

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: July 6, 2006

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

FROM: Office of the General Counsel (Brown)
Division of Economic Regulation (Redemann, Rieger)

RE: Docket No. 060277-EU – Joint petition for approval of territorial amendment in Polk, Hardee, Highlands, Manatee, and Osceola Counties by Progress Energy Florida, Inc. and Peace River Electric Cooperative, Inc.

AGENDA: 07/18/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060277.RCM.DOC

Case Background

On March 23, 2006, Progress Energy Florida, Inc. (Progress) and Peace River Electric Cooperative, Inc. (Peace River) filed a joint petition for approval of certain amendments to their territorial agreement covering Polk, Hardee, Highlands, Manatee and Osceola Counties. The territorial agreement was approved by the Commission in 1994.¹ It established the boundaries for the utilities' exclusive service territories in the counties mentioned above, and it also contained a provision permitting Progress (Florida Power Corporation at the time) to provide

¹ See Order No. PSC-94-1522-FOF-EU, issued December 12, 1994, in Docket No. 940376-EU, In re: Joint petition for approval of territorial agreement between Florida Power Corporation and Peace River Electric Cooperative, Inc.

transmission level electric service (69 KV and higher) to certain phosphate mining companies with mining operations in Peace River's service territory.

Tampa Electric Company (TECO) also provides transmission level electric service to certain phosphate mining customers in Peace River's service territory pursuant to its existing territorial agreement with Peace River.² Uncertain of the effect the proposed amendments to the Progress-Peace River agreement might have on its territorial agreement, TECO filed a Petition for leave to intervene in this docket on April 11, 2006. After discussions with TECO, Progress and Peace River filed a Joint Stipulation on May 16, 2006, affirming that the proposed amendments only applied to the phosphate mining customers within the boundaries and parameters of Progress and Peace River's current territorial agreement. With this confirmation, TECO filed a withdrawal of its petition to intervene on May 18, 2006.

This is staff's recommendation regarding the proposed amendments to Progress and Peace River's territorial agreement. The Commission has jurisdiction over this matter pursuant to section 366.04, Florida Statutes.

² See Order No. 17585, issued May 22, 1987, in Docket No. 070303-EU, In re: Joint petition of Tampa Electric Company and Peace River Electric Cooperative, Inc. for approval of a territorial agreement.

Discussion of Issues

Issue 1: Should the Commission approve the joint petition for approval of amendments to the 1994 Peace River-Progress Territorial Agreement?

Recommendation: Yes. The amendments are in the public interest and should be approved, effective when the Commission's decision approving the amendments becomes final. (Brown, Redemann, Rieger)

Staff Analysis: Progress and Peace River have proposed amendments to Section 1.9 and Section 2.4 of their 1994 agreement. Those sections address the provision of electric service to the phosphate mining companies in Peace River's service territory.

Phosphate mining companies have unique electric requirements. They operate drag-lines that require high voltage, transmission level electric service to excavate limestone from the mines. When the limestone has been depleted in a particular area, the companies move their mining operations to another location, and the electricity substations move with them. At the time their territorial agreement was approved in 1994, Peace River did not have the transmission facilities to serve the phosphate mines, and so the agreement provided that Progress would serve the phosphate customers for the period of the agreement or until mining operations were complete. When mining operations were complete, Peace River would be responsible for all future retail service in its territory, at both distribution and transmission levels, as needed.

According to the petitioners, the proposed amendments to the territorial agreement are only designed to clarify the parties' obligations with respect to the existing phosphate mining customers. Specifically, the amendments define phosphate mining customers in Peace River's service territory as "Special Industrial Customers" and they provide that Progress will only provide retail distribution and transmission level service to the existing customers' current and future mining operations. They confirm that when the customers complete their mining operations in Peace River's territory, the rights to serve those customers would revert back to Peace River. The territorial boundaries and all other substantive provisions of the agreement remain the same.

The petitioners assert that the term change for the phosphate mining customers from "Transmission Voltage Customers" to "Special Industrial Customers" makes the definition more specific and better reflects the nature of service to the phosphate mining customers. Progress and Peace River believe that the proposed amendments will help the parties better serve these customers and avoid the potential for any uneconomic duplication of service.

In addition to the above, a corrected Exhibit 3 to the agreement has also been submitted to the Commission. The correction reflects a reduction in the number of phosphate mining customers from the nine listed in the 1994 territorial agreement, to the two that are currently considered "Special Industrial Customers." The reduction in the number reflects consolidation in the phosphate mining industry.

Section 6.1 of the agreement entitled “Duration,” which was not changed by any of the proposed modifications, provided that beginning with the date the Commission’s initial order approving the agreement became final, the agreement would remain in effect for a period of 25 years. The agreement provides for automatic renewal for additional 25 year periods unless either party gives written notice to the other of its intent not to renew at least six months prior to the expiration of any 25 year period. The agreement also provides, however, that each 25 year renewal will require Commission approval. The parties have indicated to staff that they jointly intend that the initial 25 year term would not be altered by the Commission’s approval of the other modifications. As mentioned in footnote 1 above, the agreement was initially approved by the Commission on December 12, 1994. The agreement will expire on December 12, 2019.

Pursuant to section 366.04(2)(d), Florida Statutes, the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Rule 25.6.0440(2), Florida Administrative Code, provides that 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 amended territorial agreement proposed by Progress and Peace River does not propose the transfer of any customers or facilities. It eliminates existing or potential uneconomic duplication of facilities, and does not cause a decrease in the reliability of electric service to existing or future ratepayers.

Based on the above, staff recommends that the territorial agreement, contained in Attachment A³ to this recommendation, is in the public interest and should be approved.

³ Attachment A contains the amended territorial agreement and Exhibit 3 to the agreement. Exhibits 1 and 2 are service territory maps and customer lists that are not changed by the proposed amendments. They are included in the docket file of the case in the clerk’s office. They are not included here because of their size.

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Issue 2: Should this docket be closed?

Recommendation: Yes, if no protest to the Commission's Order approving the amendments to the agreement is filed by a substantially affected person within 21 days of the issuance of the Order, the docket should be closed upon issuance of a Consummating Order. (Brown)

Staff Analysis: If no protest to the Commission's Order approving the amendments to the agreement is filed by a substantially affected person within 21 days of the issuance of the Order, the docket should be closed upon issuance of a Consummating Order. If a protest is filed, the docket should remain open pending resolution of the protest.