

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval to amend territorial agreement regarding extension of time to finalize Phase II of customer transfers, by Progress Energy Florida, Inc. and Withlacoochee River Electric Cooperative.

DOCKET NO. 080206-EU
ORDER NO. PSC-08-0502-PAA-EU
ISSUED: August 8, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING PETITION TO AMEND

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

On April 10, 2008, Progress Energy Florida, Inc. (PEF) filed a petition to amend its territorial agreement with Withlacoochee River Electric Cooperative (Withlacoochee) to extend the time to complete customer transfers. The territorial agreement represented a comprehensive resolution of territorial issues in several counties, and involved the transfer of several thousand customers between the utilities. Because of the comprehensive nature of the agreement and the numerous customer transfers, the agreement was implemented in two phases. We approved the first phase of the agreement by Order No. PSC-05-0965-PAA-EU, issued October 10, 2005, and the second phase of the agreement by Order No. PSC-06-0202-PAA-EU, issued March 14, 2006.¹ We directed the utilities to file a status report on the transfer of customers every six months until the transfers were complete.

The territorial agreement intended that all affected customers would be transferred within two years of the effective date of Order No. PSC-06-0202-PAA-EU, which became effective on April 10, 2006. Phase I customer transfers have been completed, but the utilities have not been able to meet the deadline for Phase II transfers. In the petition to amend the agreement, PEF indicated that approximately 689 Phase II customers remain to be transferred from

¹ Docket No. 040133-EU, In re: Petition of Withlacoochee Electric Cooperative, Inc. to modify territorial agreement or, in the alternative, to resolve territorial dispute with Progress Energy Florida, Inc. in Hernando County,

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Withlacoochee to PEF. PEF states that logistical and operational issues regarding the customer transfers have been more complicated and time-consuming than expected. PEF asserts that it is in the mutual interest of the customers and the utilities to extend the time to implement the transfers effectively. PEF has requested a twelve month extension of time to complete the Phase II customer transfers, and has represented that Withlacoochee supports the petition to amend the agreement. All other provisions of the territorial agreement remain unchanged.

We have jurisdiction pursuant to section 366.04, Florida Statutes.

Rule 25-6.0440(2), F.A.C., provides that in approving territorial agreements we 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 we determine that the agreement will cause a detriment to the public interest, it should be approved. Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So.2d 731 (Fla. 1985).

With respect to this amendment to extend the time to transfer customers, the purchase price of facilities is not an issue, and it is our view that the reliability of electric service will be enhanced if the transfers of customers are done systematically and carefully. Further, uneconomic duplication of facilities will be prevented if the territorial agreement is fully implemented. Therefore, we see no detriment to the public interest in approving the extension of time to complete the contemplated customer transfers. The extension of time to complete customer transfers shall begin at the effective date of this order. The utilities are required to file a report on the status of the transfers every three months, with a final report to us when the transfers are complete.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that the petition of Progress Energy Florida, Inc. to amend its territorial agreement with Withlacoochee River Electric Cooperative to extend the time to complete customer transfers is hereby approved. It is further

ORDERED that the twelve month extension of time approved herein shall begin on the date this order becomes final and effective. It is further

ORDERED that the utilities shall file a report on the status of the transfers every three months, with a final report to be filed when the transfers are complete. It is further

ORDERED that this docket shall be closed upon the issuance of a Consummating Order unless a person whose substantial interests are affected by this decision files a protest within 21 days of the issuance of this proposed agency action.

By ORDER of the Florida Public Service Commission this 8th day of August, 2008.



ANN COLE
Commission Clerk

(S E A L)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 29, 2008. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any party adversely affected by the Commission's procedural or intermediate action in this matter may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.