

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL  
FILE COPY

IN RE: Territorial Dispute between )  
OKEFENOKE RURAL ELECTRIC MEMBERSHIP )  
CORPORATION and THE JACKSONVILLE )  
ELECTRIC AUTHORITY OF THE CITY OF )  
JACKSONVILLE, IN DUVAL COUNTY )

DOCKET NO. 911141-EU  
Filed: April 10, 1992

OREMC'S REQUEST FOR OFFICIAL RECOGNITION

OKEFENOKE RURAL ELECTRIC MEMBERSHIP CORPORATION (hereinafter "OREMC" of "Okefenoke"), by and through its undersigned counsel and in accordance with Section 120.61, Florida Statutes, hereby requests that the Florida Public Service Commission ("FPSC") officially recognize the attached Order in City of Tallahassee v. Talquin Electric Cooperative, Inc., Leon County Circuit Court Case No. 70-895 (Willis, J.), and says:

1. The attached Order was entered by Judge Willis on August 4, 1972 in a Leon County Circuit Court Case styled City of Tallahassee v. Talquin Electric Cooperative, Inc. That case was a territorial dispute between the City of Tallahassee (the "City") and Talquin Electric Cooperative ("Talquin") which was instituted and decided before the Legislature vested jurisdiction to decide territorial disputes with the FPSC. In the Order, which is recorded at Leon County OR Book 538, Page 284, the Court found that the City was estopped to assert its legislatively granted exclusive right to serve within the corporate boundaries of the City and a surrounding 3 mile wide zone, and that the City had waived its right to serve there.

DOCUMENT NUMBER-DATE

03618 APR 10 1992

FPSC-RECORDS/REPORTING

2. According to Section 120.57(1)(b)6, Florida Statutes, the record in a case conducted pursuant to Section 120.57(1)(b), Florida Statutes, shall include a statement of matters officially recognized. This proceeding will be conducted pursuant to Section 120.57(1)(b), Florida Statutes; therefore, the record of this proceeding can contain matters officially recognized.

3. In an administrative proceeding, official notice is the functional equivalent of judicial notice. Florida Administrative Practice §4.30 (The Florida Bar 3d Ed. 1990). Pursuant to Sections 90.202(5) and (6), Florida Statutes, a court may take judicial notice of


(5) Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States.

(6) Records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States.

The attached Order qualifies for judicial notice or official recognition under either provision of the Statute. Since the attached Order is not reported it is appropriate for OREMC to request that the Commission officially recognize that Order. The FPSC should officially recognize this Order as legal authority which may aid in its determination of the issues in this case.

WHEREFORE, OREMC respectfully requests that the Commission Officially Recognize the attached Leon County Court Order.

DATED this 10<sup>th</sup> day of April, 1992.

  
\_\_\_\_\_  
JAMES HAROLD THOMPSON  
Florida Bar No. 0121325  
J. JEFFRY WAHLEN of  
Florida Bar No. 0884316  
Ausley, McMullen, McGehee,  
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227 South Calhoun Street  
Post Office Box 391  
Tallahassee, Florida 32302  
904/224-9115

Attorneys for OREMC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of OREMC's Request for Official Recognition have been furnished by U.S. Mail or Hand Delivery\* this 10<sup>th</sup> day of April, 1992 to the following:

Martha Carter Brown\*  
Florida Public Service Commission  
Division of Legal Services  
101 East Gaines Street  
Tallahassee, FL 32301

Bruce Page  
Assistant General Counsel  
Office of the General Counsel  
1300 City Hall  
Jacksonville, FL 32202

  
\_\_\_\_\_  
ATTORNEY

jjw\pld\oremc.ror

FILED Aug 4 1972

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA.

CASE NO. 70-855

CITY OF TALLAHASSEE, a municipal corporation created and existing under the laws of the State of Florida,

Plaintiff,

vs.

TALQUIN ELECTRIC COOPERATIVE, INC., a rural electric cooperative created and existing under the laws of the State of Florida,

Defendant.

ORDER

This cause, having come on for final hearing on the Amended Complaint of the City of Tallahassee and Counts I and II of the Counterclaim of Talquin Electric Cooperative, Inc. relating to customers located in areas annexed to the City on January 1, 1970 and January 1, 1971, and the Court having taken testimony, heard argument of counsel, and being otherwise advised in the premises, doth find as follows:

A. The following facts and circumstances appear not to be in material dispute:

1. The Plaintiff is a municipal corporation within Leon County, Florida, and the Defendant is a rural electric cooperative created pursuant to Chapter 425, Florida Statutes. The Plaintiff will hereafter be referred to as "City" and Defendant as "Talquin."

2. Under the Charter Act of the City (Chapter 8374, Acts of 1919), the City was, among other things, granted the power "to supply the inhabitants of said City with artificial lights, heat and power for domestic, business and other purposes" and to make charges therefor. (Sec. 111). It was also empowered to supply " . . . electricity . . . for domestic and other purposes to individuals and corporations outside of said City" and to charge therefor, but was required to "charge a higher rate to such consumers than is charged for a like class of consumers within

Page Two - ORDER

the corporate limits . . . " (Sec. 113).

3. When the 1919 Act became effective on December 11, 1919, and at all times since, the City has owned and operated an electric power distribution system by which it has supplied inhabitants of the City and some consumers outside the corporate limits with electric energy.

4. In 1927, Section 113 of the Charter was amended by Chapter 13439, Laws of Florida 1927<sup>1</sup> by inserting the following significant language:

" . . . and shall have exclusive power and authority for the transmission and sale of electric energy in a zone three (3) miles wide, adjacent to and extending around and outside the corporate limits of said City . . . "

5. Talquin was incorporated on or about July 26, 1940, pursuant to the Rural Electric Cooperative Act, which became effective in 1939 (Chapter 19138, Acts of 1939; Chapter 425, F.S.A.) and energized its lines on or about January 2, 1942 and began serving its members at that time, after commencing construction in 1940.

6. Under F.S. 425.04(4), cooperatives created under the Rural Electric Cooperative Act, including Talquin, were specifically authorized to:

"distribute, sell, supply and dispose of electric energy in rural areas to its members, governmental agencies and political subdivisions, and to other persons not in excess of ten per cent of the number of its members; provided, however, that no cooperative shall distribute or sell any electricity or electric energy to any person residing within any town, city or area which person is receiving adequate central station service or who at the time of commencing such service, or offer to serve, by a cooperative, is receiving adequate central station service from any utility agency . . . municipally owned . . . "

7. By the enactment of Chapter 24910, Laws of Florida, 1947<sup>2</sup>, Section 113 of the City's Charter as amended by Chapter 13439, Laws of Florida, 1927, was further amended to insert immediately after the language quoted in paragraph 4 above the following:

<sup>1</sup>Became effective May 16, 1927.

<sup>2</sup>Became effective May 22, 1947.

Page Three - ORDER

"as the same now exist or may be hereafter extended."

Also in Section 2 of the 1947 Act it was provided:

"The franchise heretofore granted to said City for the transmission and sale of electric energy in a zone three miles wide, adjacent to and extending around and outside the corporate limits of said City and as the same might be hereafter extended, by Chapter 13,439, Laws of Florida, Acts of 1927, is hereby ratified and confirmed."

8. Since on or about May, 1968, Talquin has been distributing and selling electric energy to the Florida Electric Cooperative Association, hereafter called the "Association", at its headquarters building at 2916 Apalachee Parkway, Tallahassee. This site was, until December 31, 1969, located within a zone three miles wide adjacent to and extending around and outside of the corporate limits of the City, as they existed when the 1919 and the 1927 Acts, above mentioned, became effective.

9. By Chapter 69-1636, Laws of Florida, 1969, the corporate limits of the City were extended, effective at 11:59 P.M., December 31, 1969, to include the area in which the headquarters building of the Association located at 2916 Apalachee Parkway is situated.

10. There is a contract between Talquin and the Association for the furnishing of electric energy by Talquin to the Association.

B. The Court finds that the issues made by the pleadings are:

1. A determination of what effect, if any, the enactment of Chapter 425 may have had upon the provisions of the City Charter relating to the exclusive rights of the City in the three mile zone around the City.

2. Whether or not Talquin acquired a franchise to operate in any of the contested areas by its charter.

3. Estoppel, laches, and abandonment of City to enforce rights.

4. Constitutionality of charter acts as applied to Talquin.

5. Damages, vel non.



Page Four - ORDER

7. Declaratory judgment on issues made by counterclaim.

C. The Court further finds:

1. That the City and Talquin are both statutory creatures of the Legislature, and it was not the legislative intent that there be competition between them.

2. That all of the statutes heretofore referred to and involved in this proceeding are constitutional, and no part of any of them is unconstitutional.

3. That as to the exclusive territorial franchise granted to the City, and more particularly that area outside of the City, it was at least contemplated that the City be ready, willing, and able to furnish service to applicants residing therein at a reasonable and at least non-excessive cost.

4. As between Talquin and the City, adequate central station service is defined as the City being ready, willing and able to provide service to applicants in the area on terms that were not substantially different from those being served in comparable areas.

5. That as to the Lakewood area (old Campbell Park area) and the area immediately around Lake Bradford, the City is estopped to assert its exclusive right, because the people in both areas sought service from the City and the City imposed conditions so burdensome as to make their service availability prohibitive, and Talquin then provided the service, and the City has acquiesced in that course of action to the institution of this proceeding.

6. The Florida Electric Cooperative Association headquarters building at 2916 Apalachee Parkway was served by Talquin at a time when central station service was available from the City, who stood ready, willing and able to provide such service.

7. Customers of Talquin located on Pottsdamer and Callen Streets within the present City limits were served by Talquin at a time when central station service was available from the City, who stood ready, willing and able to provide such service.

Page Four - ORDER

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Page Five - ORDER

D. It is therefore ORDERED AND ADJUDGED:

1. That the Florida Electric Cooperative Association Headquarters Building at 2916 Apalachee Parkway and Velda processing plant in the City Limits of Tallahassee, shall be released as electric customers by Talquin to the City in such a manner as to provide substantially uninterrupted and continuous service to such customers.

2. Customers of Talquin located on Pottsdamer and Callen Streets within the present City Limits shall be released as electric customers by Talquin to the City in such a manner as to provide substantially uninterrupted and continuous service to such customers.

3. Any property of Talquin located in said area mentioned in paragraphs 1 and 2 may be removed by Talquin and the City shall fully cooperate in and facilitate such removal. If any of such property shall be desired by the City for its purposes, it shall purchase same on terms agreeable to the parties, and it is contemplated that both parties shall seek to minimize the loss and inconvenience of each other in the transition provided herein.

4. Talquin shall continue to serve its customers in the Lakewood Subdivision, formerly known as the Campbell Park area, within the limits of the City until:

(a) The City shall have acquired from Talquin the property and property interests of Talquin in said area, either by direct purchase or by eminent domain proceedings; (1) and

(b) The City shall be ready, able and willing to provide substantially uninterrupted and continuous service to such customers.

(1) The Court is of the view that the City possesses the authority to acquire such interests by eminent domain. The customers of Talquin in this area may, by petition to intervene, assert such rights, if any, they may have to be acquired by the City in any such eminent domain proceedings.

Page Six - ORDER

5. The City shall recover no damages from Talquin on its Amended Complaint.

6. This is a final adjudication as to the City's Amended Complaint and only Counts I and II of Talquin's Counterclaim. *Each party shall bear such costs as it shall have incurred.* It is further ordered and adjudged that in the event Talquin and the City have not reached an amicable settlement of the issues involved in the remaining Counts of the Counterclaim of Talquin, the Court specifically reserves jurisdiction as to those remaining Counts and will proceed to resolve such issues thirty (30) days from this date.

8. It is further ordered that the Clerk of this Court pursuant to Rule 1.080 (h) of the Rules of Civil Procedure, forthwith mail a conformed copy hereof to each and every party entitled to receive a copy in accordance with such Rule.

DONE AND ORDERED in Chambers at Tallahassee, Florida, this 4th day of August, 1972.

*Ben C. Mills*  
CIRCUIT JUDGE

Copies have been furnished the following:

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Tallahassee, Florida

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John K. Folsom  
122 S. Calhoun Street  
Tallahassee, Florida

Page Seven - ORDER

I HEREBY CERTIFY that a true copy of the foregoing Order has been furnished by U. S. Mail to the parties named above this 4<sup>th</sup> day of August, 1972.

*Paul F. Hartfield*

Clerk of Circuit Court, In and for Leon County, Florida

By: *Shirley W. Jannear*  
*Dr.*



*Hand delivered to Mr. Rhodes.*