

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: February 23, 2006

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

FROM: Office of the General Counsel (Brown) *MCB NCB*
Division of Economic Regulation (Breman) *JB WBM RIT*

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: 03/07/06 – 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\040133.RCM.DOC

Case Background

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

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.

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split Majestic Oaks' property between the service areas of Withlacoochee and Progress. After extensive negotiations the parties filed a joint petition requesting approval of a settlement agreement on April 29, 2005. The settlement agreement resolved the dispute between Withlacoochee and Progress over which utility would provide service to Majestic Oaks, and also addressed both parties' efforts to amend and consolidate four existing territorial agreements that have delineated their respective service areas in Citrus, Hernando, and Pasco counties. By Order No. PSC-05-0965-PAA-EU, issued October 10, 2005, the Commission approved the settlement agreement and the parties' request to implement the first of two phases of the settlement.² The first phase of the settlement consisted of modifications to the territorial boundaries in four areas of Hernando and Pasco counties, one of which was the Majestic Oaks development, and transfers of customers in the three other areas. The second phase of the settlement was to address the transfer of customers in three additional areas as well as the transfer of some extra-territorial customers. On December 8, 2005, Withlacoochee and Progress filed a second joint petition to approve their amended and consolidated territorial agreement and implement the second phase of their settlement.

This recommendation addresses the joint petition requesting approval of the amended and consolidated territorial agreement and implementation of the last phase of the parties' settlement. The Commission has jurisdiction to address this petition pursuant to Section 366.04, Florida Statutes.

² Order No. PSC-05-1099-CO-EU, issued November 2, 2005, finalized the PAA order.

Discussion of Issues

Issue 1: Should the Commission grant Withlacoochee's and Progress's second joint petition to approve their amended and consolidated territorial agreement and implement the second phase of their settlement?

Recommendation: Yes. The proposed territorial agreement and settlement implementation is in the public interest and the Commission should approve it. The Commission should direct the parties to file status reports on the transfer of customers every six months until the transfers are complete. (Breman, Brown)

Staff Analysis: The key provisions of the settlement that the Commission approved in Order No. PSC-05-0965-PAA-EU, and that provides the framework for the amended and consolidated territorial agreement, 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 Withlacoochee, including 452 lots currently located in Progress'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 Withlacoochee. This area contains approximately 366 customers currently served by Progress who would be transferred to Withlacoochee.
- 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 Withlacoochee. This area contains approximately 1,671 customers currently served by Progress who would be transferred to Withlacoochee.
- 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 Progress. This area contains approximately 706 customers currently served by Withlacoochee who will be transferred to Progress. These customers are currently served by Withlacoochee's Pasco Well Field substation site, which Progress 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 Progress. This area contains approximately 1,754 customers currently served by Withlacoochee who would be transferred to Progress.
- 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 Progress. This area contains approximately 78 customers currently served by Withlacoochee who would be transferred to Progress.

- The territorial boundary line will be modified to place the area known as Orangewood Mobile Home Park within the service territory of Progress. This area contains approximately 257 customers currently served by Withlacoochee who would be transferred to Progress.
- Approximately 194 extra-territorial customers who are currently located in Progress's service territory in Hernando and Pasco counties, but are served by Withlacoochee, will be transferred to Progress. 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 was so broad in scope and involved the transfer of some 5,400 customers, the settlement provided for implementation of the territorial boundary line modifications and customer transfers in two phases. The first phase, approved by Order No. PSC-05-0965-PAA-EU, consisted of the Majestic Oaks development in Hernando County and the Masaryktown, East Pasco Well Field, and the East Gate Estates areas in Pasco County. The second phase, which the parties are asking to implement now, 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 addresses the transfer of all the extra-territorial customers currently served by Withlacoochee in Hernando and Pasco counties. All together, the consolidated territorial agreement will replace the four existing agreements between the parties in three counties and incorporate the resolution of the Majestic Oaks dispute.

On December 22, 2005, Progress filed a letter with the Commission indicating that the parties had sent letters to 5,400 customers who would be transferred as part of the comprehensive agreement. According to the letter, the parties received only 90 responses, and of those only 29 complained of the transfer. The consolidated territorial agreement contemplates that all affected customers will be transferred within 2 years of the effective date of the agreement. Progress and Withlacoochee maintain that approval of the consolidated agreement 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 agreement'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. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved. Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

In this instance, the territorial agreement proposed by Progress and Withlacoochee 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 facilities. Approval of the territorial agreement will enable both Withlacoochee and Progress to provide more reliable service within their respective territories by eliminating pockets of customers served by the other utility. The comprehensive territorial agreement is extensive, affecting a large customer base as well as a large geographic area. 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.

Based on all of the above, staff recommends that the consolidated territorial agreement, contained in Attachment A to this recommendation, is in the public interest and should be approved. Withlacoochee and Progress may implement the last phase of their approved settlement when the Commission's order approving the agreement becomes final. Since the agreement contemplates the transfer of customers over a two year period, staff also recommends that the Commission direct the parties to file status reports on the transfers every six months until the transfers are complete.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose interests are substantially affected timely files a protest to the Commission's proposed agency action order, this docket should be closed upon issuance of a consummating order.

Staff Analysis: If no person whose interests are substantially affected timely files a protest to the Commission's proposed agency action order, this docket should be closed upon issuance of a consummating order.

CONSOLIDATED TERRITORIAL AGREEMENT

Section 0.1: Withlacoochee River Electric Cooperative, Inc. (the "COOPERATIVE"), and Progress Energy Florida, Inc. (the "COMPANY") (collectively, the "Parties"), enter into this Consolidated Territorial Agreement (sometimes referred to herein simply as the "Agreement") on this 5th day of DECEMBER, 2005.

WITNESSETH:

Section 0.2: WHEREAS, the COOPERATIVE is authorized by Chapter 425, Florida Statutes, to furnish retail electric service to its members and customers, and pursuant to such authority, presently furnishes electric service to members and customers in areas of Citrus, Hernando and Pasco Counties; and

Section 0.3: WHEREAS, the COMPANY is authorized to furnish retail electric service to customers throughout the State of Florida, and pursuant to such authority, presently furnishes electric service to customers in Citrus, Hernando and Pasco Counties, and elsewhere; and

Section 0.4: WHEREAS, the COOPERATIVE and the COMPANY are parties to four existing and currently effective territorial agreements delineating their respective service territories in Citrus County and in western Pasco County, which were approved by the Florida Public Service Commission (the "Commission") in Order No. 19610, issued July 5, 1988 in Docket No. 880234-EU; in Hernando County, which was approved by Commission Order No. 25309, issued November 7, 1991 in Docket No. 910940-EU; and in eastern Pasco County, which was approved by Commission Order No. 20368, issued November 30, 1988 in Docket No. 881164-EU (collectively, the "Existing Agreements"); and

Section 0.5: WHEREAS, the Parties desire to consolidate their four Existing Agreements into a single, comprehensive territorial agreement to better serve their interests and the interests of their customers in realizing the planning, operational, and customer service benefits provided to their respective electric systems by a properly constructed, approved and supervised territorial agreement; and

Section 0.6: ~~WHEREAS, the respective retail service territories of the Parties are contiguous, with the result that, absent the establishment of a territorial agreement defining the Parties' respective service territories, duplication of service facilities would be likely to occur;~~ and

Section 0.7: WHEREAS, the Commission has previously recognized that duplication of service facilities results in needless and wasteful expenditures and may create hazardous situations, both being detrimental to the public interest; and

Section 0.8: WHEREAS, the Parties hereto desire to continue to avoid and eliminate circumstances which may create wasteful expenditures and hazardous situations by amending and re-establishing the territorial boundary lines between their respective retail service territories in Citrus, Hernando, and Pasco Counties; and

Section 0.9: WHEREAS, the Parties have resolved a dispute concerning the provision of electric service to a development located in Hernando County known as Majestic Oaks and such resolution has been filed with the Commission in the form of a Settlement Agreement ("Settlement Agreement") entered by the Parties in Docket No. 040133-EU; and

Section 0.10: WHEREAS, the Settlement Agreement, a copy of which is attached hereto as Appendix 1, sets forth the agreement between the Parties as to

certain territorial boundaries in Citrus, Hernando and Pasco Counties which the Parties agreed would avoid and eliminate circumstances which otherwise could give rise to potential hazards or duplications of service delivery; and

Section 0.11: WHEREAS, the territorial boundaries of the Parties' respective retail service territories proposed in this Consolidated Territorial Agreement modify the boundaries identified in the Settlement Agreement, and the terms of the Consolidated Territorial Agreement being filed herewith otherwise comply with the terms of the Settlement Agreement; and

Section 0.12: WHEREAS, the Commission approved the terms of the Settlement Agreement in Docket No. 040133-EU on October 10, 2005 in Order No.: PSC-05-0965-PAA-EU; and

Section 0.13: WHEREAS, the Commission is empowered by the Florida legislature, pursuant to Section 366.04(2)(d), Florida Statutes, to approve territorial agreements and the Commission, as a matter of long-standing regulatory policy, has encouraged retail territorial agreements between electric utilities subject to its jurisdiction based on its findings that such agreements, when properly established and administered by the parties and actively supervised by the Commission, avoid uneconomic duplication of facilities, promote safe and efficient operations by utilities in rendering electric service provided to their customers, and therefore serve the public interest.

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, consolidate, and supersede the Existing Agreements 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 Exhibit A which delineate and differentiate the Parties' respective Service Territories in Citrus, Hernando, and Pasco Counties.

Section 1.2: Cooperative Service Territory. As used herein, the term "Cooperative Service Territory" shall mean the geographic area in Citrus, Hernando, and Pasco Counties allocated to the COOPERATIVE as its retail service territory and labeled as such or as "WREC" on the maps contained in Exhibit A.

Section 1.3: Company Service Territory. As used herein, the term "Company Service Territory" shall mean the geographic area in Citrus, Hernando, and Pasco Counties allocated to the COMPANY as its retail service territory and labeled as such or as "PEF" on the maps contained in Exhibit A.

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

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 Agreement with a Point of Use in the Service Territory of either Party.

Section 1.6: Extra-Territorial Customers. As used herein, the term "Extra-Territorial Customers" shall mean (a) 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, and (b) those customers, other than Temporary Service Customers, served by either Party on the Effective Date of this Agreement who are located within the Service Territory of the other Party due to modifications of the Territorial Boundary Lines established herein.

Section 1.7: Temporary Service Customers. As used herein, the term "Temporary Service Customers" shall mean customers who are being temporarily served under the temporary service provisions of the Existing Agreements.

Section 1.8: Effective Date. As used herein, the term "Effective Date" shall mean the date on which the final order of the Commission granting approval of this Agreement in its entirety becomes no longer subject to judicial review.

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 Service Territory and the COMPANY shall have the exclusive authority to furnish retail electric service in the Company Service Territory. The Territorial Boundary Lines shall not be altered or affected by any change that may occur in the corporate limits of any municipality served by either Party through annexation or otherwise unless agreed to in writing by the Parties and approved by the Commission.

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 Service Territory 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 Service Territory such Point of Use is located. In such instances, upon written request by the Party in whose Service Territory 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 New Customer. Prior to the commencement of temporary service, the Party providing such service shall inform the New Customer of the temporary nature of its service and that the other Party will ultimately serve the New Customer. 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. Such temporary service shall be discontinued upon written notice from the requesting Party of its intent to provide service, which the Parties shall coordinate to minimize any inconvenience to the customer. In conjunction with such discontinuance, the Party providing temporary service hereunder shall be compensated by the requesting Party in accordance with Section 3.5 for its distribution facilities used exclusively to provide such service, which the other Party may elect to acquire, but the other Party shall not be entitled to compensation for any loss of revenues for the period during which such temporary service is provided.

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 Service Territory 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 Agreement, 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 Agreement in which either Party is inadvertently providing retail electric service to a customer's Point of Use located within the Service Territory of the other Party, service to such customer by the other Party will be established at the earliest practical time, but in any event within 12 months of the date the inadvertent service error was discovered. Until service by the other Party can be reasonably established, the inadvertent service will be deemed to be temporary service provided and governed in accordance with Section 2.3 above.

ARTICLE III TRANSFER OF CUSTOMERS

Section 3.1: In General. It is the intent of the Parties that all customers of either Party shall be served by the Party in whose Service Territory they are located at the earliest practicable time. Accordingly, no later than 24 months after the Effective Date, all customers located in the Cooperative Service Territory who are served by the COMPANY on the Effective Date shall be served by the COOPERATIVE, and all customers located in the Company Service Territory who are served by the COOPERATIVE on the Effective Date shall be served by the COMPANY. The customers who currently are not served by the Party in whose Service Territory they are

located consist of (a) all Extra-Territorial Customers, for whom the Parties will seek approval to transfer in conjunction with the approval of this Agreement by the Commission, and (b) all Temporary Service Customers, for whom Commission approval is not required to terminate temporary service and establish service by the Party in whose Service Territory the Temporary Service Customers are located.

Section 3.2: Transfer of Extra-Territorial Customers. The Extra-Territorial Customers currently served by the COOPERATIVE and subject to transfer to the COMPANY pursuant to this Agreement are listed by account number and service address in Exhibit B hereto. The Extra-Territorial Customers currently served by the COMPANY and subject to transfer to the COOPERATIVE pursuant to this Agreement are listed by account number and service address in Exhibit C hereto.

Section 3.3: Transfer of Related Service Facilities. In conjunction with the transfer of Extra-Territorial Customers pursuant to Sections 3.1 and 3.2 above, the receiving Party shall purchase the electric distribution facilities of the transferring Party used exclusively for providing electric service to the transferred customers for an amount determined in accordance with Section 3.5 below.

Section 3.4: Going Concern Compensation for Transferred Customers. The Parties anticipate that the number of customers to be transferred and received by each Party will be balanced and that any going concern compensation from one Party to the other would be essentially offsetting. Therefore, the Parties have agreed that no going concern compensation shall be paid for the transfer of customers pursuant to this Agreement.

Section 3.5: Compensation for Transferred Facilities. The receiving Party shall compensate the transferring Party for the electric distribution facilities described in Section 3.3 above 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.

Section 3.6: Time of Payment. Upon completion of each transfer segment, all payments determined in accordance with this section shall be made by the receiving Party in cash within 60 days of the presentation of an invoice from the transferring Party.

Section 3.7: Transfer Instruments. The transferring Party will make, execute, and deliver to the receiving Party the appropriate instruments of transfer to convey the transferring Party's interest in the electric distribution facilities transferred to the receiving Party pursuant to Section 3.3 above.

ARTICLE IV OPERATION AND MAINTENANCE

Section 4.1: Facilities to Remain. Other than as expressly provided herein or in the Settlement Agreement, no generating plant, transmission line, substation, distribution line or related equipment shall be subject to transfer or removal hereunder; provided, however, that each Party shall operate and maintain its lines and facilities in a manner that minimizes any interference with the operations of the other Party. To facilitate this objective, in the event either Party intends to construct, locate, or relocate

its distribution facilities in or directly adjacent to the Service Territory of the other Party, such Party shall notify the other Party in writing at least 14 days prior to commencement of such intended action.

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 Service Territory which 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 Service Territory, including notice to the COMPANY pursuant to Section 4.1.

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 Service Territory which 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 Service Territory, including notice to the COOPERATIVE pursuant to Section 4.1.

Section 4.4: Retail Service at Facility Sites. Where either Party serves any of its facilities located in the Service Territory 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 Parties and the provisions and performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by the Commission of the provisions of this Agreement shall be a condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until Commission approval has been obtained. Any proposed modification to this Agreement, whether proposed jointly or by either Party, shall be submitted to the Commission for consideration and approval prior to becoming effective. In addition, either Party may petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance hereunder.

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

Section 5.3: Supercedes Prior Agreements. Upon approval by the Commission, this Consolidated Territorial Agreement shall be deemed to specifically supercede all prior agreements between the Parties defining the boundaries of their respective Service Territories in Hernando, Citrus and Pasco Counties.

**ARTICLE VI
DURATION**

Section 6.1: Term. This Agreement shall continue and remain in effect for a period of 20 years from the Effective Date.

**ARTICLE VII
CONSTRUCTION OF AGREEMENT**

Section 7.1: Other Electric Utilities. Nothing in this Agreement shall restrict or affect in any manner the right of either Party to define or establish its retail service area with respect to any other electric utility. 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 that have adjacent or overlapping service areas and that, in such event, nothing herein shall be construed to prevent the COOPERATIVE or the COMPANY from designating any portion of its Service Territory under this 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 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 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 Agreement, the only terms and conditions agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties unless approved by the Commission.

Section 8.2: Successors and Assigns. Nothing in this 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 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 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
Withlacoochee River Electric
Cooperative, Inc.
14651 North 21st Street (32523)
P.O. Box 278 (33526)
Dade City, Florida
Facsimile: 352-521-5971

To the COMPANY:

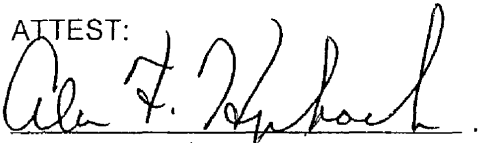
Vice President, Regulatory &
Customer Relations
Progress Energy Florida, Inc.
100 Central Avenue (33701)
P.O. Box 14042 (33733)
St. Petersburg, Florida
Facsimile: 727-820-5519

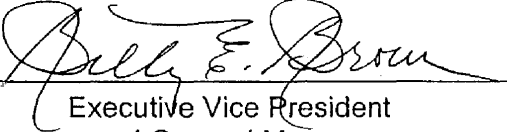
Either Party may change its designated representative or address to which such notices or communications shall be sent by giving written notice thereof to the other Party in the manner provided herein.

IN WITNESS WHEREOF, the Parties have caused this 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.

WITHLACOOCHEE RIVER ELECTRIC
COOPERATIVE, INC.

ATTEST:

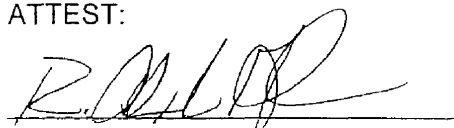

Secretary

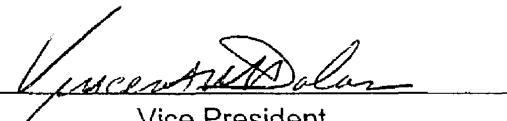
By 
Executive Vice President
and General Manager

(SEAL)

PROGRESS ENERGY FLORIDA, INC.

ATTEST:


Assistant Secretary

By 
Vice President

(SEAL)