

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: October 7, 2004

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

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

RE: Docket No. 040231-EU – Joint petition for approval of territorial agreement in Leon and Wakulla Counties by Talquin Electric Cooperative, Inc. and Progress Energy Florida, Inc.

AGENDA: 10/19/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Attachments A, B, C, and D are not included in the electronic form of this document

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040231.RCM.DOC

Case Background

On March 16, 2004, Talquin Electric Cooperative, Inc. (“Talquin”) and Progress Energy Florida, Inc. (“PEFI”) filed a Joint Petition for approval of a 20-year territorial agreement between the parties in Leon and Wakulla Counties, Florida. The territorial agreement between Talquin and PEFI dated March 12, 2004, or “Agreement” (Attachment A) reestablishes the retail electric territorial boundary previously set by Order No. 19806, issued August 15, 1988, in Docket No. 880619-EU, In Re: Joint Petition for Approval of Territorial Agreement Between Florida Power Corporation and Talquin Electric Cooperative, Inc. The prior territorial agreement (Attachment B) expired under its own terms on August 15, 2003, 15 years after the issuance of Order No. 19806.

The proposed Agreement expressly provides for customer transfers to occur within five years. The affected customers, as listed in Attachment C, have been notified. The Agreement expressly provides that its effectiveness is contingent upon approval of the Commission.

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 grant the joint petition of Talquin and PEFI for approval of the Agreement?

Recommendation: Yes. The Agreement between Talquin and PEFI (the parties) is in the public interest and should be approved. The parties should file an annual progress report on the customer transfers for the prior twelve months until the transfers are completed to ensure that the Commission can effectively monitor the transfers. (GERVASI, BREMAN, WINDHAM)

Staff Analysis: Staff reviewed the proposed Agreement (Attachment A) and the expired agreement (Attachment B). The differences between the two agreements stem from how the parties propose to address retail electric service to an extra-territorial customer. An extra-territorial customer is an existing customer located in the retail service area of one party but receiving service from the other party. The expired agreement did not require each utility to transfer extra-territorial customers by a specific date. In contrast, the proposed Agreement establishes a phased transfer of extra-territorial customers over five years.

The parties identified 17 extra-territorial customers currently served by PEFI and 25 extra-territorial customers currently served by Talquin (see Attachment C). The first phase of customer transfers requires the extra-territorial customers currently served by PEFI to be transferred to Talquin as soon as practicable (Agreement at Section 3.1.3). The methodology for compensating PEFI for the transferred customers and associated electric distribution facilities is contained in Section 3.2 of the Agreement.

The 17 extra-territorial customers served by PEFI have been notified. One customer objection was received. Because the parties’ attempts to clarify the nature of the customer’s objection were unsuccessful, staff sent the customer a letter by certified mail on July 30, 2004, requesting that the customer advise us of the reasons for his objection. The customer’s response to staff’s letter was filed on August 13, 2004, and is attached to this recommendation as Attachment D. The customer lists six reasons for his objection, including that he is concerned about the potential for interruption in service and for his electric cost to rise, and he states that he will have to read his meter monthly. However, the agreement does not appear to decrease the reliability of electric service. Moreover, in *Storey v. Mayo*, 217 So. 2d 304, 307 (Fla. 1968), the Florida Supreme Court found that “[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself.” A copy of

this recommendation will be mailed to the customer, with a cover letter informing him that he may participate at the agenda conference.

The 25 extra-territorial customers currently served by Talquin will be asked to voluntarily transfer to PEFI within five years pursuant to Sections 3.1.1 and 3.1.2 of the Agreement. The parties will initially solicit voluntary transfers 60 days after the effective date of the Agreement. Then, five years later, the parties will again solicit voluntarily transfers of any remaining extra-territorial customers. After completing the two voluntary solicitation efforts, either party may petition the Commission to require or not require the transfers of any extra-territorial customers remaining with Talquin. The methodology for compensating Talquin for the transferred customers and associated electric distribution facilities is contained in Section 3.2 of the Agreement.

By letter dated September 21, 2004, the parties advised that Talquin feels strongly that the mandatory transfer of customers served by Talquin, who are also member-owners of the Cooperative, is inappropriate, while PEFI feels strongly that it is inappropriate to continue the use of attrition to address the issues associated with customers of either utility who are located in the other utility's service area. The parties believe that Section 3.1 of the Agreement provides a reasonable middle ground for the treatment of Talquin's extra-territorial customers, and will allow all customers of the two utilities in Leon and Wakulla Counties to receive the well recognized economic and operational benefits of a territorial agreement that, in all likelihood, would not exist in the absence of the compromise.

Staff notes that Commission policy regarding the transfer of customers and facilities is to address the matter on a case-by-case basis. Two examples of the Commission having approved the transfer of customers and facilities upon approval of joint agreements are contained in Order No. 6026, issued February 6, 1974, in Docket No. 73724-EU, In Re: Application of Florida Power Corporation for Approval of Transfer of Retail Customers and Sale of Facilities to the City of Gainesville, and Order No. PSC-95-1433-FOF-EC, issued November 27, 1995, In Re: Joint Petition for Approval of Territorial Agreement Between Lee County Electric Cooperative, Inc. and Glades Electric Cooperative, Inc. The Commission has also approved voluntary customer transfers that were projected to be completed within five years. See Order No. PSC-94-0799-AS-EU, issued June 28, 1994, in Docket No. 920659-EU, In Re: Petition to Resolve a Territorial Dispute Between Central Florida Electric Cooperative Inc. and Florida Power Corporation. The Agreement is consistent and comparable with the referenced cases.

Order No. PSC-92-1071-FOF-EU, issued September 28, 1992, in Docket No. 891245-EU, In Re: Joint Motion for Approval of Territorial Agreement and Dismissal of Territorial Dispute, at page 3, clearly states longstanding Commission policy concerning the approval of territorial agreements:

Our decision on whether or not to approve a territorial agreement is based on the effect the agreement will have on all affected customers, not just on whether transferred customers will benefit. It is our responsibility to insure that the territorial agreement works no detriment to the public interest. For Commission approval, any customer transfer in a proposed territorial agreement must not harm

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

In this case, unlike in Utilities Commission of New Smyrna Beach, the 15-year old territorial boundary between the parties is not changing. This case is simply a renewal of a long established territorial boundary with updated terms and conditions related to the transfer of extra-territorial customers. If the old agreement had not expired, the same customers listed in Attachment C would be subject to transfer. Furthermore, in Order No. PSC-98-0174-FOF-EU, issued January 18, 1998, In Re: Petition to Resolve Territorial Dispute with Gulf Coast Electric Cooperative, Inc., by Gulf Power Company, the Commission stated that "Agreements are generally viewed as the best evidence of efficient and cost-effective boundaries." Staff is not aware of any fact that would result in future uneconomic duplication or a decline in reliability associated with the proposed transfer of the extra-territorial customers. Staff believes that maintaining the longstanding boundary between these parties is an efficient and cost-effective means to provide retail electric service in the area without adversely affecting the level of service provided.

In response to a staff data request, the petitioners have made it clear that Commission approval will be sought for an interim service to a new customer that lasts or is expected to last more than one year. However, there is no explicit requirement in the Agreement for annual updates regarding the status of the voluntary customer transfers. In Order No. PSC-94-1522-FOF-EU, issued December 12, 1994, In Re: Joint Petition for Approval of a Territorial Agreement Between Florida Power Corporation and Peace River Electric Cooperative, Inc., the parties were required to report customer transfer status after five years even though the approved agreement did not specifically include a reporting requirement. The purpose of the status report was to enable the Commission to monitor the utilities' progress in effecting the customer transfers. Staff believes that an annual reporting requirement is appropriate in this case because of the voluntary nature of the customer transfers for the next five years. Furthermore, not all customers may elect to transfer. Section 3.1.2 of the Agreement provides that either party may apply to the Commission to require or not require the transfer of these customers. Therefore, there is a potential for future disputes arising from this aspect of the Agreement. Staff believes that monitoring customer transfers is appropriate and reasonable to facilitate the resolution of potential future disputes.

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. In light of the foregoing, staff recommends that the Commission grant the Joint Petition for Approval of Territorial Agreement in Leon and Wakulla Counties by Talquin Electric Cooperative, Inc. and Progress Energy Florida, Inc. The parties should file an annual progress report on the customer transfers for the prior twelve months until the transfers are completed to ensure that the Commission can effectively monitor the transfers.

Docket No. 040231-EU

Date: October 7, 2004

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. (GERVASI)

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.