

State of Florida



# Public Service Commission

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

**DATE:** February 16, 2006

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

**FROM:** Office of the General Counsel (Jaeger) *RPJ EW WBM RBT WBT*  
Division of Economic Regulation (Windham) *JDJ*

**RE:** Docket No. 050977-EU – Joint petition of Orlando Utilities Commission and Progress Energy Florida, Inc. for approval of term extension to territorial agreement in Orange County.

**AGENDA:** 02/28/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Deason

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\050977.RCM.DOC

### Case Background

On December 29, 2005, Progress Energy Florida, Inc. (PEF) and Orlando Utilities Commission (OUC) filed a Joint Petition for approval of a term extension to Territorial Agreement in Orange County (Second Extension Request). This Second Extension Request proposes a second extension of the Territorial Agreement which had originally been scheduled to expire on April 5, 2005. By Order No. PSC-05-0707-PAA-EU, issued June 29, 2005, in Docket No. 050220-EU, In re: Joint petition for approval of amendment to territorial agreement in Orange County by Orlando Utilities Commission and Progress Energy Florida, Inc., the Commission granted a request for the first extension of time and extended the expiration date of

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the Territorial Agreement through December 31, 2005. The parties now seek a further extension through June 30, 2006.

Pursuant to Section 366.04(2)(d), Florida Statutes, the Commission has the authority “to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction.”

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the Joint Petition for approval of a Second Amendment extending the expiration date of the Territorial Agreement between Orlando Utilities Commission and Progress Energy Florida, Inc., through June 30, 2006?

**Recommendation:** Yes. The Second Amendment to Territorial Agreement between Orlando Utilities Commission and Progress Energy Florida, Inc. appears to be in the public interest and should be approved thereby extending the expiration date through June 30, 2006. The Second Amendment should become effective upon the issuance of a Consummating Order finalizing the Proposed Agency Action Order approving this Amendment. (Jaeger, Windham)

**Staff Analysis:** OUC and PEF state that the Territorial Agreement should be extended again in order to allow them additional time to pursue their negotiations toward a new territorial agreement to replace the current Territorial Agreement. OUC and PEF also state that there has been rapid growth in the area, and that they are attempting to work out an agreement that will minimize the formation of enclaves that would be better served by the other utility.

The current Territorial Agreement was previously approved by Order No. PSC-95-0440-FOF-EU, issued April 5, 1995, in Docket No. 940656-EU, In re: Petition to require Florida Power Corporation to comply with territorial agreement approved by Order No. 6194, by Orlando Utilities Commission. Pursuant to that Order, the Territorial Agreement was to have expired under its own terms on April 5, 2005, ten years after the issuance of Order No. PSC-95-0440-FOF-EU. The expiration date was extended to December 31, 2005, by Order No. PSC-05-0707-PAA-EU.

Pursuant to the Second Amendment, the Territorial Agreement would be further extended through June 30, 2006, to allow the Joint Petitioners additional time to pursue their negotiations toward a new territorial agreement. The Second Amendment states that it will become effective and enforceable only upon issuance of an Order by the Commission approving the Second Amendment in its entirety. The proposed Second Amendment involves no customer or facility transfers.

Staff has reviewed the proposed Second Amendment and believes that it is in compliance with Rule 25-6.0440, Florida Administrative Code, and Section 366.04(2)(d), Florida Statutes, the laws governing territorial agreements. Moreover, staff believes that the Second Amendment is a reasonable resolution which will reduce the likelihood of future uneconomic and unnecessary duplication of facilities along the boundary lines, in accordance with Commission policy and the public interest. Therefore, staff recommends that the Commission approve the Joint Petition for approval of Second Amendment to Territorial Agreement in Orange County by PEF and the OUC. The Second Amendment should become effective upon the issuance of a Consummating Order finalizing the Proposed Agency Action Order approving this Second Amendment.

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**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, if no timely protest to the proposed agency action is filed by a substantially affected person within 21 days, this docket should be closed upon the issuance of the Consummating Order. In the event there is a timely protest, this docket should remain open pending resolution of the protest. (Jaeger)

**Staff Analysis:** If no timely protest to the proposed agency action is filed by a substantially affected person within 21 days, this docket should be closed upon the issuance of the Consummating Order. In the event there is a timely protest, this docket should remain open pending resolution of the protest.