

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of amended territorial agreement in Sumter, Lake, Marion, Citrus, and Levy Counties by Sumter Electric Cooperative, Inc. and Progress Energy Florida, Inc.

DOCKET NO. 080632-EU
ORDER NO. PSC-09-0276-PAA-EU
ISSUED: April 29, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING AMENDED TERRITORIAL AGREEMENT

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature 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 (F.A.C.).

Background

On October 9, 2008, Sumter Electric Cooperative, Inc. (SECO) and Progress Energy Florida, Inc., (PEF) filed a joint petition for approval of an amended territorial agreement (Amended Agreement) dated October 1, 2008, in Sumter, Lake, Marion, Citrus, and Levy Counties. SECO and PEF are currently parties to two effective territorial agreements delineating their respective service territories in Sumter, Lake, Marion, Citrus, Levy, Pasco, and Hernando Counties.¹ The petitioners have agreed to an amended consolidated territorial agreement to replace the current agreements. The petition indicated that this Commission has long recognized that properly constructed territorial agreements between adjacent utilities are in the public interest. We have jurisdiction over the matter pursuant to Section 366.04, Florida Statutes (F.S.).

¹ See Order No. PSC-93-0998-FOF-EU, issued July 9, 1993, in Docket No. 930360-EU, In re: Joint Petition for approval of territorial agreement between Florida Power Corporation and Sumter Electric Cooperative, Inc., which approved a territorial agreement between the parties for certain areas in Lake County; and Order No. PSC-97-0611-FOF-EU, issued May 28, 1997, in Docket No. 961533-EU, In re: Joint Petition for approval of territorial agreement between Florida Power Corporation and Sumter Electric Cooperative, Inc., which approved a territorial agreement between the parties for areas in Citrus, Lake, Marion, Levy, Hernando, Pasco, and Sumter Counties.

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FPSC-COMMISSION CLERK

Amended Territorial Agreement

As stated above, the parties have agreed to replace the two currently effective agreements with one consolidated agreement. The parties desire to amend, restate, and consolidate the current agreements in their entirety in order to gain further operational efficiencies and customer service improvements in their respective retail service territories in Sumter, Lake, Marion, Citrus, and Levy Counties. The Amended Agreement will continue to eliminate circumstances giving rise to the uneconomic duplication of service facilities and hazardous situations that the current agreements were designed to avoid.

Pursuant to the Amended Agreement, there will be a transfer of customers, who are referred to as Extra-Territorial Customers. The parties have indicated that there will be 219 accounts (182 residential and 37 commercial) being transferred from SECO to PEF; and 136 accounts (119 residential and 17 commercial) being transferred from PEF to SECO. Names and service addresses of the customers subject to transfer have been attached to the Amended Agreement. The transfers of the Extra-Territorial Customers are expected to be completed within 36 months from the effective date of the Amended Agreement. The effective date shall be the date on which our final order granting approval in its entirety becomes no longer subject to judicial review. The parties will notify us in writing if circumstances require additional time to complete the transfer.

The parties anticipate that the number of customers to be transferred and received by each party will be balanced. Any going concern compensation from one party to the other would be essentially offsetting. Upon the transfer of Extra-Territorial Customers, the receiving party may elect to purchase the facilities of the transferring party related exclusively to serving those customers. If service facilities are transferred, the Amended Agreement contains provisions for the value of the facilities based upon the replacement cost (new) less depreciation. If there are facilities of one party located in the service area of the other party that are not subject to transfer or removal as a result of the Amended Agreement, those facilities shall be constructed, operated, and maintained in such a manner as to minimize any interference with the operations of the other party.

Both SECO and PEF sent several notification letters to their customers during the course of this case, with the most recent notifications being sent by SECO and PEF on March 2, 2009, and March 3, 2009, respectively. These most recent notifications updated rate information based on SECO's current rates and PEF's projected rate reduction expected to be implemented in April, 2009.² No negative responses were received. Sample copies of the letters providing notification to the affected customers were provided to our staff. These letters included sample rate comparisons between SECO and PEF, as well as information regarding refunds of deposits to the customers being transferred in earlier notifications. In addition, the parties have provided us with written assurance about customer deposits. This information explains that the customers being transferred will not be required to pay a deposit greater than the deposit that was previously charged by the other party from which the account is being transferred. Also, if the

² See Docket No. 090001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

transferring party has no deposit on hand for the transferring account, the receiving party will not require a deposit. In addition, arrangements in the form of payment installments will be considered if a customer being transferred has difficulties paying the deposit to the receiving party.

The parties agree that the provisions and performance of the Amended Agreement are subject to the regulatory authority of this Commission, and shall have no effect until such approval has been obtained. Any proposed modification to the Amended Agreement shall be submitted to us for approval. In addition, the parties agree to jointly petition this Commission to resolve any dispute concerning the provisions of the Amended Agreement or the parties' performance of the Amended Agreement. Also, as mentioned earlier, the Amended Agreement supersedes the current agreements and all other prior agreements between the parties defining the boundaries of their respective territorial areas in Sumter, Lake, Marion, Citrus, Levy, Pasco, and Hernando Counties. The term of the Amended Agreement shall continue in effect for a period of ten years, with no provision for automatic renewal.

Pursuant to Section 366.04(2)(d), F.S., we have jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Rule 25-6.0440(2), F.A.C., provides that in approving territorial agreements, we may consider the reasonableness of the purchase price of any facilities being transferred, the likelihood that the agreement will not cause a decrease in the reliability of electric service to existing or future ratepayers, and the likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities. Unless we determine that the Amended Agreement will cause a detriment to the public interest, the agreement should be approved. See Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985). In this instance, the territorial agreement proposed by SECO and PEF eliminates existing or potential uneconomic duplication of facilities, and it does not cause a decrease in the reliability of electric service to existing or future ratepayers.

Based on the above, we find that the joint petition for approval of the Amended Agreement between SECO and PEF is in the public interest, and it shall be approved. Because there will be customers transferred as a result of the Amended Agreement, beginning one year from the date of this Order approving the Amended Agreement, annual reports shall be submitted to this Commission concerning the status of the customer transfers. The reporting requirement shall continue until all Extra-Territorial Customers have been transferred and the terms of the Amended Agreement have been fully satisfied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Petition for Approval of Amended Territorial Agreement in Sumter, Lake, Marion, Citrus, and Levy Counties by Sumter Electric Cooperative, Inc., and Progress Energy Florida, Inc., is in the public interest and shall be approved. It is further

ORDERED that the effective date shall be the date on which our final order granting approval in its entirety is no longer subject to judicial review. It is further

ORDERED that the term of the Amended Agreement shall continue in effect for a period of ten years, with no provision for automatic renewal. It is further

ORDERED that the parties shall notify us in writing if circumstances require additional time to complete the transfer. It is further

ORDERED that if there are facilities of one party located in the service area of the other party that are not subject to transfer or removal as a result of the Amended Agreement, those facilities shall be constructed, operated, and maintained in such a manner as to minimize any interference with the operations of the other party. It is further

ORDERED that any proposed modification to the Amended Agreement shall be submitted to this Commission for approval. It is further

ORDERED that beginning one year from the date of this Order, annual reports shall be submitted to this Commission concerning the status of the customer transfers. It is further

ORDERED that the reporting requirement shall continue until all Extra-Territorial Customers have been transferred and the terms of the Amended Agreement have been fully satisfied. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, 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 Commission Clerk, 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 if no person whose substantial interests are affected files a protest to this Proposed Agency Action Order within 21 days, a Consummating Order will be issued and the docket shall be closed.

By ORDER of the Florida Public Service Commission this 29th day of April, 2009.



ANN COLE
Commission Clerk

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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 herein 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 Office of Commission Clerk, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 20, 2009. 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.