

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Territorial Dispute Between)
Okefenokee Rural Electric Membership)
Corporation and the Jacksonville)
Electric Authority of the City of)
Jacksonville, in Duval County.)

DOCKET NO. 911141-EU
Filed: May 15, 1992

ORIGINAL
FILE COPY

JEA'S REVISIONS TO DRAFT PREHEARING ORDER

The JACKSONVILLE ELECTRIC AUTHORITY ("JEA"), by and through its undersigned counsel, hereby submits the following revised positions and statements to the Draft Prehearing Order dated May 14, 1992. The positions of JEA set forth below should be substituted for positions previously set forth in JEA's Prehearing Statement dated April 10, 1992 and incorporated in the Final Prehearing Order:

VI. ISSUES AND POSITIONS

ISSUE 1: Does the Commission have the jurisdictional authority to grant exclusive territorial rights to a rural electric cooperative within the municipal corporate limits of Jacksonville in the absence of an approved territorial agreement between the JEA and the rural electric cooperative?

JEA: Under Section 366.04(2), Florida Statutes, there are only two procedures by which the Commission may grant exclusive territorial rights to a rural electric cooperative. The first is through the approval of a territorial agreement submitted by a rural electric cooperative and another electric utility. The second is through resolution of a territorial dispute involving the specific territory. In this case, a territorial dispute exists between the parties only as to the provision of service to the

DOCUMENT NUMBER-DATE

04956 MAY 15 1992

FPSC-RECORDS/REPORTING

Holiday Inn-Jacksonville Airport ("Holiday Inn"). JEA acknowledges that OREMC currently provides retail electric service to its existing customers within the consolidated municipal limits of the City of Jacksonville and that JEA has granted OREMC permission to provide such service or has not otherwise objected to the provision of such service. As set forth in JEA's Motion to Dismiss, or in the Alternative, Motion to Strike Portion of OREMC's Petition to Resolve Territorial Dispute, JEA maintains that the Commission lacks the statutory authority and subject matter jurisdiction to grant OREMC's requests that the Commission order the utilities to enter into a territorial agreement and/or determine and define territorial boundaries between the two utilities within the consolidated municipal limits of the City of Jacksonville.

The Commission's statutory authority to resolve territorial disputes, is limited by the following language found in Section 366.04, Florida Statutes:

No provision of this chapter shall be construed or applied to impede, prevent or prohibit any municipally owned electric utility system from distributing at retail electrical energy within its corporate limits, as such corporate limits exist on July 1, 1974; however, existing territorial agreements shall not be altered or abridged hereby. (hereinafter "1974 municipality provision").

JEA and OREMC were not parties to a territorial agreement defining their respective service rights on or before July 1, 1974. Nor was there any Commission order determining and defining service territories of the two utilities prior to July 1, 1974. Hence, the issue is whether any provision in Chapter 366 may be construed to

impede, prevent or prohibit JEA from distributing retail electric service within its consolidated corporate limits as such existed on July 1, 1974. The 1974 municipality provision very clearly and plainly provides the answer - "no provision of this chapter" may be so construed.

Applying the plain meaning of the 1974 municipality provision, it is clear that the statutory criteria used by the Commission to resolve territorial disputes shall not be construed to impede, prevent or prohibit JEA from providing retail electric service within the consolidated municipal limits of the City of Jacksonville. Likewise, the Commission's statutory authority over the planning, development, and maintenance of a coordinated electric power grid and its responsibility to deter uneconomic duplication of facilities, all specifically set forth in Section 366.04(5), shall not be construed to impede, prevent or prohibit JEA from providing retail electric service within the consolidated municipal limits of the City of Jacksonville.

The Commission must be cognizant of three established principles of statutory construction. First, it is always presumed that statutes enacted by the Florida Legislature are not superfluous and have some meaning and effect different than or in addition to law in effect at the time of enactment. Vocelle v. Knight Brothers Paper Company, 118 So.2d 664, 667 (Fla. 1st DCA 1960). OREMC alleges that the 1974 municipality provision does not grant municipalities the unfettered right to provide electric service within July 1, 1974 corporate limits but that such right

is subject to a territorial dispute to be resolved by the Commission. OREMC's construction of the statute renders the 1974 municipality provision meaningless and unnecessary since the Commission already has jurisdiction under Section 366.04(2)(c), Florida Statutes, to resolve territorial disputes between and among all types of electric utilities.

Secondly, as noted by OREMC, a court will not read words into a statute where such words and the intent presumed therewith could have easily been inserted by the Legislature. Sumner v. Board of Psychological Examiners, 555 So.2d 919, 921 (Fla. 1st DCA 1990). Here, OREMC construes the 1974 municipality provision in a manner which essentially inserts the following underlined language:

Apart from the Commission's mandate to avoid further uneconomic duplication of generation, transmission and distribution facilities, [n]o provision of this chapter

OREMC's interpretation of the 1974 municipality provision violates the aforementioned principle of statutory construction.

Third, it is also well established that an administrative agency may not modify the plain meaning of statutory language to achieve what the agency conceives to be a more practical or proper result. Vocelle, supra, at 668. JEA maintains that the Commission has avoided the plain meaning of the 1974 municipality provision in asserting its jurisdiction over this territorial dispute.

Under Sections 1.01, 2.04 and 21.04 of the Charter of the Consolidated Government of Jacksonville, and under Sections 718.103 of the City of Jacksonville Code, the JEA has the authority to provide retail electric service within the consolidated corporate

limits of the City of Jacksonville and may grant permission to OREMC to furnish electric service within such limits. The JEA's authority to provide electric service as authorized and described above predates the passage of the Grid Bill effective July 1, 1974. The 1974 municipality provision included in the Grid Bill which remains substantially the same today in no manner diminished or diluted JEA's pre-existing rights to provide retail electric service within the consolidated corporate limits of the City of Jacksonville. Accordingly, the Commission lacks jurisdictional authority to grant exclusive territorial rights to OREMC in this proceeding.

Finally, OREMC maintains that JEA has waived its right to provide electric service to the Holiday Inn. JEA disagrees and maintains that it has not waived its statutory authority to serve the Holiday Inn and that the Order cited by OREMC, City of Tallahassee v. Talquin Electric Cooperative, Inc., (Case No. 70-855, Second Judicial Circuit in and for Leon County, Florida; August 4, 1972), does not support OREMC's position.

ISSUE 5: What is the geographical description of the area in dispute?

JEA: The area in dispute is the Holiday Inn-Jacksonville Airport.

ISSUE 6: Which utility has historically served the area in dispute?

JEA: Both JEA and OREMC have a long history of service in the consolidated corporate limits of the City of Jacksonville which, apart from the Holiday Inn-Jacksonville Airport, are not the subject of a territorial dispute. JEA began serving the Holiday Inn-Jacksonville Airport on or about November 25, 1991. Prior to that time, the Holiday Inn-Jacksonville Airport was served by OREMC.

ISSUE 9: Is either utility presently serving the area in dispute?

JEA: JEA is presently serving the Holiday Inn-Jacksonville Airport. Although not the subject of a territorial dispute, JEA is also presently serving customers in the northern part of the City of Jacksonville.

ISSUE 13: How long would it take each utility to provide service to the disputed area?

JEA: JEA is presently serving the Holiday Inn-Jacksonville Airport. The other areas within the consolidated corporate limits of the City of Jacksonville are not the subject of a territorial dispute. These areas are already being served.

ISSUE 19: What would be the additional cost to each utility to provide electric service to the area in dispute?

JEA: JEA currently provides service to the Holiday Inn-Jacksonville Airport. No additional cost is necessary to continue service. With respect to the other areas which are not the subject of a territorial dispute, JEA would incur the cost to acquire OREMC facilities to provide service.

ISSUE 22: If all other things are equal, what is the customer preference for utility service in the disputed area?

JEA: The Holiday Inn-Jacksonville Airport prefers to be served by JEA. With respect to the other areas in the northern part of the consolidated corporate limits of the City of Jacksonville which are not the subject of a territorial dispute, the unsolicited signatures of Jacksonville citizens and letters from elected representatives suggest a strong preference for JEA service.

ISSUE 23: Which party should be permitted to serve the area in dispute?

JEA: The JEA should be permitted to continue serving the Holiday-Inn Jacksonville Airport.

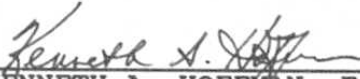
VIII. PROPOSED STIPULATIONS

There are no proposed stipulations at this time. OREMC maintains that the area in dispute in this case is the entire northern portion of Duval County where both utilities presently operate. JEA maintains, on the other hand, that the only area in dispute is the Holiday Inn-Jacksonville Airport.

IX. PENDING MOTIONS

JEA's Motion to Dismiss, or in the Alternative, Motion to Strike Portion of OREMC's Petition to Resolve Territorial Dispute in Duval County and accompanying Request for Oral Argument are currently pending. OREMC's request for official recognition is also pending.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQUIRE
J. ELLIOTT MESSER, ESQUIRE
Messer, Vickers, Caparello, Madsen,
Lewis, Goldman & Metz, P.A.
P. O. Box 1876
Tallahassee, Florida 32302
(904) 222-0720

and

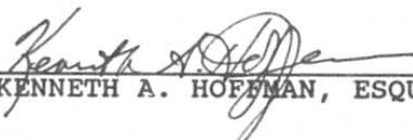
BRUCE PAGE, ESQ.
Assistant General Counsel
1300 City Hall
Jacksonville, Florida 32202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JEA's Revisions to Draft Prehearing Order was furnished by hand delivery this 15th day of May, 1992 to the following:

Martha Carter Brown, Esq.
Florida Public Service Commission
Division of Legal Services
101 East Gaines Street
Room 226
Tallahassee, Florida 32399

James Harold Thompson, Esq.
J. Jeffrey Wahlen, Esq.
Ausley, McMullen, McGehee,
Carothers and Proctor
227 South Calhoun Street
Post Office Box 391
Tallahassee, Florida 32302



KENNETH A. HOFFMAN, ESQUIRE