida Statutes (1987). On February 2, 1988, the Commission voted to dismiss the petition but allowed petitioner fifteen days in which to file an amended petition. Prior to the Commission's formal order (Order No. 18868) memorializing the dismissal, Schroeder-Manatee filed an amended petition. Peace River filed a response to the amended petition urging that the petition be dismissed on the ground Schroeder-Manatee lacked standing to request a Section 120.57(1) hearing.

Having reviewed the amended petition, we find again that petitioner has failed to demonstrate that its substantial interests will be affected by the proposed agency action. Although the amended petition contains a more complete set of factual allegations, and alleges an injury-in-fact that may occur if the agreement is approved, such injury still lacks the requisite immediacy and reality that must be shown to demonstrate standing. More specifically, in order for an injury to occur, Schroeder-Manatee must first build a residential/resort community, and Peace River must thereafter be unable to adequately and reliably provide electric service to that community. Since the agency action will not cause the injury, but is wholly dependent upon these two intervening factors, the alleged injury is speculative and indirect and cannot confer standing upon Schroeder-Manatee.

Even though Schroeder-Manatee has not pled an "injury-in-fact" caused by the agency action, it should be noted that it has also failed to pass muster on the second part of the two-part standing test first established in Agrico-Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2nd DCA 1981). Under the second part, petitioner must show that the alleged injury is of a type to be protected in a territorial agreement proceeding. Put another way, petitioner's injury must be relevant to the subject matter and issues of a Section 366.04(2)(d) hearing.

That section authorizes the Commission to approve territorial agreements between rural electric cooperatives, municipally-owned electric utilities and investor-owned

DOCUMENT NUMBER-DATE

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FPC-RECORDS/REPORTING

Exhibit B

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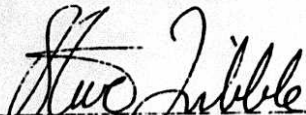
electric utilities. In determining the appropriateness of a territorial agreement, the Supreme Court has stated a customer "has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself." Storey v. Mayo, 217 So.2d 304, 307-308, (Fla. 1968). In Storey, a number of objecting customers were being transferred to a unregulated utility. The court held that these customers did not have a sufficient interest to object to a territorial agreement simply because they preferred one utility over another because of rates or service. If such customers later experienced a rate or service problem, the court held their remedy lay in the courts or a municipal council. This principle was recently reaffirmed by the same court in Lee County Electric Cooperative v. Marks, 501 So.2d 585 (Fla. 1987), where it held that "larger policies are at stake than one customer's self-interest, and those policies must be enforced and safeguarded by the Florida Public Service Commission." In short, the court has firmly established the general rule that a territorial agreement is not one in which the personal preference of a customer is an issue. Therefore, the alleged injury, even if real and direct, is not within the zone of interest of the law.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the amended petition on the proposed agency action filed by Schroeder-Manatee, Inc. is hereby dismissed with prejudice. It is further

ORDERED that Order No. 18332 is hereby determined to be final agency action of the Florida Public Service Commission and Docket No. 870816-EU is closed.

By ORDER of the Florida Public Service Commission,
this 13th day of APRIL, 1988.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MRC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), as amended by Chapter 87-345, Section 6, Laws of Florida (1987), 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.

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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.

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