



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

FLORIDA ELECTRIC POWER
COORDINATING GROUP, INC.

Case No.: 60697-02-SP

Petition for Declaratory Statement to
The Florida Department of Insurance

_____ /

ORDER DISMISSING PETITION FOR DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on February 28, 2002, by the Department of Insurance, hereinafter referred to as the Department, from the FLORIDA ELECTRIC POWER COORDINATING GROUP, INC., hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the State Treasurer and Insurance Commissioner, as State Fire Marshal, finds and orders as follows:

1. For the reasons stated in this Order, the State Treasurer and Insurance Commissioner, as State Fire Marshal, does not have jurisdiction over the subject matter and the Petitioner in this matter.

2. Petitioner asserts that:

A. Petitioner's organization is a non-profit association of thirty-four investor owned, municipal, and cooperative electric utilities engaged in the business of providing electric power throughout Florida.

- B. Petitioner's members are in some instances being required to place utility poles at least seven and one half feet from a fire hydrant.
 - C. Petitioner's members are being told by local firesafety inspectors that the requirement for the seven and one half foot distance is found the Florida Fire Prevention Code, adopted in Rule Chapter 4A-60, Florida Administrative Code.
 - D. The Florida Public Service Commission, in Rule 25-6.0345, Florida Administrative Code, adopted the National Electrical Safety Code (ANSI C-2), as the applicable safety standards for transmission an distribution facilities subject to the Commission's safety jurisdiction.
 - E. ANSI C-2 requires a four foot distance from the utility pole to the fire hydrant.
3. Petitioner requests a declaratory statement on the following

question:

Is a utility pole required to have a clearance from a fire hydrant of seven and one half feet as asserted by the local firesafety inspectors, or may the clearance be four feet as required by the Florida Public Service Commission?

4. The dispositive authority in response to the Petitioner's question is not found in Chapter 633, Florida Statutes, nor in any rule of the Division, including the Florida Fire Prevention Code, nor in any code or standard adopted by the Division of State Fire Marshal, or by any local authority having jurisdiction.

5. The dispositive authority is found in Section 366.04(6), Florida Statutes, which states in pertinent part:

The [Public Service) [C]ommission shall further have exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities, cooperatives organized under the Rural Electric Cooperative Law, and electric utilities owned and operated by municipalities.

6. The Department of Insurance, Division of State Fire Marshal does not administer Section 366.04(6), Florida Statutes, and has no jurisdiction to interpret or issue a declaratory statement on it or any matter relating thereto.

7. Although the Department of Insurance, Division of State Fire Marshal urges each utility company to work with the local authority having jurisdiction in observing firesafety requirements as set forth in the applicable firesafety codes and standards, since Section 366.04(6), Florida Statutes, provides that the Florida Public Service Commission has exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all utilities, any statute, rule, code, or standard in conflict with that section relating to a safety standard is superseded by any safety standard for transmission and distribution facilities of all utilities adopted by the Florida Public Service Commission.

NOW, THEREFORE, based on the above, the Department of Insurance, Division of State Fire Marshal, hereby dismisses the Petition for Declaratory Statement for lack of jurisdiction over the Petitioner and the subject matter. The safety standards for transmission and distribution facilities of utilities, which includes a utility pole, is governed by the Florida Public Service Commission, and all firesafety authorities are required to observe those safety standards when dealing with transmission and distribution facilities.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Section 120.565, Florida Statutes, and rule 9.110, Florida Rules of Appellate Procedure, because

pursuant to Section 120.565, Florida Statutes, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED at Tallahassee, Leon County, Florida, this ____ day of _____, 2002.

GREG GAY
Deputy Commissioner,
Treasurer and State Fire Marshal

Copies furnished to:

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