

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: March 4, 2010

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Williams) *AW/SB*
Division of Economic Regulation (Rieger) *SDR PPO* *CS* *CS*

RE: Docket No. 090530-EU – Joint Petition for approval to amend territorial agreement by Progress Energy Florida, Inc. and Reedy Creek Improvement District.

AGENDA: 03/16/10 – Regular Agenda – Proposed Agency Action -- Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\090530.RCM.DOC

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 COMMISSION
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Case Background

On September 11, 1987, Florida Power Corporation, now Progress Energy Florida, Inc. (PEF), and the Reedy Creek Improvement District (RCID) filed a joint petition for approval of a territorial agreement. The purpose of the territorial agreement was to eliminate and avoid needless and wasteful expenditures which result from unrestrained competition between utilities operating in overlapping service areas. The agreement, which was approved by Order No. 18225,¹ delineated the utilities' respective service territories in Orange and Osceola Counties.

¹ Order No. 18225, issued September 30, 1987, in Docket No. 870963-EU, In re: Joint Stipulation and Petition for approval of territorial agreement between Florida Power Corporation and Reedy Creek Improvement District.

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PEF and RCID filed a joint petition to amend the territorial agreement approved by Order No. 18225² on January 18, 1994. PEF and RCID determined it was necessary to modify the previous territorial boundary to reflect de-annexation of certain areas of the RCID. The parties believed that amending the territorial boundary would more accurately define their respective service areas in Orange and Osceola County and avoid any potential for uneconomic duplication of electric facilities. The Commission approved the amended territorial agreement by Order No. PSC-94-0580-FOF-EU.³ In its order, the Commission required that PEF and RCID seek approval from the Commission prior to making any permanent boundary changes.

On December 7, 2009, PEF and RCID filed a joint petition to amend the current territorial agreement between the parties approved by Order No. PSC-94-0580-FOF-EU.⁴ PEF and RCID have agreed to amend the current territorial agreement for the purposes of boundary modification in one area of Orange County to resolve outstanding issues.

This is staff's recommendation regarding the parties' joint petition for approval of the amended territorial agreement. The Commission has jurisdiction over the matter pursuant to Section 366.04, Florida Statutes.

² Id.

³ Order No. PSC-94-0580-FOF-EU, issued May 17, 1994, in Docket No. 940071-EU, In Re: Joint petition for approval of territorial agreement between Florida Power Corporation and Reedy Creek Improvement District.

⁴ Id.

Discussion of Issues

Issue 1: Should the Commission approve the joint petition for approval to amend the territorial agreement between Progress Energy Florida, Inc. (PEF) and Reedy Creek Improvement District (RCID)?

Recommendation: Yes. The joint petition to amend the territorial agreement between PEF and RCID should be approved. (Williams, Rieger)

Staff Analysis: PEF and RCID filed a joint petition to amend the territorial agreement approved by Order No. PSC-94-0580-FOF-EU⁵ to modify the service boundary in the Northeast Resort Parcel/Golden Oak Estates Planned Development (PD) area. This area, which is currently located within the service territory of RCID in Orange County, will soon be developed. However, the area was de-annexed from the RCID political boundary in June 2008. There are presently no existing customers affected by the proposed territory amendment. Once built out, it is estimated that there will be 634 residential and 15 commercial connections.

RCID is a special taxing district created by the Florida legislature. This means that RCID operates like a municipality in that it's authorized to furnish electricity to areas within its defined legal boundary. Pursuant to its charter, RCID cannot furnish retail electric power outside of its boundary. Accordingly, RCID provided a letter to PEF requesting that PEF provide temporary service to the Northeast Resort Parcel/Golden Oak Estates PD area until RCID and PEF can effect a permanent change in service territory. In accordance with Section 2.2 of the current agreement, the parties request that PEF provide electric service to the customer's end-use facilities in the Northeast Resort Parcel/Golden Oak Estates PD area and that the territorial boundary be permanently modified to reflect this change by placing the Northeast Resort Parcel/Golden Oak Estates PD within PEF's service territory.

Pursuant to Section 366.04(2)(d), Florida Statutes, the Commission has jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Rule 25-6.0440(2), Florida Administrative Code, provides that in approving territorial agreements, the Commission 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 the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved. See Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So.2d 731 (Fla. 1985). In addition, Order No. PSC-94-0580-FOF-EU⁶ requires that PEF and RCID seek approval from the Commission prior to making a permanent boundary change, which the parties are requesting here.

It appears that the amended territorial agreement proposed by PEF and RCID eliminates existing or potential uneconomic duplication of facilities and does not cause a decrease in the reliability of electric service to existing or future ratepayers. Therefore, staff recommends that

⁵ Id.

⁶ Id.

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the joint petition for approval of the amended territorial agreement between PEF and RCID is in the public interest and should be approved.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose substantial interests are affected files a protest to the Commission's proposed agency action order within 21 days, the docket may be closed upon issuance of a consummating order. (Williams)

Staff Analysis: If no person whose substantial interests are affected files a protest to the Commission's proposed agency action order within 21 days, the docket may be closed upon issuance of a consummating order.