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Public Service Commission

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COMMISSION
CLERK

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

DATE: September 22, 2011

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Brown) *MCB JSO*
Division of Economic Regulation (Rieger) *SDR POC* 

RE: Docket No. 110099-EU – Joint petition for approval of territorial agreement in Bradford County by Florida Power & Light Company and City of Starke.

AGENDA: 10/04/11 – Regular Agenda – 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\110099.RCM.DOC

Case Background

On April 12, 2011, Florida Power & Light Company (FPL) and the City of Starke, Florida (City) filed a joint petition for approval of a territorial agreement. The joint petition requests the establishment of a service territory boundary between the two utilities in Bradford County. The agreement will result in the transfer of 86 customer accounts and related distribution facilities between the parties. This is the first territorial agreement between these two parties.

This recommendation addresses the parties' joint petition for approval of the territorial agreement. The Commission has jurisdiction over the matter pursuant to Section 366.04, Florida Statutes (F.S.).

DOCUMENT NUMBER - DATE

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Discussion of Issues

Issue 1: Should the Commission approve the proposed territorial agreement between FPL and the City?

Recommendation: Yes. The proposed territorial agreement attached as Attachment A is in the public interest and should be approved by the Commission. The Commission should direct the parties to file status reports on the transfer of customers every six months until the transfer is complete. (Rieger)

Staff Analysis: On April 12, 2011, FPL and the City filed a joint petition for approval of a territorial agreement. The petition states that the parties initially entered into an agreement on February 27, 2009. The parties did not seek Commission approval of the initial agreement until all necessary filing requirements, including obtaining a legal description of the territorial boundaries, were satisfied. The parties stated that by the time those requirements were satisfied, the list of affected customers referenced in the initial agreement needed to be updated because of customers relocating in and out of the respective service territories. As a result, the parties decided to enter into a restated agreement instead of creating an addendum to the original agreement. FPL and the City entered into a restated territorial agreement on March 21, 2011. The restated territorial agreement was attached to the petition as Exhibit 1, and is attached here as Attachment A.

The agreement establishes a geographic boundary between the two utilities, which was depicted on the maps attached to the agreement as Composite Appendix A. The map also includes a legal description of the proposed boundary line. Staff would point out that this territorial agreement relates to a similar agreement between the City and Clay Electric Cooperative (Clay).¹ In that agreement, a territorial boundary was established between the City and Clay that encompasses some of the same geographical areas. In its Order approving the agreement, the Commission noted that FPL had been apprised of the territorial agreement and did not object to it. The Commission also noted that FPL and the City were in the process of negotiating a territorial agreement. Clay has been apprised of this territorial agreement, and it does not have any objections to it.

The restated territorial agreement addresses the transfer of a total of 86 customer accounts between the parties. Under the agreement, 20 customer accounts (15 residential and 5 commercial) will be transferred from the City to FPL and 66 accounts (54 residential and 12 commercial) will be transferred from FPL to the City. Written notice to all affected customers has been made, as required by Rule 25-6.0440(1)(d), Florida Administrative Code (F.A.C.). The petition states that 6 City customers responded that they were not opposed to the transfer, while 12 FPL customers responded to the proposal, 11 of whom were opposed to the transfer.

The petition states that the transfer of customers will be completed within two years of the Commission approval of the agreement. In response to staff's data request, the parties

¹ See Order No. PSC-08-0105-PAA-EU, issued February 18, 2008, in Docket No. 070669-EU, In re: Joint petition for approval of territorial agreement in Bradford County by Clay Electric Cooperative, Inc. and City of Starke, Florida.

indicated that a transfer schedule will be established once the Commission makes a ruling on the petition. In addition, both parties stated that they will work with all affected customers regarding deposits, so that all applicable deposit policies are followed and that the customers suffer no hardship as a result of the transfer.

Pursuant to Section 366.04(2)(d), F.S., the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Pursuant to Rule 25-6.0440(2), F.A.C., 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. Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

According to the applicants, the proposed territorial agreement eliminates existing or potential uneconomic duplication of facilities, does not cause a decrease in the reliability of electric service to existing or future ratepayers, will not occur at any significant cost, and prevents wasteful expenditures by the parties. Based on all of the above, staff recommends that the proposed territorial agreement is in the public interest and should be approved. Since the agreement contemplates the transfer of customers over a two year period, staff also recommends that the Commission direct the parties to file status reports on the transfers every six months until the transfers are complete.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If no person whose interests are substantially affected timely files a protest to the Commission's proposed agency action order, this docket should be closed upon issuance of a consummating order. (Brown)

Staff Analysis: If no person whose interests are substantially affected timely files a protest to the Commission's proposed agency action order, this docket should be closed upon issuance of a consummating order.

**RESTATED TERRITORIAL AGREEMENT BETWEEN
FLORIDA POWER & LIGHT COMPANY
AND THE CITY OF STARKE**

Section 0.1 THIS AGREEMENT, made and entered into this 21 day of MARCH, 2011, by and between FLORIDA POWER & LIGHT COMPANY, a Florida corporation organized and existing under the laws of the State of Florida (herein called the "FPL"), and the CITY OF STARKE, a municipal corporation created under the laws of the State of Florida (herein called "CITY"); and

Section 0.2 WHEREAS, this Restated Territorial Agreement replaces the Territorial Agreement which FPL and STARKE entered into on February 27, 2009, but did not seek approval by the Florida Public Service Commission (herein called the "COMMISSION"); and

Section 0.3 WHEREAS, STARKE, by virtue of its Charter and the Laws of Florida, is authorized and empowered to furnish electricity and power to persons, firms and corporations, and pursuant to such authority, presently furnishes electricity and power to customers in areas within and without the city limits of Starke, Florida; and

Section 0.4 WHEREAS, FPL, by virtue of its Charter and the Laws of Florida, is authorized and empowered to furnish electricity and power to persons, firms and corporations throughout the State of Florida and pursuant to such authority presently furnishes electricity and power to customers in areas within and without the city limits of Starke, Florida, and elsewhere; and

Section 0.5 WHEREAS, the respective areas of service of the parties hereto are contiguous in many places with the result that in the future duplication of service facilities will occur unless such duplication is precluded by a territorial agreement; and

Section 0.6 WHEREAS, the COMMISSION has previously recognized that any such duplication of said service facilities by the parties results in needless and wasteful expenditures, may create hazardous situations, and fails to provide the most economical cost effective service to the utility customer; and

Section 0.7 WHEREAS, the COMMISSION is empowered by Section 366.04, Florida Statutes, to approval territorial agreements; and

Section 0.8 WHEREAS, the parties hereto desire to avoid and eliminate the circumstances giving rise to the aforesaid possible duplications and possible hazards and to that end desire to establish territorial boundaries.

Section 0.9 NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, the parties hereto, subject to the approval of the COMMISSION, and subject to the terms and conditions herein set forth, do hereby agree as follows:

ARTICLE I

TERRITORIAL BOUNDARY

Section 1.1 Boundary. The territorial boundary to be observed by both parties is depicted on the map attached hereto as Appendix A.

Section 1.2 Allocation. The area labeled in Appendix A as "CITY", is reserved to the City of Starke as its service territory (as it relates to FPL), and the area labeled in Appendix A as "FPL" is reserved to FPL as its service territory (as it relates to the CITY), with respect to service to retail customers.

Section 1.3 Scope. The parties agree that neither party will provide or offer to provide electric service at retail to customers within the territory reserved to the other party except as provided in Section 2.1.

ARTICLE II

ELIMINATION OF OVERLAPPING FACILITIES

Section 2.1 As a result of the establishment of the boundary herein, certain customer accounts and distribution facilities shall be transferred between the parties to comply with Section 1.3. Until such transfers are accomplished pursuant to Section 2.5, each utility is authorized to continue providing service to those identified customer locations.

Section 2.2 Those customer accounts identified in Appendix B shall be transferred from the CITY to FPL.

Section 2.3 Those customer accounts identified in Appendix C shall be transferred from FPL to the CITY.

Section 2.4 Each party is responsible for making the necessary modifications to its facilities to effect the transfers in Sections 2.2 and 2.3

Section 2.5 (a) The distribution facilities necessary to effect the transfers required by Sections 2.2 and 2.3, and the identified customer accounts, shall be transferred to the appropriate party within a reasonable period of time, not to exceed two years, after the COMMISSION's final order approving this Territorial Agreement. Transfers of accounts and facilities shall not require further COMMISSION approval.

(b) Notwithstanding the foregoing, the parties recognize that in certain circumstances, economic constraints or good engineering practices may indicate that a customer's end

use facilities either cannot or should not be immediately served by the party in whose territorial area they are located. In such situations, upon written request by the party in whose territorial area the end use facilities are located, to the other party, the other party may agree in writing to temporarily provide service to such customer. If such temporary service lasts, or is expected to last for more than one year, the parties will seek formal approval of the service from the COMMISSION.

(c) If prior to the transfer major repairs to the facilities to be transferred occur before the transfer due to storm damage, then the party which is to acquire those facilities shall pay, upon presentation of appropriate cost information, all capital costs only of the aforesaid repairs. However, before any major storm damage repairs are made, the acquiring party shall be given the opportunity to do the repairs itself, and effectuate the transfer of those storm damage customers at the time of repair. The parties hereto agree to timely notify each other, by letter, of any governmental mandate to relocate, for road modifications, facilities scheduled for transfer, and coordinate the customer transfers to allow the receiving party to carry out the relocation.

(d) Prior to and after transfer of these facilities, it may be necessary for the parties to jointly use certain facilities and FPL and CITY shall enter into, as necessary, an appropriate joint use agreement for those specific facilities. Facilities are to be transferred in good operating condition. Customer meters are not to be transferred. Upon transfer of any facilities, the receiving utility shall be solely responsible for any maintenance, removal, upgrading or improvements to those facilities.

(e) All electric generating plants, transmission lines, substations, distribution lines and related service facilities now or hereafter constructed and/or used by either party in

conjunction with its respective electric utility systems, and which are directly or indirectly used or useful in serving Customers of either party shall be allowed to remain where situated and shall not be subject to removal hereunder, PROVIDED, HOWEVER, that each party shall operate and maintain said lines and facilities in such a manner as to minimize any interference with the operations of the other party.

(f) Nothing herein shall be construed to prevent or in any way inhibit the right and authority of either Party to serve any of its facilities now or hereafter constructed located in the other Party's territorial area, which facility is used in connection with that Party's business as an electric, waster, wastewater, natural gas or telecommunications utility, where such service is feasible and does not in any way interfere with or hinder the other Party from serving other customers within their service area in a reliable and cost effective way.

Section 2.6 No provision of this Agreement shall be construed as applying to bulk power supply for resale, or to facilities dedicated to such bulk power supply.

Section 2.7 Customers of transferred accounts shall be subject to the deposit policies of the utility receiving the transferred customers.

Section 2.8 All easements and joint use agreements held by either FPL or the CITY necessary or appurtenant to serving customers transferred pursuant to this Agreement are hereby assigned to the utility receiving the transferred customers.

ARTICLE III

PREREQUISITE APPROVAL

Section 3.1 Regulatory Approval. The provisions of this Agreement are subject to the regulatory authority of the COMMISSION whose approval shall be a prerequisite to the validity and applicability of this Agreement.

ARTICLE IV

DURATION

Section 4.1 Duration. This Agreement shall continue and remain in effect until the COMMISSION, by order, modifies or withdraws its approval of this Agreement after proper notice and hearing. Modification or withdrawal of the COMMISSION's order of approval of this Agreement shall be based upon the finding that modification or withdrawal is necessary in the public interest because of changed conditions or other circumstances not present at the time this Agreement was approved by the COMMISSION. Either party to this Agreement may petition the COMMISSION, consistent with the previous sentence, at any time for modification or withdrawal of the COMMISSION's order of approval of this Agreement.

ARTICLE V

CONSTRUCTION OF AGREEMENT

Section 5.1 Intent and Interpretation. It is hereby declared to be the purpose and intent of this Agreement, in accordance with which all provisions of this Agreement shall be interpreted and constructed, to eliminate and avoid needless and wasteful expenditures, and duplication of facilities which would otherwise result from unrestrained competition, between the parties operating in overlapping service areas.

Section 5.2 Annexation. Modification of the boundaries of the City of Starke shall not be grounds for modification of the Agreement under Section 4.1.

Section 5.3 Nothing contained in this Agreement shall preclude the future exercise of any franchise rights the City of Starke may have or hold. Provided, however, that this clause shall not be used as an admission or denial that any such franchise rights exist in the City of Starke.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Negotiations. Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Agreement, the only ones agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the parties hereto unless the same shall be in writing, signed by both parties, and approved by the COMMISSION.

Section 6.2 Other Electric Utilities. Nothing in this Agreement is intended to define, establish or affect in any manner the rights of either party hereto relative to any other electric utility not a party to this Agreement with respect to the furnishing of retail electric service including but not limited to the service territory of either party hereto relative to the service territory of any other electric utility not a party to this Agreement.

Section 6.3 Successors and Assigns. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person or corporation other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and

conditions herein contained shall inure to the sole benefit of and shall be binding only upon the parties hereto and their respective representatives, successors and assigns.

IN WITNESS WHEREOF, this Agreement has been caused to be executed by the City of Starke in its name by its Mayor, and by FPL in its name by its Vice President, on the day and year first above written.

CITY OF STARKE

By: Travis V. Woods
Name: Travis V. Woods
Title: Mayor

Date: March 14, 2011

Approved as to form and legality
[Signature]
Attorney, City of Starke

Attest: Linda W. Johns
Clerk of the Commission

FLORIDA POWER & LIGHT COMPANY

By: [Signature]
Name: Keith Hardy
Title: V.P. of Distribution

Date: March 21, 2011