

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition of Florida Power & Light Company and Progress Energy Florida, Inc. for approval of amendment to territorial agreement to modify territorial boundary line in two areas of Volusia County.

DOCKET NO. 030461-EI
ORDER NO. PSC-03-0964-PAA-EI
ISSUED: August 25, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING JOINT PETITION BY FLORIDA POWER & LIGHT COMPANY AND PROGRESS ENERGY FLORIDA, INC. TO AMEND 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 May 28, 2003, Florida Power & Light Company ("FPL") and Progress Energy Florida, Inc. ("PEFI") (collectively, "the Joint Petitioners") jointly filed a petition to amend the existing territorial boundary between them. The amendment consists of boundary line changes in two undeveloped locations in Volusia County, Florida. The existing territorial boundary between the Joint Petitioners was initially approved by Commission Order No. 3799, issued April 28, 1965, and subsequently amended by Order Nos. 5255 (October 29, 1971), 6184 (June 28, 1974), and 21309 (June 2,

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1989). These orders comprise the Territorial Agreement and establish the retail territorial boundary between FPL and PEFI in Volusia County and elsewhere.

We have jurisdiction in this matter pursuant to several provisions of Chapter 366 Florida Statutes, including Sections 366.04 and 366.05, Florida Statutes.

The Joint Petitioners' amendment (Attachment A) to change the territorial boundary in Volusia County consists of boundary line changes in two undeveloped locations. The first boundary line change places nine undeveloped residential lots currently in PEFI's retail service area into FPL's retail service area. The second territorial boundary line modification places four undeveloped residential lots currently in FPL's retail service area into PEFI's retail service. The amendment does not change any other provision of the existing agreement.

Rule 25-6.0440(2), Florida Administrative Code, states in pertinent part that:

In approving territorial agreements, the Commission may consider, but not be limited to consideration of:

* * *

(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.

There are no customers nor any distribution facilities within the geographic areas subject to the boundary modifications, and consequently the modification, in and of itself, is not expected to cause a decrease in the reliability of electrical service to the existing or future customers of either utility. The Joint Petitioners used proximity of existing facilities and least cost to extend facilities as the basis to decide which utility was better

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situated to serve future customers. The territorial boundary line changes are likely to eliminate potential uneconomic duplication of facilities that may have otherwise occurred.

We find that the amendment is consistent with our practice in approving territorial agreements and is in the public interest and accordingly, we approve the amendment.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the amended territorial agreement between FPL and PEFI as attached to and incorporated in this order, is hereby approved as set forth in the body of this Order. It is further

ORDERED that the amended territorial agreement shall be effective with the issuance of a consummating order. 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. If an appropriate petition is filed, the territorial agreement shall remain in effect pending resolution of the protest. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 25th
Day of August, 2003.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

JAR

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 September 15, 2003.

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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.

AMENDMENT TO TERRITORIAL AGREEMENT

Florida Power & Light Company (FPL) and Progress Energy Florida, Inc., formerly Florida Power Corporation, (Progress Energy) enter into this Amendment to their Territorial Agreement on this ____ day of _____, 2003.

WITNESSETH:

WHEREAS, FPL and Progress Energy are parties to a currently effective territorial agreement approved and amended by Florida Public Service Commission Order No. 3799, dated April 28, 1965, Order No. 5255, dated October 29, 1971, Order No. 6184, dated June 28, 1974, and Order No. 21309, dated June 2, 1989, (the Territorial Agreement); and

WHEREAS, FPL and Progress Energy desire to further amend their Territorial Agreement by modifying the territorial boundary line in two areas within Volusia County, Florida in order to provide more efficient, less costly service to customers in these areas.

NOW, THEREFORE, FPL and Progress Energy hereby agree as follows:

1. The territorial boundary line established by the Territorial Agreement shall be modified in the two areas of Volusia County depicted generally on the County Highway map attached hereto as Exhibit A, and as separately depicted on the detailed maps attached hereto as Exhibits B and C. Any conflict between the location of the modified territorial boundary line shown on the County Highway in Exhibit A and the modified territorial boundary line on the detailed maps in Exhibit B or C shall be resolved in favor of the detailed maps.

2. Except as modified herein, the territorial boundary line and all terms and conditions of the Territorial Agreement shall remain in full force and effect.

3. This Amendment to the Territorial Agreement will become effective and enforceable only upon the issuance of an order by the Florida Public Service Commission approving the Amendment in its entirety.

IN WITNESS WHEREOF, FPL and Progress Energy have caused this Amendment to be executed in duplicate by their duly authorized representatives on the day and year first above stated.

FLORIDA POWER & LIGHT COMPANY

PROGRESS ENERGY FLORIDA, INC.

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____