

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of territorial agreement in Alachua, Marion, Columbia, Levy and Volusia Counties by Clay Electric Cooperative, Inc. and Duke Energy Florida, LLC.

DOCKET NO. 150252-EU  
ORDER NO. PSC-16-0113-PAA-EU  
ISSUED: March 18, 2016

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
RONALD A. BRISÉ  
JIMMY PATRONIS

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

**Background**

On November 24, 2015, Clay Electric Cooperative, Inc. (Clay) and Duke Energy Florida, LLC (Duke) filed a joint petition for approval of a territorial agreement (agreement) in Alachua, Marion, Columbia, Levy, and Volusia Counties. The agreement is Attachment A to the petition, while the maps and written description delineating the area to be covered by the agreement are provided in petition Exhibits A and D, respectively. The agreement would consolidate the three current territorial agreements between Duke and Clay for the provision of electric service in the five counties.<sup>1</sup>

The territorial boundaries have been modified in each county that is covered by the proposed agreement. The agreement would result in the transfer of 441 customers from Clay to

<sup>1</sup> Order No. 13023, issued February 23, 1984, in Docket No. 840022-EU, In re: Joint Stipulation between Florida Power Corporation and Clay Electric Cooperative for a territorial agreement [Volusia County], Order No. 24312, issued April 2, 1991, in Docket No. 900064-EU, In re: Petition to resolve territorial dispute between Clay Electric Cooperative, Inc. and Florida Power Corporation [Alachua County], and Order No. PSC-95-1434-FOF-EU, issued November 27, 1995, in Docket No. 950851-EU, In re: Joint Petition for approval of territorial agreement in Marion, Levy, and Columbia Counties between Florida Power Corporation and Clay Electric Cooperative, Inc.

Duke (52 commercial and 389 residential) and the transfer of 83 customers from Duke to Clay (16 commercial and 67 residential).

During its evaluation of the joint petition, Commission staff issued a data request to the joint petitioners for which responses were received on December 18 and 21, 2015. We have jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

### **Decision**

Pursuant to Section 366.04(2)(d), F.S., this 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 (F.A.C.), states that in approving territorial agreements, we may consider:

- (a) The reasonableness of the purchase price of any facilities being transferred;
- (b) The reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement; and
- (c) The reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

Unless this Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.<sup>2</sup>

Through the agreement, the joint petitioners desire to clearly delineate the territorial boundaries within the five-county area in order to serve customers more reliably and economically. Pursuant to Section 1.9 of the agreement, the effective date of the agreement would be the date on which a Consummating Order is issued by this Commission, provided no timely protests are filed. The duration of the agreement would be 20 years from the effective date.

The petitioners state that in accordance with Rule 25-6.0440(1)(d), F.A.C., the customers that would be transferred between utilities pursuant to the agreement were notified by mail of the transfer and a description of the differences between Duke's and Clay's rates was provided.<sup>3</sup> In January 2016, Commission staff's calculated rate comparison for residential customers, using 1,000 kilowatt-hours (kWh), was \$111.30 for Duke and \$117.90 for Clay; the rate comparison for commercial customers, using 1,500 kWh, was \$171 for Duke and \$179 for Clay.<sup>4</sup> With regard to the degree of acceptance by affected customers, the petitioners represent that Duke has received one inquiry and Clay has received two inquiries from customers seeking additional information, but those customers expressed no opinion, either for or against, the agreement. The

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<sup>2</sup> Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

<sup>3</sup> Petition Exhibit E and petitioners' responses to Commission staff's data request

<sup>4</sup> All commercial customers that would be transferred are general services non-demand customers.

joint petitioners expect that all transfers of customers will be completed within 36 months of the effective date of the agreement and will notify this Commission in writing if additional time is needed. Duke will apply customers' deposits to their last electric bill and will directly refund any surplus.

Pursuant to Sections 3.3 and 3.5 of the agreement, Clay and Duke may elect to purchase the electric facilities used exclusively for providing electric service to the transferred customers by using a common engineering cost estimation methodology such as the Handy-Whitman index to determine the value. In response to Commission staff's data request, the petitioners stated that they plan to make decisions regarding the exchange and purchase of facilities as soon as practical should this Commission approve the agreement.

The joint petitioners assert that the agreement will avoid duplication of services and wasteful expenditures and will protect the public health and safety from potentially hazardous conditions. The joint petitioners represent that this Commission's approval of the agreement is in the public interest.

After review of the petition, the agreement, and the joint petitioners' responses to its data request, we find that the agreement is in the public interest and will enable Clay and Duke to better serve their current and future customers. It appears that the agreement eliminates any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service. As such, we find that the agreement between Clay and Duke will not cause a detriment to the public interest and hereby approve it.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that that the Joint Petition for approval of a territorial agreement in Alachua, Marion, Columbia, Levy, and Volusia Counties by Clay Electric Cooperative, Inc. and Duke Energy Florida, LLC is approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 18th day of March, 2016.



HONG WANG  
Chief Deputy Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

JEV

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 8, 2016.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.