

RECEIVED-FPSC

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

05 AUG 25 AM 10: 03

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: August 25, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Brown) *MCB* *Wheeler* *DPW* *Ret*
Division of Economic Regulation (Bremar, Wheeler) *Job* *WOM* *Ret* *Box*

RE: Docket No. 050500-EU – Joint petition for approval of territorial settlement agreement by Tampa Electric Company, Progress Energy Florida, Inc., and The Mosaic Company.

AGENDA: 09/06/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050500.RCM.DOC

Case Background

On July 25, 2005, Progress Energy Florida, Inc. (PEFI), Tampa Electric Company (TECO), and Mosaic Phosphates Company (Mosaic) filed a joint motion for approval of a Settlement Agreement that addresses the provision of electric service to Mosaic's mobile facilities that periodically traverse the approved territorial boundaries between TECO and PEFI.

The proposed Settlement Agreement is the third such agreement between the Joint Petitioners addressing the unique reliability requirements of mobile facilities, payments, and Commission notification of changes in service. The prior agreements approved in Order Nos.

DOCUMENT NUMBER-DATE

08196 AUG 25 03

FPSC-COMMISSION CLERK

Docket No. 050500-EU

Date: August 25, 2005

PSC-02-0929-AS-EI¹ and PSC-03-1215-PAA-EU² expire on August 10, 2005 and November 20, 2005, respectively. The proposed Settlement Agreement is intended to replace the prior agreements, extend the same mechanisms approved in the prior orders for an additional five years, and change the payments Mosaic will make to TECO. The Settlement Agreement requires Commission approval to be consistent with statutory authority and as part of the Commission's ongoing, active supervision of electric utility territorial agreements.

The Commission has jurisdiction over this matter pursuant to several provisions of Chapter 366, Florida Statutes, including Sections 366.04, and 366.05, Florida Statutes.

¹ In Re: Joint petition of Florida Power Corporation and Tampa Electric Company for expedited declaratory relief concerning provision of electric service to an industrial customer's facilities located in Tampa Electric Company's Commission-approved service territory, issued July 11, 2002, in Docket No. 020105-EI.

² In Re: Joint petition of Tampa Electric Company, IMC Phosphates Company and Progress Energy Florida, Inc. for approval of provision of electric service by Progress Energy Florida, Inc. to certain facilities owned and operated by IMC Phosphates Company in Tampa Electric Company's Commission-approved service territory, issued October 27, 2003, in Docket No. 030526-EU.

Discussion of Issues

Issue 1: Should the Commission approve the proposed Settlement Agreement regarding the provision of electric service to Mosaic's mobile facilities?

Recommendation: Yes. The Commission should approve the proposed agreement, effective the date of the Commission's consummating order making the approval final. (Brown, Breman, Wheeler)

Staff Analysis: Mosaic operates interconnected phosphate mining equipment consisting of pumps, slurry pipelines, and draglines (mobile facilities) in a region that is bisected by the retail service areas of TECO and PEFI. From time to time, Mosaic moves these mobile facilities from one retail service territory to another, traversing the approved territorial boundaries between TECO and PEFI. Mosaic prefers that only one utility provide the electric requirements of a mobile facility because the reliability of the mobile facility is compromised when more than one utility provides electric service to different components of the facility.

In Order No. PSC-02-0929-AS-EI, the Commission approved an agreement that allows one utility to provide all the electric requirements of a mobile facility regardless of location. In Order No. PSC-03-1215-PAA-EU, the Commission approved an agreement extending the same concept to certain new phosphate mining operations that were not contemplated at the time Order No. PSC-02-0929-AS-EI was issued. Both agreements are set to expire in 2005. The proposed Settlement Agreement (Attachment 1) is intended to replace those agreements.

The proposed Settlement Agreement is substantially similar to the existing agreements. The only material change is the proposed termination of certain payments Mosaic currently makes to TECO for the load that is located in TECO's territory but served by PEFI. Under the proposed Settlement Agreement, Mosaic will only be required to make payment to PEFI pursuant to PEFI's then-current IST-1 or otherwise applicable rate schedule. This differs from the existing agreement, which requires Mosaic to pay TECO an amount equal to the positive difference between the base rate charges billable under TECO's IST-1 rate schedule and PEFI's IST-1 rate schedule. Under the new agreement, Mosaic will only be required to make payments to TECO if Mosaic fails to notify TECO prior to the commencement of new service to a mobile facility as described in Paragraph 5 of the proposed agreement. As under the existing agreement, PEFI will pay TECO 50% of the base revenues (adjusted for the appropriate interruptible service billing credit) collected from Mosaic for the load. The new agreement provides for identical treatment for load that is located in PEFI's territory but served by TECO. The proposed change in payments does not result in lower rates to Mosaic than would otherwise be applicable to non-mobile facilities.

The Joint Petitioners requested that the Commission include the following language in its order approving the proposed Settlement Agreement:

The Commission recognizes that the Parties may, of necessity, implement the resolution of future situations concerning electric service to Mosaic's Mobile Facilities, as contemplated in paragraph 4 of the Settlement Agreement, in advance of the Parties submitting such resolutions to the Commission for its

approval. However, the Commission is satisfied that the procedures and pricing mechanism set forth in paragraph 5 to be used in addressing issues raised by future service to Mosaic Mobile Facilities are sufficiently clear and specific to avoid the exercise of undue discretion by the Parties and are in the public interest. The Commission will review each resolution when filed and approve or take other appropriate action in response thereto, consistent with its statutory authority and as part of its ongoing, active supervision of this settlement and the application and implementation of territorial agreements.

Staff notes that similar language was included in Order No. PSC-02-0292-AS-EI approving the Joint Petitioners first settlement agreement, and believes that such language is also appropriate for the order in this docket.

Staff believes the proposed Settlement Agreement avoids potential retail territorial disputes between TECO and PEFL, addresses service reliability, and is consistent with the Commission's longstanding policy of encouraging agreements. Therefore, the proposed Settlement Agreement is in the public interest and should be approved. The agreement should become effective with the issuance of the Commission's consummating order approving the agreement.

Docket No. 050500-EU

Date: August 25, 2005

Issue 2: Should this docket be closed?

Recommendation: Yes. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order. If a protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving this Settlement Agreement, the Settlement Agreement should remain in effect pending resolution of the protest and the docket should remain open. (Brown)

Staff Analysis: If no protest is filed, this docket should be closed upon the issuance of a Consummating Order. If a protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving this agreement, the agreement should remain in effect pending resolution of the protest and the docket should remain open.

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 22nd day of July, 2005 by and between Progress Energy Florida ("Progress"), Tampa Electric Company ("Tampa Electric") and The Mosaic Company ("Mosaic") (collectively, "the Parties").

WHEREAS, Mosaic currently operates certain mobile facilities located in Tampa Electric's service territory that are served by Progress pursuant to a Settlement Agreement that was entered into by the parties and approved by the Florida Public Service Commission ("FPSC") in Order No. PSC-02-0929-AS-EI¹ and has operated a sand pit pursuant to a second Settlement Agreement among the Parties approved by the FPSC in Order Nos. PSC-03-1215-PAA-EU and PSC-03-1327-CO-EU²; and

WHEREAS, the above-mentioned Settlement Agreements are due to expire on August 10, 2005 and November 20, 2005, respectively; and

WHEREAS, in recognition of the issues involved with providing electric power to dragline/slurry systems and other facilities that are mobile in nature, the Parties wish to establish a process through which future issues related to the provision of electric service to Mosaic's mobile facilities may be identified and resolved in a manner that is consistent with the objectives in the territorial agreement and that facilitates the ability of the FPSC to actively supervise administration of such process; and

WHEREAS, the Parties wish for the Commission to approve the Settlement Agreement set out below in order to continue to resolve issues that would otherwise arise with respect to the provision of electric service to Mosaic's mobile facilities by Tampa Electric and Progress.

¹ Docket No. 020105-EI, issued July 11, 2002.

² Docket No. 030526-EU, issued on October 27, 2003 and November 20, 2003, respectively.

NOW, THEREFORE in consideration of the foregoing and other valuable consideration the receipt of which is acknowledged by each Party, said Parties do mutually agree as follows:

Term

- 1) The term of this Settlement Agreement shall become effective as of the date of a final FPSC order approving the Settlement Agreement without changes or modifications to which any Party objects ("Effective Date"). The term of this Settlement Agreement shall be five years from the Effective Date unless extended by mutual agreement of the Parties and such extension is approved by the FPSC. Arrangements approved by the FPSC pursuant to the process set forth in paragraph 5 below shall survive termination of this Settlement Agreement. This Settlement Agreement supersedes and replaces those settlement agreements approved in Order Nos. PSC-02-0929-AS-EI, PSC-03-1215-PAA-EU and PSC-03-1327-CO-EU. The Parties agree to meet at least 120 days prior to the expiration of this Settlement Agreement to discuss an extension of or modifications to this Settlement Agreement, including the process described in paragraph 5 below. If the Parties cannot agree to an extension, but at least one Party desires such an extension and requests mediation of that issue at least 45 days prior to the expiration of this Settlement Agreement, then the Parties agree to mediation of that issue and will schedule such mediation to occur at least 20 days prior to expiration of the Settlement Agreement. If the Parties cannot agree to a mediator, a mediator from the Commission Staff shall be appointed by the

General Counsel of the Commission to mediate such issue. The discussion/mediation process specified in this paragraph shall not extend the term of this Settlement Agreement, absent mutual agreement of the Parties and approval of the FPSC.

Electric Loads Covered

- 2) Subject to the provisions of Section 3 below, the terms of this Settlement Agreement shall apply to the electric load associated with all Mobile Facilities, as defined below, including but not limited to such loads currently being served by Progress through either its Ft. Greene No. 8 Substation in Hardee County, Florida or its 69KV circuit, sometimes referred to as Switch #4054, from Progress's District Line Substation located in Polk County, Florida, to the extent such load is physically located in Tampa Electric's service territory ("Covered Load"), and any new electric loads identified pursuant to Paragraph 5 below.
- 3) For purposes of this Settlement Agreement, "Mobile Facility" or "Mobile Facilities" shall mean (i) a mobile, integrated phosphate dragline together with the associated slurry pipeline, electric pumps, electric lights, telemetry equipment and related ancillary equipment (such ancillary equipment to be less than a total of 50 kilowatts for any given Mobile Facility) used to enable phosphate ore to be transported via pipeline from the dragline work site to the washer facility, (ii) tailings pipelines, or clay slurry pipelines, associated electric pumps, electric lights, and telemetry equipment used to transport sand, clay and other waste material from a washer facility or beneficiation plant to the mining site, and (iii)

water jacks or water retention return pumps and associated electric lights and dewatering equipment that is installed in conjunction with such a dragline or tailings pipeline, whether in place before or after the dragline or tailings pipeline is placed in operation at the site. The Parties explicitly agree that this Settlement Agreement shall apply only to Mobile Facilities as defined herein.

Billing

- 4) Commencing with the first full billing cycle following the Effective Date, Tampa Electric will be compensated for the Covered Load as set forth below. Prior to the first full billing cycle following the Effective Date, Tampa Electric shall be compensated for the Covered Load as set forth in the Settlement Agreements approved by the FPSC in Order Nos. PSC-02-0929-AS-EI and PSC-03-1327-CO-EU.
 - (a) Progress will continue to bill Mosaic pursuant to Progress's then current Rate Schedule IST-1 or other applicable retail rate for the entire Mosaic load that Progress serves, including the Covered Load.
 - (b) As of the first full Mosaic billing cycle following the Effective Date, Progress will pay to Tampa Electric 50% of the base revenue collected by Progress from Mosaic for the Covered Load, based on Progress's then current base demand and energy rates under its then current IST-1 Rate Schedule or other applicable retail base rate, adjusted to reflect its interruptible service billing credit as appropriate, based on the actual billing determinants. On a quarterly basis, Tampa Electric shall provide

metering data quantifying the Covered Load to Progress, using a combination of Tampa Electric and Progress metering facilities. If any new or additional metering equipment is required, the purchase and/ or installation expense for such equipment shall be borne solely by the requesting utility for electric facilities providing service at 25 KV or below. For any new or additional metering that is required for electric facilities providing service at a voltage above 25 KV, the purchase and/or installation expense shall be borne jointly and equally by the requesting utility and Mosaic. Upon receipt of this information from Tampa Electric, Progress will remit the resulting amount calculated to Tampa Electric on a quarterly basis.

Dispute Resolution

- 5) The Parties agree, in order to plan for the provision and administration of service, and to avoid and if necessary to resolve future issues that may arise related to the interconnection and supply of Mobile Facilities that move across or are likely to move across the service territory boundary between Tampa Electric and Progress established in the service territory agreement in effect at the time of the execution of this Settlement Agreement, including any subsequent renewal, modification or extension approved by the FPSC, as follows:
 - (a) Designated representatives of the Parties shall meet quarterly to review Mosaic's existing and planned mining operations to determine those instances where Mobile Facilities are likely to move across or are moving

across boundaries identified in the territorial agreement, with the first such meeting to be scheduled within 10 business days following the date on which an order issued by the FPSC approving this Settlement Agreement becomes final and non-appealable;

- (b) Mosaic shall provide written notice to the Parties at least ten (10) days prior to the commencement of new service to any Mobile Facility pursuant to this Paragraph 5, other than the Covered Load, to the extent practicable. New service does not include the addition of load to existing service points to which a Mobile Facility is already connected and which is being metered and billed pursuant to this Settlement Agreement so long as such additional load falls within the definition of a Mobile Facility as defined in this Settlement Agreement. If prior notice is not practicable, then Mosaic shall, in any event, provide written notice to the Parties of the commencement of such new service within three (3) business days following the commencement of such service. The required notice shall specify the date on which the new service commenced ("Commencement Date") and shall specifically describe the location, nature and magnitude of the load being served.
- (c) When Progress is providing electric service to a Mosaic Mobile Facility that is likely to move across or is moving across a boundary set forth in the territorial agreement and is located or partially located in the service area of Tampa Electric, should Mosaic fail to provide notice of such new service as required pursuant to this Paragraph 5, then Mosaic shall pay

Tampa Electric an amount equal to twice the positive differential, if any, between Tampa Electric's IST-1 base rate or other applicable base rate and Progress's IST-1 base rate or other applicable base rate, adjusted to reflect Progress's interruptible service billing credit, for the period that starts on the date that the relevant Mobile Facility began taking electric service from Progress and ends on the date that Mosaic notified the parties in writing, as provided above, that such service had commenced, to the extent that the load associated with the new Mobile Facility is located in the service territory of the non-serving utility.

- (d) When Tampa Electric is providing electric service to a Mosaic Mobile Facility that is likely to move across or is moving across a boundary set forth in the territorial agreement and is located or partially located in the service area of Progress, should Mosaic fail to provide notice of such new service as required pursuant to this Paragraph 5, then Mosaic shall pay Progress an amount equal to twice the positive differential, if any, between Progress's IST-1 base rate or other applicable base rate and Tampa Electric's IST-1 base rate or other applicable base rate, adjusted to reflect Progress's interruptible service billing credit, for the period that starts on the date that the relevant Mobile Facility began taking electric service from Tampa Electric and ends on the date that Mosaic notified the Parties in writing, as provided above, that such service had commenced, to the extent that the load associated with the new Mobile Facility is located in the service territory of the non-serving utility.

- (e) The Parties recognize that Mobile Facilities move from place to place and that Mosaic would prefer to have a single electric supplier for such a facility for safety, continuity of service and other reasons. During the term of this Settlement Agreement, Mosaic will not be required to operate its Mobile Facilities with split suppliers;
- (f) When Progress is providing electric service to a new Mosaic Mobile Facility that is likely to move across or is moving across a boundary set forth in the territorial agreement and is located or partially located in the service area of Tampa Electric, Progress will bill Mosaic at its then applicable interruptible service rates or other applicable retail rate for the entire load of Mosaic's Mobile Facility, including the load located in Tampa Electric's service area. Progress will pay to Tampa Electric 50% of the base revenue collected by Progress from Mosaic for the new Mobile Facility, to the extent the associated load is located in the service territory of the non-serving utility, based on Progress's then current base demand and energy rates under its then applicable interruptible Rate Schedule or other applicable retail base rate, adjusted to reflect its interruptible service billing credit as appropriate, based on the actual billing determinants. On a monthly basis, Tampa Electric shall provide metering data, using a combination of existing Tampa Electric and Progress metering facilities, quantifying the new Mobile Facilities load to Progress, who will remit the amount calculated to Tampa Electric on a quarterly basis. If any new or additional metering equipment is required, the purchase and/ or

installation expense for such equipment shall be borne solely by the requesting utility for electric facilities providing service at 25 KV or below. For any new or additional metering that is required for electric facilities providing service at a voltage above 25 KV, the purchase and/or installation expense shall be borne jointly and equally by the requesting utility and Mosaic.

- (g) As an alternative to the forgoing, Tampa Electric may, at its option, request that Progress temporarily provide service to the portion of Mosaic's Mobile Facility located in Tampa Electric's service area in accordance with the temporary service provisions in Section 2.3 of the territorial agreement between Progress and Tampa Electric. However, nothing in this Settlement Agreement shall be deemed to modify, limit or amend in any way Section 2.3 of the territorial agreement;
- (h) When Tampa Electric is providing electric service to a new Mosaic Mobile Facility that is likely to move across or is moving across a boundary set forth in the territorial agreement and is located or partially located in the service area of Progress, Tampa Electric will bill Mosaic at its then applicable interruptible service rates or other applicable retail rate for the entire load of Mosaic's Mobile Facility, including the load located in Progress's service area. Tampa Electric will pay to Progress 50% of the base revenue collected by Tampa Electric from Mosaic for the new Mobile Facility, to the extent the associated load is located in the service territory of the non-serving utility, based on Tampa Electric's then current

base demand and energy rates under its then applicable interruptible Rate Schedule or other applicable retail rate, adjusted to reflect its interruptible service billing credit as appropriate, based on the actual billing determinants. On a monthly basis, Progress shall provide metering data, using a combination of existing Tampa Electric and Progress metering facilities, quantifying the new Mobile Facilities load to Tampa Electric, who will remit the amount calculated to Progress on a quarterly basis. If any new or additional metering equipment is required, the purchase and/or installation expense for such equipment shall be borne solely by the requesting utility for electric facilities providing service at 25 KV or below. For any new or additional metering that is required for electric facilities providing service at a voltage above 25 KV, the purchase and/or installation expense shall be borne jointly and equally by the requesting utility and Mosaic.

- (i) As an alternative to the forgoing, Progress may, at its option, request that Tampa Electric temporarily provide service to the portion of Mosaic's Mobile Facility located in Progress's service area in accordance with the temporary service provisions in Section 2.3 of the territorial agreement between Progress and Tampa Electric. However, nothing in this Settlement Agreement shall be deemed to modify, limit or amend in any way Section 2.3 of the territorial agreement;
- (j) The Parties will jointly notify the FPSC and seek its expedited review and approval of each arrangement that is placed into effect in accordance with

this Paragraph 5. The Parties agree to support before the Commission, both formally and informally, any arrangement for which approval is jointly sought pursuant to this subparagraph;

- (k) The Parties shall promptly notify the FPSC and ask for resolution of any dispute arising under this Settlement Agreement. During the pendency of the dispute, neither Tampa Electric nor Progress shall refuse, based on the existence of such a dispute, to provide electric service to a Mosaic Mobile Facility so long as such Mobile Facility is likely to be or is partially located in its service area and receiving service through a point of interconnection that is located in its service area. During any such dispute, the billing arrangements described above shall apply to any Mobile Facility served by either Progress or Tampa Electric that is likely to move across or is moving across a boundary identified in the territorial agreement and is partially located in the service area of the other, non-serving utility.

General

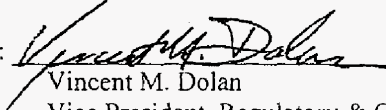
7. The Parties agree that they waive no arguments or rights by virtue of entering into this Settlement Agreement. The Parties reserve the right to take any position or make any argument in this docket on these matters if this Settlement Agreement is not accepted by the FPSC in its entirety. Subject to the provisions of subparagraphs 5(j) and 5(k) above, the Parties further reserve the right to take any position and make any argument in any future dockets. This Settlement Agreement shall not be read as an admission by any Party on the applicability or

nonapplicability of the Service Territory Agreement between Progress and Tampa Electric to Mosaic's Mobile Facilities and shall have no precedential significance in any other proceeding.

8. The Parties agree that this Settlement Agreement may be assigned by The Mosaic Company to a subsidiary or affiliate of The Mosaic Company.
9. The Parties will present this Settlement Agreement to the FPSC for approval as quickly as possible. If the Settlement Agreement is not approved by the FPSC in its entirety through a final non-appealable order, then the Parties agree to return to mediation and this Settlement Agreement shall cease to be of any further force or effect.

DATED this 22nd day of July 2005.

PROGRESS ENERGY FLORIDA

By: 
Vincent M. Dolan
Vice President, Regulatory & Customer Relations

TAMPA ELECTRIC COMPANY

By: _____
Thomas Hernandez
Vice-President, Energy Delivery and Customer Service

nonapplicability of the Service Territory Agreement between Progress and Tampa Electric to Mosaic's Mobile Facilities and shall have no precedential significance in any other proceeding.

8. The Parties agree that this Settlement Agreement may be assigned by The Mosaic Company to a subsidiary or affiliate of The Mosaic Company.
9. The Parties will present this Settlement Agreement to the FPSC for approval as quickly as possible. If the Settlement Agreement is not approved by the FPSC in its entirety through a final non-appealable order, then the Parties agree to return to mediation and this Settlement Agreement shall cease to be of any further force or effect.

DATED this 22nd day of July 2005.

PROGRESS ENERGY FLORIDA

By: _____

Vincent M. Dolan

TAMPA ELECTRIC COMPANY

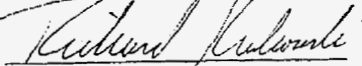
By: _____


Thomas Hernandez
Vice-President, Energy Delivery and Customer Service

Docket No. 050500-EU
Date: August 25, 2005

ATTACHMENT A

THE MOSAIC COMPANY

By: 
Richard Krakowski,
Vice President, Concentrates