

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: May 7, 2009

TO: Office of Commission Clerk (Cole)

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

RE: Docket No. 080724-EU – Joint petition for approval of territorial agreement in Marion County by Ocala Electric Utility and Progress Energy Florida, Inc.

AGENDA: 05/19/09 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\080724.RCM.DOC

Case Background

On December 23, 2008, Ocala Electric Utility (OEU) and Progress Energy Florida, Inc. (PEF) filed a joint petition for approval of a territorial agreement in Marion County. This agreement replaces a previous agreement which was approved in 1998 and originally scheduled to expire on March 30, 2008¹. The current agreement is being modified to supersede all prior territorial agreements. 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.

¹ See Order No. PSC-98-0443-FOF-EU, issued March 30, 1998, in Docket No. 971543-EU, In re: Territorial agreement between Florida Power Corporation and City of Ocala.

Discussion of Issues

Issue 1: Should the Commission approve the proposed territorial agreement between Ocala Electric Utility and Progress Energy Florida, Inc.?

Recommendation: Yes. The proposed territorial agreement between Ocala Electric Utility and Progress Energy Florida, Inc. is in the public interest and should be approved. The effective date of the agreement should be the date the Commission's order approving the agreement becomes final and is no longer subject to judicial review. (Bennett, Simpson, Rieger, Redemann)

Staff Analysis: On December 23, 2008, OEU and PEF filed a joint petition to replace an agreement approved by the Commission in Docket No. 971543-EU which expired on March 30, 2008. Exhibit A to the petition (Attachment A) contains the ten maps which the petitioners state reflect the current territorial agreement between PEF and OEU. Maps 3, 4, 7, 8, 9, and 10 reflect modifications to the service territories shown on maps filed in Docket No. 971543-EU. The proposed territorial agreement between OEU and PEF recognizes that the retail service areas of the parties are contiguous in many places, and that the parties previously entered into a territorial agreement to avoid duplication of generation, transmission, and distribution facilities. The agreement provides that the parties have exclusive authority to furnish retail service for end use inside their respective service territories, and each will not knowingly serve or attempt to serve new customers whose end use facilities are located within the territorial area of the other.

No existing customers will be transferred pursuant to the new agreement, but the proposed agreement recognizes that, in exceptional circumstances, economic constraints or good engineering practices may indicate that service cannot or should not be provided by the party in whose service territory the new customer's end use facilities are located. The other party may agree in writing to provide temporary service to that customer. Temporary service lasting more than one year shall be submitted to the Commission for approval. Also, the proposed agreement allows either party to provide bulk power supply for resale purposes where the purchase for resale may be located.

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 particular instance, modifications were made to the previous agreement to define the proposed territorial boundaries of the parties as shown on maps 3, 4, 7, 8, 9, and 10, which expired on March 30, 2008. The modifications will not require the transfers of any customers; and therefore, no customer notice is required. The agreement will avoid uneconomic duplication of facilities, wasteful expenditures, and provide for the safe and reliable provision of service to

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customers. The agreement supersedes all prior agreements between the parties defining the boundaries of their respective territorial areas within Marion County, Florida, and will be effective for ten years from the date of the Commission's final order approving the agreement.

The proposed territorial agreement between Ocala Electric Utility and Progress Energy Florida, Inc. is in the public interest and should be approved. The effective date of the agreement should be the date the Commission's order approving the agreement becomes final and is no longer subject to judicial review.

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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. (Bennett)

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