

State of Florida



Public Service Commission

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

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

DATE: July 17, 2008

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Brown) *MCBASS PD [signature] TJD*
Division of Economic Regulation (Redemann) *RRR*

RE: Docket No. 080206-EU – Petition for approval to amend territorial agreement regarding extension of time to finalize Phase II of customer transfers, by Progress Energy Florida, Inc. and Withlacoochee River Electric Cooperative.

AGENDA: 07/29/08 – Regular Agenda – 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\080206.RCM.DOC

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Case Background

On April 10, 2008, Progress Energy Florida, Inc. (Progress) filed a petition to amend its territorial agreement with Withlacoochee River Electric Cooperative (Withlacoochee) to extend the time to complete customer transfers. The territorial agreement represented a comprehensive resolution of territorial issues in several counties, and involved the transfer of several thousand customers between the utilities. Because of the comprehensive nature of the agreement and the numerous customer transfers, the agreement was implemented in two phases. The Commission approved the first phase of the agreement by Order No. PSC-05-0965-PAA-EU, issued October 10, 2005, and the second phase of the agreement by Order No. PSC-06-0202-PAA-EU, issued

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March 14, 2006.¹ The Commission directed the utilities to file a status report on the transfer of customers every six months until the transfers were complete.

The territorial agreement intended that all affected customers would be transferred within two years of the effective date of Order No. PSC-06-0202-PAA-EU, which became effective on April 10, 2006. Phase I customer transfers have been completed, but the utilities have not been able to meet the deadline for Phase II transfers. In the petition to amend the agreement, Progress indicated that approximately 689 Phase II customers remain to be transferred from Withlacoochee to Progress. Progress has requested a twelve month extension of time to complete the Phase II customer transfers, and has represented that Withlacoochee supports the petition to amend the agreement. All other provisions of the territorial agreement remain unchanged.

This is staff's recommendation to approve the proposed amendment to the territorial agreement. The Commission has jurisdiction pursuant to section 366.04, Florida Statutes.

¹ Docket No. 040133-EU, In re: Petition of Withlacoochee Electric Cooperative, Inc. to modify territorial agreement or, in the alternative, to resolve territorial dispute with Progress Energy Florida, Inc. in Hernando County.

Discussion of Issues

Issue 1: Should the Commission approve the Petition to amend the territorial agreement between Withlacoochee River Electric Cooperative, Inc. and Progress Energy Florida, Inc.?

Recommendation: Yes, the Commission should approve the Petition to amend. The extension of time to complete customer transfers should begin at the effective date of the order approving the amendment. The Commission should require the utilities to file a report on the status of the transfers every three months, with a final report to the Commission when the transfers are complete. (Brown, Redemann)

Staff Analysis: In the Petition, Progress states that logistical and operational issues regarding the customer transfers have been more complicated and time-consuming than expected. Progress asserts that it is in the mutual interest of the customers and the utilities to extend the time to implement the transfers effectively.

Rule 25-6.0440(2), Florida Administrative Code, provides that in approving territorial agreements the Commission may consider the reasonableness of the purchase price of any facilities being transferred, the likelihood that the agreement will not cause a decrease in the reliability of electric service to existing or future ratepayers, and the likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the Commission should approve the agreement. Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

With respect to this amendment to extend the time to transfer customers, the purchase price of facilities is not an issue, and it is staff's view that the reliability of electric service will be enhanced if the transfers of customers are done systematically and carefully. Further, uneconomic duplication of facilities will be prevented if the territorial agreement is fully implemented. Therefore, staff sees no detriment to the public interest in approving the extension of time to complete the contemplated customer transfers. The extension of time to complete customer transfers should begin at the effective date of the order approving the amendment. The Commission should require the utilities to file a report on the status of the transfers every three months, with a final report to the Commission when the transfers are complete.

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Issue 2: Should this docket be closed?

Recommendation: Yes, this docket should be closed upon the issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action. (Brown)

Staff Analysis: If no timely protest to the proposed agency action is filed within 21 days, this docket should be closed upon the issuance of a Consummating order.