

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint petition to reopen and extend term
of previous territorial agreement in Orange
County, by Orlando Utilities Commission and
Progress Energy Florida, Inc.

DOCKET NO. 060503-EU
ORDER NO. PSC-06-0773-PAA-EU
ISSUED: September 18, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING EXTENSION OF TERRITORIAL AGREEMENT

BY THE COMMISSION:

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.

On July 19, 2006, Orlando Utilities Commission (OUC) and Progress Energy Florida, Inc. (PEF) filed a joint petition to reopen and extend the term of their territorial agreement in Orange County. This is the third request for an extension of the agreement, which was approved in 1995 and originally scheduled to expire on April 5, 2005.¹ In the joint petition, OUC and PEF state that they have been conducting negotiations for some time on a new territorial agreement to replace the one just expired. As the second extension to that agreement was about to expire, it became apparent that they would need additional time to successfully conclude their negotiations. Therefore, they have asked for another six-month extension to continue their negotiations. They believe that the proposed stipulation to extend the expiration date to January

¹ See 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, which approved the original agreement, 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., which approved the first extension, and Order No. PSC-06-0201-PAA-EU, issued March 14, 2006, in Docket No. 050977-EU, In re: Joint petition of Orlando Utilities Commission and Progress Energy Florida, Inc for approval of term extension to territorial agreement in Orange County, which approved the second extension.

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31, 2007, will give them the time they need to conclude a new agreement. The joint stipulation is appended to this Order as Attachment A, and incorporated by reference herein. We have jurisdiction over the subject matter of the petition by section 366.04, Florida Statutes.

Pursuant to section 366.04(2)(d), Florida Statutes, we have the authority "to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under [our] jurisdiction." We will approve territorial agreements unless we determine that they cause a detriment to the public interest. We have reviewed the proposed stipulation reopening the territorial agreement and extending its expiration date through January 31, 2007, and we find that it complies with Rule 25-6.0440, Florida Administrative Code, and section 366.04(2)(d), Florida Statutes. The extension will permit the parties to preserve the existing territorial boundaries while they negotiate, thus avoiding uneconomic duplication of facilities. We find, therefore, that the extension is in accordance with Commission policy and the public interest and we approve it.

Since this is the third request for an extension, however, and since the parties allowed the agreement to lapse before requesting another extension, we believe it is advisable to direct the parties to file a status report well before this new extension expires describing the progress of the negotiations. By November 30, 2006, the parties shall file with the Commission a status report on their negotiations toward a new territorial agreement that describes the status of the negotiations and provides an estimate of when the new agreement will be submitted for approval. This information will aid our staff in monitoring the agreement and determining whether additional Commission action would be necessary to assist the parties in resolving their territorial differences.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the joint petition to reopen and extend the term of the previous territorial agreement in Orange County, by the Orlando Utilities Commission and Progress Energy Florida, Inc. is approved, effective upon the issuance of this Order approving it. It is further

ORDERED that by November 30, 2006, the parties shall file with the Commission a status report on their negotiations toward a new territorial agreement that describes the status of the negotiations and provides an estimate of when the new agreement will be submitted for approval. It is further

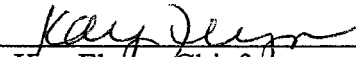
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 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 this docket shall remain open pending receipt of the parties' status report and conclusion of a new territorial agreement.

By ORDER of the Florida Public Service Commission this 18th day of September, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By:



Kay Flynn, Chief
Bureau of Records

(S E A L)

MCB

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

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.

The action proposed 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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 9, 2006.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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ATTACHMENT A

EXHIBIT A

STIPULATION REGARDING TERRITORIAL AGREEMENT

Between

Orlando Utilities Commission

And

Progress Energy Florida

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ATTACHMENT A

STIPULATION REGARDING TERRITORIAL AGREEMENT

Orlando Utilities Commission (OUC) and Progress Energy Florida, Inc. (PEF) enter into this Stipulation regarding their previous territorial agreement for Orange County on this ____ day of _____, 2006.

WITNESSETH:

WHEREAS, OUC and PEF were parties to a territorial agreement delineating their respective service territories in Orange County (the "Agreement"), which was approved by order of the Florida Public Service Commission (FPSC) and

WHEREAS, the term of the Agreement expired on April 13, 2005, and was extended through June 30, 2006 by a Second Amendment approved by order of the FPSC; and

WHEREAS, the term of the Agreement and Second Amendment expired on June 30, 2006; and

WHEREAS, OUC and PEF have entered into negotiations for the purpose of reaching a new territorial agreement to replace the Agreement; and

WHEREAS, OUC and PEF recognize that they will need additional time to successfully conclude their negotiations; and

WHEREAS, OUC and PEF desire to reopen and extend the term of the Agreement through January 31, 2007 in order to provide sufficient time to pursue the opportunity for a successful conclusion of their negotiations, and to seek Commission approval of the resulting new territorial agreement,

NOW, THEREFORE, OUC and PEF hereby agree as follows:

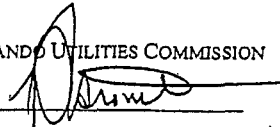
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ATTACHMENT A

1. The Agreement shall be reopened and effective between the parties.
2. The term of the Agreement is extended to and including
January 31, 2007.
3. Except as modified herein, the original terms and conditions of the Agreement shall remain in full force and effect.
4. This Stipulation will become effective and enforceable only upon the issuance of an order by the Florida Public Service Commission approving the Stipulation in its entirety.

IN WITNESS WHEREOF, OUC and PEF have caused this Stipulation to be executed in duplicate by their duly authorized representatives on the day and year first above stated.

ORLANDO UTILITIES COMMISSION

By 

Name: KENNETH P. KSIOREK

Title: GENERAL MANAGER & CEO

PROGRESS ENERGY FLORIDA, INC.

By 

Name: VINCENT M. DOLAN

Title: VICE PRESIDENT