

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:** January 13, 2009

**TO:** Office of Commission Clerk (Cole)

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

**RE:** Docket No. 080632-EU – Joint petition for approval of amended territorial agreement in Sumter, Lake, Marion, Citrus and Levy Counties by Sumter Electric Cooperative, Inc. and Progress Energy Florida, Inc.

**AGENDA:** 01/26/08 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Skop

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\080632.RCM.DOC

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### Case Background

On October 9, 2008, Sumter Electric Cooperative, Inc. (SECO) and Progress Energy Florida, Inc., (PEF) filed a joint petition for approval of an amended territorial agreement dated October 1, 2008, in Sumter, Lake, Marion, Citrus and Levy Counties. SECO and PEF are currently parties to two effective territorial agreements delineating their respective service territories in Sumter, Lake, Marion, Citrus, Levy, Pasco, and Hernando Counties.<sup>1</sup> The

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<sup>1</sup> See Order No. PSC-93-0998-FOF-EU, issued July 9, 1993, in Docket No. 930360-EU, In re: Joint Petition for approval of territorial agreement between Florida Power Corporation and Sumter Electric Cooperative, Inc., which approved a territorial agreement between the parties for certain areas in Lake County; and Order No. PSC-97-0611-FOF-EU, issued May 28, 1997, in Docket No. 961533-EU, In re: Joint Petition for approval of territorial agreement

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petitioners have agreed to an amended consolidated territorial agreement to replace the current agreements. The petition indicated that the Commission has long recognized that properly constructed territorial agreements between adjacent utilities are in the public interest.

This is staff's recommendation regarding the parties' joint petition for approval of the territorial agreement. The Commission has jurisdiction over the matter pursuant to Section 366.04, Florida Statutes.

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between Florida Power Corporation and Sumter Electric Cooperative, Inc., which approved a territorial agreement between the parties for areas in Citrus, Lake, Marion, Levy, Hernando, Pasco, and Sumter Counties.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the joint petition for approval of the territorial agreement between Sumter Electric Cooperative, Inc. and Progress Energy Florida, Inc.?

**Recommendation:** Yes. The joint petition for approval of the amended territorial agreement between Sumter Electric Cooperative, Inc. and Progress Energy Florida is in the public interest and should be approved. Since there will be customers transferred as a result of the agreement, it is recommended that, beginning one year from the date of the Commission order approving the agreement, annual reports should be submitted to the Commission concerning the status of the customer transfers. The reporting requirement shall continue until all Extra-Territorial Customers have been transferred and the terms of the amended agreement have been fully satisfied. (Jaeger, Redemann, Rieger)

**Staff Analysis:** As stated in the amended territorial agreement, the parties have agreed to replace the current agreements mentioned in the case background. The Parties desire to amend, restate, and consolidate the current agreements in their entirety in order to gain further operational efficiencies and customer service improvements in their respective retail service territories in Sumter, Lake, Marion, Citrus and Levy Counties. It was noted in the agreement that the amended territorial agreement will continue to eliminate circumstances giving rise to the uneconomic duplication of service facilities and hazardous situations that the current agreements were intended to avoid.

Pursuant to the amended territorial agreement, there will be a transfer of customers, who are referred to as Extra-Territorial Customers. The parties have indicated that there will be 219 accounts (182 residential and 37 commercial) being transferred from SECO to PEF; and 136 accounts (119 residential and 17 commercial) being transferred from PEF to SECO. Names and service addresses of the customers subject to transfer have been attached to the agreement. The transfers of the Extra-Territorial Customers are expected to be completed within 36 months from the effective date of the amended agreement. The effective date shall be the date on which the Commission's final order granting approval in its entirety becomes no longer subject to judicial review. The parties will notify the Commission in writing if circumstances require additional time to complete the transfer.

The parties anticipate that the number of customers to be transferred and received by each party will be balanced. Any going concern compensation from one party to the other would be essentially offsetting. Upon the transfer of Extra-Territorial Customers, the receiving party may elect to purchase the facilities of the transferring party related exclusively to serving those customers. If service facilities are transferred, the amended agreement contains provisions for the value of the facilities based upon the replacement cost (new) less depreciation. If there are facilities of one party located in the service area of the other party that are not subject to transfer or removal as a result of the amended agreement, those facilities shall be constructed, operated, and maintained in such a manner as to minimize any interference with the operations of the other party.

Both SECO and PEF sent two rounds of customer notification letters. No negative responses were received. Sample copies of the letters providing notification to the affected customers were provided with the agreement. These letters included sample rate comparisons between SECO and PEF, as well as information regarding refunds of deposits to the customers being transferred. In addition, the parties have provided the Commission with a written assurance about customer deposits. This information explains that the customers being transferred will not be required to pay a deposit greater than the deposit that was previously charged by the other party from which the account is being transferred. Also, if the transferring party has no deposit on hand for the transferring account, the receiving party will not require a deposit. In addition, arrangements in the form of payment installments will be considered if a customer being transferred has difficulties paying the deposit to the receiving party.

The parties agree that the provisions and performance of the amended agreement are subject to the regulatory authority of the Commission, and shall have no effect until such approval has been obtained. Any proposed modification to the amended agreement shall be submitted to the Commission for approval. In addition, the parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of the agreement or the parties' performance of the agreement. Also, as mentioned earlier, the amended agreement supersedes the current agreements and all other prior agreements between the parties defining the boundaries of their respective territorial areas in Sumter, Lake, Marion, Citrus, Levy, Pasco, and Hernando Counties. The term of the agreement shall continue in effect for a period of ten years, with no provision for automatic renewal.

Based on the above, staff recommends that the joint petition for approval of the amended territorial agreement between SECO and PEF is in the public interest and should be approved. Because there will be customers transferred as a result of the agreement, beginning one year from the date of the Commission order approving the agreement, annual reports should be submitted to the Commission concerning the status of the customer transfers. The reporting requirement shall continue until all Extra-Territorial Customers have been transferred and the terms of the amended agreement have been fully satisfied.

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

**Recommendation**: Yes. If no person whose substantial interests are affected files a protest to the Commission's proposed agency action order within 21 days, the docket may be closed upon issuance of a consummating order. (Jaeger)

**Staff Analysis**: If no person whose substantial interests are affected files a protest to the Commission's proposed agency action order within 21 days, the docket may be closed upon issuance of a consummating order.