

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-

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**DATE:** February 23, 2006

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

**FROM:** Office of the General Counsel (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:** 03/07/06 – 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\040133.RCM.DOC

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### Case Background

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

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<sup>1</sup> 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.

split Majestic Oaks' property between the service areas of Withlacoochee and Progress. After extensive negotiations the parties filed a joint petition requesting approval of a settlement agreement on April 29, 2005. The settlement agreement resolved the dispute between Withlacoochee and Progress over which utility would provide service to Majestic Oaks, and also addressed both parties' efforts to amend and consolidate four existing territorial agreements that have delineated their respective service areas in Citrus, Hernando, and Pasco counties. By Order No. PSC-05-0965-PAA-EU, issued October 10, 2005, the Commission approved the settlement agreement and the parties' request to implement the first of two phases of the settlement.<sup>2</sup> The first phase of the settlement consisted of modifications to the territorial boundaries in four areas of Hernando and Pasco counties, one of which was the Majestic Oaks development, and transfers of customers in the three other areas. The second phase of the settlement was to address the transfer of customers in three additional areas as well as the transfer of some extra-territorial customers. On December 8, 2005, Withlacoochee and Progress filed a second joint petition to approve their amended and consolidated territorial agreement and implement the second phase of their settlement.

This recommendation addresses the joint petition requesting approval of the amended and consolidated territorial agreement and implementation of the last phase of the parties' settlement. The Commission has jurisdiction to address this petition pursuant to Section 366.04, Florida Statutes.

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<sup>2</sup> Order No. PSC-05-1099-CO-EU, issued November 2, 2005, finalized the PAA order.

### **Discussion of Issues**

**Issue 1:** Should the Commission grant Withlacoochee's and Progress's second joint petition to approve their amended and consolidated territorial agreement and implement the second phase of their settlement?

**Recommendation:** Yes. The proposed territorial agreement and settlement implementation is in the public interest and the Commission should approve it. The Commission should direct the parties to file status reports on the transfer of customers every six months until the transfers are complete. (Breman, Brown)

**Staff Analysis:** The key provisions of the settlement that the Commission approved in Order No. PSC-05-0965-PAA-EU, and that provides the framework for the amended and consolidated territorial agreement, 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 Withlacoochee, including 452 lots currently located in Progress'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 Withlacoochee. This area contains approximately 366 customers currently served by Progress who would be transferred to Withlacoochee.
- 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 Withlacoochee. This area contains approximately 1,671 customers currently served by Progress who would be transferred to Withlacoochee.
- 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 Progress. This area contains approximately 706 customers currently served by Withlacoochee who will be transferred to Progress. These customers are currently served by Withlacoochee's Pasco Well Field substation site, which Progress 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 Progress. This area contains approximately 1,754 customers currently served by Withlacoochee who would be transferred to Progress.
- 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 Progress. This area contains approximately 78 customers currently served by Withlacoochee who would be transferred to Progress.

- The territorial boundary line will be modified to place the area known as Orangewood Mobile Home Park within the service territory of Progress. This area contains approximately 257 customers currently served by Withlacoochee who would be transferred to Progress.
- Approximately 194 extra-territorial customers who are currently located in Progress's service territory in Hernando and Pasco counties, but are served by Withlacoochee, will be transferred to Progress. 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 was so broad in scope and involved the transfer of some 5,400 customers, the settlement provided for implementation of the territorial boundary line modifications and customer transfers in two phases. The first phase, approved by Order No. PSC-05-0965-PAA-EU, consisted of the Majestic Oaks development in Hernando County and the Masaryktown, East Pasco Well Field, and the East Gate Estates areas in Pasco County. The second phase, which the parties are asking to implement now, 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 addresses the transfer of all the extra-territorial customers currently served by Withlacoochee in Hernando and Pasco counties. All together, the consolidated territorial agreement will replace the four existing agreements between the parties in three counties and incorporate the resolution of the Majestic Oaks dispute.

On December 22, 2005, Progress filed a letter with the Commission indicating that the parties had sent letters to 5,400 customers who would be transferred as part of the comprehensive agreement. According to the letter, the parties received only 90 responses, and of those only 29 complained of the transfer. The consolidated territorial agreement contemplates that all affected customers will be transferred within 2 years of the effective date of the agreement. Progress and Withlacoochee maintain that approval of the consolidated agreement 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 agreement'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. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved. Utilities Commission of the City of New Smyrna v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

In this instance, the territorial agreement proposed by Progress and Withlacoochee 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 facilities. Approval of the territorial agreement will enable both Withlacoochee and Progress to provide more reliable service within their respective territories by eliminating pockets of customers served by the other utility. The comprehensive territorial agreement is extensive, affecting a large customer base as well as a large geographic area. 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.

Based on all of the above, staff recommends that the consolidated territorial agreement, contained in Attachment A to this recommendation, is in the public interest and should be approved. Withlacoochee and Progress may implement the last phase of their approved settlement when the Commission's order approving the agreement becomes final. Since the agreement contemplates the transfer of customers over a two year period, staff also recommends that the Commission direct the parties to file status reports on the transfers every six months until the transfers are complete.

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

**Recommendation:** Yes. If no person whose interests are substantially affected timely files a protest to the Commission's proposed agency action order, this docket should be closed upon issuance of a consummating order.

**Staff Analysis:** If no person whose interests are substantially affected timely files a protest to the Commission's proposed agency action order, this docket should be closed upon issuance of a consummating order.