

**ORIGINAL**

**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A ECENIA  
RICHARD M ELLIS  
KENNETH A HOFFMAN  
THOMAS W KONRAD  
MICHAEL G MAIDA  
MARTIN P McDONNELL  
J STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551  
215 SOUTH MONROE STREET, SUITE 420  
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788  
TELECOPIER (850) 681-6515

R DAVID PRESCOTT  
HAROLD F X. PURNELL  
MARSHA E. RULE  
GARY R RUTLEDGE  
GOVERNMENTAL CONSULTANTS  
MARGARET A MENDUNI  
M LANE STEPHENS

January 12, 2004

Ms. Blanca S. Bayo, Director  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, Florida 32399-0850

**HAND DELIVERY**

RECEIVED - FPSC  
JAN 12 PM 4: 24  
COMMISSION  
CLERK

Re: Docket No. 031128-EU

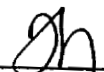
Dear Ms. Bayo:

Enclosed herewith for filing on behalf of Majestic Oaks Partners, LLC ("Majestic") is an original and fifteen copies of Majestic's Petition for Leave to Intervene and Request for Expedited Relief.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me. Thank you for your assistance with this filing.

Sincerely,

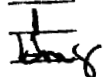
RECEIVED & FILED

  
FPSC-BUREAU OF RECORDS



Kenneth A. Hoffman

KAH/rl  
Enclosures  
FAUSERS\ROXANNE\Majestic\Bayo.ltr

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- SEC \_\_\_\_\_
- OTH 

DOCUMENT NUMBER - DA

00486 JAN 12

FPSC-COMMISSION CL

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory Statement	)	
of Withlacoochee River Electric	)	Docket No. 031128-EU
Cooperative, Inc. Regarding a Territorial	)	
Dispute with Progress Energy, Florida,	)	Filed: January 12, 2004
Inc. in Hernando County, Florida	)	
_____	)	

**MAJESTIC OAKS PARTNERS, LLC'S  
PETITION FOR LEAVE TO INTERVENE  
AND REQUEST FOR EXPEDITED RELIEF**

Majestic Oaks Partners, LLC ("Majestic"), by and through its undersigned counsel, and pursuant to Rules 25-22.039, 28-106.201(2) and 25-6.0440, Florida Administrative Code, and Sections 120.565 and 366.04, Florida Statutes, petitions for leave to intervene in the above-styled docket in support of the Petition for Declaratory Statement filed by Withlacoochee River Electric Cooperative, Inc. ("Withlacoochee") on December 29, 2003 in the above-referenced docket. In support of this Petition, Majestic states as follows:

**PARTIES**

1. Majestic's official name and business address are:

Majestic Oaks Partners, LLC  
24060 Deer Run Road  
Brooksville, Florida 34601

2. The name and address of Majestic's representative to receive notices and pleadings

in this docket is:

Kenneth A. Hoffman, Esq.  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
P. O. Box 551  
Tallahassee, FL 32302  
(850) 681-6788 (Telephone)  
(850) 681-6515 (Telecopier)

DOCUMENT NUMBER DATE

00486 JAN 12 3

FPSC-COMMISSION CLERK

3. Majestic is a Florida limited liability corporation. Majestic is in the process of developing 428 acres of property that it owns in Hernando County for the construction and sale of residential homes.

4. Withlacoochee is a rural electric cooperative organized and operating pursuant to Chapter 425, Florida Statutes. Withlacoochee is an “electric utility” as defined by Section 366.02(2), Florida Statutes, and therefore subject to the Commission’s territorial dispute and territorial agreement jurisdiction under Section 366.04(2) and (4), Florida Statutes, and Grid Bill jurisdiction under Section 366.04(5) and (6), Florida Statutes.

5. Florida Power Corporation (“FPC”), now known as Progress Energy Florida (“Progress Energy”), is a “public utility” as defined by Section 366.02(1), Florida Statutes, and therefore is subject to the Commission’s territorial dispute and territorial agreement jurisdiction under Section 366.04(2) and (4), Florida Statutes, and Grid Bill jurisdiction under Section 366.04(5) and (6), Florida Statutes.

6. The agency affected by this Petition for Leave to Intervene is the Florida Public Service Commission (“Commission”), 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

**JURISDICTION**

7. The Commission has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes, Section 366.04(2), (4), (5) and (6), Florida Statutes, and Order No. 25309 issued November 7, 1991 in Docket No. 910940-EU.

## FACTS

8. Pursuant to Order No. 25309, the Commission approved a Territorial Agreement between Withlacoochee and FPC. See Appendix A to Withlacoochee’s Petition for Declaratory Statement. As outlined in the Order, the Territorial Agreement “represent[s] a continuing effort by the parties to minimize the costs to their respective customers by avoiding unnecessary duplication of facilities.” The Agreement is a fifteen year agreement allocating territory (and a transfer of customers) as between the two parties in Hernando County. In approving the Agreement, the Commission held:

We also find that the Agreement satisfies the intent of Subsection 366.04(5), Florida Statutes, to avoid further uneconomic duplication of generation, transmission, and distribution facilities in the state. We, therefore, find that the Agreement is in the public interest and should be approved.<sup>1</sup>

9. Majestic is in the process of developing approximately 425 acres of property that it owns in Hernando County for the purpose of constructing and selling approximately 625 residential lots. The map filed by Withlacoochee in support of its Petition for Declaratory Statement reflects that:

a. The Commission approved territorial boundary line between Withlacoochee’s exclusive retail service territory in Hernando County and Progress Energy’s exclusive retail service territory in Hernando County runs directly across, east to west, and divides the Majestic property leaving Majestic (and, ultimately, the owners of homes constructed in the Majestic development) with two electric utilities authorized to provide service to portions of its development.

---

<sup>1</sup>Order No. 25309, at 2.

b. Withlacoochee has six potential service points to provide retail electric service to the entire Majestic development, all of which are situated either directly on the Majestic property or immediately adjacent to (no more than 800 feet) from the Majestic property. Five of the six service points are three phase distribution facilities.

c. Progress Energy has two potential service points to provide service to the entire Majestic development, one of which is located approximately 4,887 feet from the Majestic property. The second potential service point is a 69 kV line running south from a transmission line that traverses the Majestic property to an old substation that Majestic understands would need to be upgraded to serve the entire Majestic property. This substation has been in existence for at least 35 years and was originally built to serve the quarry abandoned in the early 1960s.

d. Majestic is the owner of the Brooksville Golf and Country Club, situated adjacent to and immediately north/northeast of the approximate 400 acres of Majestic property that will be developed. The Brooksville Golf and Country Club, which is part of the Majestic Project, is situated in the service territory of and served by Withlacoochee.

10. Majestic is scheduled to commence construction of Phase I of the development in early January 2004. Majestic requires electric service to begin construction of Phase I of its development. As indicated on the map filed by Withlacoochee, the Phase I development will begin on the southern tip of the Majestic property situated in the current service territory of Progress Energy.

11. The Territorial Agreement between the parties approved by the Commission pursuant to Order No. 25309 contemplated the prospect of a potential modification of the territorial boundary line between the two parties to provide service to a new customer or prospective new customer

consistent with the underlying statutory rationale and goals for approving the territorial agreement, i.e., to avoid further uneconomic duplication of facilities. Specifically, Section 2.2 of the Agreement provides as follows:

Section 2.2: Service to New Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any New Customer whose end-use facilities are located within the Territorial Area of the other Party, except as specifically provided in this Section of the Agreement.

The Parties recognize that exceptional circumstances, economic constraints or good engineering practices may indicate that a customer's end-use facilities either cannot or should not be immediately served by the party in whose Territorial Area the end-use facilities are located. In such instances, upon written request to the other party by the Party in whose Territorial Area the end-use facilities are located, the other Party may agree in writing to temporarily provide service to such customer's end-use facilities. Any such agreement for temporary service shall be submitted to the Florida Public Service Commission for approval in accordance with Article 4, Section 4.1 hereof.

In the event that New Customer or prospective New Customer requests or applies for service from either Party to be provided to end-use facilities located in the Territorial Area of the other Party, the Party receiving such a request or application shall refer the New Customer or prospective New Customer to the other Party with citation to this Agreement as approved by the Commission, and shall notify the other Party of such request or application.

If the New Customer or prospective New Customer delivers a written application for service after being referred to the other Party, or continues to demand service under an application made prior to a referral to the other Party, the Party receiving the application shall file a Petition for Declaratory Statement requesting the commission to apply this Agreement to the facts presented. The petitioning Party shall notify the other Party and the applicant of its intent to file a Petition for Declaratory Statement prior to filing such Petition and shall request the joinder of the other Party as a Party to the proceeding. The petitioning Party shall not provide or attempt to provide electric service to such a New Customer unless the

Commission authorizes such service in an order binding upon both Parties.

12. As reflected in the correspondence attached to Withlacoochee's Petition in Appendix B, Majestic has requested that Withlacoochee provide retail electric service to the entire Majestic development, including the portion situated in Progress Energy's current service territory.

13. Pursuant to Section 2.2 of the Agreement, by letter dated November 3, 2003, copy attached hereto as Exhibit A, Withlacoochee notified Progress Energy of Majestic's request that Withlacoochee provide retail electric service to the entire Majestic development.

14. In accordance with the procedures set forth in Section 2.2 of the Territorial Agreement, Withlacoochee filed its Petition for Declaratory Statement requesting the Commission to apply this Agreement to the facts presented and determine that Withlacoochee should serve the entire Majestic property. Withlacoochee has not provided or attempted to provide electric service to the Majestic development pending the disposition by the Commission of its Petition for Declaratory Statement.

15. Rules 25-22.039 and 28-106.205, Florida Administrative Code, authorize intervention where the allegations in the petition to intervene "demonstrate that ... the substantial interests of the intervenor are subject to determination or will be affected through the proceeding."

16. It is a well-established principle of administrative law that a party is considered to have a substantial interest in the outcome of a proceeding if: (a) the party will suffer an injury in fact which is of sufficient immediacy to entitle it to a formal administrative hearing; and (b) the injury is of the type or nature which the proceeding is designed to protect. Agrico Chemical v. Department of Environmental Regulation, 406 So.2d 478, 482 (Fla. 2<sup>nd</sup> DCA 1981).

17. Recent decisions of Florida appellate courts recognize that the 1996 amendments to Section 120.565, Florida Statutes, providing, among other things, that the agency provide notice of the filing of a petition for a declaratory statement and the resolution of the petition in the Florida Administrative Weekly:<sup>2</sup>

... accounts for the possibility that a declaratory statement may, in a practical sense, affect the rights of other parties. Any substantially affected party can intervene in a declaratory statement proceeding before... (an) agency....

Chiles v. Department of State, Division of Elections, 711 So.2d 151, 155 (Fla. 1<sup>st</sup> DCA 1998); approved in Florida Department of Business and Professional Regulation, Division of Pari-Mutual Wagering v. Investment Corp. of Palm Beach, 747 So. 374, 381 (Fla. 1999) (“Investment Corp.”); see also Order No. PSC-01-1531-PCO-SU issued July 24, 2001.<sup>3</sup> The right to intervene and participate in a declaratory statement proceeding provides protection for “other concerned parties” such as Majestic who would be substantially affected by the relief sought in the requested declaratory statement. The right to intervene in a declaratory statement proceeding was recently acknowledged by the Commission in Order No. PSC-03-0712-PCO-TP issued June 16, 2003.

18. Section 366.04(4), Florida Statutes, expressly provides that “[a]ny substantially affected customer shall have the right to intervene in (territorial agreement or territorial dispute) proceedings.” In this case, the relief sought by Withlacoochee - - modification of its territorial

---

<sup>2</sup>See Ch. 96-159, Sec. 17, Laws of Florida.

<sup>3</sup>In re: Petition for Declaratory Statement as to whether service availability agreement with United Water Florida, Inc. requires prior Commission approval as “special service availability contract” and whether contract is acceptable to Commission, by St. Johns County, 01 F.P.S.C. 7:232 (2001).



agreement with Progress Energy to authorize Withlacoochee to serve the entire Majestic property -  
- will substantially affect Majestic's interests. Service by Withlacoochee to the entire Majestic property can be provided at reduced incremental costs with increased safety, efficiency, reliability and customer satisfaction when compared with the prospect of service to portions of the Majestic property by Withlacoochee and Progress Energy. These savings, efficiencies and increased reliability can be brought to the purchasers of lots from Majestic who will be the ultimate customers of the utility. Accordingly, as a substantially affected customer of Withlacoochee and Progress Energy, Majestic has the right to intervene in this proceeding.

**ARGUMENT IN SUPPORT OF WITHLACOOCHEE'S  
PETITION FOR DECLARATORY STATEMENT**

19. As previously stated, the Territorial Agreement between the parties contemplates a potential modification of the territorial boundary line between the two utilities, as applied to the facts presented. Majestic submits that the question of whether the facts support a modification of the territorial boundary line, as requested, should be analyzed under the statutory and rule criteria that are applied to approval of territorial agreements and were applied to the approval of the original Territorial Agreement in 1991. These statutory and rule criteria are summarized below:

a) Section 366.04(5), F.S.:

The Commission shall further have 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.

b) Section 366.04(6), F.S.:

The commission 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.

c) Rule 25-6.0440(2), F.A.C.:

Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:

- (a) the reasonableness of the purchase price of any facilities being transferred;
- (b) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement; and
- (c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

20. Application of the statutory and rule criteria outlined above and Section 2.2 of the Territorial Agreement to the following facts supports the issuance of the declaratory statement requested by Withlacoochee for the following reasons:

a. Withlacoochee currently has in place 5 potential three-phase feeder service points and 1 one-phase feeder service point which could be updated to the three-phase service situated on or immediately adjacent to the Majestic property. Withlacoochee's incremental cost to reach the Majestic property for the purpose of providing retail electric service is \$0. Withlacoochee's multiple points of directly situated or immediately adjacent three phase facilities places it in the position of providing high quality electric service to Majestic and the purchasers of lots on the Majestic property, with multiple points of redundancy, at a de minimus incremental cost.

b. Progress Energy has only one point of interconnection that is fed off a one phase line and is located some 75 feet from the southern edge of Majestic's property. Progress Energy will have substantially higher incremental costs than Withlacoochee to provide retail electric service to the Majestic property, including the construction of higher capacity distribution lines over an approximate 4800 foot distance to reach the property. Even with such construction, Progress Energy currently has no other three-phase point of interconnection (the other potential service point is the previously described 69 kv line) that would feed into the Majestic property for purposes of providing back-up service in the event the newly constructed Progress Energy distribution facility were to lose service.

c. The current facts reflect that, absent a modification of the territorial boundary line to allow Withlacoochee to provide retail electric service to the entire Majestic development, there will be a classic case of uneconomic duplication of facilities. Withlacoochee would construct facilities from one or more of its immediately adjacent or directly situated service points to provide electric service to roughly the northern half of the Majestic development. Progress Energy would have to construct substantial facilities to even reach the development and then additional facilities to serve roughly the southern half of the Majestic development. Such would be a classic case of uneconomic duplication of facilities.

d. Moreover, the mixing and matching of the two electric systems would diminish the ability of both utilities to provide the most safe, efficient and reliable electric service. Moreover, once the development is built out, the development will be divided for purposes of electric service into two utilities with customers even on the same street having different electric utility providers and being subjected to different rates and varying levels of quality of service. In that regard,

Majestic maintains that Progress Energy cannot expect to maintain a level of service commensurate with that which would be provided by Withlacoochee absent substantial upgrades and construction of facilities at a substantial incremental cost - - costs that will not be incurred for Withlacoochee to provide a high level quality of service to the entire Majestic development.

e. Withlacoochee also has lower retail electric rates than Progress Energy. Customer confusion and customer dissatisfaction within the entire Majestic development concerning disparate rates and levels of service will be avoided by authorizing Withlacoochee to serve the entire Majestic development.

f. Consistent with Section 2.2 of the Territorial Agreement, the foregoing facts demonstrate both exceptional circumstances and economic constraints that justify the conclusion that Majestic and its purchasing lot owners should not be immediately served by Progress Energy in Progress Energy's currently carved out portion of the Majestic development. Further, consistent with Section 2.2, the above facts demonstrate that good engineering practices will be enhanced by authorizing Withlacoochee to serve the Majestic property in its entirety.

#### **CONCLUSION AND REQUEST FOR RELIEF**

21. The Commission-approved Territorial Agreement between the parties expressly contemplated that a situation may arise where it would be appropriate, and consistent with statutory goals, to modify the territorial boundary line between the parties. The Withlacoochee Petition for Declaratory Statement represents such a case. Without a modification of the territorial boundary line between the parties, service can only be provided to the entire Majestic development by two utilities at substantially higher collective incremental costs - - most all of which would be incurred by Progress Energy, and with the prospect of diminished safety, efficiency, reliability, and customer

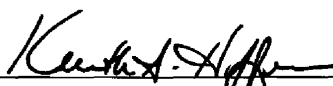
satisfaction. Withlacoochee clearly has the facilities currently in place, directly on or immediately adjacent to the property, necessary to provide fully redundant, high quality electric service. Progress Energy cannot provide service to its portion of the Majestic development at a commensurate level of reliability without substantially higher incremental costs. The statutory goals imposed on the Commission and underlying the original approval of this Territorial Agreement - - to avoid the further uneconomic duplication of facilities - - will be furthered by the granting of Withlacoochee's Petition for Declaratory Statement and authorizing Withlacoochee to provide retail electric service to the entire Majestic property.

22. Majestic's schedule for the development of its property and construction of homes has been delayed, in part, by the negotiations between Withlacoochee and Progress Energy regarding service by Withlacoochee to the entire Majestic property. Majestic has secured financing for its development, and continues to incur the carrying costs associated therewith. Majestic had planned to commence construction in early January 2004 but cannot do so until the issue of electric service to its development is resolved. Therefore, Majestic respectfully requests that the Commission grant the relief requested by Withlacoochee on an expedited basis.

WHEREFORE, for the foregoing reasons, Majestic respectfully requests that the Commission enter an Order:

- A. Granting this Petition for Leave to Intervene; and
- B. Granting Withlacoochee's Petition for Declaratory Statement on an expedited basis.

Respectfully submitted,



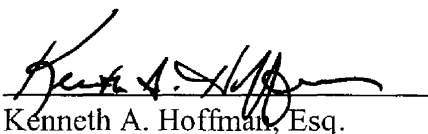
\_\_\_\_\_  
Kenneth A. Hoffman, Esq.  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
P. O. Box 551  
Tallahassee, FL 32302  
(850) 681-6788 (Telephone)  
(850) 681-6515 (Telecopier)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States Mail to the following this 12<sup>th</sup> day of January, 2004:

Brian P. Armstrong, Esq.  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive  
Suite 200  
Tallahassee, Florida 32380

Martha Carter Brown, Esq.  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, FL 32399-0850



\_\_\_\_\_  
Kenneth A. Hoffman, Esq.



WITHLACOCHEE  
RIVER  
ELECTRIC  
COOPERATIVE, INC.

November 3, 2003

Kathleen Small  
Progress Energy Florida, Inc.  
4121 Saint Lawrence Drive  
New Port Richey, FL 34653

Dear Kathy:

This letter is a follow-up to our conversation earlier today concerning the request we have received to serve Majestic Oaks in Hernando County. Mr. Bronson delivered a written application for service to Withlacoochee River Electric Cooperative, specifically asking us to provide "retail electric service to the 420 acre area" that we have been discussing for the last couple of months.

As I mentioned to you on several occasions, WREC has not promoted this issue and we have repeatedly referred to our existing territorial agreement with Progress Energy. However, it seems obvious that Mr. Bronson is pursuing that portion of the agreement (Section 2.2: Service to New Customers) that requires intervention from the commission. If we are unable to reach an agreement to resolve the issue, WREC will be mandated to ask for a Declaratory Statement from the Public Service Commission.

We had briefly discussed a cash payment from Withlacoochee River Electric to Progress Energy for that portion of the development that lies outside our established boundary. Historically, we have used one years' projected revenue to determine value, and WREC would be willing to make this offer to avoid lengthy legal proceedings. If you wish to give further consideration to this type of negotiation, please contact us.

You indicated to me today that you were to have a conference with others in your organization concerning the formal request to provide service. Please let me know if the only solution you can consider is to ask for the above-mentioned decision from the commission.

Again, we would like to reiterate that we have only responded to requests from Tommy Bronson or his agents, and have not encouraged this issue.

Sincerely,

Duane Vann  
Assistant General Manager

