

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:** February 17, 2005

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

**FROM:** Office of the General Counsel (Brown) *MBW*  
Division of Economic Regulation (Bremar) *WBM* *RLT* *JDJ*

**RE:** Docket No. 050009-EU – Joint petition for approval of term extension to territorial agreements in Citrus and Pasco Counties, by Withlacoochee River Electric Cooperative and Progress Energy Florida, Inc.

**AGENDA:** 03/01/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\050009.RCM.DOC

### Case Background

At present, Progress Energy Florida, Inc. (Progress) and Withlacoochee River Electric Cooperative (Withlacoochee) are negotiating a new comprehensive territorial agreement to replace four territorial agreements currently delineating their retail electric service territories in Citrus County, East Pasco County, West Pasco County and Hernando County.<sup>1</sup> The parties

<sup>1</sup> The Commission approved the Citrus and West Pasco territorial agreements by Order No. 19480, issued June 10, 1988, in Docket No. 880234-EU, In Re: Joint Petition of Florida Power Corporation and Withlacoochee River Electric Cooperative, Inc. for Approval of Territorial Agreement. The Commission approved the East Pasco agreement by Order No. 20368, issued November 30, 1988, in Docket No. 881164-EU, In Re: Joint Petition to Approve Territorial Agreement Between Florida Power Corporation and Withlacoochee River Electric Cooperative, Inc. The Commission approved the Hernando agreement by Order No. 25309, issued November 7, 1991, in Docket No. 910940-EU, In Re: Joint Petition for approval of territorial agreement between Florida Power Corporation and Withlacoochee River Electric Cooperative, Inc.

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requested approval of amendments to extend the term of the existing agreements to December 31, 2004, to conduct negotiations on the new comprehensive agreement.<sup>2</sup>

During this time Withlacoochee also petitioned the Commission for resolution of a territorial dispute involving a proposed development called Majestic Oaks that crosses part of the parties' existing territorial boundary in Hernando County.<sup>3</sup> Withlacoochee and Progress agreed to negotiate a settlement of the dispute together with their negotiations on a new comprehensive territorial agreement for all three counties. The Commission granted a motion to toll the time for filing responsive pleadings in the dispute docket in order to facilitate settlement negotiations.<sup>4</sup> On December 3, 2004, the parties filed a joint status report stating that the parties have an agreement in principle to settle the dispute, and are continuing negotiation of the details.

The parties were not able to complete negotiations on the comprehensive agreement by December 31, 2004, and on that date they filed another joint petition to extend the terms of their existing agreements to September 30, 2005, when they expect to have the new agreement completed.

This recommendation addresses the joint petition to extend the terms of the parties' existing agreements. The proposed amendment to the agreements is attached hereto as Attachment A. The Commission has jurisdiction over this matter pursuant to section 366.04(2)(d), Florida Statutes.

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<sup>2</sup> The petition was approved by Order No. PSC-03-0789-PAA-EU, issued July 3, 2003, in Docket No. 030406-EU, In Re: Joint petition for approval of term extension to territorial agreements in Citrus and Pasco Counties, by Progress Energy Florida, Inc. and Withlacoochee River Electric Cooperative, Inc.

<sup>3</sup> Filed February 12, 2004, in Docket No. 040133-EU, In Re: Petition of Withlacoochee River Electric Cooperative, Inc. to Modify Territorial Agreement Or, in the Alternative, To Resolve A territorial Dispute With Progress Energy Florida, Inc., In Hernando County, Florida.

<sup>4</sup> See Order No. PSC-04-0339-PCO-EU, issued March 31, 2004.

### Discussion of Issues

**Issue 1:** Should the Commission grant the joint petition of Withlacoochee River Electric Cooperative, Inc., and Progress Energy Florida, Inc., for approval of an amendment to extend the term of the parties' Citrus, West Pasco, and East Pasco territorial agreements?

**Recommendation:** Yes. The Commission should grant the joint petition. The Amendment should become effective the date the Commission's Order approving the Amendment becomes final. (Brown, Breman)

**Staff Analysis:** As explained in the case background, the parties' joint petition requests an extension of the term of the territorial agreements through September 30, 2005, because the parties expect to file a comprehensive multi-county territorial agreement encompassing all four existing territorial agreements within that time. The parties anticipate that the comprehensive agreement will also resolve the territorial dispute over the Hernando Agreement. Unless the Commission grants the request to extend the term of the current agreements, the utilities will not have an operative Commission-approved territorial agreement in effect for Citrus and Pasco Counties while they complete negotiations and seek Commission approval of the new agreement.

The parties' on-going efforts and commitment to achieve a comprehensive territorial agreement was the basis of the Commission's decision to grant a term extension through December 31, 2004. Likewise, the Commission granted Progress' motion to toll time in the dispute docket to facilitate settlement negotiations. The parties were not able to complete a comprehensive agreement by December 31, 2004, in part because of the hurricanes of 2004. In their joint request and in their recent status report in the dispute docket, the parties have represented that they have reached an agreement in principle and need some additional time to complete the effort.

In determining whether or not to approve an amendment to a territorial agreement the Commission considers what effect the amendment will have on all affected customers and insures that the amendment does not create a detriment to the public interest. See Utilities Commission of New Smyrna Beach v. Florida Public Service Commission, 469 So.2d. 731 (Fla. 1985). In this instance, extending the term of the agreements provides regulatory certainty to the utilities during their negotiation efforts. The parties' efforts to reach a comprehensive agreement are intended to improve reliable service and avoid future uneconomic duplication of facilities. In Order No. PSC-98-0174-FOF-EU, issued January 28, 1998, in Docket No. 930885-EU, In Re: Petition to resolve territorial dispute with Gulf Coast Electric Cooperative, Inc. by Gulf Power Company the Commission stated that "[t]he utilities are the entities with the best evidence of what their long range plans are, what their systems are and what is the most economic way of providing additional service." Customer growth has been occurring in the boundary areas of the parties' territorial agreements, and staff believes that a review of the boundary areas in the context of a comprehensive territorial agreement would be important to a determination of how best to provide reliable service and how to avoid future uneconomic duplication. Thus staff believes that extending the term of the Citrus, West Pasco and East Pasco Agreements to September 30, 2005, is in the public interest. The term extension facilitates the development of a territorial agreement that is expected to provide for reliable service and avoid future uneconomic duplication of facilities. Staff recommends that the Commission approve the joint petition.

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**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Brown)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

**AMENDMENT TO TERRITORIAL AGREEMENTS**

Withlacoochee River Electric Cooperative, Inc. (WREC) and Progress Energy Florida, Inc. (Progress Energy), enter into this Amendment to their Territorial Agreements for Citrus and Pasco Counties on this 31st day of December, 2005.

**WITNESSETH:**

WHEREAS, WREC and Progress Energy are parties to four currently effective territorial agreements delineating their respective service territories in Citrus County (the Citrus Agreement), western Pasco County (the West Pasco Agreement), eastern Pasco County (the East Pasco Agreement), and Hernando County (the Hernando Agreement), each of which has been approved by order of the Florida Public Service Commission (FPSC); and

WHEREAS, on July 3, 2003, the FPSC issued an order approving an amendment of the Citrus, West Pasco and East Pasco Agreements to extend the expiration dates of those Agreements through December 31, 2004 for the purpose of providing sufficient time for WREC and Progress Energy to consolidate all of the existing Territorial Agreements, including the Hernando Agreement, into a single amended and restated agreement; and

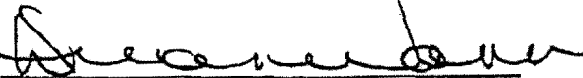
WHEREAS, in view of the substantial work effort required to develop and prepared a comprehensive consolidated territorial agreement, and delays resulting from unanticipated events, in particular the major hurricanes that caused significant damage and customer service outages on their respective systems in August and September, 2004, WREC and Progress Energy desire to further extend the expiration dates of the Citrus, West Pasco and East Pasco Agreements in order to complete the preparation of the consolidated territorial agreement.

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

- 1 The term of the Citrus Agreement, the West Pasco Agreement, and the East Pasco Agreement shall be extended to and including September 30, 2005.
- 2 Except as modified herein, the terms and conditions of the Citrus, West Pasco and East Pasco Agreements shall remain in full force and effect.
- 3 This Amendment to the Territorial Agreements 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, WREC 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.

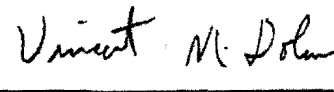
WITHLACOOCHEE RIVER ELECTRIC  
COOPERATIVE, INC.

By 

Name: Duane Vann

Title: Assistant General Manager

PROGRESS ENERGY FLORIDA, INC.

By 

Name: Vincent M. Dolan (M.N.)

Title: Vice-President Corporate Relations  
& Administrative Services