

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** September 9, 2004

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Office of the General Counsel (Gervasi)  
Division of Economic Regulation (Windham, Breman)

**RE:** Docket No. 040701-EU – Joint petition for approval of territorial agreement concerning service to two locations in Jackson County, by Florida Public Utilities Company and West Florida Electric Cooperative Association, Inc.

**AGENDA:** 09/21/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Attachment A is not included in the electronic form of this document

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\040701.RCM.DOC

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### Case Background

On July 6, 2004, the West Florida Electric Cooperative Association, Inc. (WFEC) and Florida Public Utilities Company (FPUC) filed a Joint Petition for Approval of Territorial Agreement (Agreement). The Agreement resolves a dispute regarding permanent electric service to two new customers in Jackson County. A copy of the Agreement is appended to this recommendation as Attachment A.

This Agreement is the first such agreement entered into between WFEC and FPUC. The Agreement provides that it shall remain in effect for an initial term of 30 years and shall automatically renew for successive 10 year periods unless either party gives written notice of its intent to terminate at least one year prior to the end of the initial term or any renewal period, or until modified or vacated by a final and non-appealable order of the Commission or of a court of competent jurisdiction.

FPUC serves primarily an area in Jackson County that includes most of the City of Marianna, with some customers located in Calhoun and Liberty Counties. WFEC serves customers in Washington, Holmes, Calhoun, and Jackson Counties. The Agreement currently directly affects only two new customers; Racetrac Petroleum, Inc. (Racetrac), which is constructing a service station located on Highway 231 in Cottondale, and the James Grant Apartments, which are being constructed at 2422 Standfast Lane in Marianna.

The Agreement expressly provides that it shall become effective on the date that the Commission's order approving the Agreement becomes final and effective. Pursuant to Section 366.04(2)(d), Florida Statutes, the Commission has the authority "[t]o approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction."

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the Joint Petition of WFEC and FPUC for approval of the Agreement?

**Recommendation:** Yes. The Agreement between WFEC and FPUC (the parties) is in the public interest and should be approved. (GERVASI, WINDHAM, BREMAN)

**Staff Analysis:** The parties state that each utility currently has existing equipment in each of these areas to reliably serve the customers. However, they each acknowledge that there is currently uneconomic duplication of facilities in these areas.

Racetrac is located on the southeast corner of the intersection of Highway 231 and Dilmore Road, south of Dilmore Road and East of Highway 231. FPUC is currently providing temporary construction service to Racetrac. The parties agree that Racetrac will receive permanent electric service from an existing WFEC primary power line adjacent to the property, and that FPUC's temporary facilities will be removed at FPUC's expense upon WFEC providing permanent service.

The James Grant Apartments are located at the intersection of Standfast Lane and Highway 90, north of Highway 90. WFEC is currently providing temporary construction service to the James Grant Apartments. The Grant property has historically been served by FPUC, which has an existing primary pole on the site. The parties agree that the Grant property will receive permanent electric service from FPUC, and that WFEC's temporary facilities will be removed at WFEC's expense upon FPUC providing permanent service.

Removal of the duplicative facilities will occur as set forth in the Agreement on a date or dates to be agreed upon by the parties. This is expected to be carried out expeditiously. The parties state that the Agreement will result in elimination of the uneconomic duplication of

facilities in the two areas and will result in reliable service for the customers. Both parties support a determination by the Commission that WFEC should provide permanent electric service to Racetrac and that FPUC should provide permanent electric service to the Grant property.

According to the Joint Petition, the differential between FPUC and WFEC's rates has been explained to Racetrac and to James Grant Apartments. Racetrac has agreed to take permanent service from WFEC and James Grant Apartments has agreed to take permanent service from FPUC. Maps showing the areas affected by the Agreement have been submitted. Staff has reviewed the existing facilities of each of the companies in these areas.

Rule 25-6.0440(2), Florida Administrative Code, describes the standards of approval for territorial agreements as follows:

- (2) Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:
  - (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.

The Agreement does not establish a traditional "lines-on-the-ground" territorial boundary. However, it addresses all the necessary standards required for approval. The Agreement comports with the requirements of Rule 25-6.0440, Florida Administrative Code. It does not appear to cause a decrease in the reliability of electric service, and it appears to eliminate or minimize existing or potential uneconomic duplication of facilities. Thus, the Agreement appears to be in the public interest. In light of the foregoing, staff recommends that the Commission grant the Joint Petition for Approval of Territorial Agreement concerning service to two locations in Jackson County, by Florida Public Utilities Company and West Florida Electric Cooperative Association, Inc.

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**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, if no timely protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving the Agreement, this docket should be closed upon the issuance of a Consummating Order. If a protest is timely filed by a substantially interested person, the Agreement should remain in effect pending resolution of the protest and the docket should remain open.

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