

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:** August 25, 2005

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

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

**RE:** Docket No. 050500-EU – Joint petition for approval of territorial settlement agreement by Tampa Electric Company, Progress Energy Florida, Inc., and The Mosaic Company.

**AGENDA:** 09/06/05 – 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\050500.RCM.DOC

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### Case Background

On July 25, 2005, Progress Energy Florida, Inc. (PEFI), Tampa Electric Company (TECO), and Mosaic Phosphates Company (Mosaic) filed a joint motion for approval of a Settlement Agreement that addresses the provision of electric service to Mosaic's mobile facilities that periodically traverse the approved territorial boundaries between TECO and PEFI.

The proposed Settlement Agreement is the third such agreement between the Joint Petitioners addressing the unique reliability requirements of mobile facilities, payments, and Commission notification of changes in service. The prior agreements approved in Order Nos.

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PSC-02-0929-AS-EI<sup>1</sup> and PSC-03-1215-PAA-EU<sup>2</sup> expire on August 10, 2005 and November 20, 2005, respectively. The proposed Settlement Agreement is intended to replace the prior agreements, extend the same mechanisms approved in the prior orders for an additional five years, and change the payments Mosaic will make to TECO. The Settlement Agreement requires Commission approval to be consistent with statutory authority and as part of the Commission's ongoing, active supervision of electric utility territorial agreements.

The Commission has jurisdiction over this matter pursuant to several provisions of Chapter 366, Florida Statutes, including Sections 366.04, and 366.05, Florida Statutes.

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<sup>1</sup> In Re: Joint petition of Florida Power Corporation and Tampa Electric Company for expedited declaratory relief concerning provision of electric service to an industrial customer's facilities located in Tampa Electric Company's Commission-approved service territory, issued July 11, 2002, in Docket No. 020105-EI.

<sup>2</sup> In Re: Joint petition of Tampa Electric Company, IMC Phosphates Company and Progress Energy Florida, Inc. for approval of provision of electric service by Progress Energy Florida, Inc. to certain facilities owned and operated by IMC Phosphates Company in Tampa Electric Company's Commission-approved service territory, issued October 27, 2003, in Docket No. 030526-EU.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the proposed Settlement Agreement regarding the provision of electric service to Mosaic's mobile facilities?

**Recommendation:** Yes. The Commission should approve the proposed agreement, effective the date of the Commission's consummating order making the approval final. (Brown, Breman, Wheeler)

**Staff Analysis:** Mosaic operates interconnected phosphate mining equipment consisting of pumps, slurry pipelines, and draglines (mobile facilities) in a region that is bisected by the retail service areas of TECO and PEFI. From time to time, Mosaic moves these mobile facilities from one retail service territory to another, traversing the approved territorial boundaries between TECO and PEFI. Mosaic prefers that only one utility provide the electric requirements of a mobile facility because the reliability of the mobile facility is compromised when more than one utility provides electric service to different components of the facility.

In Order No. PSC-02-0929-AS-EI, the Commission approved an agreement that allows one utility to provide all the electric requirements of a mobile facility regardless of location. In Order No. PSC-03-1215-PAA-EU, the Commission approved an agreement extending the same concept to certain new phosphate mining operations that were not contemplated at the time Order No. PSC-02-0929-AS-EI was issued. Both agreements are set to expire in 2005. The proposed Settlement Agreement (Attachment 1) is intended to replace those agreements.

The proposed Settlement Agreement is substantially similar to the existing agreements. The only material change is the proposed termination of certain payments Mosaic currently makes to TECO for the load that is located in TECO's territory but served by PEFI. Under the proposed Settlement Agreement, Mosaic will only be required to make payment to PEFI pursuant to PEFI's then-current IST-1 or otherwise applicable rate schedule. This differs from the existing agreement, which requires Mosaic to pay TECO an amount equal to the positive difference between the base rate charges billable under TECO's IST-1 rate schedule and PEFI's IST-1 rate schedule. Under the new agreement, Mosaic will only be required to make payments to TECO if Mosaic fails to notify TECO prior to the commencement of new service to a mobile facility as described in Paragraph 5 of the proposed agreement. As under the existing agreement, PEFI will pay TECO 50% of the base revenues (adjusted for the appropriate interruptible service billing credit) collected from Mosaic for the load. The new agreement provides for identical treatment for load that is located in PEFI's territory but served by TECO. The proposed change in payments does not result in lower rates to Mosaic than would otherwise be applicable to non-mobile facilities.

The Joint Petitioners requested that the Commission include the following language in its order approving the proposed Settlement Agreement:

The Commission recognizes that the Parties may, of necessity, implement the resolution of future situations concerning electric service to Mosaic's Mobile Facilities, as contemplated in paragraph 4 of the Settlement Agreement, in advance of the Parties submitting such resolutions to the Commission for its

approval. However, the Commission is satisfied that the procedures and pricing mechanism set forth in paragraph 5 to be used in addressing issues raised by future service to Mosaic Mobile Facilities are sufficiently clear and specific to avoid the exercise of undue discretion by the Parties and are in the public interest. The Commission will review each resolution when filed and approve or take other appropriate action in response thereto, consistent with its statutory authority and as part of its ongoing, active supervision of this settlement and the application and implementation of territorial agreements.

Staff notes that similar language was included in Order No. PSC-02-0292-AS-EI approving the Joint Petitioners first settlement agreement, and believes that such language is also appropriate for the order in this docket.

Staff believes the proposed Settlement Agreement avoids potential retail territorial disputes between TECO and PEFI, addresses service reliability, and is consistent with the Commission's longstanding policy of encouraging agreements. Therefore, the proposed Settlement Agreement is in the public interest and should be approved. The agreement should become effective with the issuance of the Commission's consummating order approving the agreement.

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

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

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