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Subject: JEA/Scampi -- Foley coop memo -- risks of aggressive statutory interpretation

Greetings,

An area for the analysis/memo that needs additional work is what would happen (sources of opposition, legal threats, AG action, etc) if JEA used an aggressive reading of the statutes in pursuit of cooperative status. Do we have someone, likely in Florida, for whom this would be right in their wheelhouse? Would welcome your thoughts/suggestions.

Aggressive Argument examples.

Avenues that JEA might consider for transitioning to a "rural electric cooperative" model under Florida's Chapter 425 include taking an aggressive reading of relevant statutory authority. Such aggressive approaches might include, for example,

- Trying to fit within the "Conversion of existing corporations" authority under Section 425.17. This would require first a conversion of the municipal entity into a corporation and then (presumably instantaneously) following the process required to be "converted into a cooperative and become subject to this chapter".
 - Among the problems with this approach is that Section 425.02 states as the "purpose" of the chapter that "[c]ooperative, nonprofit, membership corporations *may be organized* under this chapter for the purpose of supplying electric energy and promoting and extending the use thereof *in rural areas.*" "Rural area" is defined in a way that clearly excludes the JEA service territory.
 - The aggressive argument to get around that is that the "conversion" process in 425.17 is distinct from the "*may be organized*" reference in 425.05 "Purpose" section. Further, it is clear that current Florida coops originally organized under the statute at a time when their service territories met the "rural area" definition no longer meet that definition, but nonetheless continue to operate under Chapter 425 today as "rural electric cooperatives."
- Similarly, JEA might want to invite an existing Florida (or Georgia or Alabama cooperative (see 425.27) rural electric cooperative to acquire its assets, service territory, and customers. This would arguably be allowed as one of the enumerated "powers" of a rural electric cooperative under Section 425.04(8) is to "purchase, take, receive . . . or otherwise acquire, and to own, hold, use, equip, maintain, and operate . . . electric transmission and distribution lines or systems, electric generating plants . . . and any and all kinds and classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate *to accomplish the purpose for which the cooperative is organized.*"
 - The problem with this approach again goes to the "Purpose" section of Chapter 425, in that such an action is not really "supplying electric energy and promoting and extending the use thereof *in rural areas.*" Further the acquiring coop may have needed to change its own bylaws/purpose to allow for such expansion.

Issue: What would happen?

If JEA went down one of these paths, I need help/expertise thinking through what would happen, and whether anyone would try and/or succeed in stopping it.

- I can handle the Florida PSC angle. It has general jurisdiction over the electric industry, including "jurisdiction 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 generation, transmission, and distribution facilities." 366.04(6). It could use this or other general authority to investigate on its own volition the plans of JEA (and/or an acquiring FL coop or an applying GA or AL coop) and try to issue an order preventing the action. That order itself would be subject to judicial appeal.
 - What about Florida Attorney General?
 - What about opponents within Jacksonville, whether current customers or political leaders?
 - What about any organized consumer advocate groups?
 - Could anyone just seek an injunction?
 - Avenues for ITN failed bidders?

- Vogtle opponents? (Likely a separate issue in many ways of course)
- Other avenues?

What is needed?

At the end I'm looking for a few sentences/paragraphs that could be added to the memo. If there is relevant authority or precedent that someone is aware of, I would hope we have someone we could check it out and prepare the relevant inserts.

Thanks

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