REVISED

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: April 9, 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: 04/21/09 – 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

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.[1] The

[1] 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 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.

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.

<u>This recommendation was filed previously for consideration at the February 10, 2009 agenda conference. The case was deferred to allow the parties an opportunity to notice the customers affected by the agreement with updated rate information. Both SECO and PEF sent revised notification letters to the affected customers. In addition to the revised noticing information, this revised recommendation includes an additional discussion regarding the Commission's jurisdiction to approve territorial agreements between and among electric utilities.</u>

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.

Discussion of Issues

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

Recommendation: Yes. The joint petition for approval of the amended territorial agreement between SECO and PEF 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 several ~~two rounds of~~ customer notification letters to their customers during the course of this case. The most recent notifications sent by SECO and PEF on March 2, 2009, and March 3, 2009, respectively (Attachment A), included updated rate information based on SECO's current rates and PEF's projected rate reduction expected to be implemented in April, 2009.[2] No negative responses were received. Sample copies of the letters providing notification to the affected customers were provided to staff ~~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 earlier notifications. 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.

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. See 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 SECO and Progress eliminates existing or potential uneconomic duplication of facilities, and it does not cause a decrease in the reliability of electric service to existing or future ratepayers.

[2] See Docket No. 090001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

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.

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.