

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: February 17, 2005

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

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

RE: Docket No. 041293-EU – Joint petition for approval of territorial agreement in Osceola and Orange Counties by City of St. Cloud and Progress Energy Florida, Inc.

AGENDA: 03/01/05 – Regular Agenda – Proposed Agency Action -- Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\041293.RCM.DOC

Case Background

On November 8, 2004, Progress Energy Florida, Inc. (PEF) and The City of St. Cloud (City) filed a Joint Petition for Approval of a Territorial Agreement Between The City of St. Cloud and Progress Energy Florida, Inc. (Agreement) in Osceola and Orange counties, Florida. The Agreement, dated November 4, 2004, re-establishes the retail electric territorial boundary, with minor boundary changes, previously approved by Order No. 5121, issued May 7, 1971, in Docket No. 70388-EU, In re: Application of Florida Power Corporation [now PEF] for approval of a territorial agreement with the City of St. Cloud, Florida. The prior territorial agreement expired under its own terms on May 7, 2001, 30 years after the issuance of Order No. 5121.

The proposed Agreement involves no customer or facility transfers and provides that its effectiveness is contingent upon approval of the Commission. Pursuant to Section 366.04(2)(d),

Docket No. 041293-EU
Date: February 17, 2005

Florida Statutes, the Commission has the authority “to 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 for approval of Territorial Agreement Between the City of St. Cloud and Progress Energy Florida, Inc.?

Recommendation: Yes. The Agreement between the City of St. Cloud and Progress Energy Florida, Inc. appears to be in the public interest, and the Agreement and its associated maps should be approved. (Jaeger, Windham, Breman)

Staff Analysis: This territorial agreement is an update of a previous territorial agreement, which was approved by Order No. 5121, issued May 7, 1971. The previous agreement had a term of 30 years and expired in 2001. Pursuant to Sections 5.1 and 6.1, the new Agreement would not be effective until the date of the Commission's Order granting approval of the Agreement, and the term of the Agreement would be 15 years from the effective date of the approval. The new Agreement involves only minor boundary changes and no customer or facility transfers. The minor boundary changes take into account that the main road in a new development near Lake Hart, called North Shore, in Orange County does not follow the rectangular shape of the previous boundary. Staff believes that it would be more efficient for one utility to serve the developments on either side of the road. For the Lake Hart area, PEF would serve those developments north of the main road, and the City would serve those developments south of the main road. There are no other significant changes between the previously approved agreement and the new Agreement.

The Agreement is attached as Attachment A. The maps and legal description of the new agreement boundary lines were attached to the Agreement as Exhibit 1. Also, on February 7, 2005, the parties provided a supplemental set of large scale, color-coded maps that identified the parties respective territorial areas in greater detail.

Staff has reviewed the proposed Agreement and believes that the Joint Petition and the Agreement are in compliance with Rule 25-6.0440, Florida Administrative Code, and Section 366.04(2)(d), Florida Statutes, the laws governing territorial agreements. Moreover, staff believes that the Agreement is a reasonable resolution which will reduce the likelihood of future uneconomic and unnecessary duplication of facilities along the boundary lines, in accordance with Commission policy and the public interest. Therefore, staff recommends that the Commission approve the Joint Petition for approval of Territorial Agreement in Orange and Osceola counties by PEF and the City, and the associated maps. Because this action is being taken as proposed agency action, staff believes that the action approving this Agreement cannot be said to be effective until the issuance of a Consummating Order, and that the 15-year term of the Agreement will begin to run upon the issuance of the Consummating Order.

Docket No. 041293-EU
Date: February 17, 2005

Issue 2: Should this docket be closed?

Recommendation: Yes, this docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action. (Jaeger)

Staff Analysis: If no timely protest to the proposed agency action is filed by a substantially affected person within 21 days, this docket should be closed upon the issuance of the Consummating Order.