

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to acknowledge termination)	DOCKET NO. 900744-EU
or, in the alternative, to resolve)	ORDER NO. 23955
territorial dispute between the CITY OF)	ISSUED: 1-3-91
HOMESTEAD and FLORIDA POWER & LIGHT)	
COMPANY)	
)	

The following Commissioners participated in the disposition of this matter:

- MICHAEL McK. WILSON, Chairman
- THOMAS M. BEARD
- BETTY EASLEY
- GERALD L. GUNTER
- FRANK T. MESSERSMITH

ORDER GRANTING MOTION TO DISMISS

BY THE COMMISSION:

On September 4, 1990 the City of Homestead (Homestead) filed a Petition to Acknowledge Termination or, in the Alternative, Resolve Territorial Dispute with the Florida Public Service Commission. (the Commission) In its Petition, Homestead sought to have the Commission, as a matter of contract law, acknowledge termination of a territorial agreement between Homestead and Florida Power & Light Company (FPL). This territorial agreement was approved by the Commission in Order No. 4285 issued on December 1, 1967. As an alternative to its request for acknowledgment of termination, Homestead requested that the Commission consider the matter a territorial dispute.

In response to Homestead's Petition, FPL filed a Motion to Dismiss on October 8, 1990. In its Motion, FPL asserted that, according to Florida case law, once a territorial agreement has been approved by the Commission, it becomes an order of the Commission which may only be modified or terminated in accordance with the Commission's express statutory purpose. See Florida Public Service Commission v. Fuller, 551 So.2d 1210 (Fla. 1989); Peoples Gas System, Inc. v. Mason, 187 So.2d 335 (Fla. 1966); and City Gas Company v. Peoples Gas System, Inc., 182 So.2d 429 (Fla. 1965). FPL further asserted that Homestead was attempting to modify the territorial agreement with FPL and in order to do so, Homestead must show the modification is necessary and in the public interest because of changed conditions or circumstances that were not present in the original proceedings.

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Finally, FPL stated that the matter should not be treated as a territorial dispute. Rule 25-6.0439 of the Florida Administrative Code defines a territorial dispute as a "disagreement as to which utility has the right and the obligation to serve a particular geographic area." According to FPL, there is no question as to who has the right and obligation to serve Homestead and the surrounding area. Order No. 4285 clearly outlines FPL's and Homestead's rights and obligations in the area. Therefore, there is no territorial dispute before the Commission.

During oral arguments held on December 11, 1990, Homestead consistently asserted that it was not asking the Commission to modify the territorial agreement embodied in Order No. 4285. Rather, it claimed that it wanted the Commission to acknowledge Homestead's right to "terminate" the agreement under Florida contract law. We decline to grant Homestead's request. In Florida Public Service Commission v. Fuller, 551 So.2d 1210 (Fla. 1989), the Florida Supreme Court held that, "the purpose of the action brought by the City of Homestead in the circuit court is to modify the territorial agreement between it and FPL." We also find that the purpose of the action brought by Homestead before this Commission is to modify its territorial agreement with FPL.

When a territorial agreement is approved by the Commission, it becomes embodied in the approving order which may only be modified or terminated in accordance with the Commission's express statutory purpose. See Fuller at 1212. Therefore, in order to withdraw or modify Order No. 4285, Homestead must make a showing that, "such modification or withdrawal of approval is necessary in the public interest because of changed conditions or circumstance not present in the proceedings which led to the order being modified." Peoples Gas System, Inc. v. Mason, 187 So.2d 335, 339 (Fla. 1966) Homestead has failed to allege facts sufficient to support a modification of Commission Order No. 4285 consistent with Peoples Gas and Fuller. Consequently, we grant FPL's motion and dismiss Homestead's petition without prejudice.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power and Light Company's Motion to Dismiss the City of Homestead's Petition to Acknowledge Termination or, in the Alternative, Resolve Territorial Dispute is hereby granted. It is further

ORDERED that the City of Homestead's Petition to Acknowledge Termination or, in the Alternative, Resolve Territorial Dispute is hereby dismissed without prejudice. It is further

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ORDERED that the City of Homestead has 30 days from the date of this order to file an amended petition for modification of the territorial agreement with Florida Power and Light Company.

By ORDER of the Florida Public Service Commission, this 3rd day of JANUARY, 1991.



STEVE TRIBBLE, DIRECTOR
Division of Records and Reporting

(S E A L)
EAT

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