

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for Assistance)	DOCKET NO. 900700-GU
To Resolve Impending)	ORDER NO. 24260
Territorial Dispute Between)	ISSUED: 3/20/91
Florida Public Utilities)	
Corporation and Palm Beach)	
County Utilities Company)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 J. TERRY DEASON
 BETTY EASLEY
 GERALD L. GUNTER
 MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On August 17, 1990, Florida Public Utilities Company (FPUC) filed a petition for resolution of a territorial dispute with Palm Beach County Utilities Corporation (PBCUC). Subsequent to the filing date, FPUC and PBCUC met with our Staff to discuss the issues and to determine whether the parties could resolve the dispute, and avoid going to hearing on the matter.

On October 18, 1990, we received a letter from FPUC stating that the parties had reached an agreement on the issues, and FPUC requested that they be allowed to withdraw their petition to resolve the territorial dispute. FPUC also informed us that "submission of a written territorial agreement, as requested by the Public Service Commission staff members, would be premature at this time and not in the best interests of our respective companies." FPUC and PBCUC decided that it would be more prudent to forego developing definitive territorial agreements until a decision or opinion had been rendered in En Banc hearing of Consolidated Gas Company of Florida, Inc. v. City Gas Company of Florida - No. 87-6108, being heard in the United States Court of Appeals for the Eleventh Circuit. Unbeknownst to FPUC, that case had already been

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decided and had been sent to the United States Supreme Court on a writ of certiorari, where it is still pending at this time.

On November 21, 1990, we issued Order 23788, which granted FPUC's request to withdraw its petition. However, on this Commission's own motion, a hearing was scheduled so that we could review, and approve or disapprove, the territorial agreement in Palm Beach County between FPUC and PBCUC.

On February 11, 1991, FPUC and PBCUC filed a territorial agreement for our approval. It is this Agreement, dated February 8, 1991, which is the subject of this Order.

Both FPUC and PBCUC are natural gas distribution companies authorized to serve customers in Palm Beach County. Both companies have gas distribution systems adjacent to each other, along a reasonably defined boundary. This boundary serves to separate the service areas with the exception of one area, where the systems actually cross each other. This area is in the vicinity of Prosperity Farms Road and PGA Boulevard, and it is the sole area where this problem occurs.

With the exception of the above mentioned area where the companies' systems actually cross each other, FPUC and PBCUC have agreed to refrain from installing distribution mains or services which would cross and duplicate other facilities, or which would intrude into the other company's service area. Furthermore, the parties have agreed to abstain from soliciting potential or existing customers within the other company's service area, or from providing service when the customer requests service.

FPUC and PBCUC have also agreed that if a project or customer is located in such a place where it would straddle or be divided by the above mentioned boundary line, the company with the initial contract to provide service to the project will service the entire area of the project. The boundary line will be adjusted to include the entire area of the project within the service area of the company, subject to our review and approval.

We find that FPUC and PBCUC's Territorial Agreement defines the parties' natural gas service areas and service obligations in the Palm Beach County area. The Agreement does not provide for the transfer of any customers. Furthermore, it will alleviate any potential problems involving duplication of facilities. We find that this agreement shall resolve any territorial disputes between

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the parties in the area. Also, we note that the Agreement provides that the "Agreement shall be submitted to and reviewed by the [Florida Public Service Commission] every five (5) years." Accordingly, we approve this Territorial Agreement between FPUC and PBCUC dated February 8, 1991.

Finally, we find that this docket should be closed if no protest or notice of appeal is timely filed.

It is, therefore,

ORDERED by the Florida Public Service Commission that the Territorial Agreement between Florida Public Utilities Company and Palm Beach County Utilities Corporation, dated February 8, 1991, is hereby approved. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for a formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this 20th day of MARCH, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

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by: Kay Flynn
Chief, Bureau of Records

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

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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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 10, 1991.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.