

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition of Progress Energy Florida, Inc. and Withlacoochee River Electric Cooperative, Inc. for approval of amendment to territorial agreement to modify territorial boundary line in four areas of Pasco and Hernando Counties.

DOCKET NO. 090428-EI
ORDER NO. PSC-10-0246-PAA-EI
ISSUED: April 22, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP
DAVID E. KLEMENT
BEN A. "STEVE" STEVENS III

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING AMENDMENT TO 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.

BACKGROUND

On September 2, 2009, Progress Energy Florida, Inc. (PEF) and Withlacoochee River Electric Cooperative, Inc. (WREC) filed a joint petition for approval to amend the territorial agreement we approved in Order No. PSC-06-0202-PAA-EU.¹ That order dealt with the second phase of a settlement between PEF and WREC that involved the transfer of some 5,400 customers for both phases. According to the settlement, the transfer of the second phase of customers was to be completed within two years of issuance of our Order. With approximately 689 Phase II customers remaining to be transferred, we issued Order No. PSC-08-0502-PAA-

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.

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EU² allowing for a twelve month extension of time to complete the customer transfers. The time extension was necessary because the logistical and operational issues regarding the transfers were more complicated and time consuming than expected. The proposed amended territorial agreement before us now finalizes the transfers of customers, with the exception of 117 customers in Pasco County. The proposed amendment of the territorial agreement also includes a boundary modification in Hernando County that will transfer one customer from PEF to WREC. PEF and WREC have not proposed any other changes to the current territorial agreement.

As explained in more detail below, we grant the parties' joint petition for approval of the amended territorial agreement. We have jurisdiction over this matter pursuant to Section 366.04, Florida Statutes.

DECISION

In their joint petition, the parties explain that operational constraints and good engineering practices indicate that three areas in Pasco County once slated to become part of PEF's service territory should remain in WREC's service territory. This change affects 117 customers who will not be transferred from WREC to PEF. Additionally, the petition states that at the time of filing there were 33 customers in Pasco County to be transferred by September 10, 2009. As indicated in a November 2, 2009, correspondence to the Commission, the 33 customers have been transferred from PEF to WREC as anticipated.

The 33 customers who have recently been transferred, plus the 117 customers who were once slated to be transferred, are the only remaining customers to have a change in service providers under the current territorial agreement. WREC has provided notification letters to the 117 customers that they will not be transferred to PEF. No adverse customer inquiries have been received. In addition to those mentioned above, the amendment also identified a PEF customer in Hernando County who is to be transferred to WREC because of operational constraints and potential safety issues. The joint petition indicates that this customer has agreed to the transfer.

Pursuant to Section 366.04(2)(d), Florida Statutes, we have 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, we 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 we determine 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).

² See Order No. PSC-08-0502-PAA-EU, issued August 8, 2008, in Docket No. 080206-EU, In re: 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.

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. Therefore, we find that the amended territorial agreement between PEF and WREC is in the public interest and we approve it.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint petition of Progress Energy Florida, Inc. and Withlacoochee River Electric Cooperative, Inc. for approval of amendment to territorial agreement to modify territorial boundary line in four areas of Pasco and Hernando Counties is 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 Commission Clerk, 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 22nd day of April, 2010.



ANN COLE
Commission Clerk

(S E A L)

MCB

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 13, 2010.

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.