

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: September 9, 2004

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

FROM: Office of the General Counsel (Gervasi) *PS*
Division of Economic Regulation (Windham, Brennan) *Be Matt JB WBM RLT TSD*

RE: Docket No. 040701-EU – Joint petition for approval of territorial agreement concerning service to two locations in Jackson County, by Florida Public Utilities Company and West Florida Electric Cooperative Association, Inc.

AGENDA: 09/21/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Attachment A is not included in the electronic form of this document

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040701.RCM.DOC

Case Background

On July 6, 2004, the West Florida Electric Cooperative Association, Inc. (WFEC) and Florida Public Utilities Company (FPUC) filed a Joint Petition for Approval of Territorial Agreement (Agreement). The Agreement resolves a dispute regarding permanent electric service to two new customers in Jackson County. A copy of the Agreement is appended to this recommendation as Attachment A.

This Agreement is the first such agreement entered into between WFEC and FPUC. The Agreement provides that it shall remain in effect for an initial term of 30 years and shall automatically renew for successive 10 year periods unless either party gives written notice of its intent to terminate at least one year prior to the end of the initial term or any renewal period, or until modified or vacated by a final and non-appealable order of the Commission or of a court of competent jurisdiction.

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FPSC-COMMISSION CLERK

FPUC serves primarily an area in Jackson County that includes most of the City of Marianna, with some customers located in Calhoun and Liberty Counties. WFEC serves customers in Washington, Holmes, Calhoun, and Jackson Counties. The Agreement currently directly affects only two new customers; Racetrac Petroleum, Inc. (Racetrac), which is constructing a service station located on Highway 231 in Cottondale, and the James Grant Apartments, which are being constructed at 2422 Standfast Lane in Marianna.

The Agreement expressly provides that it shall become effective on the date that the Commission's order approving the Agreement becomes final and effective. Pursuant to Section 366.04(2)(d), Florida Statutes, the Commission has the authority "[t]o approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction."

Discussion of Issues

Issue 1: Should the Commission approve the Joint Petition of WFEC and FPUC for approval of the Agreement?

Recommendation: Yes. The Agreement between WFEC and FPUC (the parties) is in the public interest and should be approved. (GERVASI, WINDHAM, BREMAN)

Staff Analysis: The parties state that each utility currently has existing equipment in each of these areas to reliably serve the customers. However, they each acknowledge that there is currently uneconomic duplication of facilities in these areas.

Racetrac is located on the southeast corner of the intersection of Highway 231 and Dilmore Road, south of Dilmore Road and East of Highway 231. FPUC is currently providing temporary construction service to Racetrac. The parties agree that Racetrac will receive permanent electric service from an existing WFEC primary power line adjacent to the property, and that FPUC's temporary facilities will be removed at FPUC's expense upon WFEC providing permanent service.

The James Grant Apartments are located at the intersection of Standfast Lane and Highway 90, north of Highway 90. WFEC is currently providing temporary construction service to the James Grant Apartments. The Grant property has historically been served by FPUC, which has an existing primary pole on the site. The parties agree that the Grant property will receive permanent electric service from FPUC, and that WFEC's temporary facilities will be removed at WFEC's expense upon FPUC providing permanent service.

Removal of the duplicative facilities will occur as set forth in the Agreement on a date or dates to be agreed upon by the parties. This is expected to be carried out expeditiously. The parties state that the Agreement will result in elimination of the uneconomic duplication of

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facilities in the two areas and will result in reliable service for the customers. Both parties support a determination by the Commission that WFEC should provide permanent electric service to Racetrac and that FPUC should provide permanent electric service to the Grant property.

According to the Joint Petition, the differential between FPUC and WFEC's rates has been explained to Racetrac and to James Grant Apartments. Racetrac has agreed to take permanent service from WFEC and James Grant Apartments has agreed to take permanent service from FPUC. Maps showing the areas affected by the Agreement have been submitted. Staff has reviewed the existing facilities of each of the companies in these areas.

Rule 25-6.0440(2), Florida Administrative Code, describes the standards of approval for 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 Agreement does not establish a traditional "lines-on-the-ground" territorial boundary. However, it addresses all the necessary standards required for approval. The Agreement comports with the requirements of Rule 25-6.0440, Florida Administrative Code. It does not appear to cause a decrease in the reliability of electric service, and it appears to eliminate or minimize existing or potential uneconomic duplication of facilities. Thus, the Agreement appears to be in the public interest. In light of the foregoing, staff recommends that the Commission grant the Joint Petition for Approval of Territorial Agreement concerning service to two locations in Jackson County, by Florida Public Utilities Company and West Florida Electric Cooperative Association, Inc.

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Issue 2: Should this docket be closed?

Recommendation: Yes, if no timely protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving the Agreement, this docket should be closed upon the issuance of a Consummating Order. If a protest is timely filed by a substantially interested person, the Agreement should remain in effect pending resolution of the protest and the docket should remain open.

Staff Analysis: If no timely protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving the Agreement, this docket should be closed upon the issuance of a Consummating Order. If a protest is timely filed by a substantially interested person, the Agreement should remain in effect pending resolution of the protest and the docket should remain open.

JAL

Kay Flynn

040701-EC

From: Bill Willingham [bill@feca.com]
Sent: Tuesday, July 06, 2004 4:42 PM
To: Filings@psc.state.fl.us
Cc: Michelle Hershel; Norman Horton; Russell Dunaway; Mark Cutshaw
Subject: Petition - West florida and FPUC

The name, address, telephone number and e-mail address of the person responsible for the electronic filing is as follows:

William B. Willingham

Florida Electric Cooperatives Association, Inc.

2916 Apalachee Parkway

Tallahassee, FL 32301

(850)877-6166, Ext. 1

bill@feca.com

The attached 6-page document is a Joint Petition to approve a territorial agreement between two electric utilities is filed on behalf of West Florida Electric Cooperative Association, Inc. and Florida Public Utilities Company. The Petition is four pages and the exhibit is two pages for a total of six pages. The attachment includes the joint petition and the exhibit.

Bill Willingham
Executive V.P. & General Manager
Florida Electric Cooperatives Assn.
2916 Apalachee Parkway
Tallahassee, FL 32301
(850) 877-6166, ext. 1

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of West Florida Electric Cooperative Association, Inc. and Florida Public Utilities Company for approval of a territorial agreement concerning service to two locations in Jackson County)
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Docket No. 040701-EC

Filed:

JOINT PETITION FOR APPROVAL OF TERRITORIAL AGREEMENT

West Florida Electric Cooperative Association, Inc. ("WFEC") and Florida Public Utilities Company ("FPUC"), by and through their undersigned counsel, hereby request the Florida Public Service Commission ("Commission") to approve the Territorial Agreement (the "Agreement") attached hereto as Exhibit "A", which would allow the companies to provide permanent electric service to the customers as described herein. In support of this Joint Petition, WFEC and FPUC state as follows:

1. The names and mailing addresses of Petitioners are:

West Florida Electric Cooperative Association, Inc.
P.O. Box 127
Graceville, Florida 32440

Florida Public Utilities Company
P.O. Box 610
Marianna, Florida 32447

2. All notices, communications, pleadings and orders should be directed to:

FOR WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION, INC.

William B. Willingham, Esq.
Michelle L. Hershel, Esq.
Florida Electric Cooperatives Assn., Inc.
2916 Apalachee Parkway
Tallahassee, Florida 32301
(850) 877-6166
(850) 656-5485 (fax)

Russell Dunaway
Vice President, Finance and Administration
West Florida Electric Cooperative Association, Inc.
P.O. Box 127
Graceville, Florida 32440
(850) 263-3231
(850) 263-3726 (fax)

DOCUMENT NUMBER-DATE

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FOR FLORIDA PUBLIC UTILITIES COMPANY

Norman Horton, Jr.
Messer Caparelo & Self
P.O. Box 1876
Tallahassee, Florida 32302
(850) 222-0720
(850) 224-4359 (fax)

Mark Cutshaw
Director, Northwest Florida
Florida Public Utilities Company
P.O. Box 610
Marianna, Florida 32447
(850) 526-6811
(850) 526-6815 (fax)

3. WFEC is an electric cooperative that provides electric service to its member/owners in Jackson County. FPUC is an investor-owned electric utility that provides electric service to its customers in Jackson County. WFEC and FPUC have entered into a joint territorial agreement to resolve a dispute regarding permanent electric service to two new customers in Jackson County. The Commission has jurisdiction to review and approve the Agreement pursuant to Section 366.04(2)(d), Florida Statutes.

4. The customers involved are Racetrac Petroleum, Inc. ("Racetrac") and residential apartments on property that is owned by Mr. James Grant ("Grant"). The parties agree that WFEC and FPUC both are capable of providing reliable electric service to Racetrac and Grant, but both utilities believe that it is in the best interest of all their consumers if the Commission resolves this territorial dispute in a manner that benefits all of the consumers of both utilities.

5. In order to eliminate further uneconomic duplication of facilities and to insure that the facilities of WFEC and FPUC do not become crossed or intermingled, the utilities have worked cooperatively toward an equitable resolution and have reached the Agreement attached hereto and incorporated herein as Exhibit "A". The Agreement addresses the provision of electric service in Jackson County for customers Racetrac and Grant, and the responsibility for the removal of certain temporary facilities and the costs associated therewith. The Agreement is conditioned upon

approval of the Commission.

6. Racetrac is located at 2496 Highway 231 in Cottondale, Florida. WFEC has an existing three-phase distribution line on the north edge of Racetrac's property. WFEC can serve Racetrac by installing a transformer on its existing pole. The builder has extended conduit for the permanent service to the base of WFEC's pole. The differential between FPUC's and WFEC's rates has been explained to Michael R. Volavka, Construction Coordinator with Racetrac Petroleum, Inc., and he has agreed to take permanent service from WFEC.

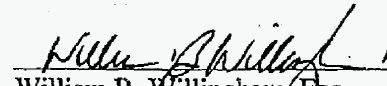
7. Grant is located at 2422 Standfast Lane in Marianna, Florida. FPUC has historically served the site with the type of service that is being requested by Mr. Grant. More specifically, FPUC previously provided single phase service to a single family home and well pump, and the proposed apartments will require single phase residential service. The primary facilities that FPUC previously used to provide service to the site are still on Mr. Grant's property. The differential between FPUC's and WFEC's rates has been explained to Mr. Grant and he has agreed to take permanent service from FPUC.

8. No transfer of existing customers or facilities will occur as a result of the Agreement.

9. WFEC and FPUC maintain that the Agreement attached hereto as Exhibit "A" appropriately prevents further uneconomic duplication of facilities and will insure that the facilities of the utilities do not become crossed or intermingled. The resolution should enhance reliability by providing stable conditions on which to plan future expansions and upgrades and is in the public interest. Both parties support a determination by the Commission that WFEC should provide permanent electric service to Racetrac and FPUC should provide permanent electric service to Mr. Grant's property.

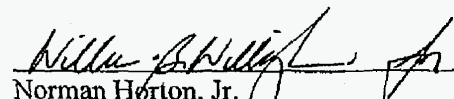
WHEREFORE, WFEC and FPUC respectively jointly request that the Commission approve the Agreement attached hereto and incorporated herein as Exhibit "A".

Respectfully submitted the 6th day of July, 2004,



William B. Willingham, Esq.
Michelle L. Hershel, Esq.
Florida Electric Cooperatives Association, Inc.
2916 Apalachee Parkway
Tallahassee, Florida 32301

Attorneys for West Florida Electric Cooperative Association, Inc.



Norman Horton, Jr.
Messer Caparello & Self
P.O. Box 1876
Tallahassee, Florida 32302

Attorneys for Florida Public Utilities Company

Territorial Agreement

This Agreement is made between West Florida Electric Cooperative Association, Inc. ("WFEC") and Florida Public Utilities Company ("FPUC") in order to provide electric utility service to two customers in an economical and non-duplicative fashion and to enhance future reliability for each utility's customer base. WFEC and FPUC (the "Parties") hereby agree as follows:

1. FPUC is providing temporary construction service to Racetrac Petroleum, Inc. ("Racetrac"), which is located at 2496 Highway 231, Cottondale, Florida 32431. The Parties agree that Racetrac Petroleum, Inc. will receive permanent electric service from WFEC, and that FPUC's temporary facilities will be removed at FPUC's expense upon WFEC providing permanent service.

2. WFEC is providing temporary construction service to Mr. James Grant's property ("Grant"), which is located at 2422 Standfast Lane, Marianna, Florida 32446. The Parties agree that Grant will receive permanent electric service from FPUC, and that WFEC's temporary facilities will be removed at WFEC's expense upon FPUC providing service.

3. Removal of the facilities as set forth above shall occur on a date or dates to be agreed upon by the Parties.

4. This Agreement shall be submitted jointly by the Parties to the Florida Public Service Commission ("FPSC") for approval. This Agreement shall become effective on the date that the FPSC's order approving the Agreement becomes final and effective, and shall remain in effect (a) for an initial term of thirty (30) years and shall automatically renew for successive ten (10) year periods unless either Party gives written notice of intent to terminate at least one (1) year prior to the end of the initial term or any renewal period, or (b) until modified or vacated by a final and non-appealable order of the FPSC or a court of competent jurisdiction.

5. This Agreement will become void and unenforceable should the FPSC's jurisdiction in service territorial matters be ruled invalid by a court of final appellate jurisdiction.

6. This Agreement may be modified only upon the agreement of the Parties and the approval of the FPSC.

7. The Parties have entered into this Agreement solely for the purpose of adhering to Florida's policy that favors territorial agreements between electric utilities. This Agreement is governed by Section 366.04(2)(d), Florida Statutes, that expressly confers authority on the FPSC to approve territorial agreements between electric utilities. Upon approval by the FPSC, this Agreement will merge into and become part of the FPSC order that approved it.

AGREED this 30th day of June, 2004.

WEST FLORIDA ELECTRIC COOPERATIVE ASSOCIATION, INC.

BY: William S. Rimes

TITLE: Executive Vice President & CEO

DATE: 6-30-04

FLORIDA PUBLIC UTILITIES COMPANY

BY: P. Mark Cutshaw

TITLE: Director, North West Florida

DATE: 6/30/04

EXHIBIT "A"