

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: September 8, 2005

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

FROM: Office of the General Counsel (Vining, Brown)
Division of Economic Regulation (Breman)

RE: Docket No. 040133-EU – Petition of Withlacoochee River Electric Cooperative, Inc. to modify territorial agreement or, in the alternative, to resolve territorial dispute with Progress Energy Florida, Inc. in Hernando County.

AGENDA: 09/20/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\2004\040133.RCM.DOC

Case Background

On February 12, 2004, Withlacoochee River Electric Cooperative, Inc. (WREC) filed a petition requesting that the Commission modify its territorial agreement with Progress Energy Florida, Inc. (PEF) in order to resolve a dispute that had arisen between WREC and PEF over service to a parcel of land owned by Majestic Oaks Partners, LLC (Majestic Oaks) in Hernando County.¹ WREC requested the modification in order to serve the entire 425 acre property owned by Majestic Oaks. The existing territorial boundary splits Majestic Oaks' property

¹ The territorial agreement was approved by Order No. 25309, issued November 7, 1991, in Docket No. 910940-EU, In re: Joint petition for approval of territorial agreement between Florida Power Corporation and Withlacoochee River Electric Cooperative, Inc.

between the service areas of WREC and PEF. On March 1, 2004, PEF filed an Agreed Upon Motion to Toll Time for Response to Petition, requesting that the time for PEF to respond to WREC's petition be tolled to allow the parties to conduct settlement discussions. Order No. PSC-04-0339-PCO-EU, issued March 31, 2004, granted PEF's request and required that PEF and WREC file joint status reports every 60 days on the progress of their settlement discussions. Subsequently, PEF and WREC filed several joint status reports detailing their discussions, which culminated in their filing a joint petition requesting approval of their settlement agreement on April 29, 2005. The settlement agreement resolves the dispute between WREC and PEF as to which utility will provide service to Majestic Oaks, and also addresses both parties' efforts to amend and consolidate four existing territorial agreements that delineate their respective service areas in Citrus, Hernando, and Pasco counties. PEF and WREC are requesting approval to implement the first of two phases of the settlement, which consists of modifications to the territorial boundaries in four areas of Hernando and Pasco counties, one of which is the Majestic Oaks development, and transfers of customers in the three other areas. The remaining phase addresses the transfer of customers in three additional areas as well as some extra-territorial customers.

This recommendation addresses the joint petition requesting approval of the settlement agreement. The Commission has jurisdiction to address this petition pursuant to Section 366.04, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the settlement agreement and implementation of the first phase of the settlement by PEF and WREC?

Recommendation: Yes. (Vining, Brown, Breman)

Staff Analysis: The negotiations that culminated in the settlement agreement, appended to this recommendation as Attachment A, took place against the backdrop of ongoing negotiations between WREC and PEF to amend and consolidate four territorial agreements that delineate the utilities' service areas in Citrus, Hernando, and Pasco counties.² WREC and PEF were able to reach an agreement in this docket by expanding the scope of the negotiations beyond the Majestic Oaks development to six additional areas in Hernando and Pasco counties. Those areas were part of the parties' broader negotiations to amend and consolidate their territorial agreements. The key provisions of the settlement are as follows:

- The territorial boundary line will be modified to locate the entire Majestic Oaks development in Hernando County within the service territory of WREC, including 452 lots currently located in PEF's service territory.
- The territorial boundary line will be modified to place a portion of an area known as Masaryktown located south of the County Line Road in northern Pasco County within the service territory of WREC. This area contains approximately 366 customers currently served by PEF who would be transferred to WREC.
- The territorial boundary line will be modified to include an area in and around Trilby located in northern Pasco County and eastern Hernando County within the service territory of WREC. This area contains approximately 1,671 customers currently served by PEF who would be transferred to WREC.
- The territorial boundary line will be modified to include the area known as the East Pasco Well Field located in southern Pasco County within the service territory of PEF. This area contains approximately 706 customers currently served by WREC who would be transferred to PEF. These customers are currently served by WREC's Pasco Well Field substation site, which PEF will acquire and construct a new substation to serve customer growth in the area.
- The territorial boundary line will be modified to locate the area near Seven Springs in southern Pasco County within the service territory of PEF. This area contains approximately 1,754 customers currently served by WREC who would be transferred to PEF.

² The term of these territorial agreements was extended until September 30, 2005, by Order No. PSC-05-0304-PAA-EU, issued March 21, 2005, in Docket No. 050009-EU, In re: Joint petition for approval of term extension to territorial agreements in Citrus and Pasco Counties, by Withlacoochee River Electric Cooperative and Progress Energy Florida, Inc.

- The territorial boundary line will be modified to include an area known as East Gate Estates in southern Pasco County within the service territory of PEF. This area contains approximately 78 customers currently served by WREC who would be transferred to PEF.
- The territorial boundary line will be modified to place the area known as Orangewood Mobile Home Park within the service territory of PEF. This area contains approximately 257 customers currently served by WREC who would be transferred to PEF.
- Approximately 194 extra-territorial customers who are currently located in PEF's service territory in Hernando and Pasco counties, but are served by WREC, will be transferred to PEF. All remaining extra-territorial customers who are not yet served by the utility in whose service territory they are located will subsequently be served by the utility in whose territory they are either currently located or will be located in as the result of further boundary line modifications.
- The distribution facilities of each utility that are used to provide service to the affected customers will be transferred contemporaneously with these customers. Compensation for the distribution facilities to be transferred is determined based upon the replacement cost less depreciation calculated on a straight line basis over the life of the asset as determined from the transferring party's books and records.

Because the settlement is broad in scope and involves the transfer of some 5,000 customers, the settlement provides for implementation of the territorial boundary line modifications and customer transfers in two phases. The first phase, consisting of the Majestic Oaks development in Hernando County and the Masaryktown, East Pasco Well Field, and the East Gate Estates areas in Pasco County, is to be implemented in conjunction with the Commission's consideration of the joint petition for approval of the settlement. The second phase covers the Trilby and the Seven Springs areas, the two most populous areas covered by the settlement, as well as the Orangewood Mobile Home Park, all of which are in Pasco County. In addition, the second phase will address the transfer of all the extra-territorial customers currently served by WREC in Hernando and Pasco counties. The parties to the settlement will submit the amended and consolidated territorial agreement and second phase boundary line modifications and customer transfers in a second joint petition.

The parties to the settlement expect that all first phase transfers of customers and related service facilities will be completed within six months of the Commission's order approving the transfers. In the first phase, there are 799 customers to be transferred from WREC to PEF and 359 customers to be transferred from PEF to WREC. All customers scheduled to be transferred in the first phase have received written notification of the transfer. The letters sent to these customers provided a comparison of the rates of WREC and PEF as well as contact information so that the customers could express any questions or concerns regarding the transfer. Of the 799 customers to be transferred from WREC to PEF, 38 contacted WREC after receiving notification of the transfer, and 11 of those 38 customers did not want to be transferred to PEF. Of the 359 customers to be transferred from PEF to WREC, 2 contacted PEF after receiving notification of the transfer, and 1 of those 2 customers did not want to be transferred to WREC. PEF and WREC maintain that approval of the settlement will not cause a decrease in the reliability of the

electrical service to the existing or future customers of either utility. To the contrary, the parties assert that the settlement's boundary line modifications and customer transfers will enable them to plan and operate their systems more efficiently, thereby improving reliability and eliminating uneconomic duplication of facilities.

Pursuant to Rule 25-6.0440(2), Florida Administrative Code, in approving territorial agreements, the Commission may consider the reasonableness of the purchase price of any facilities being transferred, the likelihood that the agreement will not cause a decrease in the reliability of electric service to existing or future ratepayers, and the likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities. In this instance, the settlement agreement proposed by PEF and WREC eliminates existing or potential uneconomic duplication of facilities, does not cause a decrease in the reliability of electric service to existing or future ratepayers, and provides a reasonable method for calculating the purchase price of WREC's Pasco Well Field substation. Approval of the settlement agreement will enable both WREC and PEF to provide more reliable service within their respective territories by eliminating pockets of customers served by the other utility. The comprehensive territorial settlement is extensive, affecting a large customer base as well as a large geographic area. Over 1,000 customers will be transferred in the first phase of the settlement, and approximately 5,000 will be transferred overall. The degree of acceptance among affected customers appears to be high based upon the small number of customers who have expressed opposition to the transfer. Finally, the settlement agreement would resolve WREC's request for a modification to its territorial agreement with PEF to serve the Majestic Oaks development. Based on all of the above, staff recommends that the settlement agreement, contained in Attachment A to this recommendation, is in the public interest and should be approved, and that WREC and PEF should be permitted to implement phase one of the settlement. The Commission's approval of the settlement agreement and implementation of phase one of the settlement by WREC and PEF should be given with the understanding that the parties will come back to the Commission for approval of the amended territorial agreement and authorization to implement phase two of the settlement.

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Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open to address the petition for approval of the amended territorial agreement and implementation of phase two of the settlement agreement. (Vining)

Staff Analysis: This docket should remain open to address the petition for approval of the amended territorial agreement and implementation of phase two of the settlement agreement.