

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: July 28, 2016

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Guffey) *SKG ESD PAB WK7*
Office of the General Counsel (Trierweiler) *TC*

RE: Docket No. 160148-EU – Joint petition for approval of territorial agreement in Polk County by City of Bartow and DEF Florida, LLC.

AGENDA: 08/09/16 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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Case Background

On June 9, 2016, the City of Bartow (Bartow) and Duke Energy Florida, LLC (DEF) filed a joint petition for approval of an amended territorial agreement (agreement) in Polk County. The proposed agreement is Attachment A to the petition, while the maps and written descriptions delineating the area to be served by the proposed agreement are provided in the petition as Exhibits A and D respectively (due to the volume of the exhibits, they have not been attached to this recommendation).

The Commission approved the existing territorial agreement between Bartow and DEF in 1986.¹ The existing agreement was for a term of 30 years and the joint petitioners desire to amend and continue the existing agreement. The joint petitioners negotiated the proposed agreement

¹ Order No. 16231, issued June 12, 1986, in docket No. 851006-EU, *In re: Joint stipulation and petition of Florida Power Corporation for approval of territorial agreement with City of Bartow.*

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delineating their respective service boundaries in Polk County for a term of 30 years. If approved, the agreement would result in the transfer of two commercial customers from DEF to Bartow. There will be no customer transfers from Bartow to DEF. The transfer will be implemented when it's operationally feasible for Bartow to serve the two customers, but no later than 12 months after the approval of the proposed agreement by the Commission.

During the evaluation of this joint petition, staff issued one data request to the joint petitioners for which responses were received on June 28, 2016. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve the proposed territorial agreement between Bartow and DEF?

Recommendation: Yes, the Commission should approve the proposed territorial agreement between Bartow and DEF. (Guffey)

Staff Analysis: Pursuant to Section 366.04(2)(d), F.S. and Rule 25-6.0440(2), Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.²

Through the proposed agreement, the joint petitioners desire to essentially continue the existing agreement and clearly delineate the territorial boundaries within Polk County in order to serve customers reliably and economically. The proposed agreement does not change the territorial boundaries; however, two commercial customers will be transferred from DEF to Bartow. In response to staff's data request, DEF stated that during the in-field due diligence process to determine if there were any encroachments by one utility into the service area territory of the other utility, one of the two customers that will be transferred was discovered within Bartow's service territory but was being served by DEF. The second customer to be transferred is currently being served by DEF because it was not operationally and economically feasible for Bartow to serve the customer previously. DEF and Bartow have agreed that Bartow will serve the two customers if the proposed agreement is approved.

In addition to transferring the two customers, the joint petitioners updated the territorial boundary maps using Geographic Information System (GIS) software to demonstrate the boundary lines in greater detail. The petitioners negotiated the proposed agreement for a 30-year term and after the expiration of that term the agreement will remain in effect until and unless either party provides a written notice of termination. Pursuant to Section 1.8 of the proposed agreement, the effective date of the agreement would be the date on which a Consummating Order is issued by the Commission, provided no timely protests are filed.

The petitioners state that in accordance with Rule 25-6.0440(1)(d), F.A.C., the two commercial customers that would be transferred between utilities pursuant to the proposed agreement were notified by mail of the transfer and a description of the differences between DEF's and Bartow's rates was provided.³ As of March 2016, the rate comparison for these customers, using 1,500 kilowatt hours, was \$175.95 for DEF and \$204.50 for Bartow. DEF will apply the customers' deposits to their last electric bill and will directly refund any surplus. With regard to the degree of acceptance by the affected customers, the petitioners state that DEF has not received any feedback, questions, or concerns from the customers. The joint petitioners expect that the

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

³ Petition Exhibit C

customer transfers will be completed within 12 months of the effective date of the proposed agreement and will notify the Commission in writing if additional time is needed.

Pursuant to Section 3.3 (Compensation of Related Service Facilities) and Section 3.4 (Transfer Segment Closings) of the proposed agreement, Bartow 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 staff's data request, the petitioners stated that at this time the parties do not plan to exchange or purchase the required facilities. Upon further inquiry, the petitioners stated that Bartow will not be using DEF's facilities to serve the two customers. DEF will remove its facilities after the transfer and either retire or re-use the facilities if possible.

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

After review of the petition, the proposed agreement, and the joint petitioners' responses to staff's data request, staff believes that the proposed agreement is in the public interest and will enable Bartow and DEF to better serve their current and future customers. It appears that the proposed agreement eliminates any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service. As such, staff believes that the proposed agreement between Bartow and DEF will not cause a detriment to the public interest and recommends that the Commission approve it.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose substantial interests are affected within 21days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Trierweiler)

Staff Analysis: If no protest is filed by a person whose substantial interests are affected within 21days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.