



ORIGINAL

JAMES A. MCGEE  
ASSOCIATE GENERAL COUNSEL  
PROGRESS ENERGY SERVICE COMPANY, LLC

January 20, 2004

VIA HAND DELIVERY

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RECEIVED FPSC  
04 JAN 20 PM 2:46  
COMMISSION  
CLERK

Re: Docket No. 031128-EU

Dear Ms. Bayó:

Enclosed for filing in the subject docket on behalf of Progress Energy Florida, Inc., are an original and fifteen copies of its Petition for Leave to Intervene.

Please acknowledge your receipt of the above filing on the enclosed copy of this letter and return to the undersigned. A 3½ inch diskette containing the above-referenced documents in Word format is also enclosed. Thank you for your assistance in this matter.

Very truly yours,

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

James A. McGee

JAM/scc  
Enclosures

cc: Parties of record

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

*Done  
01/27/04  
KMP  
JAM*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Petition for Declaratory Statement  
of Withlacoochee River Electric  
Cooperative, Inc. regarding a territorial  
dispute with Progress Energy Florida,  
Inc. in Hernando County, Florida.

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Docket No. 031128-EU

Submitted for filing:  
January 20, 2004

**PROGRESS ENERGY FLORIDA'S  
PETITION FOR LEAVE TO INTERVENE**

Progress Energy Florida, Inc. (Progress Energy or the Company), pursuant to Rule 25-22.039, F.A.C., hereby petitions the Florida Public Service Commission (the Commission) for leave to intervene in the captioned proceeding and states as follows.

**Introduction**

1. Progress Energy is a public utility subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, Florida Statutes. The Company's principal place of business is located at 100 Central Avenue, St. Petersburg, Florida 33701.

2. All notices, pleadings and correspondence required to be served on the petitioner should be directed to:

James A. McGee, Esquire  
Post Office Box 14042  
St. Petersburg, FL 33733-4042  
Facsimile: (727) 820-5519

For express deliveries by private courier, the street address in paragraph 1 above should be used.

## Discussion

3. On December 29, 2003, Withlacoochee River Electric Cooperative, Inc. (WREC), initiated this proceeding by filing a petition requesting that the Commission issue a declaratory statement defining the rights and obligations of WREC under a Commission-approved territorial agreement between it and Progress Energy establishing their respective service areas in Hernando County. Specifically, the petition requests the Commission to declare that WREC is authorized to provide service to future customers who will be located in the service area assigned to Progress Energy by the territorial agreement in question. As a party to the territorial agreement, Progress Energy's substantial interests will be materially and adversely affected by WREC's requested unilateral modification of the bilateral agreement.

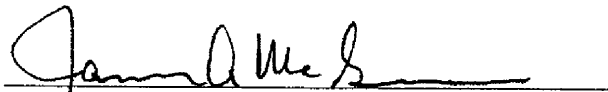
4. Section 2.2 of the territorial agreement, the section cited by WREC as the basis for its declaratory statement petition, explicitly recognizes the need of the non-petitioning utility for party status in a declaratory statement proceeding initiated under that section. In pertinent part, Section 2.2 provides:

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 on both Parties.

The highlighted language above makes clear that the declaratory statement process contemplated by Section 2.2 was intended to provide party status for the non-petitioning utility, as well as the petitioning utility. This is unsurprising, since it is the only way to allow the substantial interests of both parties to the agreement to be presented and considered, and the only way to enable the Commission to issue "an order binding on both Parties."

WHEREFORE, Progress Energy respectfully requests that the Commission grant this petition and authorize the Company to participate as a full party in this proceeding.

Respectfully submitted,



James A. McGee  
Associate General Counsel  
Progress Energy Service Company, LLC  
Post Office Box 14042  
St. Petersburg, Florida 33733-4042  
Telephone: 727-820-5184  
Facsimile: 727-820-5519  
Email: [james.mcgee@pgnmail.com](mailto:james.mcgee@pgnmail.com)

Attorney for  
PROGRESS ENERGY FLORIDA, INC.

**CERTIFICATE OF SERVICE**

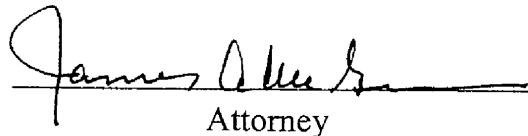
I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the following individuals by regular U.S. Mail on the 20<sup>th</sup> day of January, 2004.

Martha Carter Brown, Esquire  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Brian P. Armstrong, Esquire  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, FL 32308

Duane Vann  
Withlacoochee River Electric Cooperative, Inc.  
P.O. Box 278  
Dade City, FL 33526-0278

Kenneth A. Hoffman, Esquire  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
P.O. Box 551  
Tallahassee, FL 32302

  
Attorney