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070137-ELL

From: Cope, Sandra C [Sandra.Cope@pgnmail.com]
Sent: Thursday, March 01, 2007 4:28 PM
To: Filings@psc.state.fl.us
Cc: Tibbetts, Arlene; Stright, Lisa; Burnett, John
Subject: Joint Petition between Orlando Utilities Commission and Progress Energy Florida, Inc.
Attachments: 030107 signed OUC PEF petition.doc; OUC PEF Territorial Agreement March 11.doc

Attached for e-service is the Joint Petition of Orlando Utilities Commission and Progress Energy Florida for approval of Territorial Agreement in Orange County.

This electronic filing is made by:

*John T. Burnett
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Docket Number: None

In re: Joint Petition of Orlando Utilities Commission and Progress Energy Florida for approval of territorial agreement in Orange County.

On behalf of: Progress Energy Florida and Orlando Utilities Commission.

Consisting of: 16 pages

The attached documents for filing are the parties' Joint Petition with Attached Territorial Agreement both in Word Format.

<<030107 signed OUC PEF petition.doc>> <<OUC PEF Territorial Agreement March 11.doc>>

DOCUMENT NUMBER DATE

01939 MAR-15

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Orlando Utilities Commission and Progress Energy Florida for approval of a territorial agreement in Orange County.

Docket No. 070137-EU
Submitted for filing:
March 1, 2007

JOINT PETITION

Orlando Utilities Commission ("OUC") and Progress Energy Florida, Inc., ("PEF") (collectively, "the Joint Petitioners"), pursuant to Section 366.04(2)(d), Fla. Stats., and Rule 25-6.0440, F.A.C., jointly petition the Florida Public Service Commission ("the Commission") for approval of a territorial agreement in Orange County, in the form attached hereto as Exhibit A. In support hereof, the Joint Petitioners represent as follows:

1. The Joint Petitioners are electric utilities organized under the laws of Florida and are subject to the regulatory jurisdiction of the Commission pursuant to Section 366.04(2), Fla. Stats. OUC's principal offices are located in Orlando, Florida. PEF's principal offices are located in St. Petersburg, Florida.

2. All pleadings, notices, and other communications in this matter should be served on the undersigned attorneys for OUC and PEF.

3. OUC and PEF are parties to a currently effective territorial agreement delineating their respective service territories in Orange County (the "Current Agreement"), which was approved by the Commission in Order No. PSC-95-0440-FOF-EU, issued April 5, 1995 in Docket No. 940565-EU, and extended by the Commission to be effective through January 31, 2007.

DOCUMENT NUMBER-DATE


01939 MAR-16

4. OUC and PEF have agreed to a new territorial agreement to replace the Current Agreement upon its expiration (the "New Agreement"). A copy of the New Agreement is attached hereto as Exhibit A. However, maps delineating the respective Territorial Areas of OUC and PEF are being finalized and will be provided shortly as a supplemental attachment to Exhibit A.

5. The Commission has long recognized that properly constructed territorial agreements between adjacent utilities are in the public interest. The Joint Petitioners believe and therefore represent that the New Agreement is in the public interest and should be approved.

WHEREFORE, OUC and PEF respectfully request that the Commission grant this Joint Petition and approve the New Agreement contained in Exhibit A hereto.

Respectfully submitted,

s/ Roy C. Young 
Young & van Assenderp, P.A.
Post Office Box 1833
Tallahassee, Florida 32302-1833
Telephone: 850-222-7206
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Attorney for
ORLANDO UTILITIES COMMISSION

s/ John T. Burnett
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Attorney for
PROGRESS ENERGY FLORIDA, INC.

EXHIBIT A

TERRITORIAL AGREEMENT

Between

Orlando Utilities Commission

And

Progress Energy Florida

TERRITORIAL AGREEMENT
BETWEEN
ORLANDO UTILITIES COMMISSION
AND
PROGRESS ENERGY FLORIDA
ORANGE COUNTY

TERRITORIAL AGREEMENT

Section 0.1: THIS AGREEMENT, made and entered into this 1st day of March, 2007 by and between Florida Power Corporation d/b/a Progress Energy Florida, Inc., a Florida Corporation, (herein called "PEF"), and ORLANDO UTILITIES COMMISSION, a public corporation organized and existing under the laws of the State of Florida, (herein called "OUC"), each an electric utility as defined in, and whose retail service territories are subject to regulation pursuant to, Chapter 366, Florida Statutes, and which entities are herein collectively called the "Parties";

WITNESSETH:

Section 0.2: WHEREAS, each of the Parties is authorized, empowered and obligated by its charter and the laws of the State of Florida to furnish retail electric service to persons desiring to use such service within their respective areas of service; and

Section 0.3: WHEREAS, each of the Parties presently furnishes retail electric service to Customers in areas of Orange County, Florida; and

Section 0.4: WHEREAS, the respective areas of service of the Parties are contiguous in many places, and the Parties previously entered into a Territorial Agreement on February 9, 1995 (the "Old Territorial Agreement"), in an effort to minimize costs to their respective rate payers by avoiding duplication of generation, transmission and distribution facilities; and

Section 0.5: WHEREAS, the Florida Public Service Commission (herein called the "Commission") has previously recognized that any duplication of facilities results in

needless and wasteful expenditures and may create hazardous situations, both being detrimental to the public interest; and

Section 0.6: Whereas, the Commission previously approved the Old Territorial Agreement on April 5, 1995 in Docket No. 940656-EU by Order No. PSC-95-0440-FOF-EU; and

Section 0.7: WHEREAS, the Old Territorial Agreement, as amended and extended by the Commission, expires on January 31, 2007 and the Parties wish to enter into this Agreement to take the place of the Old Territorial Agreement; and

Section 0.8: WHEREAS, the Commission is empowered by Section 366.04(2)(d), Florida Statutes, to approve and enforce territorial agreements between electric utilities, and has often recognized the wisdom of such agreements, and has held that such agreements, when properly presented to the Commission, are advisable in proper circumstances, and indeed, in the public interest;

Section 0.9: NOW, THEREFORE, in consideration of the premises aforesaid and the mutual covenants and agreements herein set forth, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1: Territorial Boundary Line. As used herein, the term "Territorial Boundary Line" shall mean the boundary lines which circumscribe the geographic areas shown on the maps attached hereto as Composite Exhibit "A" and as more particularly described in the description attached here to as Exhibit "B" which differentiate and divide the OUC Territorial Area from the FPC Territorial Area. In the event of a discrepancy between composite Exhibit "A" and composite Exhibit "B", the written description in composite Exhibit "B" shall prevail.

Section 1.2: OUC Territorial Area. As used herein, the term "OUC Territorial Area" shall mean the geographic area shown on composite Exhibits "A" and designated "OUC."

Section 1.3: PEF Territorial Area. As used herein, the term "PEF Territorial Area" shall mean the geographic area shown on composite Exhibits "A" and designated "PEF."

Section 1.4: Transmission Line. As used herein, the term "Transmission Line" shall mean any transmission line of either Party having a rating of 69 kV or greater.

Section 1.5: Distribution Line. As used herein, the term "Distribution Line" shall mean any distribution line of either Party having a rating up to, but not including 69 kV.

Section 1.6: Person. As used herein, the term "Person" shall have the same inclusive meaning given to it in Section 1.01(3), Florida Statutes.

Section 1.7: New Customer. As used herein, the term “New Customer” shall mean any person that applies to either OUC or PEF for retail electric service after the effective date of this Agreement.

Section 1.8: End Use. As used herein, the term “End Use” shall mean the consumption of electricity by a retail customer.

ARTICLE II

AREA ALLOCATIONS AND NEW CUSTOMERS

Section 2.1: Territorial Allocations. Except as otherwise specifically provided herein, during the term of this Agreement, OUC shall have the exclusive authority to furnish retail electric service for end use within the OUC Territorial Area and PEF shall have the exclusive authority to furnish retail electric service for end use within the PEF Territorial Area.

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 end use facilities are located within the Territorial Area of the other Party, except as specifically provided in this Section of this Agreement.

The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a New Customer’s end use facilities either cannot or should not be immediately served by the utility in whose Territorial Area they are located. In such instances, upon written request by the Party in whose Territorial Area the end use facilities are located, to the other Party, the other Party may agree in writing to temporarily provide services to such customer’s end use facilities. Any such

agreement for temporary service which lasts or is anticipated to last for longer than one year shall be submitted to the Commission for approval in accordance with Article IV, Section 4.1 hereof.

Section 2.3: Transfer of Customers. PEF and OUC shall cooperate to affect a smooth transfer of any customers from one Party to the other arising from the Parties' delineation of their respective Territorial Areas agreed to herein. Such transfer shall occur as soon as reasonably possible after approval of this Agreement by which the Commission or as otherwise expressly provided herein, but not longer than twelve (12) months from the effective date of this Agreement. The Parties intend that transferred customers suffer no hardship due to different deposit requirements required by each Party. When possible, the transferring Party will refund the deposit of a customer. The receiving Party will then bill the customer the lesser of the deposit previously charged by the transferring party, or the receiving party's normal deposit.

Section 2.4: Inadvertent Service. If any situation is discovered during the term of this Agreement in which either of the Parties is inadvertently providing retail electric service to end use facilities located within the Territorial Area of the other Party, then, at the option of the Party in whose Territorial Area such end use facilities are actually located, service to such end use facilities will be transferred to the Party in whose Territorial Area such facilities are actually located. In the event of any such transfer, any electric facilities of the transferring Party used solely to provide retail electric service to the end use facilities being transferred will also be transferred to the other Party in consideration for the payment by the other Party to the transferring Party of the replacement cost new, less depreciation, calculated on a thirty (30) year straight line

basis, of the electric facilities being transferred. Any such transfer shall occur within six (6) months of the discovery of the inadvertent error and be implemented as provided in Section 2.3 above. In the event the Party in whose Territorial Area the end use facilities are actually located shall decline the option to serve those facilities, the maps attached to this Agreement will be appropriately amended and the Parties will mutually seek the approval of such amendment by the Commission within six (6) months of the discovery of the inadvertent error involved.

Section 2.5: Bulk Power for Resale. Nothing herein shall be construed to prevent either Party from providing a bulk power supply to wholesale customers for resale purposes wheresoever they may be located. Further, no other provision of this Agreement shall be construed as applying to bulk power supply for resale.

ARTICLE III
OPERATION AND MAINTENANCE

Section 3.1: Facilities to Remain. Except as expressly provided herein, any generating plant, transmission line, substation, distribution line or related facility now or hereafter construed or used by either Party in conjunction with its electric utility system, which is directly or indirectly used and useful in service to its Customers by either of the Parties in its Territorial Area, shall be allowed to remain where situated and shall not be subject to removal or transfer hereunder; provided, however, that each Party shall operate and maintain all such plants, lines, substations or facilities in such a manner as to minimize interference with the operations of the other Party.

Section 3.2: OUC Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of OUC to serve any OUC facilities located in PEF's Territorial Area and for such purpose to construct all necessary lines and facilities; provided, however, that OUC shall construct, operate and maintain said lines and facilities in such manner as to minimize any interference with the operations of PEF in PEF's Territorial Area.

Section 3.3: PEF Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of PEF to serve any PEF facility located in OUC's Territorial Area and for such purpose to construct all necessary lines and facilities; provided, however, that PEF shall construct, operate and maintain said lines and facilities in such manner as to minimize any interference with the operations of OUC in OUC's Territorial Area.

Section 3.4: Retail Service Facility Sites. Where either Party provides service to its facility located in the Territorial Area of the other Party pursuant to Sections 3.2 or

3.3 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 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.

ARTICLE IV PREREQUISITE APPROVAL

Section 4.1: Commission Approval. The provisions and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by that body of the provisions of this Agreement shall be an absolute condition precedent to the validity, enforceability and applicability of such relief. This Agreement shall have no effect whatsoever until that approval has been obtained, and the date of the Commission's Order, if any, granting initial Commission approval of this Agreement shall be deemed to be the effective date of this Agreement. Any proposed modification to this Agreement shall be submitted to the Commission for approval. The Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance of this Agreement.

Section 4.2: No Liability in the Event of Disapproval. In the event approval of this Agreement pursuant to Section 4.1 hereof is not obtained, neither Party will have any cause of action or claim against the other arising under this document or on account of such non-attainment of approval.

Section 4.3: Supersedes Prior Agreements. Upon its approval by the Commission, this Agreement shall be deemed to specifically supersede any and all prior agreements between the Parties defining the boundaries of their respective Territorial Areas including the Old Territorial Agreement.

ARTICLE V
DURATION

Section 5.1: This Agreement shall continue and remain in effect for a period of nine (9) years beginning February 1, 2007.

ARTICLE VI
CONSTRUCTION OF AGREEMENT

Section 6.1: 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 7.1: Negotiations. Regardless of any others terms or conditions that may have been discussed during the negotiations leading up to the execution of this Agreement, the only ones agreed upon by the Parties are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties hereto unless the same shall be in writing, attached hereto, signed by both the Parties, and approved by the Commission in accordance with Article IV, Section 4.1 hereof. The Parties shall each support the approval of this Agreement

by the Commission and neither shall initiate any proceeding whether before the Commission or in civil court specifically seeking to invalidate the Agreement.

Section 7.2: Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended, or shall be construed, to confer upon or give to any person other than the Parties hereto, or their respective successors or assigns, any right, remedy, or claim under or by reason of this Agreement, or any provision or condition hereof; and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of the parties or their respective successors or assigns.

Section 7.3: Notices. Notices given hereunder shall be deemed to have been given to OUC if mailed by certified mail, postage prepaid, to: Orlando Utilities Commission, ATTN: General Manager and Chief Executive Officer, P. O. Box 3193, Orlando, FL 32802, and to PEF if mailed by certified mail, postage prepaid, to: Progress Energy Florida, Inc., ATTN: John T. Burnett, or his successor, Legal Department, P. O. Box 14042, St. Petersburg, FL 33733. The person or address to which such notice shall be mailed may, at any time, be changed by designating a new person or address and giving notice thereof in writing in the manner herein provided.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

ATTEST:

[title]

(SEAL)

Progress Energy Florida, Inc.

By *Vernon H. Dolan*
Vice President, External Relations

ATTEST:

Sharon Kauder
Assistant Secretary

(SEAL)

Orlando Utilities Commission

By *[Signature]*
General Manager & CEO

