

Kay Flynn

From: Mary Anne Helton
Sent: Tuesday, February 28, 2006 8:49 AM
To: Kay Flynn
Cc: Rick Melson
Subject: FW: Mike Twomey comments on extent of storm remediation jurisdiction over munis and co-ops

ORIGINAL

Kay, please file in Docket No. 060000. Thanks, Mary Anne

From: Mary Anne Helton
Sent: Tuesday, February 28, 2006 8:48 AM
To: Barry Moline; Beth Salak; Bill Feaster; Bill McNulty; Billy Stiles; Bob Trapp; Brenda Buchan; Carl Vinson; Charles Beck; Chuck Hill; Clayton Lewis; Cochran Keating; Commissioner Charles A. Falcone, Ph.D. (Jupiter); Commissioners & Staffs; Connie Kummer; Dale Mailhot; Dan Hoppe; David McDonald; Diana Caldwell; Dr. Kurt Gurley; Dr. Ron Cook; Dr. Tom Sputo; Earl Poucher; Ed Gray; Edward Mills; Gary Furman; Gary Livingston; Harold Mclean; Howard Bryant; Jack English; James McRoy; Jennifer Brubaker; Jim Breman; Jim Dean; Joe McGlothlin; John Burnett; Karen Culpepper; Karla Barnes; Kathy Lewis; Kevin Bloom; Lee Willis; Lisa Harvey; Mark Futrell; Marshall Willis; Mary Anne Helton; Mary Bane; Mary Wolter Glass ; Mayor Slesnic; Michelle Hershel; Mike Lee; Mike Twomey, Esq.; Norman "Doc" Horton, Esq.; Pam May; Patrick Bryan; Patti Zellner; Patty Christensen; Paul Davis; Paul Lewis; Renae Deaton; Rick Melson; Ron Goforth; Roy Jazowski; Russell Badders; Sid Matlock; Tim Devlin; Tim Hughes; Tom Ballinger; Wendy Holt
Subject: FW: Mike Twomey comments on extent of storm remediation jurisdiction over munis and co-ops

Attached please find an e-mail from Mike Twomey to Chairman Edgar concerning Item No. 3 at the February 27, 2006, Florida Public Service Commission Internal Affairs meeting, which was staff's post-Electric Infrastructure Workshop Recommendation to the Commission.

Please let me know if you have any questions.

Mary Anne Helton
Attorney Supervisor
Florida Public Service Commission
Office of the General Counsel
Economic Regulation Section
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0862
(850) 413-6096 (voice)
(850) 413-6250 (fax)
mhelton@psc.state.fl.us

CMP _____
COM _____
CTR _____
ECR _____
GCL _____
OPC _____
RCA _____
SCR _____

From: Mike Twomey [mailto:miketwomey@talstar.com]
Sent: Monday, February 27, 2006 4:47 PM
To: Lisa Edgar; J. Terry Deason; Katrina Tew; Matthew Carter; Isilio Arriaga
Cc: Rick Melson; Cochran Keating; Bob Trapp
Subject: Mike Twomey comments on extent of storm remediation jurisdiction over munis and co-ops

SGA _____
SEC 1
OTH kimp

Madam Chairwoman Edgar,

Like you and the other commissioners, I am trying to get out of town for your customer service hearings and didn't have time to personally attend your internal affairs meeting this morning. I did, however, try to listen on the Internet. One point I may have sought to speak on had I been there was the discussion about the

DOCUMENT NUMBER - DATE
01689 FEB 28 06

Commission's jurisdiction to compel storm related corrections/compliance to the attention of municipal and cooperative electric utilities. As the Commission's senior electric lawyer for some 9 years in the 1980's and one with a central Florida House staff role in the Sunset Review of all Commission statutes in 1989/90, I have an opinion on the extent of your jurisdiction I would like to briefly share with you.

Let me offer the following caveats:

I'm writing on my own behalf, not a client's, and I view the procedural status of this case to be such (internal affairs) that these comments do not constitute prohibitive ex parte communications. Had I more time I would find all the "parties" email addresses and copy them, but I do not. I invite your staff to forward this message to any relevant email list they have for these issues.

The Commission Has The Statutory Authority And Responsibility For Ensuring The Entire Florida Electric Grid Is Adequate And Reliable For Both Operational And Emergency Purposes

While Section 366.04(6), F.S. gives the Commission exclusive jurisdiction over safety standards for all public electric utilities, including IOUs, municipals and cooperatives, I believe it is too restrictive by its very terms to encompass what your staff is recommending. That is, you are largely limited to what you can impose in terms of setting standards to ANSI C2, and revisions, and, worse, compliance with its minimum standards "shall constitute good engineering practice by the utilities."

There are two other sections of 366.04 I think are bulletproof as a foundation for you to require the other utilities to do what you ultimately attempt to impose on the IOUs through your PAA order. They are:

Sections 366.04(2)(c) and (5).

The first reads:

366.04(2) In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following

purposes:

(c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.

The section is by definition -- electric utilities -- applicable to all Florida electrics, not just IOUs. "Conservation" is generally thought of as a distribution/consumer

related function and clearly not limited to just the transmission system, which notion is further dismissed by the reference to a "coordinated grid," which necessarily, in my view, speaks to the entire electrical system of the state. The Commission can require, and some might suggest "must require," "conservation and reliability" "for operational and emergency purposes." I believe this section alone provides an adequate statutory basis for you to impose hurricane related requirements on all utilities, although there is an even stronger section yet.

Section 366.04(5) is often referred to as the "grid bill," and it states:

(5) The commission shall further 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.

By its clear terms this section gives the Commission jurisdiction over a "coordinated electric power grid throughout Florida," which necessarily has to encompass all the state's electric utilities. This section is more expansive than the first section because it specifically gives you jurisdiction over "planning, development, and maintenance," the first and last factors of which are critically important in preparing for and recovering from major storms. As with the previous section, you are to "assure an adequate and reliable source of energy [both] for operational and emergency purposes." I would suggest there can be no doubt as to whether "distribution facilities" are included in the statutory responsibility as they are clearly and specifically stated.

While "jawboning" some of the non-IOU electrics to do what they ought to otherwise do might have been adequate in the past, my view of the statute is that you are required to have them do what is required of the IOUs when it comes to ensuring and assuring an adequate and reliable source of energy. While the unique operational circumstances of some electric utilities might warrant you carefully crafting your requirements and avoiding a "one size fits all" solution, I do not believe little utilities, like Havana, can be left out merely because they are small. There should be a "weakest link of the chain" approach to much of your examination of strengthening Florida's grid. More importantly, perhaps, customers of little utilities are arguably entitled to as much reliability as those of larger utilities.

I'm not aware of any case law that would materially limit your ability to require municipal and cooperative electric utilities to undertake the same planning and execution for strengthening and hardening their systems as you would require of the investor-owned electrics. Again, my view is that you are statutorily required to treat them all the same for the protection of the state and all its electric consumers.

Thank you for considering my thoughts on this issue,

Respectfully,

Mike Twomey