

RECEIVED-FPSC

State of Florida



Public Service Commission

SEP -8 AM 9:03

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

COMMISSION
CLERK

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

DATE: September 8, 2005

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

FROM: Office of the General Counsel (Vining, Brown) *AEV MCB [initials]*
Division of Economic Regulation (Bremner) *[initials]* *RLT JDJ*

RE: Docket No. 040133-EU – Petition of Withlacoochee River Electric Cooperative, Inc. to modify territorial agreement or, in the alternative, to resolve territorial dispute with Progress Energy Florida, Inc. in Hernando County.

AGENDA: 09/20/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\2004\040133.RCM.DOC

Case Background

On February 12, 2004, Withlacoochee River Electric Cooperative, Inc. (WREC) filed a petition requesting that the Commission modify its territorial agreement with Progress Energy Florida, Inc. (PEF) in order to resolve a dispute that had arisen between WREC and PEF over service to a parcel of land owned by Majestic Oaks Partners, LLC (Majestic Oaks) in Hernando County.¹ WREC requested the modification in order to serve the entire 425 acre property owned by Majestic Oaks. The existing territorial boundary splits Majestic Oaks' property

¹ The territorial agreement was approved 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.

DOCUMENT NUMBER-DATE

08481 SEP-8 05

FPSC-COMMISSION CLERK

between the service areas of WREC and PEF. On March 1, 2004, PEF filed an Agreed Upon Motion to Toll Time for Response to Petition, requesting that the time for PEF to respond to WREC's petition be tolled to allow the parties to conduct settlement discussions. Order No. PSC-04-0339-PCO-EU, issued March 31, 2004, granted PEF's request and required that PEF and WREC file joint status reports every 60 days on the progress of their settlement discussions. Subsequently, PEF and WREC filed several joint status reports detailing their discussions, which culminated in their filing a joint petition requesting approval of their settlement agreement on April 29, 2005. The settlement agreement resolves the dispute between WREC and PEF as to which utility will provide service to Majestic Oaks, and also addresses both parties' efforts to amend and consolidate four existing territorial agreements that delineate their respective service areas in Citrus, Hernando, and Pasco counties. PEF and WREC are requesting approval to implement the first of two phases of the settlement, which consists of modifications to the territorial boundaries in four areas of Hernando and Pasco counties, one of which is the Majestic Oaks development, and transfers of customers in the three other areas. The remaining phase addresses the transfer of customers in three additional areas as well as some extra-territorial customers.

This recommendation addresses the joint petition requesting approval of the settlement agreement. The Commission has jurisdiction to address this petition pursuant to Section 366.04, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the settlement agreement and implementation of the first phase of the settlement by PEF and WREC?

Recommendation: Yes. (Vining, Brown, Breman)

Staff Analysis: The negotiations that culminated in the settlement agreement, appended to this recommendation as Attachment A, took place against the backdrop of ongoing negotiations between WREC and PEF to amend and consolidate four territorial agreements that delineate the utilities' service areas in Citrus, Hernando, and Pasco counties.² WREC and PEF were able to reach an agreement in this docket by expanding the scope of the negotiations beyond the Majestic Oaks development to six additional areas in Hernando and Pasco counties. Those areas were part of the parties' broader negotiations to amend and consolidate their territorial agreements. The key provisions of the settlement are as follows:

- The territorial boundary line will be modified to locate the entire Majestic Oaks development in Hernando County within the service territory of WREC, including 452 lots currently located in PEF's service territory.
- The territorial boundary line will be modified to place a portion of an area known as Masaryktown located south of the County Line Road in northern Pasco County within the service territory of WREC. This area contains approximately 366 customers currently served by PEF who would be transferred to WREC.
- The territorial boundary line will be modified to include an area in and around Trilby located in northern Pasco County and eastern Hernando County within the service territory of WREC. This area contains approximately 1,671 customers currently served by PEF who would be transferred to WREC.
- The territorial boundary line will be modified to include the area known as the East Pasco Well Field located in southern Pasco County within the service territory of PEF. This area contains approximately 706 customers currently served by WREC who would be transferred to PEF. These customers are currently served by WREC's Pasco Well Field substation site, which PEF will acquire and construct a new substation to serve customer growth in the area.
- The territorial boundary line will be modified to locate the area near Seven Springs in southern Pasco County within the service territory of PEF. This area contains approximately 1,754 customers currently served by WREC who would be transferred to PEF.

² The term of these territorial agreements was extended until September 30, 2005, by Order No. PSC-05-0304-PAA-EU, issued March 21, 2005, in Docket No. 050009-EU, In re: 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.

- The territorial boundary line will be modified to include an area known as East Gate Estates in southern Pasco County within the service territory of PEF. This area contains approximately 78 customers currently served by WREC who would be transferred to PEF.
- The territorial boundary line will be modified to place the area known as Orangewood Mobile Home Park within the service territory of PEF. This area contains approximately 257 customers currently served by WREC who would be transferred to PEF.
- Approximately 194 extra-territorial customers who are currently located in PEF's service territory in Hernando and Pasco counties, but are served by WREC, will be transferred to PEF. All remaining extra-territorial customers who are not yet served by the utility in whose service territory they are located will subsequently be served by the utility in whose territory they are either currently located or will be located in as the result of further boundary line modifications.
- The distribution facilities of each utility that are used to provide service to the affected customers will be transferred contemporaneously with these customers. Compensation for the distribution facilities to be transferred is determined based upon the replacement cost less depreciation calculated on a straight line basis over the life of the asset as determined from the transferring party's books and records.

Because the settlement is broad in scope and involves the transfer of some 5,000 customers, the settlement provides for implementation of the territorial boundary line modifications and customer transfers in two phases. The first phase, consisting of the Majestic Oaks development in Hernando County and the Masaryktown, East Pasco Well Field, and the East Gate Estates areas in Pasco County, is to be implemented in conjunction with the Commission's consideration of the joint petition for approval of the settlement. The second phase covers the Trilby and the Seven Springs areas, the two most populous areas covered by the settlement, as well as the Orangewood Mobile Home Park, all of which are in Pasco County. In addition, the second phase will address the transfer of all the extra-territorial customers currently served by WREC in Hernando and Pasco counties. The parties to the settlement will submit the amended and consolidated territorial agreement and second phase boundary line modifications and customer transfers in a second joint petition.

The parties to the settlement expect that all first phase transfers of customers and related service facilities will be completed within six months of the Commission's order approving the transfers. In the first phase, there are 799 customers to be transferred from WREC to PEF and 359 customers to be transferred from PEF to WREC. All customers scheduled to be transferred in the first phase have received written notification of the transfer. The letters sent to these customers provided a comparison of the rates of WREC and PEF as well as contact information so that the customers could express any questions or concerns regarding the transfer. Of the 799 customers to be transferred from WREC to PEF, 38 contacted WREC after receiving notification of the transfer, and 11 of those 38 customers did not want to be transferred to PEF. Of the 359 customers to be transferred from PEF to WREC, 2 contacted PEF after receiving notification of the transfer, and 1 of those 2 customers did not want to be transferred to WREC. PEF and WREC maintain that approval of the settlement will not cause a decrease in the reliability of the

electrical service to the existing or future customers of either utility. To the contrary, the parties assert that the settlement's boundary line modifications and customer transfers will enable them to plan and operate their systems more efficiently, thereby improving reliability and eliminating uneconomic duplication of facilities.

Pursuant to Rule 25-6.0440(2), Florida Administrative Code, in approving territorial agreements, the Commission may consider the reasonableness of the purchase price of any facilities being transferred, the likelihood that the agreement will not cause a decrease in the reliability of electric service to existing or future ratepayers, and the likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities. In this instance, the settlement agreement proposed by PEF and WREC eliminates existing or potential uneconomic duplication of facilities, does not cause a decrease in the reliability of electric service to existing or future ratepayers, and provides a reasonable method for calculating the purchase price of WREC's Pasco Well Field substation. Approval of the settlement agreement will enable both WREC and PEF to provide more reliable service within their respective territories by eliminating pockets of customers served by the other utility. The comprehensive territorial settlement is extensive, affecting a large customer base as well as a large geographic area. Over 1,000 customers will be transferred in the first phase of the settlement, and approximately 5,000 will be transferred overall. The degree of acceptance among affected customers appears to be high based upon the small number of customers who have expressed opposition to the transfer. Finally, the settlement agreement would resolve WREC's request for a modification to its territorial agreement with PEF to serve the Majestic Oaks development. Based on all of the above, staff recommends that the settlement agreement, contained in Attachment A to this recommendation, is in the public interest and should be approved, and that WREC and PEF should be permitted to implement phase one of the settlement. The Commission's approval of the settlement agreement and implementation of phase one of the settlement by WREC and PEF should be given with the understanding that the parties will come back to the Commission for approval of the amended territorial agreement and authorization to implement phase two of the settlement.

Docket No. 040133-EU
Date: September 8, 2005

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open to address the petition for approval of the amended territorial agreement and implementation of phase two of the settlement agreement.
(Vining)

Staff Analysis: This docket should remain open to address the petition for approval of the amended territorial agreement and implementation of phase two of the settlement agreement.

FPSC DOCKET NO. 040133-EU

SETTLEMENT AGREEMENT

Withlacoochee River Electric Cooperative, Inc. ("WREC") and Progress Energy Florida, Inc. ("PEF") (also referred to individually as "Party" and collectively as "Parties") enter into this Settlement Agreement for the purpose of resolving all outstanding issues currently pending before the Florida Public Service Commission (the Commission) in Docket No. 031057-EI and, accordingly, hereby stipulate and agree as follows:

1. Definitions. As used in this Settlement Agreement, the definitions of following terms shall apply.
 - (a) The term "Existing Agreements" shall mean the four currently effective territorial agreements between the Parties that delineate their respective territorial areas in Citrus County and western Pasco County, which were approved by the Commission in Order No. 19610, issued July 5, 1988 in Docket No. 880234-EU; in eastern Pasco County, which was approved by the Commission in Order No. 20368, issued November 30, 1988 in Docket No. 881164-EU; and in Hernando County, which was approved by the Commission in Order No. 25309, issued November 7, 1991 in Docket No. 910940-EU.
 - (b) The term "Existing Territorial Boundary Line(s)" shall mean the territorial boundary line or lines established in each of the Existing Agreements.
 - (c) The term "Amended Agreement" shall mean the territorial agreement that results from the negotiations currently in process between the Parties to amend, consolidate and restate the Existing Agreements.

- (d) The term "Extra-Territorial Customers" shall mean those customers served by either Party on the effective date of the applicable Existing Agreement who are located within the service territory of the other Party established by such Existing Agreement.
- (e) The term "Effective Date" shall mean the date of a final order issued by the Commission approving this Settlement Agreement in its entirety and the implementation of Phase 1 as set forth herein.
2. The Existing Territorial Boundary Lines will be modified in a manner that places the following areas in the service territory of WREC: (a) the entire Majestic Oaks development located in Hernando County and depicted on the maps contained in the attached Exhibit A, including the portion thereof consisting of approximately 452 lots currently situated in PEF's service territory which is the subject of the pending docket; (b) the portion of the area known as Masaryktown located south of County Line Road in Pasco County, as depicted on the maps contained in the attached Exhibit A, which includes approximately 366 PEF customers; and (c) the area in and around Trilby in Pasco County, as depicted on the maps contained in the attached Exhibit A, which includes approximately 1,671 PEF customers.
3. The Existing Territorial Boundary Line will be modified in a manner that places the following areas in the service territory of PEF: (a) The area known as the "East Pasco Well Field" located in Pasco County, as depicted on the maps contained in the attached Exhibit A, which includes approximately 706 customers currently served by WREC from its Pasco Well Field substation; (b) the portion of the area near Seven Springs in Pasco County, as depicted on the maps contained in the

attached Exhibit A, which includes approximately 1,754 customers currently served by WREC; (c) the area known as East Gate Estates in Pasco County, as depicted on the maps contained in the attached Exhibit A, which includes approximately 78 customers currently served by WREC; and (d) the area known as Orangewood Mobile Home Park in Pasco County, as depicted on the maps contained in the attached Exhibit A, which includes approximately 257 customers currently served by WREC.

4. The approximately 194 Extra-Territorial Customers located within PEF's service territory in Hernando and Pasco Counties who are currently served by WREC under the Existing Agreements will also be transferred to PEF. All remaining Extra-Territorial Customers and the accounts of all former Extra-Territorial Customers that have experienced a change of use, and thus constitute New Customers under the terms of the Existing Agreements, but are not yet served by the utility in whose service territory they are located, will be addressed by the Amended Agreement which shall provide for the accounts of these current and former Extra-Territorial Customers as follows: (a) Such accounts will be served by the utility in whose service territory the accounts are currently located, which the Parties will implement in conjunction with, and subject to the same time limitations as the transfer of customers authorized by the Commission's final order approving the Amended Agreement, or (b) further modifications to the Existing Boundary Lines place such accounts in the service territory of the utility currently serving the accounts.

5. The modifications to the Existing Territorial Boundary Lines and the related customer transfers described in paragraphs 2 and 3 above, and the transfer of Extra-Territorial Customers described in paragraph 4 above, will be implemented in two phases.

(a) Phase 1 will be implemented in conjunction with the Parties' joint petition for approval of this Settlement Agreement and will include the following areas:

(1) The portion of the Majestic Oaks development currently located within PEF's service territory, as described in paragraph 2; (2) the portion of the Masaryktown area currently served by PEF, as described in paragraph 2; (3) the East Pasco Well Field area currently served by WREC, as described in paragraph 3; and (4) the East Gate Estates area currently served by WREC, as described in paragraph 3.

(b) Phase 2 will be included as a part of and implemented in conjunction with the Parties' joint petition for approval of the Amended Agreement, which the Parties will file not later than June 30, 2005, and will include the following areas: (1) The area in and around Trilby currently served by PEF, as described in paragraph 2; (2) the portion of the area near Seven Springs currently served by WREC, as described in paragraph 3; and (3) the area known as Orangewood Mobile Home Park currently served by WREC, as described in paragraph 3. Phase 2 will also include the transfer of the approximately 194 Extra-Territorial Customers currently served by WREC, as described in paragraph 4.

6. The number of customers identified for each of the areas described in paragraphs 2, 3 and 4, particularly those areas to be implemented in Phase 2, are based on estimates that may require adjustment as ongoing field inventories are completed. If the actual number of customers subject to transfer within these areas varies from the estimates such that either Party is adversely affected relative to the other Party, the Parties agree to identify other areas in which Boundary Line modifications would restore the customer balance reflected in these estimates and upon which the Parties' settlement was reached. Any such areas so identified will be included in the Amended Agreement.

7. The distribution facilities of each Party used exclusively for providing service to customers transferred to the other Party pursuant to this Settlement Agreement or the Amended Agreement shall be transferred in conjunction with the transfer of customers. Compensation for such distribution facilities shall be paid in accordance with the following provision:

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. The replacement cost shall be determined by applying a cost escalator such as the Handy Whitman Index or a common engineering cost estimation methodology to the original cost, as long as both parties apply the same escalation method.

The distribution facilities subject to this paragraph include, without limitation, WREC's Pasco Well Field substation identified in paragraph 3(a). Upon Commission

approval of this Settlement Agreement, WREC shall assign to PEF its ownership, leasehold, easement and other interests, if any, in the substation's distribution facilities, the substation property, and the roadway providing ingress and egress thereto, and shall provide to PEF such other documents or transfer instruments as may be reasonably necessary to establish PEF's interest in the substation. WREC shall be paid for the transfer of its interests in such substation property and roadway in an amount to be determined by mutual agreement, in addition to the compensation WREC shall receive for the substation's distribution facilities provided for in this paragraph.

8. In addition to the areas described in paragraphs 2 and 3, WREC and PEF recognize the existence of other areas covered by the Existing Agreements that may also warrant Territorial Boundary Line modifications due to various conditions which have arisen or changed since the Boundary Lines were initially established. These additional Boundary Line modifications will be included in the Amended Agreement as they are identified by the Parties.
9. This Settlement Agreement is expressly conditioned upon approval in its entirety by a final order of the Commission. In the event such approval is denied by the Commission, this Settlement Agreement shall be null and void, and of no further force or effect.
10. Except as amended, revised, or otherwise provided for by this Settlement Agreement, the terms and conditions of the Existing Agreements shall remain in full force and effect until such time as this Settlement Agreement and the Existing


Agreements are subsumed within, and amended, restated and consolidated by the Amended Agreement. Until such time, in the event of any conflict or inconsistency between this Settlement Agreement and any of the Existing Agreements, the terms and conditions of this Settlement Agreement shall prevail.

11. The Parties agree that this Settlement Agreement resolves all outstanding issues between the Parties currently pending before the Commission in Docket No. 040133-EU, and that upon approval of the Agreement as provided herein and the consent of the intervenor, Majestic Oaks Partners, LLC, the docket should be closed by the Commission.
12. This Settlement Agreement may be executed in counterpart originals, and a facsimile of an original signature will be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Settlement Agreement by the signatures of their duly authorized representatives.

Dated April 28, 2005.

**WITHLACOCHEE RIVER ELECTRIC
COOPERATIVE, INC.**

By 

Billy E. Brown
Executive Vice President
and General Manager

PROGRESS ENERGY FLORIDA, INC.

By 

Vincent M. Dolan
Vice President

EXHIBIT A

**General Highway Maps for
Hernando and Pasco Counties**
depicting modified territorial boundary lines

