

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of amendment to territorial boundary line in Commission-approved territorial agreement in Osceola County, by Kissimmee Utility Authority and Progress Energy Florida, Inc.

DOCKET NO. 040176-EU
ORDER NO. PSC-04-0520-PAA-EU
ISSUED: May 24, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING AMENDMENT TO
TERRITORIAL AGREEMENT

BY THE COMMISSION:

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

On February 27, 2004, Kissimmee Utility Authority (KUA) and Progress Energy Florida, Inc., formerly Florida Power Corporation (Progress Energy), filed a Joint Petition for approval of an amendment to their territorial agreement. The territorial agreement was approved by Order No. 25714 in Docket No. 911138-EU, issued February 12, 1992 (1992 agreement). By its terms and incorporated maps, the 1992 agreement establishes the service territories of KUA and Progress Energy in Osceola County and elsewhere. The proposed amendment to the 1992 agreement, which is attached to and incorporated by reference in this Order, provides for a limited, specific modification to the territorial boundary line in Osceola County. Pursuant to Section 366.04(2), Florida Statutes, we have jurisdiction over territorial agreements between electric utilities, and for the reasons discussed below we approve the amendment requested, effective when our decision becomes final.

Section 1 of the proposed amendment provides for a specific modification to the territorial boundary line in Osceola County. The petitioners state that the need for the boundary modification arises because Cypress Shadows, a planned residential subdivision, is beginning

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construction development which straddles the territorial boundary line set forth in the 1992 agreement. Section 2.7 of the 1992 agreement provides;

The parties agree that if a distinct phase of a construction development is being constructed at a single period in time and falls on both sides of the Territorial Boundary Line, then the Territorial Boundary Line shall be altered by amendment to this Agreement so that the utility serving the predominant number of customers of that current phase of the construction development would be entitled to serve the entirety of that current phase of the construction development. Any amendment under this Section shall be submitted to the FPSC for approval pursuant to Chapter 366.04(2), Florida Statutes.

The majority of the proposed 197 lots in the Cypress Shadows subdivision fall within the current service territory of Progress Energy. Pursuant to Section 2.7, the amendment reflects the agreement between the petitioners to relocate the territorial boundary line to go around, rather than through, the subdivision in question. By redrawing the territorial boundary line as modified, the petitioners believe that the proposed amendment will conform to the requirements of Section 2.7, will result in service being provided by the most appropriate party under the circumstances, and will promote operational safety and efficiency.

The amendment meets the requirements set forth in Rule 25-6.0440, Florida Administrative Code. The specific modification of territorial boundaries in the amendment will help avoid uneconomic duplication of facilities. No existing customers or facilities of the joint petitioners will be transferred. There is no reasonable likelihood that the amendment will cause a decrease in the reliability of electric service to the existing or future ratepayers of KUA or Progress Energy. Therefore, we find that the amendment is in the public interest and we approve it.

It is therefore

ORDERED by the Florida Public Service Commission that the Joint petition for approval of amendment to territorial boundary line in Commission-approved territorial agreement in Osceola County, by Kissimmee Utility Authority and Progress Energy Florida, Inc., is approved, to become effective when this Order becomes final . It is further

ORDERED that this Order approving amendment to territorial agreement shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition , in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 24th day of May, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action approving an amendment to the petitioners' territorial agreement is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 14, 2004. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

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.