

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----------------------|
| In Re: Petition of Clay Electric Cooperative, Inc., Central Florida Electric Cooperative, Inc., and the City of Williston, for a Declaratory Statement Regarding their Obligations to Serve a Proposed School Site in the City Limits of Williston. |) | DOCKET NO. 910474-EU |
| |) | |
| |) | ORDER NO. 24676 |
| |) | |
| |) | ISSUED: 6/17/91 |
| |) | |
| |) | |

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, CHAIRMAN
 J. TERRY DEASON
 BETTY EASLEY
 GERALD L. GUNTER
 MICHAEL WILSON

ORDER DENYING DECLARATORY STATEMENT

BY THE COMMISSION:

CASE BACKGROUND

Clay Electric Cooperative (Clay), Central Florida Electric Cooperative (CFEC), and the City of Williston (Williston) filed a petition with the Commission on April 2, 1991, requesting that the Commission issue a declaratory statement with respect to the obligation of the petitioners to provide electric service to a proposed school inside the city limits of Williston. Williston has a Territorial Agreement with Clay which was approved by the Commission on April 4, 1988, in Docket No. 880121-EU, Order No. 19223. CFEC does not have a territorial agreement in this geographic area with either Clay or Williston. Clay and CFEC are organized as rural electric cooperatives under the provisions of Chapter 425, Florida Statutes. The City of Williston operates a municipal utility within portions of the municipality, and apparently has granted a franchise to CFEC to provide electric service in other portions of the municipality.

According to the petition, the School Board of Levy County, Florida has requested electric service from Clay for the new school. The site is located within the city limits of Williston and within Williston's territory under the terms of the territorial agreement mentioned above. Williston has advised Clay that it has no objection to Clay providing electric service to the school. Although the petition does not specifically state that CFEC wishes to provide electric service to the school, that fact can be reasonably inferred from CFEC's participation as a party in this declaratory statement proceeding.

DOCUMENT NUMBER-DATE

06051 JUN 17 1991

PSC-RECORDS/REPORTING

ORDER NO. 24676
DOCKET NO. 910474-EU
PAGE 2

Williston's distribution facilities are within 100 feet of the site. CFEC's facilities are approximately 1,100, and Clay's facilities are approximately 1,200 feet from the site. No facts were presented in the petition regarding the relative costs to the parties of providing service to the area.

DISCUSSION

We deny this Petition for Declaratory Statement, because the petition raises no real question or doubt with respect to the present obligation of the petitioners to provide electric service under the terms of the territorial agreement between the City of Williston and Clay Electric Cooperative. Furthermore, a declaratory statement proceeding is not the appropriate forum to modify a territorial agreement or settle a territorial dispute.

Commission Rule 25-22.021, Florida Administrative Code, describes the purpose and use of a declaratory statement. That rule states:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of any statutory provision, rule or order as it does, or may, apply to petitioner in his or her particular circumstances only. The potential impact upon petitioner's interests must be alleged in order for petitioner to show the existence of a controversy, question or doubt.

The territorial agreement between Clay and Williston was approved by Commission order in 1988. When that approval was given, the agreement "merged into and became part of" the final order of the Commission. Florida Public Service Commission v. Fuller, 551 So.2d 1210 (Fla. 1989). As such, an interpretation of the terms of the agreement would be an appropriate subject for a declaratory statement, if there were some legitimate controversy or doubt concerning the application of the agreement to the circumstances described in the petition. Here there is no doubt, and the petitioners in fact admit, that the new school is in Williston's service territory as delineated in the territorial agreement. There is no real question for the Commission to answer, and we will not issue a declaratory statement under those circumstances.

By asking the Commission to decide who is entitled to serve the new Levy County school, the petitioners are really asking that we alter an existing territorial agreement or settle a territorial dispute by means of a declaratory statement. A declaratory statement, however, is not the proper method to resolve that kind

ORDER NO. 24676
DOCKET NO. 910474-EU
PAGE 3

of territorial issue. Other procedural means are available for Commission action of this nature. A declaratory statement should not be used as a means of awarding territory between utilities. Lee County Electric Cooperative v. Marks, 501 So.2d 585 (Fla. 1987).

Section 366.04(2)(d) and Section 366.04(2)(e), Florida Statutes, grant us the express authority to approve territorial agreements and resolve territorial disputes between electric utilities in the state. Rules 25-6.0439, 25-6.0440, 25-6.0441, and 25-6.0442, Florida Administrative Code, implement the procedures by which that authority will be exercised. To ensure procedural due process in its territorial decisions, and to see that all relevant factors are taken into consideration, the resolution of territorial issues between utilities should be made in a proceeding where substantially affected persons will have an opportunity to be heard and all relevant factual matters may be fully presented to the Commission and decided. Proposed agency action, with an opportunity for affected parties to request a hearing, or a dispute proceeding under the provisions of section 120.57, Florida Statutes, satisfy those established due process requirements. A declaratory statement does not.

CONCLUSION

It is clear from the territorial agreement, the map accompanying the petition, and the petition itself, that the new school is in Williston's service territory as approved by the Commission. Therefore, under the territorial agreement as it is written, the city of Williston has the present obligation to serve the school. If Williston and Clay wish to change their territorial agreement and alter the obligations thereunder, they are required by Rule 25-6.0440, Florida Administrative Code, to submit "any modification, changes, or corrections" in writing to the Commission for prior approval. No modification of the agreement will be valid under Florida law without that approval. Florida Public Service Commission v. Fuller, supra.

If CFEC does in fact object to the modification of the agreement, it may participate in the proceeding to amend the agreement, or it may initiate a territorial dispute under the provisions of Rule 25-6.0441, Florida Administrative Code. In either proceeding, the Levy County School Board may present its position on the issue under the terms of Rule 25-6.0442, Florida Administrative Code, providing for customer participation in territorial agreements and disputes.

The territorial matters at issue here are better raised in the proceedings specifically designed for their resolution. Therefore,

ORDER NO. 24676
DOCKET NO. 910474-EU
PAGE 4


we decline to issue the Declaratory Statement requested by the petitioners.

Now therefore, it is

ORDERED by the Florida Public Service Commission that for the reasons stated in the body of this order, the Petition for a Declaratory Statement is denied. It is further

ORDERED that this docket should be closed.

By ORDER of the Florida Public Service Commission, this 17th day of JUNE, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MCB

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

485

ORDER NO. 24676
DOCKET NO. 910474-EU
PAGE 5

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.