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Public Service Commission

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COMMISSION
CLERK

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

DATE: August 17, 2006

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

FROM: Office of General Counsel (Brown) *NCB* *WLF* *ARR* *SDR*
Division of Economic Regulation (Redemann, Rieger) *TSR* *CM*

RE: Docket No. 060503-EU – Joint petition to reopen and extend term of previous territorial agreement in Orange County, by Orlando Utilities Commission and Progress Energy Florida, Inc.

AGENDA: 08/29/06 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: ~~Deason~~ *Arriaga/WF*

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060503.RCM.DOC

Case Background

On July 19, 2006, Orlando Utilities Commission (OUC) and Progress Energy Florida, Inc. (PEF) filed a Joint Petition to reopen and extend the term of their territorial agreement in Orange County. This is the third request for an extension of the agreement, which was approved in 1995 and originally scheduled to expire on April 5, 2005.¹ The parties assert that they are still

¹ See 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, which approved the original agreement, Order No. PSC-05-0707-PAA-EU, issued June 29, 2005, in Docket No. 050220-EU, In re: Joint petition for approval of amendment to territorial agreement in Orange County by Orlando Utilities Commission and Progress Energy Florida, Inc., which approved the first extension, and Order

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negotiating the terms of a new agreement and were not able to conclude their negotiations before June 30, 2006, when their second extension expired. They ask the Commission to approve their joint stipulation reopening and extending their territorial agreement until January 31, 2007. They believe that they will be able to successfully conclude their negotiations by that date. The joint stipulation is appended to this recommendation as Attachment A.

The Commission has jurisdiction over the subject matter of this petition by section 366.04, Florida Statutes.

No. PSC-06-0201-PAA-EU, issued March 14, 2006, in Docket No. 050977-EU, In re: Joint petition of Orlando Utilities Commission and Progress Energy Florida, Inc for approval of term extension to territorial agreement in Orange County, which approved the second extension.

Discussion of Issues

Issue 1: Should the Commission approve the stipulation between Orlando Utilities Commission and Progress Energy Florida, Inc. that reopens their recently expired territorial agreement and extends its expiration date through January 31, 2007?

Recommendation: Yes. The stipulation reopening the Territorial Agreement between Orlando Utilities Commission and Progress Energy Florida, Inc. and extending its expiration date through January 31, 2007, is in the public interest and should be approved. By November 30, 2006, the parties should file with the Commission a status report on their negotiations toward a new territorial agreement that describes the status of the negotiations and provides an estimate of when the new agreement will be submitted for approval. (Brown, Redemann, Rieger)

Staff Analysis: In their joint petition, OUC and PEF state that they have been conducting negotiations for some time on a new territorial agreement to replace the one just expired. As the second extension to that agreement was about to expire, it became apparent that they would need additional time to successfully conclude their negotiations. Therefore, they have asked for another six-month extension to continue their negotiations. They believe that the proposed stipulation to extend the expiration date to January 31, 2007, will give them the time they need to conclude a new agreement.

Staff has reviewed the proposed extension of the agreement and believes that it is in compliance with Rule 25-6.0440, Florida Administrative Code, and section 366.04(2)(d), Florida Statutes. The extension will permit the parties to negotiate a new agreement while maintaining the status quo and avoiding uneconomic duplication of facilities. Staff believes, therefore, that the extension is in accordance with Commission policy and the public interest and should be approved. Since this is the third request for an extension, however, and since the parties allowed the agreement to lapse before requesting another extension, staff believes it is advisable to direct the parties to file a status report well before this new extension expires describing the progress of the negotiations. This information will aid staff in monitoring the agreement and determining whether additional Commission action would be necessary to assist the parties in resolving their territorial differences.

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." The Commission will approve territorial agreements unless they cause a detriment to the public interest. Staff recommends that the Commission approve the Joint petition to reopen and extend the term of the previous territorial agreement in Orange County, by Orlando Utilities Commission and Progress Energy Florida, Inc. to January 31, 2007. The additional extension will preserve the existing territorial boundaries while the parties negotiate, and is therefore in the public interest. The new extension should be effective upon the Commission's order approving it, and by November 30, 2006, the parties should file with the Commission a status report on their negotiations toward a new territorial agreement that describes the status of the negotiations and provides an estimate of when the new agreement will be submitted for approval.

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Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending receipt of the parties' status report and conclusion of a new territorial agreement.

Staff Analysis: This docket should remain open pending receipt of the parties' status report and conclusion of a new territorial agreement.

EXHIBIT A

STUPULATION REGARDING TERRITORIAL AGREEMENT

Between

Orlando Utilities Commission

And

Progress Energy Florida

STIPULATION REGARDING TERRITORIAL AGREEMENT

Orlando Utilities Commission (OUC) and Progress Energy Florida, Inc. (PEF) enter into this Stipulation regarding their previous territorial agreement for Orange County on this ____ day of _____, 2006.

WITNESSETH:

WHEREAS, OUC and PEF were parties to a territorial agreement delineating their respective service territories in Orange County (the "Agreement"), which was approved by order of the Florida Public Service Commission (FPSC) and

WHEREAS, the term of the Agreement expired on April 13, 2005, and was extended through June 30, 2006 by a Second Amendment approved by order of the FPSC; and

WHEREAS, the term of the Agreement and Second Amendment expired on June 30, 2006; and

WHEREAS, OUC and PEF have entered into negotiations for the purpose of reaching a new territorial agreement to replace the Agreement; and

WHEREAS, OUC and PEF recognize that they will need additional time to successfully conclude their negotiations; and

WHEREAS, OUC and PEF desire to reopen and extend the term of the Agreement through January 31, 2007 in order to provide sufficient time to pursue the opportunity for a successful conclusion of their negotiations, and to seek Commission approval of the resulting new territorial agreement,

NOW, THEREFORE, OUC and PEF hereby agree as follows:

1. The Agreement shall be reopened and effective between the parties.

2. The term of the Agreement is extended to and including

January 31, 2007.

3. Except as modified herein, the original terms and conditions of the Agreement shall remain in full force and effect.

4. This Stipulation will become effective and enforceable only upon the issuance of an order by the Florida Public Service Commission approving the Stipulation in its entirety.

IN WITNESS WHEREOF, OUC and PEF have caused this Stipulation to be executed in duplicate by their duly authorized representatives on the day and year first above stated.

ORLANDO UTILITIES COMMISSION

By

Name: KENNETH P. KSIONEK

Title: GENERAL MANAGER & CEO

PROGRESS ENERGY FLORIDA, INC.

By

Name: VINCENT M. DOLAN

Title: VICE PRESIDENT