

State of Florida



Public Service Commission

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COMMISSION
CLERK

DATE: April 22, 2010

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Brown) *MB JSB*
Division of Economic Regulation (Daniel, Rieger) *DR SDR*

RE: Docket No. 090011-EU – Complaint and petition to rescind approval of territorial agreement between Progress Energy Florida, Inc. and Withlacoochee River Electric Cooperative, Inc. by Mark Williams, as Trustee of S.A. Williams Trust, and S.A. Williams Corporation.

AGENDA: 05/04/10 – Regular Agenda – Proposed Agency Action -- Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Argenziano

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\090011.RCM.DOC

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Case Background

On March 24, 2010, Progress Energy Florida, Inc. (PEF), Withlacoochee River Electric Cooperative (WREC), and Mr. Mark Williams (Customer), petitioned the Commission to amend the current territorial agreement between PEF and WREC that was approved by the Commission per Order No. PSC-06-0202-PAA-EU.¹ The petition was submitted as a result of an agreement made to resolve all outstanding issues related to a January 5, 2009, complaint and petition filed by Mr. Williams. The petition to amend the current territorial agreement resolves the Customer's dispute concerning the provision of electric service to his property. On March 25, 2010, the Commission received a notice of voluntary dismissal without prejudice of Mr. Williams' complaint and petition.

This is staff's recommendation regarding the parties' joint petition for approval of the amended territorial agreement. It is also an acknowledgement of the voluntary dismissal of Mr. Williams' complaint and petition. The Commission has jurisdiction over the matter pursuant to Section 366.04, Florida Statutes.

¹ See Order No. PSC-06-0202-PAA-EU, issued March 14, 2006, in Docket No. 040133-EU, In re: Petition of Withlacoochee River 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 joint petition to amend the territorial agreement between Progress Energy Florida, Inc. (PEF) and Withlacoochee River Electric Cooperative (WREC), and acknowledge the voluntary dismissal without prejudice of Mr. Williams' complaint and petition?

Recommendation: Yes. The joint petition to amend the territorial agreement between PEF and WREC should be approved. Additionally, the Commission should acknowledge the voluntary dismissal without prejudice of Mr. Williams' complaint and petition. (Brown, Rieger)

Staff Analysis: As stated in the March 24, 2010 joint petition, PEF and WREC are parties to a currently effective territorial agreement delineating their respective territories as approved by the Commission in Order No. PSC-06-0202-PAA-EU. The approved territorial agreement allowed Mr. Williams' property to be divided and served in part by both utilities. PEF, WREC, and Mr. Williams have resolved the dispute brought forth by Mr. Williams concerning the provision of electric service to his property. The Customer has agreed to cooperate in the transfer of his existing service to WREC, including access to his property. Pursuant to the terms of the agreement, the installation of the new service lines by WREC for the existing service, and the removal of PEF's equipment, service lines, and any appropriate remediation, shall be coordinated and performed by the utilities without cost to the Customer. Any new connections or expansion of the service for future needs shall be pursuant to the applicable WREC policies/rates. Additionally, the stipulation does not affect PEF's transmission lines and access easements upon the Customer's lands. Other than changing the boundaries affecting the Customer's parcels, as reflected in boundary modification maps attached to the filing, the amendment agreement indicated that there are no other proposed changes to the current territorial agreement approved by the Commission.

In addition to the above discussed agreement, a March 25, 2010 notice of voluntary dismissal without prejudice was filed by Mr. Williams with the Commission. This filing effectively withdrew Mr. Williams' complaint and petition against PEF and WREC, as well as arranged for each party to bear his or its own costs and attorneys' fees.

Pursuant to Section 366.04(2)(d), Florida Statutes, the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. 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 agreement should be approved. See Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

In this instance, the amended territorial agreement proposed by PEF and WREC eliminates existing or potential uneconomic duplication of facilities, and it does not cause a decrease in the reliability of electric service to existing or future ratepayers. Based on the above,

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staff recommends that the joint petition for approval of the amended territorial agreement between PEF and WREC is in the public interest and should be approved. Additionally the Commission should acknowledge the voluntary dismissal without prejudice of Mr. Williams' complaint and petition.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected files a protest to the Commission's proposed agency action order within 21 days, the docket may be closed upon issuance of the consummating order. (Brown)

Staff Analysis: If no person whose substantial interests are affected files a protest to the Commission's proposed agency action order within 21 days, the docket may be closed upon issuance of the consummating order.