

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint application for approval of transfer of customers by Florida Power & Light Company and Peace River Electric Cooperative, Inc.

DOCKET NO. 001707-EU
ORDER NO. PSC-01-0965-PAA-EU
ISSUED: April 19, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING APPLICATION FOR TRANSFER OF CUSTOMERS

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.

Pursuant to Section 366.04(2)(d), Florida Statutes, this Commission has jurisdiction "to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction." As an exercise of our jurisdiction, we approved Florida Power & Light Company (FPL) and Peace River Electric Cooperative, Inc.'s (PRECO) original territorial agreement by Order No. 18332, in Docket No. 870816-EU, issued October 22, 1987. The territorial agreement states in part:

Section 6. Elimination of Overlapping Services. FPL and PRECO agree to use reasonable efforts to eliminate,

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FILED IN THE OFFICE OF THE CLERK

during the term of this Agreement, electric services by either party in the retail service areas of the other party. This effort shall include the identification of potential customer and facilities transfers which would eliminate duplication of facilities or avoid hazardous conditions. Any transfers shall be subject to review and approval by the Florida Public Service Commission.

Pursuant to this clause, FPL and PRECO filed an Application for Transfer of Customers on November 15, 2000. The request seeks approval of a transfer of 298 PRECO customers to FPL.

In interpreting our authority to review territorial agreements, the Florida Supreme Court has held the appropriate standard is the "no-detriment test." Utilities Comm'n of City of New Smyrna v. FPSC, 469 So. 2d 731 (Fla. 1985). The Court stated that our approval should be based on the effect the territorial agreement will have on all customers in the territory, not just whether transferred customers will benefit. See id. at 732. "For PSC approval, any customer transfer in a proposed territorial agreement must not harm the public." Id. at 733.

Rule 25-6.0440(2), Florida Administrative Code, describes the standards of approval of territorial agreements as follows:

(2) Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:

- (a) the reasonableness of the purchase price of any facilities being transferred;
- (b) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement; and
- (c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

The above standards were adopted to ensure that the general body of ratepayers is not harmed by the approval of territorial agreements.

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In the Application to Transfer Customers, the petitioners allege that the transfer will eliminate PRECO's electric service to the identified area and the customers currently served by PRECO in FPL's service area, but will not result in a decrease in electric reliability to the existing or future ratepayers of either utility. Attachment A to the petition identifies the 298 PRECO accounts (280 residential and 18 commercial) which are anticipated to be transferred to FPL within one year of Commission approval.

In accordance with the Application, any existing customer deposits held by PRECO shall be refunded to customers. In addition, the initial deposits to FPL will be no greater than the customers' previous deposit with PRECO and can be paid over a three-month period. Provisions in the agreement also give FPL the right to purchase any existing PRECO facilities at current net book value; PRECO will be responsible for removal of facilities not purchased by FPL. The agreement also states that any major repairs due to damage from hurricane, tropical storm, tornado, etc., during the transfer period will be repaired by FPL or FPL will be billed for repairs by PRECO. Furthermore, the agreement states that if relocation is required due to government mandate of any existing PRECO facilities agreed to be transferred to FPL, PRECO shall timely notify FPL by letter to allow FPL to carry out the relocation. Moreover, FPL's purchase right includes any associated easements, street light contracts, franchise agreements, and joint use agreements.

We hereby approve the Application for Transfer of Customers submitted by FPL and PRECO. The Application is consistent with the intent of the 1987 territorial agreement approved by the Commission in Order No. 18322 to use reasonable efforts to eliminate service by one utility in the service area of the other utility. The Application is in the public interest and is consistent with our goal to eliminate all existing and potential uneconomic duplication of electrical facilities in the State of Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company and Peace River Electric Cooperative's

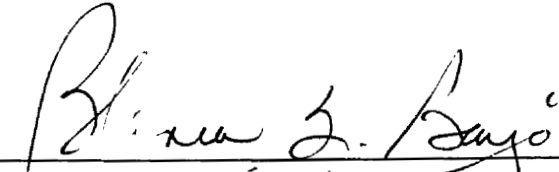
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Application for Transfer of Customers is hereby approved. It is further

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 Records and Reporting, 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 in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 19th day of April, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

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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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 10, 2001.

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 docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.