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COMMISSION
CLERK

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

DATE: September 1, 2010

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Sayler) *ES* *ED* *CRB*
Division of Economic Regulation (Drapet, Rieger, J. Williams) *PA* *CRB* *W*

RE: Docket No. 100336-EU – Joint petition for approval to extend territorial settlement agreement by Progress Energy Florida, Inc., Tampa Electric Company, and The Mosaic Company.

AGENDA: 09/14/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\100336.RCM.DOC

Case Background

On June 23, 2010, Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), and The Mosaic Company (Mosaic), collectively, the Joint Petitioners, filed a joint petition for approval to extend the current Settlement Agreement, approved by Order No. PSC-05-0934-PAA-EU, issued September 21, 2005, in Docket No. 050500-EU. The current Settlement Agreement addresses the provision of electric service to Mosaic's mobile facilities that periodically traverse the approved territorial boundaries between TECO and PEF. It is the

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third such agreement¹ between the Joint Petitioners, addressing the unique reliability requirements of mobile facilities, payments, and Commission notification of changes in service. The Joint Petitioners now seek Commission approval to extend the current Settlement Agreement, set to expire on October 17, 2010, for an additional five years through October 17, 2015.

The Commission has jurisdiction over this matter pursuant to several provisions of Chapter 366, Florida Statutes, including Sections 366.04, and 366.05, Florida Statutes (F.S.).

¹ Two prior settlement agreements were approved by Order Nos. PSC-02-0929-AS-EI, issued July 11, 2002, in Docket No. 020105-EI, In re: Joint petition of Florida Power Corporation and Tampa Electric Company for expedited declaratory relief concerning provision of electric service to an industrial customer's facilities located in Tampa Electric Company's Commission-approved service territory.; and PSC-03-1215-PAA-EU, issued October 27, 2003, in Docket No. 030526-EU, In re: Joint petition of Tampa Electric Company, IMC Phosphates Company and Progress Energy Florida, Inc. for approval of provision of electric service by Progress Energy Florida, Inc. to certain facilities owned and operated by IMC Phosphates Company in Tampa Electric Company's Commission-approved service territory.

Discussion of Issues

Issue 1: Should the Commission approve extending the current Settlement Agreement, effective October 17, 2010, for an additional five years?

Recommendation: Yes. The Commission should approve extending the current Settlement Agreement, effective October 17, 2010, for an additional five years. (Sayler, Draper, Rieger, J. Williams)

Staff Analysis: Mosaic operates interconnected phosphate mining equipment consisting of pumps, slurry pipelines, and draglines (mobile facilities) in a region that is bisected by the retail service areas of TECO and PEF. From time to time, Mosaic moves these mobile facilities from one retail service territory to another, traversing the approved territorial boundaries between TECO and PEF. Mosaic prefers that only one utility provide the electric requirements of a mobile facility because the reliability of the mobile facility is compromised when more than one utility provides electric service to different components of the facility.

By Order No. PSC-02-0929-AS-EI, the Commission first approved an agreement that allowed PEF to provide all the electric requirements of a mobile facility regardless of location. By Order No. PSC-03-1215-PAA-EU, the Commission then approved an agreement extending the same concept to certain new phosphate mining operations that were not contemplated at the time Order No. PSC-02-0929-AS-EI was issued. By Order No. PSC-05-0934-PAA-EU, both agreements were replaced by the current Settlement Agreement, which will expire on October 17, 2010.

Under the provisions of the current Settlement Agreement, which the Joint Petitioners are seeking to extend for an additional five years, PEF provides the electric service and bills Mosaic for the usage of the mobile facilities pursuant to PEF's applicable rate schedule. In response to staff's data request, PEF stated the Mosaic mobile facilities affected by the agreement include two draglines, two lift pumps, one pit pump, and two booster pumps. Mosaic's load is served at transmission level. PEF pays TECO on a quarterly basis 50 percent of the base revenue collected by PEF from Mosaic for the load covered under the Settlement Agreement. Since PEF actually serves the load, it is appropriate that PEF retains the fuel and other adjustment clause revenues collected from Mosaic and only remits a portion of base revenues to TECO. For the most recent 12-month period, PEF has paid TECO \$39,532.

Staff notes that the order approving the current Settlement Agreement included the following language at the request of the Joint Petitioners:

The Commission recognizes that the Parties [Joint Petitioners] may, of necessity, implement the resolution of future situations concerning electric service to Mosaic's Mobile Facilities, as contemplated in paragraph 4 of the Settlement Agreement, in advance of the Parties submitting such resolutions to the Commission for its approval. However, the Commission is satisfied that the procedures and pricing mechanism set forth in paragraph 5 to be used in addressing issues raised by future service to Mosaic Mobile Facilities are sufficiently clear and specific to avoid the exercise of undue discretion by the

Parties and are in the public interest. The Commission will review each resolution when filed and approve or take other appropriate action in response thereto, consistent with its statutory authority and as part of its ongoing, active supervision of this settlement and the application and implementation of territorial agreements.

In response to staff's data request about this paragraph, the Joint Petitioners explained that this language recognizes the need for flexibility in the provision of service to Mosaic's mobile mining operations while maintaining the goals of the territorial agreements between PEF and TECO. The Joint Petitioners indicated that this provision was not implemented during the term of the current Settlement Agreement. Staff believes that retaining this language would be appropriate.

Staff believes extending the current Settlement Agreement avoids potential retail territorial disputes between TECO and PEF, addresses service reliability, and is consistent with the Commission's longstanding policy of encouraging agreements. Therefore, extending the current Settlement Agreement for an additional five years is in the public interest and should be approved. The extension to the current Settlement Agreement should become effective October 17, 2010.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order. If a protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving this extension to the current Settlement Agreement, the current Settlement Agreement should remain in effect pending resolution of the protest and the docket should remain open. (Sayler)

Staff Analysis: If no protest is filed, this docket should be closed upon the issuance of a Consummating Order. If a protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving this extension to the current Settlement Agreement, the current Settlement Agreement should remain in effect pending resolution of the protest and the docket should remain open.