

State of Florida



Public Service Commission

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COMMISSION
CLERK

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

DATE: April 7, 2005

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

FROM: Office of the General Counsel (Rodan) *JAR* *Watt* *BA* *RT*
Division of Economic Regulation (Breman, Windham) *P won*

RE: Docket No. 041413-EU – Joint petition for approval of amended territorial agreement in Levy and Marion Counties by Central Florida Electric Cooperative, Inc. and Progress Energy Florida, Inc.

AGENDA: 04/19/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Attachment A is not included in the Word version of this document.

FILE NAME AND LOCATION: S:\PSC\GCL\WP\041413.RCM.DOC

Case Background

On December 20, 2004, Progress Energy Florida, Inc. (PEF) and Central Florida Electric Cooperative, Inc. (CFEC) filed a Joint Petition for approval of an amendment and restatement of an existing territorial agreement between the parties in Levy and Marion Counties, Florida, which was approved by Order No. PSC-94-0799-AS-EU, issued June 28, 1994, Docket No. 920659-EU, In Re: Petition to resolve a territorial dispute between Central Florida Electric Cooperative, Inc. and Florida Power Corporation in Levy County. The new agreement would expire on June 28, 2014. The proposed territorial agreement, attached hereto as Attachment A, amends the retail electric territorial boundary previously set by the Commission for the currently effective agreement.

DOCUMENT NUMBER-DATE

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The proposed agreement provides that its effectiveness is contingent upon approval of the Commission. Pursuant to Section 366.04(2), Florida Statutes, the Commission has jurisdiction over territorial agreements between electric utilities.

Discussion of Issues

Issue 1: Should the Commission approve the joint petition for approval of the amended territorial agreement between Progress Energy Florida, Inc. and Central Florida Electric Cooperative, Inc.?

Recommendation: Yes. The proposed agreement is in the public interest and should be approved, effective upon the issuance of a Consummating Order finalizing the Commission's decision. (Rodan, Windham, Breman)

Staff Analysis: The proposed agreement involves minor boundary changes to provide the parties further operational efficiencies and customer service improvements in their respective territories. The proposed agreement eliminates the need for each utility to serve extra-territorial customers currently located in the territory of the other utility, through either modifying the territorial boundary lines to place these customers in the territorial area of the utility currently providing service, or transferring the remaining extra-territorial customers to the utility in whose territorial area they are located. Thus, both utilities will be able to plan and operate more efficiently and better serve their customers by concentrating their efforts and attention exclusively on their own respective service areas. Maps of relevant areas in Levy and Marion counties showing the new agreement boundary lines are contained in Exhibit A to the Amended Agreement. Under the agreement CFEC will serve no customers in Citrus County, so there is no territorial boundary between these utilities in Citrus County.

The proposed agreement provides for the transfer of all extra-territorial customers to the utility in whose service territory such customers are located. The parties expect that all such transfers and related service facilities will be completed within 36 months of the Commission's order approving the amended agreement. The parties are agreeable to submitting annual reports on the status of these customer and related facility transfers, and will provide the Commission advance notification if extenuating circumstances require additional time to complete the transfers. The names and service addresses of the extra-territorial customers subject to transfer are listed in Exhibit B to the Amended Agreement, which includes seven customers to be transferred from PEF to CFEC and 190 customers to be transferred from CFEC to PEF.

The utilities have agreed that current deposits of customers being transferred will be credited against the customer's final bill. Any remaining deposit will be refunded to customers. Any remaining account balance will be billed to customers. Deposits will be required only if determined to be necessary under each utility's standard, uniformly applied deposit criteria. In addition, a membership fee will be required of customers transferred to CFEC who are not already a member of the Cooperative. For customers being transferred to PEF, the customer/member's capital credit of record with CFEC will be refunded at an appropriate time determined by CFEC's Board of Trustees. This is consistent with Commission practice¹.

¹ See Order No PSC-95-0440-FOF-EU, issued April 5, 1995, Docket No 940656-EU, In Re: Petition for Approval of a Territorial Agreement between Orlando Utilities Commission and Florida Power Corporation in Orange County; Order No. PSC-95-1434-FOF-EU, issued November 27, 1995, Docket No 950851-EU, In Re: Joint Petition for Approval of a Territorial Agreement in Marion, Levy, and Columbia Counties between Florida Power Corporation and Clay Electric Cooperative, Inc.; and Order No PSC-95-0668-FOF-EU, issued May 31, 1995,

The utilities sent a letter to all customers proposed to be transferred advising the customers of the proposed transfers. To date, CFEC has received three responses to the notification letters sent to the 190 customers to be transferred to PEF. Two customers objected to the transfer and raised general reasons rather than specific service or rate-related issues. The remaining customer objected to the transfer based on concerns regarding his past experience with PEF's delayed outage response time. PEF has not received any responses to its customer notification letters.

Staff has reviewed the proposed Agreement and believes that the Joint Petition and the Agreement are in compliance with Rule 25-6.0440, Florida Administrative Code, and Section 366.04(2), Florida Statutes, the laws governing territorial agreements. Moreover, staff believes that the Agreement is a reasonable resolution that will reduce the likelihood of future uneconomic and unnecessary duplication of facilities along the boundary lines, in accordance with Commission policy and the public interest. Therefore, staff recommends that the Commission approve the Joint Petition for approval of Territorial Agreement in Levy and Marion counties by PEF and CFEC, and the associated maps. Because this action is being taken as proposed agency action, staff believes that the action approving this Agreement cannot be effective until the issuance of a Consummating Order, and that the term of the agreement will be from that date to the expiration date of the currently effective agreement. This Agreement comports with the law and the public interest, and it furthers the Commission policy of avoiding unnecessary and uneconomic duplication of facilities.

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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. (Rodan)

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.

AMENDED TERRITORIAL AGREEMENT

Section 0.1: CENTRAL FLORIDA ELECTRIC COOPERATIVE, INC. (the "COOPERATIVE"), and PROGRESS ENERGY FLORIDA, INC., formerly Florida Power Corporation, (the "COMPANY") (collectively, the "Parties") enter into this Amended Territorial Agreement (the "Amended Agreement") on this 16th day of December, 2004.

WITNESSETH:

Section 0.2: WHEREAS, the COOPERATIVE and the COMPANY are each authorized, empowered and obligated by their corporate charter and laws of the State of Florida to furnish retail electric service to persons upon request within their respective service areas; and

Section 0.3: WHEREAS, the COOPERATIVE and the COMPANY are parties to a currently effective territorial agreement dated December 20, 1993, and approved by the Commission in Order No. PSC-94-0799-AS-EU, issued June 28, 1994 in Docket No. 920659-EU (the Current Agreement), which delineates the Parties respective service territories in Levy and Marion Counties, Florida, and allocates the former service territory of the COOPERATIVE in Citrus County, Florida, to the COMPANY; and

Section 0.4: WHEREAS, the Parties desire to amend and restate the Current Agreement in its entirety through this Amended Agreement in order to gain further operational efficiencies and customer service improvements in their respective retail service territories in Levy and Marion Counties, while continuing to eliminate the circumstances giving rise to the uneconomic duplication of service facilities and hazardous situations that the Current Agreement was intended to avoid.

Section 0.5: NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the Parties hereby agree to amend and restate the Current Agreement as follows:

ARTICLE I DEFINITIONS

Section 1.1: Territorial Boundary Line(s). As used herein, the term "Territorial Boundary Line(s)" shall mean the boundary line(s) depicted on the maps attached hereto as Composite Exhibit A which delineate and differentiate the Parties' respective Territorial Areas in Levy and Marion Counties.

Section 1.2 Cooperative Territorial Area. As used herein, the term "Cooperative Territorial Area" shall mean the geographic areas in Levy and Marion Counties allocated to the COOPERATIVE as its retail service territory and labeled as "CFEC Territorial Area" or "CFEC" on the maps contained in Composite Exhibit A. The COOPERATIVE will have no retail service territory in Citrus County

Section 1.3 Company Territorial Area. As used herein, the term "Company Territorial Area" shall mean the geographic areas in Citrus, Levy and Marion Counties allocated to the COMPANY as its retail service territory and labeled as "PEF Territorial Area" or "PEF" on the maps contained in Composite Exhibit A.

Section 1.4: Point of Use. As used herein, the term "Point of Use" shall mean the location within the Territorial Area of a Party where a customer's end-use facilities consume electricity, which such Party shall be entitled to provide under this Amended Agreement, irrespective of where the customer's point of connection or metering is located.

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Section 1.5: New Customers. As used herein, the term "New Customers" shall mean all customers applying for retail electric service after the Effective Date of this Amended Agreement at a Point of Use in the Territorial Area of either Party.

Section 1.6: Extra-Territorial Customers. As used herein, the term "Extra-Territorial Customers" shall mean all retail electric customers with a Point of Use located in the Territorial Area of one Party but who are receiving service from the other Party on the Effective Date of this Amended Agreement.

Section 1.7: Commission. As used herein, the term "Commission" shall mean the Florida Public Service Commission.

Section 1.8: Effective Date. As used herein, the term "Effective Date" shall mean the date of the Commission's final order granting approval of this Amended Agreement in its entirety.

**ARTICLE II
RETAIL ELECTRIC SERVICE**

Section 2.1: In General. Except as otherwise specifically provided herein, the COOPERATIVE shall have the exclusive authority to furnish retail electric service within the Cooperative Territorial Area and the COMPANY shall have the exclusive authority to furnish retail electric service in the Company Territorial Area. The Territorial Boundary Line shall not be affected by any change that may occur in the corporate limits of any municipality lying within the Cooperative Territorial Area or the Company Territorial Area.

Section 2.2: Service to New Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any New Customer whose Point of Use is

located within the Territorial Area of the other Party, except as specifically provided in Sections 2.3 and 4.4 below.

Section 2.3: Temporary Service. The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a New Customer's Point of Use either cannot or should not be immediately served by the Party in whose Territorial Area such Point of Use is located. In such instances, upon written request by the Party in whose Territorial Area the New Customer's Point of Use is located, the other Party may, in its sole discretion, agree in writing to temporarily provide service to such Point of Use until such time as the requesting Party provides written notice of its intent to serve the Point of Use. The other Party shall inform the customer of the temporary nature of such service. Any such agreement for temporary service which lasts, or is anticipated to last, for more than one year shall be submitted to the Commission for approval in accordance with Section 5.1 hereof. The Party providing temporary service hereunder shall not be required to pay the other Party for any loss of revenue associated with the provision of such temporary service.

Section 2.4: Referral of Service Request. In the event that a prospective New Customer requests or applies for service from either Party to be provided to a Point of Use located in the Territorial Area of the other Party, the Party receiving the request or application shall advise the prospective New Customer that such service is not permitted under this Amended Agreement as approved by the Commission, and shall refer the prospective New Customer to the other Party.

Section 2.5: Correction of Inadvertent Service Errors. If any situation is discovered during the term of this Amended Agreement in which either Party is

inadvertently providing retail electric service to a Point of Use located within the service area of the other Party, service to such Point of Use will be transferred to the other Party. Until such transfer can be completed, the service provided by the Party inadvertently serving the Point of Use will be deemed temporary in accordance with the provisions of Section 2.3 above, which the serving Party shall accept. The electric facilities of the transferring Party used solely to provide electric service to the Point of Use subject to such transfer may also be transferred, at the option of the other Party, in return for compensation determined in accordance with Section 3.3.2 below. Any such transfer shall be completed within 12 months of the discovery of the inadvertent error.

ARTICLE III TRANSFER OF CUSTOMERS

Section 3.1: In General. In order to achieve the operational efficiencies and other benefits contemplated by this Amended Agreement in a timely manner, all Extra-Territorial Customers shall be transferred to the Party in whose Territorial Area such customers are located at the earliest practical time, consistent with sound utility practices and reasonable customer notice. The Parties expect the transfer of Extra-Territorial Customers to be completed within 36 months from the Effective Date and will notify the Commission in writing if circumstances require additional time to complete the transfer. The Extra-Territorial Customers subject to transfer hereunder are listed by name and service address on Exhibit B hereto.

Section 3.2: Transfer of Facilities. Upon the transfer of Extra-Territorial Customers pursuant to Section 3.1 above, the receiving Party may elect to purchase the facilities of the transferring Party related exclusively to serving the Extra-Territorial Customers for an amount determined in accordance with Section 3.3.2 below.

Section 3.3: Compensation for Transferred Customers and Facilities.

Section 3.3.1: Going Concern Value. The receiving Party shall pay to the transferring Party for each customer account transferred an amount equal to two (2) multiplied by (a) the transferring Party's total revenues from the sale of electric service (including the customer, fuel and demand charges but excluding taxes and fees) to such account during the most recent 12 complete billing months available at the time of transfer, or (b) if service was provided for less than 12 complete billing months, the average monthly amount of such revenues multiplied by 12. In the case of a customer account that was not billed for any part of the preceding 12 billing months, the amount to be paid for the transfer of such account shall be the transferring Party's prevailing average annual amount of such revenues from customers of the same class (*i.e.*, residential, commercial, etc.), multiplied by 2. In addition, the same compensation methodology shall be followed for the total revenues (including pole rental and fixture maintenance charges) of each transferred street or security lighting account.

Section 3.3.2: Cost of Facilities. If service facilities are transferred pursuant to Sections 2.5 or 3.2 above, the receiving Party shall compensate the transferring Party in an amount based upon the replacement cost (new), less depreciation calculated on a straight line basis over the life of the asset (facility) as determined from the transferring Party's books and records, and the cost to the transferring Party for reintegration of its remaining system to the extent such reintegration costs are reasonably required by sound utility practices. The replacement cost shall be determined by applying a cost escalator such as the Handy Whitman Index or a common engineering cost estimation methodology.

Section 3.3.3: Time of Payment. All payments from the receiving Party to the transferring Party determined in accordance with this section shall be made in cash within 30 days of the related transfer.

Section 3.3.4: Transfer Instruments. For each transfer, the transferring Party will make, execute, and deliver to the receiving Party a conveyance, deed or other instrument of transfer, as is appropriate, in order to convey all rights, titles and interests of the transferring Party in any facilities, rights-of-way, easements, road permits, or other rights to the receiving Party.

ARTICLE IV OPERATION AND MAINTENANCE

Section 4.1: Facilities to Remain. No generating plant, transmission line, substation, distribution line or related equipment, except as provided in Article III above, shall be subject to transfer or removal hereunder; provided, however, that each Party shall operate and maintain its lines and facilities in such a manner as to minimize any interference with the operations of the other Party.

Section 4.2: COOPERATIVE Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of the COOPERATIVE to serve any COOPERATIVE facility located in the Company Territorial Area which facility is used exclusively in connection with the COOPERATIVE'S business as an electric utility; provided, however, that the COOPERATIVE shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of the COMPANY in the Company Territorial Area.

Section 4.3: COMPANY Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of the COMPANY to serve any COMPANY facility located in the Cooperative Territorial Area which facility is used exclusively in connection with the COMPANY'S business as an electric utility; provided, however, that the COMPANY shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of the COOPERATIVE in the Cooperative Territorial Area.

Section 4.4: Retail Service at Facility Sites. Where either Party serves any of its facilities located in the Territorial Area of the other Party pursuant to Sections 4.2 or 4.3 above, such Party may provide limited retail service on the site of the facility to prevent potential safety hazards or unsound operating conditions that would result from the construction and maintenance of lines and related facilities by the other Party to provide retail service at the site. As used in this section, limited retail service shall mean no more than three separate retail accounts with a combined load of 25 kW or less at any such site.

ARTICLE V PREREQUISITE APPROVAL

Section 5.1: Commission Approval. The provisions and the Parties' performance of this Amended Agreement are subject to the regulatory authority of the Commission, and appropriate approval by that body of this Amended Agreement in its entirety shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This Amended Agreement shall have no effect whatsoever until such approval has been obtained. Any proposed modification to this Amended Agreement shall be submitted to the Commission for approval. In addition, the Parties

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agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Amended Agreement or the Parties' performance hereunder.

Section 5.2: Liability in the Event of Disapproval. In the event approval pursuant to Section 5.1 is not obtained, neither Party will have any claim against the other arising under this Amended Agreement.

Section 5.3: Supersedes Prior Agreements. Upon approval by the Commission, this Amended Agreement shall be deemed to specifically supersede all prior agreements between the Parties defining the boundaries of their respective Territorial Areas in Citrus, Levy and Marion Counties.

ARTICLE VI DURATION

Section 6.1: Term. This Amended Agreement shall continue and remain in effect through and including June 28, 2014.

ARTICLE VII CONSTRUCTION OF AGREEMENT

Section 7.1: Other Electric Utilities. Nothing in this Amended Agreement is intended to define, establish or affect in any manner the rights of either Party hereto relative to any other electric utility not a party to this Amended Agreement with respect to the furnishing of retail electric service including, but not limited to, the service territory of either Party hereto relative to the service territory of any other electric utility not a party to this Amended Agreement. The Parties understand that the COOPERATIVE or the COMPANY may, from time to time and subject to Commission approval, enter into territorial agreements with other electric utilities providing retail service in Citrus, Levy or Marion Counties and that, in such event, nothing herein shall be construed to prevent

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the COOPERATIVE or the COMPANY from designating any portion of its Territorial Area under this Amended Agreement as the retail service area of such other electric utility

Section 7.2: Bulk Power for Resale. Nothing herein shall be construed to prevent either Party from providing a bulk power supply for resale purposes, regardless of where the purchaser for resale may be located. Further, no other section or provision of this Amended Agreement shall be construed as applying to a bulk power supply for resale purposes.

Section 7.3: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Amended Agreement shall be interpreted and construed, among other things, to further this State's policy of actively regulating and supervising the service territories of electric utilities; supervising the planning, development, and maintenance of a coordinated electric power grid throughout Florida; avoiding uneconomic duplication of generation, transmission and distribution facilities; and encouraging the installation and maintenance of facilities necessary to fulfill the Parties' respective obligations to serve.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.1: Negotiations. Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Amended Agreement, the only terms and conditions agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Amended Agreement

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shall be binding upon either of the Parties unless made in writing, signed by both Parties, and approved by the Commission.

Section 8.2: Successors and Assigns. Nothing in this Amended Agreement expressed or implied is intended or shall be construed to confer upon or give to any person or corporation, other than the Parties, any right, remedy or claim under or by reason of this Amended Agreement or any provision or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding only upon the Parties and their respective representatives, successors and assigns.

Section 8.3: Notices. Notices and other written communications contemplated by this Amended Agreement shall be deemed to have been given if sent by certified mail, postage prepaid, by prepaid private courier, or by confirmed facsimile transmittal, as follows:

To the COOPERATIVE:

General Manager,
Central Florida Electric Cooperative, Inc.
1124 N. Young Boulevard
Chiefland, Florida 32644
Facsimile 352-493-4499

To the COMPANY:

President,
Progress Energy Florida, Inc.
100 Central Avenue (33701)
P.O. Box 14042 (33733)
St. Petersburg, Florida
Facsimile 727-820-5940

Either Party may change its designated representative or address to which such notices or communications shall be sent by giving written notice thereof to the other Party in the manner herein provided.

IN WITNESS WHEREOF, the Parties have caused this Amended Agreement to be executed in triplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

CENTRAL FLORIDA ELECTRIC
COOPERATIVE, INC.

ATTEST:

Yuzo Stephen
Secretary

By *Gail Oshee*
President



PROGRESS ENERGY FLORIDA, INC.

ATTEST:

R. M. [Signature]
Assistant Secretary

By *[Signature]*
Vice President

(SEAL)

