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COMMISSION
CLERK

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

DATE: November 21, 2006

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

FROM: Office of the General Counsel (Brown) *MCB*
 Division of Economic Regulation (Clapp, Kummer) *UPet*
 Division of Consumer Services (Plescow) *CRP* *IR* *AM*
JP

RE: Docket No. 060745-EI - Complaint of Danielle Dobbs against Progress Energy Florida, Inc. and request for reconfiguration of overhead distribution facilities to serve Dommerich Hills neighborhood in Maitland

AGENDA: 12/05/06 - Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060745.RCM.DOC

Case Background

This customer complaint arises from Progress Energy Florida, Inc.'s (Progress) implementation of its arbitrated agreement to transfer its electric facilities in and around the City of Winter Park (Winter Park) to the city's new municipal electric utility. An arbitration panel established the price and other terms for the transfer of Progress' distribution system to Winter Park, including approval of the geographic area that Progress and Winter Park agreed would be

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the "City Territorial Area."¹ Detailed maps delineate the service area established by the 2003 arbitration award for Progress and the Winter Park utility. The transfer was successfully accomplished on June 1, 2005.

In order to make the transfer to Winter Park safe and reliable, and to maintain reliability for customers in the area remaining on its distribution system, Progress needed to make changes to the configuration of its system along the boundary of the "City Territorial Area." One of the changes it made to its system occurred in Mrs. Danielle Dobbs' Dommerich Hills neighborhood along Waumpi Trail in Seminole County, which was divided by the new territorial boundary and located across the street from the new Winter Park service territory. Progress transferred the overhead distribution lines that had served part of Mrs. Dobbs' neighborhood to Winter Park as the arbitration agreement required, and installed new distribution lines and 50 foot poles in the front of and at the entrance to Mrs. Dobbs' neighborhood. The neighborhood had previously been served from overhead distribution facilities in the backyards of the neighborhood, which had left the front and entrance to the neighborhood free of poles and power lines.

Progress made these changes in Mrs. Dobbs' neighborhood and all along the new "City Territorial Area" in April of 2005, in anticipation of the Winter Park transfer June 1. Mrs. Dobbs states in her complaint, and Progress confirms, that no one in the neighborhood was notified that the changes were to occur until the trucks arrived and started installing the poles. Ms. Dobbs confronted Progress at that time, and asked that the new lines in the front of her neighborhood be placed across the Seminole County line either next to the lines that were transferred to Winter Park, in the backyards of residents who had become customers of Winter Park, or underground. Progress responded that it would place the lines across the Seminole County line, if Mrs. Dobbs and her neighbors could persuade the residents there to grant Progress easements to install the lines. Progress also indicated to Mrs. Dobbs that it could not place new lines next to the ones transferred to Winter Park for safety reasons. Finally, Progress indicated that, pursuant to its tariffs and Commission rules, the customers in Dommerich Hills would have to pay the differential to place the new lines underground, which Progress estimated to be approximately \$45,000. Ms. Dobbs then filed a complaint requesting that Progress place the new lines across the street from her neighborhood, or underground, at Progress's expense. An informal conference held April 05, 2006, did not settle the matter, and therefore this recommendation will address whether Progress complied with all regulatory statutes, or Commission rules and policies when it reconfigured its distribution system in Mrs. Dobbs' neighborhood and refused to comply with Mrs. Dobbs' demands. The Commission has not received any other complaints regarding the facilities transfer to Winter Park, and Progress has indicated that it has not received any other complaints either. A Commission safety engineer inspected the new facilities installed to serve Mrs. Dobbs' neighborhood and found them to be in compliance with the National Electrical Safety Code. The Commission has jurisdiction over this matter pursuant to Section 366.03, Florida Statutes.

¹ See Order No. PSC-05-0453-PAA-EI, issued April 28, 2005, in Docket No. 050117-EI, In re: Petition to relieve Progress Energy Florida, Inc. of the statutory obligation to provide electrical service to certain customers within the City of Winter Park, pursuant to Section 366.03 and 366.04, F.S.

Discussion of Issues

Issue 1: Should the Commission dismiss Mrs. Dobbs' complaint against Progress Energy?

Recommendation: Yes. Progress Energy Florida, Inc. complied with all regulatory statutes and Commission rules and policies when it reconfigured its electrical distribution system in Mrs. Dobbs' neighborhood to accommodate the transfer to the City of Winter Park. Accordingly, complaint #663875E should be dismissed. (Brown, Plescow, Clapp, Kummer)

Staff Analysis: In her complaint (see Attachment A), Mrs. Dobbs claims that Progress should have notified her and her neighbors of its plans to place new facilities in their neighborhood, so that they could have consulted with Progress on the best placement of the poles and lines. She asserts that the infrastructure changes have doubled the number of power poles on the Seminole County side of the territorial line, thereby doubling the safety hazards during hurricanes, increasing fire potential with trees and depreciating property values. Mrs. Dobbs claims that her due process rights were violated, and a hearing should have been held to present the residents with options and to receive the residents' input on the proposed changes. Mrs. Dobbs claims that Progress abused its monopoly position by refusing to take the residents' interests into account and by abusing its use of the county right of way along Waumpi Trail to save money. Mrs. Dobbs asserted that alternatives were available that would have been acceptable to the residents, such as rerouting part of the system underground or adding a parallel line at the Seminole County line where poles would have remained in backyards hidden from view.

Mrs. Dobbs also claims that the residents of her neighborhood should not have to pay to underground the new lines pursuant to the utility's undergrounding tariff and the Commission's rules, because they are not the "applicants" for the installation of the new facilities. The residents, Mrs. Dobbs asserts, were happy with the overhead facilities in their backyards, as they had been for forty years. Progress provided the impetus for the installation of new lines, and accordingly, Mrs. Dobbs asserts, should bear the cost of converting them to underground facilities or securing easements from the Winter Park customers to place the lines across the territorial boundary on their property.²

At the informal conference on Mrs. Dobb's complaint, Progress stated that it is not required by any statute or Commission rule to notify customers when it makes changes to its distribution system to serve those customers. Such a requirement would be burdensome and inefficient. Rather, it is required to configure its distribution system in the most cost-effective manner in compliance with the National Electrical Safety Code -- which it did in this case-- not in a manner most favored by the customers. Progress also stated that it could not place additional lines to serve Mrs. Dobbs' neighborhood in the same location as the lines transferred to Winter Park, because there was not enough space to meet the required clearances. Further, it

² Initially, Mrs. Dobbs also objected to the installation of the new facilities on the grounds that they diminished property values, were aesthetically displeasing and required unduly severe trimming of the trees in the neighborhood. Staff mailed Mrs. Dobbs a copy of Commission Order No. PSC-02-0788-PAA-EI, issued June 10, 2002, in Docket No. 010908-EI, In re: Complaint against Florida Power & Light Company regarding placement of power lines and transmission lines by Amy and Jose Gutman, Teresa Badillo, and Jeff Lessera (Commission could not require removal of power lines for those reasons), and Mrs. Dobbs did not renew those objections in her filings for her informal conference.

did not believe it could acquire easements from the Winter Park customers, but it was able to acquire permits to install facilities in the Seminole County right-of-way along Waumpi Trail. Progress also stated that it installed 50 foot poles rather than shorter ones to accommodate Mrs. Dobbs' concern about having to trim too much from the large trees along the entrance to Dommerich Hills.

With regard to Mrs. Dobbs suggestion that it place the new facilities underground at its expense, Progress responded that it would violate its tariffs and Commission Rule 25-6.115, Florida Administrative Code, if it did so, thereby imposing those additional costs on its other ratepayers. According to Progress, Commission policy requires it to choose the most cost-effective means to serve its customers, which in this instance were new overhead facilities along the Seminole County right of way.

The facts of this complaint do not show that Progress violated any regulatory statute or rule or policy of the Commission when it reconfigured its distribution system in anticipation of the transfer of facilities to Winter Park. Staff agrees that Progress is not required to notify its customers every time it makes a change to its distribution system. While under some circumstances it might be advisable to do so, as it might have been in this circumstance, any such requirement to notify customers every time a change is made to an electric utility's system would be unworkable. Customers do not have a due process right to a hearing regarding Progress' configuration of its electrical system. As long as the modifications are made in a cost-effective manner and comply with the National Electrical Safety Code, Progress has fulfilled its obligation to its customers to provide ". . . reasonably sufficient, adequate and efficient service upon terms as required by the Commission." Section 366.03, Florida Statutes. In this case Progress complied with those requirements.

In addition, Progress complied with Commission Rule 25-6.115, Florida Administrative Code, Facility Charges for Providing Underground Facilities of Public Distribution Facilities Excluding New Residential Subdivisions. That rule provides, in pertinent part:

- (1) Each public utility shall file a tariff showing the non-refundable deposit amounts for standard applications addressing new construction and the conversion of existing overhead to underground facilities excluding new residential subdivisions. The tariff shall include the general provisions and terms under which the public utility and applicant may enter into a contract for the purpose of new construction or conversion of existing overhead electric facilities to underground electric facilities. The non-refundable deposit amounts shall approximate the engineering costs for underground facilities serving each of the following scenarios: urban commercial, urban residential, rural residential, existing low-density single family home subdivision and existing high-density single family home subdivision service areas.
- (2) For purposes of this rule, the applicant is the person or entity seeking the undergrounding of existing overhead electric distribution facilities. . . .
- (7) The charge paid by the applicant shall be the charge for the proposed underground facilities as indicated in subsection (8) minus the charge for

overhead facilities as indicated in subsection (9) minus the non-refundable deposit amount. . . .

(8) For the purpose of this rule, the charge for the proposed underground facilities shall include:

(a) The estimated cost of construction of the underground distribution facilities including the construction cost of the underground service lateral(s) to the meter(s) of the customer(s);

(b) For conversions, the estimated remaining net book values of the existing facilities to be removed less the estimated net salvage value of the facilities to be removed.

(9) For the purpose of this rule, the charge for overhead facilities shall be the estimated construction cost to build new overhead facilities, including the service drop(s) to the meter(s) of the customer(s).

Progress' tariffs Part XI, Underground Residential Distribution Policy, and Part XII, Underground Electric Distribution Facility Charges, comport with the Commission's undergrounding rules. Progress would have violated its tariff and Rule 25-6.115 if it had borne the additional costs to underground the new facilities as Mrs. Dobbs requested.

In conclusion, staff recommends that Mrs. Dobbs' complaint No. 663875E should be dismissed. Progress has complied with all applicable rules and statutes, and the Commission cannot grant the relief requested.

Docket No. 060745-EI
Date: November 21, 2006

Issue 2: Should this docket be closed?

Recommendation: Yes, if no person whose substantial interests are substantially affected files a timely protest of the Commission's Proposed Agency Action Order, this docket should be closed upon the issuance of a consummating order.

Staff Analysis: If no person whose substantial interests are substantially affected files a timely protest of the Commission's Proposed Agency Action Order, this docket should be closed upon the issuance of a consummating order.



FLORIDA PUBLIC SERVICE COMMISSION
DISPUTE RESOLUTION FORM
FPSC Complaint Number: 663875E
Utility: Progress Energy Florida

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Florida Public Service Commission
Division of RCA

Consumer to provide the following information:

Consumer's Name: Danielle Dobbs
Address/Apartment: 2945 Waumpi Trail
City/State/Zip: Maitland, FL 32751
Daytime Telephone Number: 407-629-4820 Home: _____
FAX: _____
E-mail address: cdobbs@cfl.rr.com
Authorized Representative (if applicable): _____

Utility to provide the following information:

Account Holder: _____
Utility Contact Person: _____
Telephone Number: _____ FAX: _____
E-mail address: _____

Please address the following statements using additional pages if necessary.

Describe the facts that gave rise to the complaint and the reason why it appears to be a violation of applicable statutes, rules, company tariffs, and/or orders of the Commission. **Statements should not raise any new issues not addressed in the initial complaint. Any new issues will be considered as a separate complaint.**

See attached

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Identify the issue(s) to be resolved. _____

See attached

Identify any specific dollar amount in dispute, if applicable. _____

Provide a suggested resolution or the relief sought. _____

See attached

NOTICE: This form must be postmarked by March 3, 2006

FPSC Complaint No. 663875E
February 27, 2006

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COMPLAINT DESCRIPTION

As part of our complaints, the definition of key elements have to be considered:

COMPANY: Progress Energy - a for-profit public-held company traded on the New York stock exchange in addition to regional stock exchanges across the United States.

CUSTOMERS: Users of electricity, such as the Seminole County residents of Dommerich Hills subdivision.

APPLICANTS: The definition found in CHAPTER 25-6, PART VII, 25-5.115 (2) **Undergrounding electric Distribution Facility Charges** states that "**the applicant is the person or entity seeking the undergrounding of existing overhead electric distribution facilities.**"

EXISTING ESTABLISHED NEIGHBORHOOD/SUBDIVISION: A neighborhood, such as the Dommerich Hills subdivision, which has had the same electrical infrastructure for 30 to 40 years since the development of that subdivision. The infrastructure was designed so that all the power poles were hidden from view and placed in the resident backyards away from their homes.

TAKE OVER BY THE CITY OF WINTER PARK: A business deal that transpired between Progress Energy and the City of Winter Park without any input from the residents whatsoever regarding rerouting options in their neighborhood.

COMPLAINT

1. **LACK OF DUE PROCESS**
None of the residents received any letter or notice from Progress Energy advising the residents of their plan to redesign the infrastructure of the neighborhood and present them with options.
2. **USE OF INTIMIDATION BY A COMPANY HAVING MONOPOLY OVER A NEIGHBORHOOD**
Progress Energy said that if the residents wanted power they had to let them do their job, otherwise they would be left without power. Progress Energy acted as if they owned the neighborhood and could do as it pleased without consulting the people.
3. **ABUSE OF RIGHT-OF-WAY PRIVILEGES FOR THE PURPOSE OF SAVING MONEY**
The right-of-way privilege was abused by Progress Energy for the sole purpose of saving money to the company. Alternatives were available, such as rerouting part of the system underground, or adding a parallel line at the County line where poles would have remained hidden from view in backyards.
4. **THE RESIDENTS DID NOT ASK FOR THEIR INFRASTRUCTURE TO BE CHANGED.**
It is Progress Energy who unilaterally decided to change the infrastructure and put it on the residents' front lawns because it is cheaper for the company. As a response to the residents who told Progress Energy to put the power underground, Progress Energy responded by citing the Tariff saying that the undergrounding power lines must be paid by the people who request it. Before April 2005 the residents had no existing overhead power line on Waumpi Trail.
5. **JUMPING THE GUN AND POOR PLANNING**
On September 13, 2005 a copy of the following document was sent to us by Randy Roland from the Public Service Commission: DOCKET NO. 050117-EI, ORDER NO. PSC-05-0453-P-AA-EI, It is dated April 28, 2005. Page 4 states that "Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding." It is interesting to note that the trucks with 50ft-poles arrived in our neighborhood on Saturday April 16th, 2005, which is 12 days before the Public Service Commission action.

FPSC Complaint No. 663875E February 27, 2006

ISSUES TO BE RESOLVED:

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1. LACK OF DUE PROCESS

There is no question that Progress Energy should have consulted beforehand the residents of their intention to redesign the 40-year old infrastructure of their neighborhood so that the power poles are either hidden from view or the power lines installed underground. There should have been a hearing to present the residents with options and to obtain residents' input.

2. USE OF INTIMIDATION BY A COMPANY HAVING MONOPOLY OVER A NEIGHBORHOOD.

A company having a monopoly over a neighborhood, such as Progress Energy, should not take people hostage by intimidating them into compliance so that the company saves money.

3. ABUSE OF RIGHT-OF-WAY PRIVILEGES FOR THE PURPOSE OF SAVING MONEY

Just because right-of-ways were available, it should not be a ticket to abuse right-of-way privileges for the sole purpose of saving money to the company at the expense of the people. Alternatives were available, such as rerouting part of the system underground, or adding a parallel line at the County line where poles would have remained in backyards hidden from view.

4. THE RESIDENTS DID NOT ASK FOR THEIR INFRASTRUCTURE TO BE CHANGED.

A new infrastructure was imposed unilaterally by Progress Energy without consulting the residents. The residents asked that the new infrastructure installed in April and May 2005 be put underground to preserve the uniformity of the neighborhood, and prevent safety hazards from the increased number of power poles. This new infrastructure has doubled the number of power poles on the Seminole County side doubling the safety hazards during hurricanes and increasing fire potential with trees, without mentioning real estate depreciation of having poles at one of the entrance of the subdivision and on people's front lawns. Incidentally since the new infrastructure was installed a fire has already happened at the corner of Tuscaloosa Trail and Waumpi Trail during hurricane Wilma where a single woman and her two young children reside; Tree branches came into contact with the power lines and caught fire over the roof of the house. A series of what appeared "explosions" were heard in the neighborhood and someone driving by the house saw the fire and called the fire department.

It is not germane for Progress Energy to cite the tariffs and calls us "applicants" just because we asked that the rerouting decided by Progress Energy be put underground. The residents contend that the wording found in the Tariff (Chapter 25-6, Part VII, section 25-6.115 (2), page 6-79) regarding the so-called "applicants" does not apply to them because the residents were perfectly happy with their electrical poles in their backyards and away from their homes. Furthermore, the definition talks about "existing overhead electric distribution facilities". We must point out that the "existing overhead electric distribution" in front yards and at the entrance of the subdivision did not exist on Waumpi Trail at that time. It was installed by Progress Energy on their own volition and for their own benefit in April/May 2005.

The residents existing infrastructure at the time was overhead but in their backyards hidden from view and away from the homes. It is Progress Energy who decided to change that without the residents' input and for the benefit of Progress Energy. The responsibility and obligation now rests with Progress to rectify the situation so that the uniformity and safety of the neighborhood is maintained. Had the residents been properly consulted before hand, as they should have been, an acceptable solution could have been reached before Progress Energy barged into our neighborhood and did as it pleased.

5. JUMPING THE GUN AND POOR PLANNING

It appears that planning has been lacking through the entire process and things were done after the fact. It looks like the welfare of the people have been totally ignored and poor planning was

FPSC Complaint No. 663875E
February 27, 2006

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shown by the order of the Commission DOCKET NO. 050117-EI, ORDER NO. PSC-05-0453-P-AA-EI, which is dated April 28, 2005. Page 4 states that "Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding." It is interesting to note that the trucks with 50ft-poles arrived in our neighborhood on Saturday April 16th, 2005, and the order of the Commission was written 12 days later . . . Even if people had known about this document, the people would not have been able to respond in time to the Commission.

According to Mr. Rogers from Progress Energy, the cost of undergrounding the new overhead system installed by Progress Energy in April and May 2005 is \$42,932.06

SUGGESTED RESOLUTION

In April 2005 the residents suggested to Progress Energy that instead of adding power poles in residents' front lawns that a parallel line be installed on the Winter Park side, one house away from the present line that bisects our neighborhood at the county line. Progress Energy replied that it would be possible but the residents affected by this new line would have to consent to creating an easement. The poles would be in people's backyard hidden from view. Progress Energy replied that they would be willing to do that providing that we, the residents of Seminole County ask the eight (8) residents of Winter Park for their unanimous consent. But, since the business deal with Winter Park had already done and the infrastructure for the Winter Park residents was already in place, it is doubtful that the residents would agree after the fact. In any case, this was not and nor is it today the responsibility of Seminole County residents; the responsibility lies solely on Progress Energy.

The other alternative is for Progress Energy to underground the new system that they installed in 2005 at their own expense since it is Progress Energy that decided to change the system without consulting with the residents or giving them options to reroute the power as a result of a business deal with the City of Winter Park. Seminole County residents had nothing to do with it, and consequently the residents should not suffer in any way.

It is time for Progress Energy to realize that rerouting power in any neighborhood involves PEOPLE, their property, and their safety. It is one thing for the engineers of Progress Energy to draw electrical poles anywhere the Company pleases and abuse right-of-way privileges, it is another thing to come up with a sensible rerouting system that will not double the number of electrical poles, jeopardize the safety of residents, destroy the uniformity of the neighborhood and affect property values. Having a monopoly over a neighborhood, as is the case here with Progress Energy, involves more responsibility toward the people than if the people had a choice in their electric service company. Due process and care toward the people should be at the top of the list. And, when the following has transpired: abuse of power, lack of due process, and intimidation, it is equitable that the company make things right for the people it is supposed to serve. If additional cost is involved to complete the take over by Winter Park by undergrounding a line so that the people of that subdivision is not harmed, the shareholders of Progress Energy, who have families and homes, will surely understand the necessity of good and fair business practices.