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Writer's Direct Dial No. 727-820-5587

R. ALEXANDER GLENN
Deputy General Counsel - Florida

VIA HAND DELIVERY

February 10, 2005

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

RECEIVED FPSC
05 FEB 10 PM 2:15
COMMISSION
CLERK

Re: Petition of Progress Energy Florida, Inc. to relieve it of the statutory obligation to serve certain customers within the city of Winter Park with electrical service

Dear Ms. Bayo:

Enclosed for filing on behalf of Progress Energy Florida, Inc. is an original and 15 copies of the subject petition. Please acknowledge your receipt and filing of the above filing on the enclosed copy of this letter and return to the undersigned.

Two 3.5 inch diskettes containing the above-referenced petition in Word format and its exhibit in PDF format are also enclosed. Thank you for your assistance in this matter.

Sincerely,

R. Alexander Glenn

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

RAG/at
Enclosures

STATE OF FLORIDA



DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR

Public Service Commission

M A P S

DOCKET NO.: 050117 - EI

DOCUMENT NO.: 01473-05

DESCRIPTION: Progress Energy Florida, Inc. [Progress] (Glenn) - Petition to relieve statutory obligation to provide electrical service to certain customers within the City of Winter Park, pursuant to Section 366.03 and 366.04, F.S. [CCA note: Map forwarded to ECR.]

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Progress Energy Florida, Inc.'s Petition) Docket No: _____
to Relieve It of the Statutory Obligation to)
Provide Certain Customers Within The City)
of Winter Park With Electrical Service.) Filed: February 10, 2005

**PETITION OF PROGRESS ENERGY FLORIDA, INC.,
TO RELIEVE IT OF THE STATUTORY OBLIGATION
TO PROVIDE CERTAIN CUSTOMERS WITHIN THE
CITY OF WINTER PARK WITH ELECTRICAL SERVICE**

BEFORE THIS COMMISSION, Progress Energy Florida, Inc., (“PEF”) pursuant to Sections 366.03 and 366.04, Florida Statutes, submits this Petition for entry of an order relieving PEF, after June 1, 2005, or such later date on which the City of Winter Park (“City”) has the ability to furnish retail electric service in the area identified as the City’s service territory on the maps contained in Exhibit A hereto, of its statutory obligation to provide electrical service to customers within such service territory (hereinafter referred to as the “City Territorial Area”).¹

This Petition arises from the decision of the City to furnish retail electric service to customers within the City Territorial Area beginning on June 1, 2005.

¹ The maps in Exhibit A label the territorial area to be served by the City of Winter Park as “City Territorial Area” or “City.” This territorial service area was agreed to by PEF and the City in arbitration and represents the Winter Park City limits at the time the Franchise Agreement between PEF and the City expired in June, 2001. The City Territorial Area also includes portions of two annexations that took place after that Franchise Agreement expired because PEF and the City agreed in arbitration to include those annexations to simplify the separation and reintegration of PEF’s remaining distribution system in and around Winter Park.

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FPSC-COMMISSION CLERK

PEF, by virtue of its Charter and its statutory obligation to serve pursuant to Section 366.03, Florida Statutes, presently furnishes retail electric service to customers in Orange County both inside and outside the City's corporate limits.

Pursuant to the City's purchase of PEF's electric distribution system within the City Territorial Area, PEF proposes, on June 1, 2005, or such later date on which the City has the ability to furnish retail electric service in the area identified as the City's service territory, to terminate its provision of electrical service to customers it is currently serving within the City Territorial Area. PEF and the City are bound by the arbitration between them to adhere to the territorial boundary lines depicted on the maps contained in Exhibit A, and it is PEF's intention to adhere to those boundaries once the City begins providing service within the City Territorial Area.

Approval of PEF's request is necessary to avoid any uncertainty as to the existence of an ongoing statutory obligation on its part to provide electrical service within the City Territorial Area, and to bring the City and PEF within the ambit of the state action immunity doctrine under antitrust laws, which might otherwise be applicable to the allocation of exclusive service territories.

In further support of the Petition, PEF states as follows:

1. PEF is a public utility subject to the jurisdiction of the Florida Public Service Commission ("PSC" or the "Commission") under Chapter 366, Florida

Statutes (2004). PEF's General Offices are located at 100 Central Avenue, St. Petersburg, Florida, 33701.

2. Any pleading, motion, notice, order or other document required to be served upon the petitioner or filed by any party or person seeking intervention in this proceeding should be served upon:

R. Alexander Glenn
Deputy General Counsel
Progress Energy Service Company, LLC
P. O. Box 14042
St. Petersburg, FL 33733
(727) 820-5587

James Michael Walls, Esq.
and John T. Burnett, Esq.
CARLTON FIELDS, P.A.
P. O. Box 3239
Tampa, FL 33601-3239
(813) 223-7000

3. PEF is not aware of any disputed issue of material fact. This Petition is not filed in response to any agency decision.

Background

4. PEF has provided retail electric service to customers within the City since 1927. PEF executed franchise agreements with the City in 1927, 1947 and 1971. During that time, the Legislature required that all electric franchise agreements include an option in favor of the municipality to purchase the distribution system within the franchise area upon the expiration of the franchise.

The Legislature repealed that requirement in 1973. The expiration date for the most recent franchise agreement with the City was June 12, 2001.

5. PEF and the City were unable to successfully negotiate a renewal of the franchise agreement with the City prior to June 12, 2001. On June 8, 2001, the City filed a declaratory judgment action seeking a declaration that it had the right to purchase PEF's electric distribution system located in the City and to determine the value of the system to be purchased through arbitration.

6. PEF contested the City's right to the declaration requested. However, in September, 2001, the Florida Fifth District Court of Appeal entered an opinion in the case of *Florida Power Corporation v. City of Casselberry*, 793 So. 2d 1174 (Fla. 5th DCA 2001), which upheld the validity of the purchase option in the franchise and the City's right to arbitrate the purchase price of a utility's distribution system. The court further noted that any potential acquisition would be subject to further state and federal regulatory review. On October 15, 2001, in accordance with the *City of Casselberry* opinion, the trial court entered an order compelling PEF to arbitrate, among other issues, the purchase price of its electric distribution system located in the City.

7. On July 18, 2003, the arbitrators issued a Corrected Arbitration Award establishing, among other things, the value of PEF's electric distribution system in the City Territorial Area (the "Arbitration Award"). The City has indicated that it

intends to pay the amounts set forth in the Arbitration Award and purchase PEF's electric distribution system within the City Territorial Area with proceeds from revenue bonds issued by the City.

8. Since entry of the court order and issuance of the Arbitration Award, PEF and the City have communicated and attempted to finalize the City's purchase of PEF's electric distribution system located in the City Territorial Area. The City's current plan is for ownership and operation of the electric distribution system in the City Territorial Area to be transferred from PEF to the City on June 1, 2005.

9. PEF is working with the City to supplement the agreement to the territorial boundary depicted on the maps attached hereto as Exhibit A by attempting to agree on the terms and conditions of a Territorial Agreement. An agreement was reached during the arbitration and confirmed in the Arbitration Award with regard to the boundaries of the City's Territorial Area, however, the terms and conditions of a Territorial Agreement between PEF and the City have not been agreed to as yet. To facilitate the implementation of a Territorial Agreement in the event an agreement is reached, PEF is in the process of preparing a large scale set of maps that will identify the territorial boundary line in much greater detail than the existing map. If a Territorial Agreement has not been

reached upon their completion, PEF will submit these detailed maps by supplemental filing for Commission approval in conjunction with this Petition.

PEF is committed to continuing to work with the City in an attempt to negotiate a Territorial Agreement that will address issues that commonly arise between utilities operating in contiguous defined service areas.

Relief From Statutory Obligation To Provide Electrical Service

10. PEF has an obligation to serve its customers imposed by Section 366.03, Florida Statutes, by providing safe, adequate and reliable electric service to customers who are entitled to service within the geographic area served by PEF. A utility's statutory obligation to serve its customers has been recognized by Florida's Supreme Court. *Tampa Electric Co. v. Garcia*, 767 So.2d 428, 434 (Fla. 2000). The obligation to serve includes an obligation to plan to serve the customers within the City and to incur the costs of constructing generation plants to do so.

11. The City has begun construction of distribution facilities needed to commence utility operations upon completion of its purchase of PEF's system, hired a contractor to operate its distribution system, executed a wholesale power purchase agreement as a source of electricity for its retail customers, is in the final stages of issuing revenue bonds to fund the purchase of PEF's system, and has informed PEF of its firm commitment to acquire ownership of PEF's electric

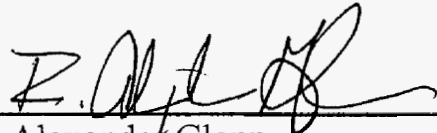
distribution system located within the area identified as the City's service territory on the maps contained in Exhibit A and to begin providing electrical service to customers located within such service territory who heretofore received retail electrical service from PEF. Accordingly, PEF respectfully requests that the Commission enter an order relieving PEF, as of June 1, 2005, or such later date on which the City has the ability to furnish retail electric service in its territorial area identified in Exhibit A, from its statutory obligation to provide electrical service to customers located within such territorial area.

Conclusion

12. PEF believes the entry of an order by the Commission granting PEF relief from its statutory duty to provide electric service to retail customers within the City Territorial Area depicted on the maps contained in Exhibit A in which the City will be the exclusive provider of electric service, and recognizing the agreement between the parties to their respective territorial areas in Exhibit A, is necessary to avoid any uncertainty as to the existence of PEF's statutory obligation to provide electrical service within the City Territorial Area, and to bring the City and PEF within the ambit of the state action immunity doctrine under antitrust laws, which might otherwise be applicable to the allocation of exclusive service territories.

WHEREFORE, for the reasons set forth herein, Progress Energy Florida, Inc., respectfully requests that the Commission grant the relief requested by this Petition.

Respectfully Submitted

By: 
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