

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Declaratory) DOCKET NO. 951227-EQ
Statement Regarding Portions of) ORDER NO. PSC-96-0254-DS-EQ
Section 366.02(1), F.S., By) ISSUED: February 22, 1996
Pasco County Board Of)
Commissioners)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

BACKGROUND

On October 4, 1995, the Pasco County Board of County Commissioners (County) filed a Petition for Declaratory Statement (Petition). The petition seeks a declaration to the effect that the County's provision of electricity from its Waste-To-Energy facility (WTE) to its Leachate Treatment Facility (LTF) and Shady Hills Wastewater Treatment Plant (WWTP) will not constitute "...supplying electricity...to or for the public..." within the meaning of Section 366.02(1), Florida Statutes (1995) and will not, therefore, subject the WTE to rate regulation by us as a public utility.

The County notes the following factual circumstances:

1) The LTF, which is located adjacent to the WTE, is in the process of being designed and permitted. It, as well as the already existing WWTP, will be powered with electricity generated by the WTE.

2) The WTE is owned by the County and operated under a 20-year service agreement by Ogden Martin Systems of Pasco, Inc. (OMSP). The WTE was permitted under the Power Plant Siting Act (Certification No. PA-87-23) and has an installed generator capacity of 31 MW. Though the WTE is located within the

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Withlacoochee River Electric Cooperative (Withlacoochee) service area, the County has a power purchase agreement with Florida Power Corporation (FPC) to sell FPC 23 MW of capacity and receives energy from an interconnection with FPC's substation during turbine generator outages.

3) The LTF is expected to have an energy demand of less than 1 MW. The County will construct the interconnection from the WTE to power the LTF. The County will own the LTF and anticipates operating it. Accordingly, no public utility will be requested or required to supply power between the WTE and LTF.

4) The WTPP is owned and operated by the County and powered, at present, by Withlacoochee. The County proposes to construct an interconnection from the WTE to the WTPP, so that the WTPP as well as the LTF, both County-owned facilities, are powered by the WTE.

The County argues that its provision of electricity from its WTE to other County-owned facilities would not constitute a sale of electricity to the public which would subject it to our rate regulation pursuant to Section 366.02(1), Florida Statutes. Instead, the County asserts that these facts

would constitute a Qualifying Facility supplying electricity to other facilities under common ownership. Such an arrangement would not subject the WTE to Commission rate regulation and further would not constitute and infringement upon a "public utility's" or "Rural Electric Cooperative's" franchise rights to supply electricity to or for the public. The intent and purpose of Pasco's proposal is to provide electricity only to adjacent County-owned facilities.

Petition, at ¶10.

The County notes, in conclusion, that it seeks a declaration as to the foregoing prior to making investment to interconnect the existing WTPP and proposed LTF with the WTE.

DISCUSSION

We grant the requested petition stating that Pasco County's supply of electricity by its Waste-To-Energy Facility (WTE) to its Leachate Treatment Facility (LTF) and Wastewater Treatment Plant (WTPP) will not constitute "...supplying electricity...to or for

the public..." pursuant to Section 366.02(1), Florida Statutes (1995).

Section 366.04(1), Florida Statutes, provides that we have

jurisdiction to regulate and supervise each public utility with respect to its rates and services. [e.s.]

In turn, Section 366.02(1) defines "public utility" to mean

every person, corporation ... supplying electricity ... to or for the public within this state; [e.s.]

Clearly, Pasco County's supplying of electricity from its own WTE to its own LTF and WTTP does not constitute supplying electricity to or for the public within this state, and will not invoke our jurisdiction pursuant to Section 366.04(1). Accordingly, we grant the petition in order to so state.

In addition, with appropriate clarification and caveats, we grant the petition stating that the above-described self-service would not violate the franchise rights of a public utility or rural electric cooperative.

This issue, which is not explicitly stated in the petition until the last two pages, once in paragraph 10 and again in the concluding Request for Relief, is potentially more complex than the main question raised by the petition discussed earlier.

To the extent the County refers only to its supplying of its own energy to its own facilities, no "franchise rights" are affected and we so state. However, to the extent the "arrangement" referred to includes the provision of back-up power, territorial rights may well be implicated.

Since the petition does not explicitly raise this issue, it is unnecessary for us to address it directly, except to note, by way of clarification or caveat, that the provision of back-up power to the County's WTE, LTF and WTTP would continue to be governed by the terms of existing territorial agreements between the affected public utility, FPC, and the rural electric cooperative, Withlacoochee. The latter is the entity within whose service territory the three County facilities at issue are located.

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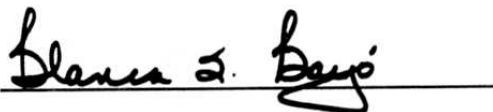
During its investigation of the provision of back-up to each of these three facilities, staff found that there was some ambiguity as to the basis of FPC's supply of back-up to the WTE, but that Withlacoochee had no intention of contesting the arrangement.¹ However, both the County and Withlacoochee were in agreement that any back-up to the WTTP would be supplied by Withlacoochee. Moreover, even though the County asserted that the LTF would never need back-up power because of technical reasons unique to that facility, any back-up actually required would be supplied by Withlacoochee, pursuant to the territorial agreement.

In view of the above, it is

ORDERED by the Florida Public Service Commission that Pasco County's Petition For Declaratory Statement is granted. It is further

ORDERED that this docket be closed.

BY ORDER of the Florida Public Service Commission this 22nd day of February, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

¹ The Division of Electric and Gas may, for its part, investigate the formal status of this arrangement further so as to clarify that status.

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 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.