

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida) DOCKET NO. 930676-EU
Power Corporation to Open) ORDER NO. PSC-94-0717-FOF-EU
Investigation into Tampa) ISSUED: June 9, 1994
Electric Company's Proposed)
Construction of a 69 KV)
Transmission Line to Serve)
Cities of Wauchula and Fort)
Meade)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER ON INVESTIGATION INTO
TAMPA ELECTRIC COMPANY'S
PROPOSED CONSTRUCTION OF A 69 KV TRANSMISSION LINE

BY THE COMMISSION:

CASE BACKGROUND

Until recently the Cities of Fort Meade and Wauchula were full requirements wholesale customers of Florida Power Corporation (FPC). They had received their wholesale power from FPC for many years through the 230, 115 and 69kV transmission grid that FPC owns and operates in Southern Polk and Northern Hardee Counties. In 1992 and 1993, the cities entered into long-term wholesale power contracts with Tampa Electric Company (TECO), instead of FPC. As part of those new contracts, TECO agreed to construct a 69 kV transmission line to provide direct transmission service to the cities.

On July 9, 1993, FPC filed a petition to open an investigation into the proposed construction of the 69 kV line. FPC claimed that the line would duplicate its existing adequate and reliable transmission service to the cities and would be uneconomic for both TECO and FPC and their customers. The cities received leave to intervene in the proceedings on August 24, 1993. A prehearing conference was held on March 7, 1994. The hearing was held on March 17-18, 1994. Ten witnesses presented testimony and exhibits, and the parties also filed post-hearing statements and briefs. At

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our May 17, 1994 Agenda Conference we made our decision on the issues presented at the hearing. That decision, the facts upon which it is based, and the reasons for it are set out in detail below.

JURISDICTION

By the authority of Section 366.04(5), Florida Statutes, commonly known as "The Grid Bill", we have jurisdiction

over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

Section 366.05(8), Florida Statutes, provides that

If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities. . . .

Section 366.055(3), Florida Statutes, further provides that

To assure efficient and reliable operation of a state energy grid, the commission shall have the power to require any electric utility to transmit electrical energy over its transmission lines from one utility to another or as a part of the total energy supply of the entire grid

The plain language of the Grid Bill and its related statutes indicates that we have jurisdiction to assure the efficient and reliable operation of the state energy grid and to prevent further uneconomic duplication of transmission facilities as well as distribution facilities. See also, In Re: Petition of Gulf Power Company involving Complaint and Territorial Dispute with Alabama Electric Cooperative, Inc., Docket No. 830428, Order Nos. 13191 and 13926, issued April 12, 1984 and December 21, 1984.

TECO and the cities suggest that we do not have specific jurisdiction to disturb the terms and conditions of a wholesale power agreement. We see no jurisdictional exclusion in the statutes for transmission facilities constructed in order to obtain wholesale power contracts, and we are not aware of any Federal statute or regulation of wholesale power agreements that preempts our authority to protect the efficiency and integrity of the Florida energy grid. Chapter 366 is an exercise of the police power of the State for the protection of the public welfare. Section 366.01, Florida Statutes. TECO's and the cities' contracts are subject to that power. See also H. Miller & Sons, Inc. v. Hawkins, 373 So.2d 913, 914 (Fla. 1979) where the Florida Supreme Court said that it is a

. . . well-settled principle that contracts with public utilities are made subject to the reserved authority of the state, under the police power of express statutory or constitutional authority, to modify the contract in the interest of the public welfare without unconstitutional impairment of contracts.

Furthermore, under the terms of the contracts, if the line is not constructed by July 1995, TECO will be required to continue providing bulk power through FPC's transmission system. The cities will not be required to reimburse TECO for FPC's transmission service charges. This transmission service charge exemption will stay in effect for the life of the contract, unless the cities elect to terminate their bulk power contract with TECO. The witnesses for the cities indicated that regardless of the outcome of this case they will continue to receive TECO's power at the agreed upon price. Thus it appears from the evidence that Wauchula and Fort Meade will get the benefit of their bargain with TECO whether or not we permit TECO to construct the 69 kV transmission line.

TECO and the cities also assert that we do not have specific authority to issue "injunctions" or "cease and desist orders", as FPC requested. In addition to the powers specifically granted by Section 366.05(8) and 366.055(3) cited above, we may use all powers reasonably necessary to the effective exercise of our jurisdiction. See Storey v. Mayo, 217 So.2d 304, where the Supreme Court affirmed the Commission's approval of a territorial agreement. There, at page 307, the Court said:

The powers of the Commission over these privately-owned utilities are omnipotent within the confines of the statute and the limits of organic law. Because of this, the power to mandate an efficient and effective utility in the public interest necessitates a correlative power to protect it against unnecessary competitive practices.

It is reasonable and well within our jurisdiction to halt construction of duplicative, uneconomic transmission lines under the authority of a statute that specifically directs us to prevent further uneconomic duplication of transmission lines. We therefore find that we have the jurisdiction to determine whether the 69kV transmission line is duplicative and uneconomic, and to order whatever relief is reasonably necessary to effectuate the intent of the Grid Bill.

Duplication of FPC's Existing Transmission System

The generation that TECO presently provides to Fort Meade and Wauchula is transmitted over FPC's existing transmission system, which is designed to meet the cities' power needs. No evidence was presented at the hearing to indicate that FPC's transmission service was inadequate or unreliable. Fort Meade's witness Mr. Saddler stated that until TECO offered to build the additional transmission line he expected that whoever won the bulk power contract with Fort Meade would use FPC's existing transmission facilities. TECO's witness Mr. Porter testified that TECO's proposed transmission line was designed to match the reliability of FPC's existing transmission system. Mr. Porter stated that the performance of FPC's 69 kV system was really not in question in this case.

FPC's existing system can accommodate the cities' requirements now and in the foreseeable future. According to the 1995 summer FCG load flow case, FPC's 69 kV line serving the City of Fort Meade is projected to carry 31.1 MW, which is only 39 percent of the line's capability. Fort Meade's portion of this load is 7.4 MW. FPC's 69 kV line serving the City of Wauchula is projected to carry 33.4 MW or 27 percent of the line's capability. Wauchula's portion of this load is 16 MW. TECO's witness Mr. Ramil testified that the decision to build the 69 kV line to serve Fort Meade and Wauchula was not based on the need for a second 69 kV line to reliably serve the cities. The decision to build was based on TECO's desire to secure the wholesale power supply contracts.

We find that there is no need for an additional 69 kV transmission line to serve the Cities of Fort Meade and Wauchula. Both cities are receiving adequate and reliable transmission

service from Florida Power Corporation's transmission facilities. TECO's proposed transmission line is duplicative of FPC's existing transmission system, and will cause FPC's system to be underutilized. If TECO is allowed to duplicate part of FPC's transmission system, this could increase the uncertainty of FPC's planning process.

The Economic Impact of the Proposed Transmission Line

We find that construction of TECO's proposed 69kV line is not only duplicative of FPC's existing transmission system, but also it is uneconomic. Several cost-benefit analyses of the transmission line were provided in this docket. Mr. Ramil provided an analysis for TECO's whole system, retail and wholesale. FPC's Witness Pollock provided a cost-effectiveness analysis for TECO's and FPC's retail customers, as well as a revised version of Mr. Ramil's cost-effectiveness analysis. The preponderance of the evidence demonstrates that the line will be uneconomic and that the costs of the proposed line exceed the benefits of the line. Also, the costs of the new line will be borne by TECO's retail customers, but the benefits will flow to TECO's wholesale customers.

FPC's witness Pollock revised the cost-benefit analysis presented by TECO to include generation and transmission cost, using the per unit revenue requirement for generation and transmission plant cost from the stipulated Cost of Service Study from TECO's last rate case, Docket No. 920324-EI. That revised cost-effectiveness calculation shows that the costs of construction of the transmission line, expressed on a cumulative present worth basis, outweigh the benefits by \$16.321 million. Ninety-six percent of the costs associated with the line would be allocated to the retail customers. Three or four percent of the costs would be allocated to the wholesale customers.

TECO states that the project will benefit TECO's retail customers by approximately \$16 million in present net value over the 21 year life of the project, because the \$34 million of nonfuel revenues from the two cities exceeds the \$18 million revenue requirement for the line. We disagree. The nonfuel revenues of the two cities are not currently offsetting the cost of constructing the line. We do not expect that they will after TECO's next rate case either. While the cities' nonfuel revenues will be credited to the wholesale jurisdiction, approximately 96% of the cost of the line will be carried by TECO's retail customers. Revenues of wholesale customers included in the wholesale portion of TECO's separation study are included in the wholesale jurisdiction only. Thus, retail customers will not benefit from the nonfuel revenues of separated wholesale customers. The nonfuel

revenues of neither city are being credited to the retail customers in the Fuel and Purchased Power Clause. At the hearing TECO agreed that at the present time the revenues that TECO receives from Fort Meade and Wauchula are not making any difference in the revenue requirement of TECO's retail customers.

At the hearing, Mr. Ramil stated that he had been informed that the two cities have an estimated savings of \$13 million. We have not included estimated savings to the cities in our evaluation of the proposed transmission line, because there is no evidence in the record to support and quantify this information. If we did include those savings in our evaluation of the line, we would balance the savings to the cities against the loss of wholesale revenues and the loss of wheeling revenues to FPC's stockholders and ratepayers. We believe that savings to the two cities is a transfer of wealth from TECO's retail customers and stockholders and FPC's customers and stockholders.

We have carefully reviewed all cost-effectiveness analyses presented in this case, and we find that the levelized annual cost of all costs of the line exceeds the benefits to TECO's retail customers by \$2,495,000 per year, with a cost-benefit ratio of 24 to 1. We hold that TECO's proposed new transmission line is an uneconomic duplication of FPC's existing transmission facilities. Further construction of the line is not cost-effective for TECO's or FPC's customers.

TECO suggests that we take no action to prohibit construction of the line at this time. TECO proposes that we consider it in a prudence review in a full rate proceeding. At the most, TECO suggests, we should only require joint planning.

In the past we have prohibited construction of facilities by a utility if the construction would result in an uneconomic duplication of the existing facilities of another utility. In Docket No. 830271-EU, Order No. 12324, we prohibited FPC from further costly construction of transmission and distribution facilities that would have been an uneconomic duplication of Suwannee Valley Electric Cooperative's existing facilities. Also, in Docket No. 830428-EU, Order No. 13191, mentioned above, we prohibited Alabama Electric Cooperative from constructing transmission facilities that would have been an uneconomic duplication of Gulf Power Company's existing transmission grid.

The most effective way we can "avoid the further uneconomic duplication of generation, transmission, and distribution facilities", as the Grid Bill requires, is to stop additional construction of facilities once they are shown to be an uneconomic

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duplication of existing facilities. It is not appropriate, as TECO suggests, to wait for its next rate case. A rate case can correct the damage to TECO's ratepayers, but it cannot correct the damage FPC and its ratepayers or to the public interest. We prohibit TECO from any further construction of the line. The recovery of costs already expended for construction shall be a specific issue in TECO's next full requirements rate case.


It is therefore

ORDERED by the Florida Public Service Commission, for the reasons given in the body of this order, that Tampa Electric Company shall not continue construction of the 69 kV transmission line to serve the Cities of Wauchula and Fort Meade. It is further

ORDERED that the recovery of costs already expended for construction of the 69 kV transmission line shall be a specific issue in Tampa Electric Company's next full requirements rate case. It is further

ORDERED, that assuming no party timely files a motion for reconsideration or a notice of appeal, the issuance of this final order concludes our consideration of this matter and the docket shall be closed.

By ORDER of the Florida Public Service Commission, this 9th day of June, 1994.



BLANCA S. BAYO, Director
Division of Records and Reporting

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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

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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 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.