

OREMC requested oral argument on the Motion to Dismiss, which was heard at our February 18, 1992 agenda conference.

Both JEA and OREMC requested that we take official notice of certain documents they deemed relevant to our determination of this motion. We grant those requests and hereby take official notice of the Charter of the City of Jacksonville, sections 718.101, 718.102, and 718.103 of the Jacksonville Code, and ch. 74-196, 1974 Fla. Laws 538.

We do not agree with JEA's first argument that we should dismiss the petition to resolve the territorial dispute because the area in dispute is not a "rural area." The argument may be an appropriate issue for JEA to raise at the hearing in this case, based on the evidence presented there, but JEA's allegation that the area is not a "rural area" must be proven. It is not sufficient grounds for a decision that, as a matter of law, based on the pleadings alone, Okefenoke has failed to state a cause of action capable of resolution by this Commission.

We also do not agree that we should dismiss this petition because we do not have jurisdiction to resolve territorial disputes within the City of Jacksonville's municipal boundaries. Rather, we believe that the Legislature of the State of Florida has purposely and explicitly granted the Florida Public Service Commission the jurisdiction to approve territorial agreements and resolve territorial disputes between all electric utilities throughout the State. In 1974 the Florida Legislature adopted legislation, known informally as the "Grid Bill," for the explicit purpose of;

[assuring] 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 366.04(3), Florida Statutes.

The legislation gave the Florida Public Service Commission explicit regulatory responsibility 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 facilities.
Section 366.04(5), Florida Statutes.

The Legislature gave the Commission increased authority over rural electric cooperatives and municipalities - including the authority to approve territorial agreements and resolve disputes - in order to accomplish the public policy purposes of the bill. Section 366.04(2), Florida Statutes states;

In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:

(a) To prescribe uniform systems and classifications of accounts.

(b) To prescribe a rate structure for all electric utilities.

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

(d) To approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. However, nothing in this chapter shall be construed to alter existing territorial agreements.

(e) To resolve, upon petition of a utility or on its own motion, any territorial dispute involving service areas between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. In resolving territorial disputes, the commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services.

(f) To prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder.

No provision of the chapter shall be construed or applied to impede prevent, or prohibit any municipally owned electric utility system from distributing at retail electrical energy

within its corporate limits, as such corporate limits exist on July 1, 1974; however existing territorial agreements shall not be altered or abridged hereby.

It is JEA's position that the last paragraph of subsection (f) above prevents the Commission from exercising any authority over municipalities providing electric service within municipal boundaries established as of July 1, 1974, unless territorial agreements with other utilities were in effect as of that date. JEA contends that the paragraph provides a jurisdictional exclusion for municipalities from the operation of the Grid Bill, and thus the authority granted to the Commission under the other sections of the statute - to resolve territorial disputes, prevent further uneconomic duplication of facilities, and ensure the reliability of a coordinated energy grid - does not apply to the operation of municipal electric systems within 1974 corporate limits.

We must construe all provisions of section 366.04 as a whole, and interpret them in a manner that gives effect to the fundamental regulatory intent of the statute. Vocelle v. Knight Brothers Paper Company, 118 So. 2d 664 (Fla. 1st DCA 1960); City of Tampa v. Thatcher Glass Corp., 485 So.2d 1302 (Fla. 3d DCA 1986). We do not believe that JEA's interpretation of 366.04(f) allows us to do that. We find that interpretation to be inconsistent with the Legislative intent and public purpose of the statute as a whole, because it would prevent the Commission from exercising its primary responsibilities under the Grid Bill.

JEA admits that its proposed interpretation presents "a potential conflict" with the intent of the other provisions of Chapter 366. JEA attempts to resolve that conflict with the somewhat strained proposition that the Commission will have jurisdiction over municipalities to fulfill the purposes of the Grid Bill where territorial agreements are in effect, but the Commission will not have jurisdiction where territorial agreements are not in effect. In other words, where territorial agreements have already fulfilled the purposes of the Grid Bill - further uneconomic duplication of electric facilities is prevented and the reliability of the energy grid protected - JEA suggests that the Commission has the authority to act. Where territorial agreements do not exist, however, and the potential for public harm remains, JEA proposes that the Commission may not act. We cannot accept a construction of the statute that leads to such an illogical result.

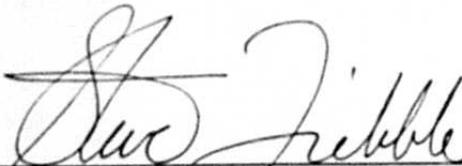
JEA's construction undermines the fundamental public policy purposes of the Grid Bill, and it creates conflict where none needs to be. We believe that the provision of section 366.04(2)(f),

Florida Statutes at issue here does not exempt municipal electric systems from the Commission's jurisdiction, and thus it does not prevent the Commission from resolving territorial disputes, preventing uneconomic duplication of facilities, or ensuring the reliability of the energy grid - in municipalities, as well as elsewhere in the state. The provision simply directs the Commission to apply its authority, and carry out its responsibilities, in a manner consistent with a municipality's right to serve customers within its 1974 corporate limits. For its part, a municipality may have a right to provide electric service to customers within its 1974 municipal boundaries, but that right is not inviolable. A municipality must exercise it in a manner that is consistent with the other provisions, and the public policy purposes, of the Grid Bill. It is the Florida Public Service Commission's responsibility to see that it does so.

It is therefore

ORDERED that for the reasons set forth in the body of this order, Jacksonville Electric Authority's Motion to Dismiss is denied.

By ORDER of the Florida Public Service Commission this 12th
day of MARCH, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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

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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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.