

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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RECEIVED 11:00
APR 21 AM 11:29
COMMISSION
CLERK

DATE: April 21, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Brown) *MB Malt*
Division of Economic Regulation (Lee, Windham) *BW RLT*
RL

RE: Docket No. 040176-EU – Joint petition for approval of amendment to territorial boundary line in Commission-approved territorial agreement in Osceola County, by Kissimmee Utility Authority and Progress Energy Florida, Inc.

AGENDA: 05/03/04 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040176.RCM.DOC

CASE BACKGROUND

On February 27, 2004, Kissimmee Utility Authority (KUA) and Progress Energy Florida, Inc., formerly Florida Power Corporation (Progress Energy), filed a Joint Petition for approval of an amendment to their territorial agreement. The territorial agreement was approved by Order No. 25714 in Docket No. 911138-EU, issued February 12, 1992 (1992 agreement). By its terms and incorporated maps, the 1992 agreement establishes the respective service territories of KUA and Progress Energy in Osceola County and elsewhere. The proposed amendment to the 1992 agreement (Attachment 1) provides for a limited, specific modification to the territorial boundary line in Osceola County.

Pursuant to Section 366.04(2), Florida Statutes, the Commission has jurisdiction over territorial agreements between electric utilities.

DOCUMENT NUMBER - DATE

04729 APR 21 04

FPSC-COMMISSION CLERK

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the joint petition for approval of Amendment to the 1992 Territorial Agreement?

RECOMMENDATION: Yes, the Amendment is in the public interest and should be approved, effective upon the issuance of a Consummating Order finalizing the Commission's decision. **(Brown, Lee, Windham)**

STAFF ANALYSIS: Section 1 of the proposed amendment provides for a specific modification to the territorial boundary line in Osceola County, the location of which is shown on the County Highway map attached as Exhibit A to the amendment. The boundary line modification is shown separately on a detailed map attached as Exhibit B to the Amendment. The joint petitioners state that the need for the boundary modification arises because Cypress Shadows, a planned residential subdivision, is beginning construction development and extends to both sides of the territorial boundary line set forth in the petitioners' 1992 agreement.

Section 2.7 of the 1992 agreement provides as follows:

The parties agree that if a distinct phase of a construction development is being constructed at a single period in time and falls on both sides of the Territorial Boundary Line, then the Territorial Boundary Line shall be altered by amendment to this Agreement so that the utility serving the predominant number of customers of that current phase of the construction development would be entitled to serve the entirety of that current phase of the construction development. Any amendment under this Section shall be submitted to the FPSC for approval pursuant to Chapter 366.04(2), Florida Statutes.

The majority of the proposed 197 lots in the Cypress Shadows subdivision fall within the current service territory of Progress Energy. Pursuant to Section 2.7, the amendment reflects the agreement between the joint petitioners to relocate the territorial boundary line to go around, rather than through, the subdivision in question. By redrawing the territorial boundary line as modified, the joint petitioners believe that the proposed amendment will conform to the requirements of Section 2.7, will result in service being provided by the most appropriate party under the circumstances, and will promote operational safety and efficiency.

The amendment meets the requirements set forth in Rule 25-6.0440, Florida Administrative Code. The specific modification of territorial boundaries in the amendment will help avoid potential uneconomic duplication of facilities. No existing customers or facilities of the joint petitioners will be transferred. There is no reasonable likelihood that the amendment will cause a decrease in the reliability of electric service to the existing or future ratepayers of KUA or Progress Energy. Therefore, staff believes the amendment is in the public interest and should be approved, effective upon the issuance of a Consummating Order.

Docket No. 040176-EU

Date: April 21, 2004

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order. If a protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving this amendment, the docket should remain open. **(Brown)**

STAFF ANALYSIS : If a protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving this amendment, the docket should remain open. If no protest is filed, the docket should be closed upon the issuance of a Consummating Order.

ATTACHMENT 1



JAMES A. MCGEE
ASSOCIATE GENERAL COUNSEL
PROGRESS ENERGY SERVICE COMPANY, LLC

February 26, 2004

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

040176-EU

RECEIVED FISC
04 FEB 27 AM 9:58
COMMISSION
CLERK

Re: Joint Petition of Kissimmee Utility Authority and Progress Energy
Florida for approval of an Amendment to their territorial boundary
line in Osceola County, Florida.

Dear Ms. Bayó:

Enclosed for filing are an original and seven copies of the subject Joint
Petition.

Please acknowledge your receipt of the above filing on the enclosed copy of
this letter and return to the undersigned. A 3½ inch diskette containing the above-
referenced document in Word format is also enclosed. Thank you for your assistance
in this matter.

Very truly yours,

James A. McGee

DISTRIBUTION CENTER
04 FEB 27 AM 9:51

JAM/scc
Enclosures

cc: Grant Lacerte, Esquire

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Docket No. 040176-EU
Date: April 21, 2004

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition of Kissimmee Utility)
Authority and Progress Energy Florida)
for approval of an Amendment to their)
territorial boundary line in Osceola)
County, Florida.)
_____)

Docket No. 040176-EU

Filed: February __, 2004

JOINT PETITION

Joint Petitioners, Kissimmee Utility Authority (“KUA”) and Progress Energy Florida, Inc., formerly Florida Power Corporation, (“Progress Energy”) pursuant to Section 366.04(2)(d), Florida Statutes, Rule 25-6.0440, Florida Administrative Code, and Order No. 25714 in Docket No. 911138-EU (issued February 12, 1992) (“Order No. 25714”), petition the Florida Public Service Commission (the “Commission”) for approval of an Amendment to the Joint Petitioners’ Commission-approved territorial agreement that would modify the territorial boundary line in one area of Osceola County, Florida. In support, Joint Petitioners state as follows:

1. All notices and pleadings in this matter should be served on the following:

For KUA:

Grant Lacerte
Vice President and General Counsel
Kissimmee Utility Authority
P.O. Box 423219
Kissimmee, Florida 34742-3219

For Progress Energy:

James A. McGee
Associate General Counsel
Progress Energy Service Co., LLC
P.O. Box 14042
St. Petersburg, FL 33733-4042

2. Joint Petitioners are electric utilities as defined in Section 366.02(2), Florida Statutes, and are subject to jurisdiction of the Commission with respect to territorial agreements and territorial disputes pursuant to Section 366.04(2)(d) and (e), Florida Statutes. KUA’s principal offices are located at 1701 West Carroll Street, Kissimmee, Florida 34741. Progress Energy’s principal offices are located at 100 Central Avenue, St. Petersburg, Florida 33701.

3. The territorial agreement currently in effect between the Joint Petitioners was approved by Order No. 25714 (the "1992 Territorial Agreement"). By its terms and attached maps, the 1992 Territorial Agreement establishes the respective service territories of KUA and Progress Energy in Osceola County and elsewhere, as delineated by a territorial boundary line.

4. By this Joint Petition, KUA and Progress Energy seek approval of an Amendment to the 1992 Territorial Agreement dated February 23, 2004 (the Amendment), which is appended as Attachment 1 to this Joint Petition. The Amendment provides for a specific modification to the territorial boundary line in Osceola County, the general location of which is shown on the County Highway map attached as Exhibit A to the Amendment. The boundary line modification is shown separately on a detailed map attached as Exhibit B to the Amendment. The effectiveness of the Amendment is expressly contingent upon approval in its entirety by the Commission.

5. The need for the territorial boundary line modification sought by this Joint Petition arises because Cypress Shadows, a planned residential subdivision in Osceola County, Florida, that is subject to immediate or near-term development, is bisected by the territorial boundary line set forth in the 1992 Territorial Agreement. Section 2.7 of the 1992 Territorial Agreement ("Section 2.7"), attached to and incorporated in Order No. 25714, provides as follows:

The parties agree that if a distinct phase of a construction development is being constructed at a single period in time and falls on both sides of the Territorial Boundary Line, then the Territorial Boundary Line shall be altered by amendment to this Agreement so that the utility serving the predominant number of customers of that current phase of the construction development would be entitled to serve the entirety of that current phase of the construction development. Any amendment under this Section shall be submitted to the FPSC for approval pursuant to Chapter 366.04(2), Florida Statutes.

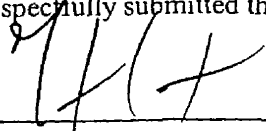
6. The majority of the proposed 197 lots in the Cypress Shadows subdivision fall within the current service territory of Progress Energy. Pursuant to Section 2.7, the Amendment reflects the

agreement negotiated by the Joint Petitioners to relocate the territorial boundary line to go around, rather than through, the subdivision in question. As modified, the territorial boundary line would cause the reallocation of about 68 lots from the KUA service territory to that of Progress Energy, thereby locating all of the previously bisected subdivision in the service territory of Progress Energy.

7. By redrawing the territorial boundary line in this manner, the Joint Petitioners believe and therefore represent that the Amendment will conform to the requirements of Section 2.7; will result in service being provided by the most appropriate Party under the circumstances presented; will promote operational safety and efficiency; and, therefore, that approval of the Amendment by the Commission will be in the public interest.

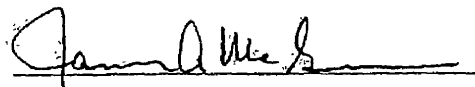
WHEREFORE, Joint Petitioners, KUA and Progress Energy, request that the Commission approve the modification of the territorial boundary line set forth in the Amendment to the 1992 Territorial Agreement appended hereto at Attachment 1.

Respectfully submitted this 23 day of February, 2004.



Grant Lacerte
Vice President and General Counsel
P.O. Box 423219
Kissimmee, Florida 34742-3219

Attorney for
Kissimmee Utility Authority



James A. McGee
Associate General Counsel
Progress Energy Service Company, LLC
P.O. Box 14042
St. Petersburg, Florida 33733-4042

Attorney for
Progress Energy Florida, Inc.

Docket No. 040176-EU
Date: April 21, 2004

**Amendment of 1992 Territorial Agreement between
Kissimmee Utilities Authority and Progress Energy Florida**

AMENDMENT TO TERRITORIAL AGREEMENT

Kissimmee Utility Authority ("KUA") and Progress Energy Florida, Inc., formerly Florida Power Corporation, ("Progress Energy"), collectively referred to as the "Parties", enter into this Amendment to their Territorial Agreement on this 23 day of February, 2004.

WITNESSETH:

WHEREAS, each of the Parties is authorized by its charter and the Laws of the State of Florida to furnish, and do furnish, retail electric service to persons within their respective service areas; and

WHEREAS, the current service areas of each of the Parties were established pursuant to a territorial agreement (the "1992 Territorial Agreement") between the Parties approved by the Florida Public Service Commission (the "Commission") in Order No. 25714 in Docket No. 911138-EU (issued February 12, 1992) ("Order No. 25714"); and

WHEREAS, Section 2.7 of the 1992 Territorial Agreement, titled "Special Conditions," sets forth the Parties' agreement that "if a distinct phase of a construction development is being constructed at a single period in time and falls on both sides of the Territorial Boundary Line, then the Territorial Boundary Line shall be altered by amendment to this Agreement so that the utility serving the predominant number of customers of that current phase of the construction development would be entitled to serve the entirety of that current phase of the construction development"; and

WHEREAS, Cypress Shadows is a planned residential subdivision in Osceola County, Florida, subject to immediate or near-term development that is bisected by the territorial boundary line set forth in the 1992 Territorial Agreement; and

WHEREAS, the majority of the 197 lots in the Cypress Shadows subdivision fall within the current service territory of Progress Energy; and

Docket No. 040176-EU
Date: April 21, 2004

WHEREAS, the Parties desire that the territorial boundary line in the 1992 Territorial Agreement be modified in a certain area of Osceola County, Florida, so that Progress Energy will provide electric service to all of the lots in the Cypress Shadows subdivision; and

WHEREAS, the 1992 Territorial Agreement, incorporated by reference in Order No. 25714, establishes that any amendment to the Territorial Agreement under Section 2.7 shall be submitted to the Commission for approval pursuant to Section 366.04(2), Florida Statutes; and

WHEREAS the Commission has jurisdiction to resolve territorial disputes and approve territorial agreements.

NOW, THEREFORE, the Parties agree to modify their 1992 Territorial Agreement as follows:

Section 1. For the reasons set forth in Section 2 below, the territorial boundary line established by the 1992 Territorial Agreement would be modified as depicted generally on the County Highway map attached and incorporated as Exhibit A, and as separately depicted and described on the detailed map attached and incorporated as Exhibit B, to cause the reallocation of a portion of the planned Cypress Shadows subdivision from the KUA service territory to that of Progress Energy, thereby locating all of the previously bisected subdivision in the service territory of Progress Energy. 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 map in Exhibit B shall be resolved in favor of the detailed map.

Section 2. The Parties agree that the modification of the territorial boundary line as specified in the paragraph above will conform to the requirements of Section 2.7 of the 1992 Territorial Agreement, will result in service being provided by the most appropriate Party under the circumstances; and will promote operational safety and efficiency.

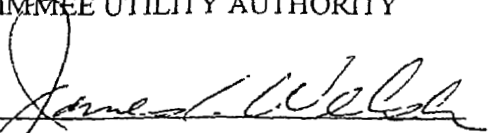
Section 3. Except as modified in this document, the territorial boundary line and all terms and conditions of the 1992 Territorial Agreement shall remain in full force and effect.


Section 4. This Amendment to the 1992 Territorial Agreement will become effective and enforceable only upon the issuance of an order by the Commission approving this Amendment in its entirety.

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

KISSIMMEE UTILITY AUTHORITY

PROGRESS ENERGY FLORIDA, INC.

By 
Name: James C. Welsh
Title: President & General Manager

By 
Name: VINCENT H. DOLAN
Title: VICE PRESIDENT