

SUPREME COURT OF FLORIDA

Board of County Commissioners, Indian River County, Florida v. Art Graham, etc.

191 So. 3d 890 (Fla. 2016) · No. Nos. SC15-504 and SC15-505 · Decided May 19, 2016

SUMMARY

The Supreme Court of Florida reviewed consolidated appeals from Florida Public Service Commission orders concerning the City of Vero Beach’s authority and obligation to continue providing electric service in portions of unincorporated Indian River County after expiration of its franchise agreement with the County. The court held that the City had standing to seek a declaratory statement, that the Commission acted within its exclusive and superior jurisdiction over utility service territories, and that the declaration did not transfer County property rights or improperly affect franchise fees. The court affirmed both Commission orders.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Justice Polston; Chief Justice Labarga; Justice Pariente; Justice Lewis; Justice Quince; Justice Canady; Justice Perry
JURISDICTION	Florida
DECIDED	May 19, 2016
DOCKET	Nos. SC15-504 and SC15-505
DISPOSITION	affirmed
PROCEDURAL POSTURE	The County directly appealed two Florida Public Service Commission orders. One order granted a declaratory statement sought by the City of Vero Beach concerning its continuing obligation to provide electric service under PSC territorial orders after expiration of the County franchise agreement; the other denied the County's own petition for declaratory statement.
STANDARD OF REVIEW	An appellate court may reverse an agency declaratory statement only if the agency's interpretation of law is clearly erroneous. PSC orders carry a statutory presumption that they were made within the Commission's jurisdiction and powers and are reasonable and just; the challenger bears the burden of showing a departure from the essential requirements of law. The Court approves PSC findings and conclusions supported by competent substantial evidence and not

	clearly erroneous, and gives great deference to an agency's interpretation of a statute it is charged with enforcing.
PRECEDENTIAL VALUE	Published Florida Supreme Court majority opinion; precedential.
PARTIES	Board of County Commissioners, Indian River County, Florida v. Art Graham, etc., Florida Public Service Commission, City of Vero Beach

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QUESTIONS PRESENTED

1. Whether the City had standing as a substantially affected person to seek a PSC declaratory statement concerning the applicability of PSC territorial orders after expiration of the County franchise agreement.
2. Whether the PSC had authority to declare that the City retained the right and obligation to provide electric service in its PSC-approved territory after expiration of the franchise agreement.
3. Whether the PSC's declaration impermissibly stripped the County of property rights or granted those rights to the City.
4. Whether the PSC's declaration violated section 366.13, Florida Statutes, by affecting a municipal tax or franchise fee.
5. Whether the County was entitled to relief from the PSC's denial of its own petition for declaratory statement.

HOLDINGS

1. The City had standing to request a declaratory statement because it was an electric utility subject to PSC regulation and a party to PSC territorial orders that the County had indicated it would treat as invalid after expiration of the franchise agreement.
2. The PSC acted within its exclusive and superior statutory jurisdiction when it declared that the City had the right and obligation to continue providing electric service in the territory described in the PSC territorial orders after expiration of the franchise agreement.
3. The PSC's declaration did not impermissibly strip the County of property rights or grant those rights to the City.
4. The PSC's declaration did not violate section 366.13, Florida Statutes, because it did not prevent the County from receiving remuneration for the City's use of County property.

5. The PSC properly denied the County's petition because it failed to satisfy the applicable statutory requirements for issuance of a declaratory statement.

KEY QUOTATIONS

“As the entity the Florida Legislature vested with “exclusive and superior” jurisdiction under section 366.04, Florida Statutes, to (among other things) determine “which utility has the right and the obligation to serve a particular geographical area,” Fla. Admin. Code R. 25-6.0439 (2015), the PSC’s declaration was within its jurisdiction and powers.” (191 So. 3d at 894)

“Accordingly, we affirm. It is so ordered.” (191 So. 3d at 899)

FACTUAL BACKGROUND

Indian River County and the City of Vero Beach had a franchise agreement giving the City the exclusive right to use County property to construct, maintain, and operate an electric system in unincorporated County areas; the agreement was set to expire in 2017 and did not contain a buy-out clause or specify the parties' post-expiration rights. Before and after the franchise agreement, the PSC issued territorial orders recognizing the City's and Florida Power and Light Company's rights and obligations to serve specified areas. The County took the position that the PSC territorial orders would become invalid or voidable within the franchise area when the franchise expired, while the City asserted that it remained obligated and entitled to serve those areas under the PSC orders.

PROCEDURAL HISTORY

The County and City were parties to a franchise agreement granting the City rights to use County property to operate an electric system in unincorporated areas, but the agreement was scheduled to expire in 2017 and the County declined renewal. The County petitioned the PSC for declarations concerning the effect of expiration on PSC territorial orders, while the City separately sought a declaration that it could continue serving its PSC-approved territory. The PSC denied the County's petition and declared that the City had the right and obligation to continue service under the territorial orders. The County appealed both orders, and the Supreme Court of Florida consolidated the appeals and affirmed.

DISPOSITION

affirmed

CASES CITED

- Public Service Commission v. Fuller, 551 So. 2d 1210, 1211 (Fla. 1989)
- Florida Public Service Commission v. Bryson, 569 So. 2d 1253, 1254 (Fla. 1990)
- Carr v. Old Port Cove Property Owners Association, Inc., 8 So. 3d 403, 404 (Fla. 4th DCA 2009)
- Regal Kitchens, Inc. v. Florida Department of Revenue, 641 So. 2d 158, 162 (Fla. 1st DCA 1994)
- United Telephone Co. v. Public Service Commission, 496 So. 2d 116, 118 (Fla. 1986)
- General Telephone Co. v. Carter, 115 So. 2d 554, 556 (Fla. 1959)
- City of Tallahassee v. Mann, 411 So. 2d 162, 164 (Fla. 1981)

- Shevin v. Yarborough, 274 So. 2d 505, 508 (Fla. 1973)
- Fort Pierce Utilities Authority v. Beard, 626 So. 2d 1356, 1357 (Fla. 1993)
- PW Ventures, Inc. v. Nichols, 533 So. 2d 281, 283 (Fla. 1988)
- AmeriSteel Corp. v. Clark, 691 So. 2d 473, 477 (Fla. 1997)
- Florida Power Corp. v. City of Winter Park, 887 So. 2d 1237, 1241 (Fla. 2004)
- Santa Rosa County v. Gulf Power Co., 635 So. 2d 96, 100 (Fla. 1st DCA 1994)
- Lee County Electric Cooperative, Inc. v. City of Cape Coral, 159 So. 3d 126, 128 (Fla. 2d DCA 2014)
- City of Homestead v. Beard, 600 So. 2d 450, 453 (Fla. 1992)

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