

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: March 23, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Ward, Hampson) *JGH*
Office of the General Counsel (Dose) *JSC*

RE: Docket No. 20230012-EU – Joint petition for approval of first amendment to a territorial agreement, by Tampa Electric Company and City of Bartow, Electric Department.

AGENDA: 04/04/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On January 9, 2023, Tampa Electric Company (TECO) and the City of Bartow, Electric Department (Bartow), collectively the joint petitioners, filed a petition seeking Commission approval of an amendment to their current territorial agreement in Polk County (the proposed amendment). TECO serves retail customers in Hillsborough County and in portions of Polk, Pinellas, and Pasco Counties. Bartow serves retail customers within and adjacent to the City of Bartow, Polk County, Florida.

In 1985, the Commission approved the original territorial agreement between TECO and Bartow.¹ The instant petition seeks to amend the territorial boundaries to accommodate

¹ Order No. 15437, issued December 11, 1985, in Docket No. 19850148-EU, *In re: Joint petition for approval of territorial agreement between City of Bartow and Tampa Electric Company.*

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development within the Ranches at Lake McLeod subdivision (Ranches at Lake McLeod or subdivision), as shown in Attachment B to the recommendation. All other terms and conditions of the current agreement, shown in Attachment A, would remain in place.

During the review of this joint petition, staff issued one data request to the joint petitioners on March 1, 2023, for which responses were received on March 10, 2023. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S).

Discussion of Issues

Issue 1: Should the Commission approve the joint petition by TECO and Bartow to amend their territorial agreement related to the boundaries in Polk County?

Recommendation: Yes, the Commission should approve the joint petition by TECO and Bartow to amend their territorial agreement related to the boundaries in Polk County. The approval of this amendment would enable TECO and Bartow to redefine their existing service boundary to better serve future customers in Polk County and will not be a detriment to the public interest. Furthermore, it appears that the proposed territorial amendment eliminates any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service. (Ward)

Staff Analysis: Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440(2), Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the amendment to the territorial agreement will cause a detriment to the public interest, the amendment should be approved.²

Proposed Amendment to the 1985 Territorial Agreement

A new residential subdivision, known as Ranches at Lake McLeod, is currently under development in Polk County. A section of the existing service boundary runs through the planned subdivision. The joint petitioners explained that the current service boundary runs through proposed home lots, across planned streets, and without regard to future utility easement areas in the subdivision.

The joint petitioners stated that they had discussions for the provision of electric service to the new subdivision, which led to a mutual agreement between TECO and Bartow regarding the most efficient, reliable provision of electricity to the new subdivision. Under this agreement, the revised boundary lines would follow planned streets and along lot lines within the subdivision. The joint petitioners assert that this proposal would allow both utilities to have sufficient access to the areas to be served. Furthermore, the joint petitioners assert that the proposed territorial amendment would not cause a decrease in the reliability of electric service to the existing and future ratepayers of either utility and would prevent the uneconomic duplication of facilities. Pursuant to Rule 25-6.0440(1)(f), F.A.C., the joint petitioners provided a map depicting the proposed boundary line of the subdivision. The map is shown in Attachment B to this recommendation.

Pursuant to Rule 25-6.0440(1)(b), F.A.C., the joint petitioners provided the original 1985 territorial agreement, shown in Attachment A to the recommendation. In paragraph 26 of the petition, the joint petitioners explained that the terms and conditions of the original 1985 territorial agreement remain in effect; the only proposed change is to modify the boundary line within the new subdivision. Furthermore, the joint petitioners explained that the 1985 territorial agreement continues to remain in effect until terminated or modified by the joint petitioners.

² *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

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Under the proposed division of the development, TECO would serve 541 lots, including 140 in the North Ranch segment of the subdivision, and Bartow would serve 469 lots. In paragraph 19 of the petition, the joint petitioners explained that the North Ranch segment of the subdivision is wholly within TECO's service area and was not part of the negotiations leading to this boundary line amendment. Aside from the unaffected North Ranch segment, this subdivision has not yet been developed. Therefore, there are no current customers or facilities to be transferred as a result of the proposed territorial amendment. Similarly, there are no affected customers to be notified as required by Rule 25-6.0440(1)(d), F.A.C.

Conclusion

After review of the petition, the proposed territorial amendment, and the joint petitioners' responses to staff's data request, staff recommends that the Commission should approve the proposed amendment to the territorial agreement between TECO and Bartow in Polk County. Staff believes that the proposed territorial amendment will enable TECO and Bartow to redefine their existing service boundary to better serve future customers in Polk County and will not cause a detriment to the public interest. Furthermore, it appears that the proposed territorial amendment eliminates any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of the Consummating Order. (Dose)

Staff Analysis: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of the Consummating Order.

APPENDIX "A"

**TERRITORIAL BOUNDARY AGREEMENT
BETWEEN
TAMPA ELECTRIC COMPANY
AND
THE CITY OF BARTOW, FL.**

Section 0.1 THIS AGREEMENT, made and entered into this 16th day of APRIL, 1985, by and between TAMPA ELECTRIC COMPANY, a corporation organized and existing under the laws of the State of Florida, herein referred to as "TECO" and the CITY of BARTOW - Electric Department, a city incorporated and existing under the laws of the State of Florida, herein referred to as "BARTOW";

WITNESSETH:

Section 0.2 WHEREAS, TECO is presently providing retail electric service in a portion of Polk County near and adjacent to the BARTOW city limits.

Section 0.3 WHEREAS, BARTOW is presently providing retail electric service in a portion of Polk County near and adjacent to the BARTOW city limits.

Section 0.4 WHEREAS, the areas in which each party is supplying retail electric service are in close proximity and abut in Polk County, TECO and BARTOW desire to cooperate in the public interest in supplying service in a manner so as to avoid uneconomic waste, potential safety hazards and other adverse effects that would result from duplication of electric facilities in the same area.

Section 0.5 WHEREAS, the execution of this AGREEMENT by the parties hereto is not conditioned upon the acceptance of or agreement to any other contractual arrangements pending or contemplated by or between the parties.

Section 0.6 NOW, THEREFORE, in consideration of the foregoing premises and of the mutual benefits to be obtained from the covenants herein set forth, the parties hereto do hereby agree as follows:

ARTICLE I

TERM OF AGREEMENT

Section 1.1 **TERM:** After this AGREEMENT becomes effective pursuant to Section 3.4 hereof, it shall continue in effect until termination or until modification shall be mutually agreed upon, or until termination or modification shall be mandated by governmental entities or courts with appropriate jurisdiction. Fifteen (15) years from the date above first written, but not before, either of the parties hereto shall have the right to initiate unilateral action before any governmental entity or court with appropriate jurisdiction, seeking to obtain modification or cancellation of this AGREEMENT.

ARTICLE II

ESSENCE OF AGREEMENT

Section 2.1 The boundary line delineating the retail electric service areas of the parties is marked on the map attached hereto and labeled Exhibit A, and said boundary line is further described in (a) and (b) as follows:

WINTER HAVEN

(a) Commence at the southeast corner of the northeast 1/4 of Section 30, Township 29, Range 26 east, run thence north along the east boundary of said Section 30 to the northeast corner of said Section 30, run thence west along the north boundary of said Section 30 to the southeast corner of the southwest 1/4 of Section 19, Township 29 south, Range 26 east, run thence north to the southeast corner of the southwest 1/4 of Section 18, Township 29 south, Range 26 east, run thence west along the south boundary of said Section 18 to the southwest corner of said Section 18, run thence north along the

west boundary of said Section 18 to the intersection of the said west boundary and the south right-of-way of State Road 559, run thence westerly in a straight line along the projected right-of-way of State Road 559 to the easterly right-of-way of line of State Road 555, run thence southwesterly along said right-of-way line to a point 900 feet west of the east boundary of Section 22, Township 29 south, Range 25, run thence south parallel to and 900 feet west of the east boundary of said Section 22 to the south boundary of said Section 22, run thence west along the south boundaries of Sections 22 and 21, Township 29 south, Range 25 east, to the southwest corner of said Section 21, run thence north along the west boundary of said Section 21 into Lake Hancock to a point of intersection with the westerly projected north boundary of Section 22, Township 29 south, Range 25 east, run thence west along the projected north boundary of said Section 21 to a point in Lake Hancock located 1,900 feet east of the southeast corner of Section 13, Township 29 south, Range 24 east, for a point of termination. All lying in Polk County, Florida.

PLANT CITY

(b) Commence at the southeast corner of the southwest 1/4 of Section 3, Township 31 south, Range 24 east, run thence north to the northeast corner of the northwest 1/4 of Section 15, Township 30 south, Range 24 east, run thence east along the north boundaries of Sections 15 and 14, Township 20 south, Range 24 east, to the northeast corner of the northwest 1/4 of said Section 14, run thence

north to the center of Section 2, Township 30 south, Range 24 east, run thence west to the center of Section 3, Township 30 south, Range 24 east, run thence north to the northeast corner of the northwest 1/4 of said Section 3, run thence east along the north boundary of said Section 3 to the southeast corner of the southwest 1/4 of Section 34, Township 29, south Range 24 east, run thence north to the northeast corner of the northwest 1/4 of said Section 34 for a point of termination. All lying in Polk County, Florida.

Section 2.2 The area generally north of said boundary line (a) and generally west of said boundary line (B) is reserved to TECO (as relates to BARTOW), and the area generally south of said boundary line (a) and generally east of said boundary line (b) is reserved to BARTOW (as relates to TECO), with respect to service to retail customers.

Section 2.3 The parties agree that neither party, except as provided in Section 2.4, will provide or offer to provide electric service at retail to future customers within the territory reserved to the other party.

Section 2.4 The parties recognize that, in specific instances, good engineering practices (or economic constraints on either of the parties) may from time to time indicate that small service areas and/or future retail electric customers should not be served by the party in whose territory they are located. In such instances, upon written request by the party in whose territory they are located to the other party, the other party may agree in writing to provide service to such small service areas and/or future retail electric customers, and it is understood that no additional regulatory approval will be required for such agreement(s). By the execution of this AGREEMENT, the parties acknowledge that TECO may continue to provide retail electric service to existing and future phosphate customers and/or customers served at transmission voltage (69 KV and above) in the area of Polk County reserved for BARTOW.

Section 2.5 This AGREEMENT shall apply only to the provision of retail electric service by the parties hereto and shall have absolutely no application or effect with respect to either party's sale of "bulk power supply for resale," which is defined to mean all arrangements for supply of electric power in bulk to any person for resale, including but not limited to, the taking of utility responsibility for supply of firm power in bulk to fill the full requirements of any person engaged or to be engaged in the distribution of electric power at retail, and/or interconnection with any persons for the sale or exchange of emergency power, economy energy, deficiency power, and such other forms of bulk power sales or exchanges for resale made for the purpose or with the effect of achieving an overall reduction in the cost of providing electric power supply.

Section 2.6 Nothing in this AGREEMENT is intended to affect the power plants, transmission lines, or substations of one party which are now located, or may in the future be located in the service area of the other party, and any problems between the respective parties involving these types of facilities shall be settled at the General Office level of the parties.

ARTICLE III

MISCELLANEOUS PROVISIONS

Section 3.1 The failure of either party to enforce any provision of this AGREEMENT in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

Section 3.2 Neither party shall assign, transfer or sublet any privilege granted to it hereunder without the prior consent in writing of the other party, but otherwise, this AGREEMENT shall insure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 3.3 This AGREEMENT shall be governed by the laws of the State of Florida.

Section 3.4 The parties recognize and agree that both companies are subject to the jurisdiction of the Florida Public Service Commission (hereinafter called the "Commission") and further agree that this AGREEMENT shall have no force and effect unless and until it is submitted to and approved by the Commission in accordance with applicable procedures. The parties further agree that the AGREEMENT, if and when approved by the Commission, shall be subject to the continuing jurisdiction of the Commission and may be terminated or modified only by Order of the Commission. No modification or termination of this AGREEMENT by the parties hereto shall be effective unless and until approved by the Commission. Each party agrees to promptly notify the other in writing of any petition, application or request for modification of the AGREEMENT made to the Commission and to serve upon the other party copies of all pleadings or other papers filed in connection therewith.

Section 3.5 This AGREEMENT shall be effective on the date it is approved by the Florida Public Service Commission in accordance with Section 3.4 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

ATTEST:

TAMPA ELECTRIC COMPANY

BY: [Signature]
Secretary

BY: [Signature], 4-16-85
Vice President Date

ATTEST:

CITY OF BARTOW, FL

BY: [Signature]
City Clerk

BY: [Signature] APR 4 1985
Vice Mayor Date

Approved as to correctness
and form:

Approved as to substance:

By: [Signature]
City Attorney

By: [Signature]
City Manager



