

State of Florida



Public Service Commission
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DATE: March 25, 2010

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Brown) *MCB* *KB*
Division of Economic Regulation (Rieger) *SDR* *PA* *CB*

RE: Docket No. 090428-EI – Joint petition of Progress Energy Florida, Inc. and Withlacoochee River Electric Cooperative, Inc. for approval of amendment to territorial agreement to modify territorial boundary line in four areas of Pasco and Hernando Counties.

AGENDA: 04/06/10 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Argenziano

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\090428.RCM.DOC

Case Background

On September 2, 2009, Progress Energy Florida, Inc. (PEF) and Withlacoochee River Electric Cooperative, Inc. (WREC) filed a joint petition for approval to amend the territorial agreement approved by the Commission per Order No. PSC-06-0202-PAA-EU.¹ The order dealt with the second phase of a settlement between PEF and WREC, which involved the transfer of some 5,400 customers for both phases. According to the settlement, the transfer of the second

¹ See Order No. PSC-06-0202-PAA-EU, issued March 14, 2006, in Docket No. 040133-EU, In re: Petition of Withlacoochee River 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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phase of customers was to be completed within two years of Order No. PSC-06-0202-PAA-EU. With approximately 689 Phase II customers remaining to be transferred, the Commission issued Order No. PSC-08-0502-PAA-EU² allowing for a twelve month extension of time to complete the customer transfers. The time extension was necessary because the logistical and operational issues regarding the transfers were more complicated and time consuming than expected. This proposed amended territorial agreement finalizes the transfers of customers pursuant to Order No. PSC-06-0202-PAA-EU, with the exception of 117 customers in Pasco County. Included in the proposed amendment of the territorial agreement, PEF and WREC have also agreed to a boundary modification in Hernando County which will transfer one customer from PEF to WREC. With no other proposed changes to the current territorial agreement approved by the Commission, PEF and WREC have requested that the proposed boundary modifications be allowed.

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 See Order No. PSC-08-0502-PAA-EU, issued August 8, 2008, in Docket No. 080206-EU, 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.

Discussion of Issues

Issue 1: Should the Commission approve the joint petition to amend the territorial agreement between Progress Energy Florida, Inc. (PEF) and Withlacoochee River Electric Cooperative (WREC)?

Recommendation: Yes. The joint petition for approval of the amended territorial agreement between PEF and WREC is in the public interest and should be approved. (Brown, Rieger)

Staff Analysis: As stated in their joint petition, the parties have agreed to amend the current territorial agreement approved by the Commission in Order No. PSC-06-0202-PAA-EU. The amendment points out that the parties recognize that operational constraints and good engineering practices indicate that three areas in Pasco County, once slated to become part of PEF's service territory, should be served by WREC. This change affects 117 customers who will remain with their current provider and not be transferred from WREC to PEF. Additionally, the amendment states that, at the time of filing, there were 33 customers in Pasco County to be transferred by September 10, 2009. As indicated in a November 2, 2009, correspondence to the Commission, the 33 customers have since been transferred subsequent to the filing of the petition from PEF to WREC.

The 33 customers who have recently been transferred, plus the 117 customers who were once slated to be transferred, are the only remaining customers to have a change in service providers under the current territorial agreement. WREC has provided notification letters to the 117 customers that they will not be transferred to PEF. No adverse customer inquiries have been received. In addition to those mentioned above, the amendment also identified a PEF customer in Hernando County who is to be transferred to WREC because of the operational constraints and potential safety issues that have been identified. This customer, who was transferred in September of 2009, was not among those customers previously identified to be transferred in the 2nd phase agreement pursuant to Order No. PSC-06-0202-PAA-EU. The joint petition indicates that this customer has agreed to the transfer.

Pursuant to Section 366.04(2)(d), Florida Statutes, the Commission has the 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 this instance, the amended territorial agreement proposed by PEF and WREC eliminates existing or potential uneconomic duplication of facilities, and it does not cause a decrease in the reliability of electric service to existing or future ratepayers. Based on the above, staff recommends that the joint petition for approval of the amended territorial agreement between PEF and WREC 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. (Brown)

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.