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Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: March 26, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Kummer) *SK*
Office of Strategic Analysis and Governmental Affairs (Garl) *TS*
Office of the General Counsel (Young) *CG*
198 RET
KL/SB

RE: Docket No. 080200-EI – Petition to modify tariff sheet No. 4.010 regarding underground commercial and industrial services by Progress Energy Florida, Inc.

AGENDA: 04/07/09 – Regular Agenda – Tariff Filing - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: 4/3/09 (12 month clock)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080200.RCM.DOC

Case Background

On April 4, 2008, Progress Energy Florida, Inc. (PEF or Utility) filed a proposed revision to Tariff Sheet 4.010, concerning the definition of the point of delivery, or the demarcation point between customer and utility facilities. The change clarifies that, for nonresidential customers, the Utility will not install facilities beyond the point of delivery which is defined as the pad-mounted transformer serving the customer. The filing was predicated on discussions with staff concerning two customer inquiries.

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On December 11, 2007, staff received an inquiry from the City of St. Petersburg concerning PEF's refusal to replace a commercial underground secondary electric line that PEF had installed in Maximo Park, a park owned by the City of St. Petersburg.¹ The Utility patched the line to maintain service to the customer but informed the customer that he was responsible for replacement of the line, as PEF no longer installed such facilities.

On April 11, 2008, staff received a complaint from Mr. Mike Handley,² contesting PEF's policy to no longer replace existing nonresidential underground service facilities. Mr. Handley represented that existing customers were not notified of the policy change and were then faced with significant unexpected costs to replace the lines themselves when their service failed. Mr. Handley stated he knew of four customers who had spent large sums to upgrade and repair underground electric services as a result of this policy change, but the complaint did not provide the customer names or any details of the situations.

Progress indicated that it ceased installing new underground electric lines for commercial and industrial customers in 1994. Commercial and Industrial (C/I) customers wishing to receive underground electric service subsequent to 1994 were required to install their own service lines and facilities, subject to PEF approval. This change, however, was made through alterations to PEF's Requirements for Electric Service and Meter Installations Handbook (Handbook), not through a tariff revision. The Handbook is a supplemental appendix to the Utility's tariff that is incorporated by reference as part of the tariff but which is not formally reviewed or approved by the Commission.

On July 13, 2007, PEF again revised its Requirements for Handbook which added language in Section III, Part D3, subsection (d), stating that, in addition to not installing new underground C/I services, existing commercial and industrial underground electric services would no longer be replaced by the Utility. PEF stated that this change was made to bring clarity to its previous statement that the Utility would not install new commercial and industrial underground electric service. Again, no change was made in the Utility's filed tariffs.

On April 4, 2008, PEF agreed to file this policy as part of its underground tariffs. Third Revised Tariff Sheet 4.010 brings the Utility's tariffed requirements for installation of commercial underground services into conformity with the earlier changes made to PEF's Handbook.

On June 4, 2008, the Commission issued Order No. PSC-08-0375-PCO-EI, suspending the proposed change to PEF's Tariff Sheet 4.010. On November 1, 2008, PEF waived the 8-month time requirement for approval of tariffs in Section 366.06(3), Florida Statutes (F.S.). That same statute requires the Commission to take final action on a tariff filing within 12 months, which expired February 4, 2009. By letter/email dated March 20, 2009, PEF agreed to waive the 12-month date.

¹ Consumer Request No. 764779C, filed by David Reed on behalf of the City of St. Petersburg, filed January 14, 2008.

² Consumer Request No. 774800C, filed by Mike Handley, on behalf of himself, Charles Spitzer and Joe Bolesina, filed April 11, 2008. Mr. Handley represented himself as a consultant, not a customer affected by the change in policy. He alleged that he knew of customers affected but did not provide any customer specific information that staff could evaluate.

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There are two issues associated with PEF's policy change for underground C/I installations: (1) is PEF's policy to not install nonresidential services appropriate, and (2) given that the policy was not formally approved by the Commission, what relief, if any, is appropriate for customers affected by the new requirement to install or replace existing services upon failure. Issue 1 addresses the appropriateness of the policy. Issue 2 deals with treatment of customers affected by the change prior to formal Commission approval.

The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve Progress Energy Florida's (PEF) proposal to clarify the Utility's point of delivery for commercial and industrial (C/I) underground services?

Recommendation: Yes. PEF's policy to require C/I customers to install and maintain their own underground facilities beyond the point of delivery is appropriate. (Kummer)

Staff Analysis: Currently, Tariff Sheet 4.010 defines the point of delivery as "The point of attachment where the Utility's service drop is connected to the Customer's service entrance." This definition has been in place since 1962. The proposed tariff adds the following language: "For underground service other than residential, the Customer's service entrance shall include conductors and raceway to a point designated by the Utility, generally the pad-mounted transformer closest to the building." This brings the Utility's tariffs into conformance with the 1994 change to its Handbook regarding underground C/I services.

The proposed tariff change makes C/I customers responsible for all conduit, facilities, and hookup costs beyond the PEF-designated point of delivery, usually the pad-mounted transformer. The pad-mounted transformer is the point where the lines come down from PEF's overhead transmission and distribution system and meet the underground conduit coming out of the ground from the customer's location. All current C/I customers, even those whose underground service beyond the designated point of delivery was installed and owned by the Utility, will be responsible for the full replacement cost of their underground conduit and equipment when the conduit or equipment fails or wears out. PEF will continue to maintain the lines it installed until maintenance is no longer feasible and replacement is the only viable option.

Prior to this filing, PEF's tariff did not specifically address the demarcation point for underground service for commercial customers. Prior to 1994, PEF's Handbook allowed the designated Point of delivery to be in a company-owned distribution box or in a pad-mounted transformer. In practice, PEF often ended its responsibility at the transformer, but could and did move the point of delivery for specific customers beyond the pad-mounted transformer. In 1994, PEF modified the following language in its Handbook to state that "The Utility will no longer run underground services."³ The effect of this modification was to define the point of delivery as the pad-mounted transformer, and cease installing any facilities such as underground conduit and equipment on the customer's side of the transformer.

PEF changed the Handbook in 1994 in response to problems arising from the traditional ability of C/I customers to designate their point of delivery. PEF states that, over time, the Utility experienced problems with utility-owned conduit and equipment located beyond its pad-mounted transformers, most notably, frequent requests for reconfiguration of underground services, reliability issues from cut-ins due to construction projects on the customer's property, and determination of fault for outages. These requests required increased customer-specific maintenance costs which resulted in higher overall maintenance costs which were then passed on to all ratepayers. PEF determined that it was better, from a reliability and cost perspective for all

³ 1994 Requirements for Electric Service and Meter Installations Handbook, Section III, Part D3, subsection (d).

customers, for the Utility to have a standardized connection policy by fixing the point of delivery at the pad-mounted transformer.

Based on responses from the other three major investor owned utilities, PEF's decision to require C/I customers pay for underground facilities beyond the transformer appears similar to the policies of the other utilities. While Florida Power & Light Company and Gulf Power Company do install some facilities beyond the transformer, both utilities limit the size of customer for which they will install any underground conduit and equipment beyond the point of delivery. Tampa Electric Company does not install facilities beyond the point of delivery for reasons similar to those of PEF.

The proposed tariff change strengthens the definition for the point of delivery and is appropriate from both a cost and reliability standpoint. PEF's maintenance and design responsibility now stops at a clearly defined point of delivery, the pad-mounted transformer, and transfers the responsibility for underground service conduit and equipment for C/I customers on the customer's property to the individual customers. This reduces maintenance costs to all customers by reducing the time spent repairing or reconfiguring facilities on the customer's side of the transformer, where such costs were incurred solely to the benefit the specific customer. Customers continue to have maximum flexibility to design and configure their connection as they see fit, subject to the standards of PEF without the need to coordinate with the Utility on construction or debate the cause or responsibility for outages on the customer's side of the delivery point. Staff, therefore, recommends approval of the proposed tariff.

Issue 2: What relief, if any, should be granted to C/I customers who have incurred the cost of replacing conduit and equipment previously installed by PEF beyond the pad-mounted transformer, as a result of the change adopted in 1994 prior to formal approval of the tariff?

Staff Recommendation: Based on the information available, Staff believes there is no basis to grant relief at this time. Only two complaints were filed. PEF reached a settlement on one complaint and it was withdrawn. The second complaint was filed by a consultant who has not alleged that he is directly affected by the change, and who did not identify any specific customer who is affected by the change. If affected customers come forward in the future, each complaint will be handled on a case by case basis. (Kummer)

Staff Analysis: The Handbook is a supplemental volume that contains technical definitions and engineering requirements for residential and commercial customers wishing to interconnect with the Utility's distribution system. It is often provided to contractors and developers and is available on the Utility's website. The Handbook is incorporated by reference in the Utility's tariffs, but, unlike the regular tariff sheets, the Handbook is not approved or reviewed by the Commission or Commission staff. When PEF changed the responsibility for replacement for underground conduit and facilities by C/I customers in 1994, it did so by changing the language in the Handbook.

Commission Rule 25-6.033(2)(a)(9), Florida Administrative Code (F.A.C.), states that rules covering customer's construction requirements must be filed with the Commission. PEF's tariff does contain language on the definition of point of delivery, as required. That general language was then clarified in the Handbook. In most instances, the Handbook addresses specific construction standards required by governmental entities or generally accepted construction practices, which the Commission would have little reason to dispute. While Staff believes that a formal tariff change may have been preferred, we believe there is a legitimate question whether the failure to include the more explicit policy in the tariff as well as in the Handbook rises to the level of a violation of Rule 25-6.033, F.A.C.

Customer inquiries. As noted in the Case Background, this tariff modification was a direct result of staff's investigation of two customer inquiries. The first was filed by Mr. David Reed, on behalf of the City of St. Petersburg. Underground facilities serving a city park failed and PEF informed the City that PEF no longer installed or replaced commercial underground services. Staff requested additional information from PEF on the complaint but never rendered a decision or recommendation. On May 13, 2008, the City of St. Petersburg withdrew its complaint and the investigation was closed.

Mr. Handley's complaint took a different approach. He does not allege that he is directly affected by the policy change, but represents that he knows of customers who have been affected. He begins by stating that the change had been discussed in 2003 by a committee of utility and nonutility members selected by PEF to review the Handbook as a whole. Mr. Handley and his two co-complainants were members of this review committee. According to Mr. Handley, the decision to cease installing or replacing C/I underground services was discussed and rejected by the committee, yet PEF included the provision.

Mr. Handley then asserts that the customers with PEF-installed facilities became responsible for the underground service when PEF adopted the policy not to replace existing services. This, according to Mr. Handley, places the customer immediately in violation of the National Electric Code (NEC) because the line built by PEF was built to the National Electrical Safety Code (NESC) which has less stringent requirements, while customer owned facilities must meet the NEC. Second, when the line fails the customer faces significant unanticipated costs, as PEF did not notify customers of the change in policy.

With respect to the rejection of the concept by the review committee, the Handbook on page 1 describes the process for review. That statement notes that "changes were made only after a subject had been considered from all points of view." Clearly, PEF considered the review committee's suggestions as helpful but not dispositive of utility policy. So the rejection of the committee's recommendation does not rise to a violation of Commission rules or the Utility's tariffs.

Mr. Handley's statement that the customer is in immediate jeopardy of violation of the NEC and local codes as of the date the policy changed seems to be misplaced as well. To the extent possible, PEF will continue to maintain any C/I service it installed until the service must be replaced, so there is no immediate transfer of responsibility to the customer due to the change in the Handbook. PEF stated that, as a practical matter, there is little maintenance that can be done on an underground line, other than replacement. If a service installed by PEF fails, PEF will make a temporary connection, if possible, until the customer can repair the underground service, so that the customer can maintain service pending replacement of the underground line. Although it is true that the service installed by the customer will need to be constructed to NEC standards, it is difficult to quantify what that cost difference would be, compared to the cost to PEF under the NESC. PEF estimates that its costs to install underground services range from approximately \$1,000 to \$2,500. Mr. Handley provided no supporting documentation for the \$30,000 to \$50,000 estimates cited in his complaint.

Staff notes that, in the fifteen years since PEF changed its policy on C/I underground facilities, the Commission had not received any complaints regarding this matter until it received the complaints filed by the City of St. Petersburg and Mr. Handley. The City of St. Petersburg has reached a settlement with PEF and has withdrawn its complaint. Mr. Handley's concerns have been discussed above.

As noted in Issue 1, it may have been preferable for PEF to formally amend its tariff to reflect this change. However, PEF's existing tariff language does address the point of delivery as required by rule. It was not unreasonable for PEF to believe the Handbook change was sufficient to implement what it saw as a construction practice not specifically addressed in the tariff. Staff does not believe there is sufficient information to grant relief to any customer at this point. If any affected customer wishes to file a complaint concerning the impact of the change, it will be handled on a case by case basis through the Informal Complaint process outlined in Rule 25-22.032, F.A.C.

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Issue 3: Should this docket be closed?

Recommendation: Yes. If the Commission approves Staff's recommendation, the tariff should become effective on March 17, 2009. If no protest is received, a consummating order should be issued and the docket administratively closed. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. (Young)

Staff Analysis: If the Commission approves Staff's recommendation, the tariff should become effective on March 17, 2009. If no protest is received, a consummating order should be issued and the docket administratively closed. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest.