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Public Service Commission

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COMMISSION
CLERK

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

DATE: June 9, 2005

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

FROM: Office of the General Counsel (Jaeger) *RLT*
 Division of Economic Regulation (Windham) *BHW WBM RLT*

RE: Docket No. 050220-EU – Joint petition for approval of amendment to territorial agreement in Orange County by Orlando Utilities Commission and Progress Energy Florida, Inc.

AGENDA: 06/21/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Bradley

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050220.RCM.DOC

Case Background

On March 31, 2005, Progress Energy Florida, Inc. (PEF) and Orlando Utilities Commission (OUC) filed a Joint Petition for approval of Amendment to Territorial Agreement (Amendment). The Amendment (attached as Attachment A) proposed to amend the then effective territorial agreement (Current Agreement) in Orange County which was due to expire on April 5, 2005, by extending that agreement through December 31, 2005.

Pursuant to Section 366.04(2)(d), Florida Statutes, the Commission has the authority “to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction.”

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Discussion of Issues

Issue 1: Should the Commission approve the Joint Petition for approval of an Amendment to Territorial Agreement between Orlando Utilities Commission and Progress Energy Florida, Inc.?

Recommendation: Yes. The Amendment to Territorial Agreement between Orlando Utilities Commission and Progress Energy Florida, Inc. appears to be in the public interest, and the Amendment should be approved. The Amendment should become effective upon the issuance of a Consummating Order finalizing the Proposed Agency Action Order approving this Amendment. (Jaeger, Windham, Breman)

Staff Analysis: OUC and PEF state that the Current Agreement should be extended in order to allow them additional time to pursue their negotiations toward a new territorial agreement to replace the Current Agreement. The Current Agreement was previously approved by Order No. PSC-95-0440-FOF-EU, issued April 5, 1995, in Docket No. 940656-EU, In re: Petition to require Florida Power Corporation to comply with territorial agreement approved by Order No. 6194, by Orlando Utilities Commission. Pursuant to that Order, the Current Agreement was to have expired under its own terms on April 5, 2005, ten years after the issuance of Order No. PSC-95-0440-FOF-EU.

Pursuant to the Amendment, the Current Agreement would simply be extended through December 31, 2005, to allow the Joint Petitioners additional time to pursue their negotiations toward a new territorial agreement. The Amendment states that it will become effective and enforceable only upon issuance of an Order by the Commission approving the Amendment in its entirety. The proposed Amendment involves no customer or facility transfers.

Staff has reviewed the proposed Amendment and believes that it is in compliance with Rule 25-6.0440, Florida Administrative Code, and Section 366.04(2)(d), Florida Statutes, the laws governing territorial agreements. Moreover, staff believes that the Amendment is a reasonable resolution which 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 Amendment to Territorial Agreement in Orange County by PEF and the OUC. The Amendment should become effective upon the issuance of a Consummating Order finalizing the Proposed Agency Action Order approving this Amendment.

Docket No. 050220-EU

Date: June 9, 2005

Issue 2: Should this docket be closed?

Recommendation: Yes, if no timely protest to the proposed agency action is filed by a substantially affected person within 21 days, this docket should be closed upon the issuance of the Consummating Order. In the event there is a timely protest, this docket should remain open pending resolution of the protest. (Jaeger)

Staff Analysis: If no timely protest to the proposed agency action is filed by a substantially affected person within 21 days, this docket should be closed upon the issuance of the Consummating Order. In the event there is a timely protest, this docket should remain open pending resolution of the protest.