

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: November 13, 2012

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (M. Brown) *MCB*
Division of Economics (Garl, Draper) *ED*
Division of Engineering (Lee, Watts) *Watts*
J.W.D.
CKL

RE: Docket No. 120248-EU – Joint petition for approval of territorial agreement between Tampa Electric Company and Peace River Electric Cooperative, Inc.

AGENDA: 11/27/12 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Place this item before Docket No. 120247-EU on the Agenda.

FILE NAME AND LOCATION: S:\PSC\GCL\WP\120248.RCM.DOC

Case Background

On May 22, 1987, the Commission approved a 25-year Territorial Agreement (Existing Agreement) between Tampa Electric Company (TECO) and Peace River Electric Cooperative, Inc. (PRECO)¹ The Existing Agreement expired in May of this year and the parties have been operating under the Existing Agreement on a year-to-year basis.

¹ See Order No. 17585, issued May 22, 1987, in Docket No. 870303-EU, In re: Joint Petition of Tampa Electric Company and Peace River Electric Cooperative, Inc. for Approval of a Territorial Agreement.

DOCUMENT NUMBER-DATE
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Docket No. 120248-EU
Date: November 13, 2012

On October 3, 2012, TECO and PRECO jointly filed a petition requesting Commission approval of a new long-term territorial agreement (Agreement) rather than continuing the year-to-year term of the Existing Agreement.

The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve the joint petition for a territorial agreement between Tampa Electric Company and Peace River Electric Cooperative, Inc.?

Recommendation: Yes. The joint petition of a territorial agreement between Tampa Electric Company and Peace River Electric Cooperative, Inc. is in the public interest and should be approved. (Garl, M. Brown)

Staff Analysis: On October 3, 2012, TECO and PRECO filed a joint petition for approval of a new territorial agreement to replace the Existing Agreement which expired in May 2012. The new Agreement, as well as associated maps and territory description, are included as Attachment A. The parties have been operating on a year-to-year basis since the Existing Agreement expired; however, for long-term planning purposes, both parties wish to have a new long-term agreement. Accordingly, the parties entered into the Agreement as of September 28, 2012.

Pursuant to Section 366.04(2)(d), F.S., the Commission has jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Pursuant to Rule 25-6.0440(2), F.A.C., 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).

The Agreement is essentially a slightly modified version of the Existing Agreement. The maps the parties provided with their joint petition are the same as the maps incorporated in the Existing Agreement and reflect the same boundaries. With minor clarifications and adjustments, the terms and conditions of the Agreement are the same as the Existing Agreement it will supersede. There are no new customer transfers affected by the Agreement, so there was no need to contact any customers to explain differences in rates. Likewise, there are no existing facilities being transferred and there is no reasonable likelihood that the Agreement, in and of itself, will cause a decrease in the reliability of electric service to existing or future customers of either party. The parties state that the Agreement will avoid confusion and potential uneconomic duplication of facilities and that the Agreement is in the public interest.

The Agreement includes a provision that allows for certain variances to the Agreement, subject to Commission approval, such as the one addressed in Docket 120247-EU involving the provision of transmission level service to phosphate load. The Agreement also preserves TECO's right to continue serving transmission level phosphate load in the area of Polk and Hillsborough Counties.

The Agreement will remain in effect for a period of 25 years from the date of Commission approval.

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Based on the above, staff recommends that the new territorial agreement between TECO and PRECO is in the public interest and should be approved.

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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. (M. Brown)

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.

AGREEMENT

THIS AGREEMENT, made and entered into this 28th day of September, 2012, by and between PEACE RIVER ELECTRIC COOPERATIVE, INC., an electric cooperative organized and existing under the laws of the State of Florida (herein called "PRECO"), party of the first part, and TAMPA ELECTRIC COMPANY, a corporation organized and existing under the laws of the State of Florida (herein called "TECO"), party of the second part:

WITNESSETH:

WHEREAS, PRECO, by virtue of Chapter 425, Florida Statutes, and the charter issued to it thereunder, is authorized and empowered to furnish electricity and power to its members, private individuals, corporations and others, as defined by the laws of Florida, and pursuant to such authority, presently furnishes electric power to members and customers in areas of Hillsborough and Polk County, Florida, and elsewhere; and

WHEREAS, TECO, a corporation organized and existing under the laws of the State of Florida, is authorized and empowered to furnish electric power to persons, firms and corporations in areas of Hillsborough and Polk County, Florida, and elsewhere; and

WHEREAS, the respective areas of retail service of the parties hereto are contiguous in many places, with the result that in the future substantial duplication of service facilities will occur unless such duplication is avoided; and

WHEREAS, the Florida Public Service Commission (the "Commission") has previously recognized that any such duplication of said service facilities by the parties results in needless and wasteful expenditures and creates hazardous situations; both being detrimental to the public interest; and

WHEREAS, the parties hereto desire to avoid and eliminate the circumstances giving rise to the aforesaid duplications and possible hazards and to that end desire to operate within delineated retail service areas for the period hereinafter fixed and set forth; and

WHEREAS, in order to accomplish said area allocation, the parties have established boundary lines which delineate the contiguous retail service areas of the parties in portions of Hillsborough and Polk County; and

WHEREAS, the Commission has recognized on numerous occasions the wisdom of retail territorial agreements between competing utilities and has adhered to the general opinion that retail territorial agreements, in the proper circumstances, are advisable and indeed in the public interest.

Exhibit "A"

NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

1. TERRITORIAL BOUNDARY LINE - As used herein, the term "Territorial Boundary Line" shall mean the boundary line depicted on Exhibit "A" which differentiates and divides the PRECO Territorial Area from the TECO Territorial area.
2. PRECO TERRITORIAL AREA - As used herein, the term, "PRECO Territorial Area" shall mean the geographic areas which are not within the TECO Territorial Area, as shown on Exhibit "A."
3. TECO TERRITORIAL AREA - As used herein, the term "TECO Territorial Area" shall mean the geographic areas designated as such on Exhibit "A."
4. TRANSMISSION LINES - As used herein, the term "Transmission Lines" shall mean all transmission lines of either party having a rating of 69 KV or over.
5. DISTRIBUTION LINES - As used herein, the term "Distribution Lines" shall mean all distribution lines of either party having a rating up to but not including 69 KV.
6. DISTRIBUTION CUSTOMERS - As used herein, term "Distribution Customers" shall mean all retail electric consumers served from Distribution Lines.
7. TRANSMISSION CUSTOMERS - As used herein, the term "Transmission Customers" shall mean all retail electric consumers served directly from Transmission Lines or on the low side of a transformer sourced from Transmission Lines.
8. EXTRA-TERRITORIAL CUSTOMERS - As used herein, the term "Extra-Territorial Customers" shall mean those existing distribution customers (on the effective date of this agreement) of either party located within the territorial area of the other.

ARTICLE II

AREA ALLOCATIONS AND NEW CUSTOMERS

1. ALLOCATIONS - The PRECO Territorial Area, as herein defined, is hereby allocated to PRECO as its distribution retail service area for the term hereof; and the TECO Territorial Area, as herein defined, is hereby allocated to TECO as its distribution retail service area for the term hereof, and, except as otherwise specifically provided herein, neither party shall cross any Territorial Boundary Line to serve any Distribution Customer in the territorial area of the other.

2. NEW DISTRIBUTION CUSTOMERS - The parties shall each have the right to provide retail electric service to all new Distribution Customers within their respective territorial areas. Neither party shall after the effective date hereof serve or offer to serve a new Distribution Customer located in the territorial area of the other party unless such other party shall request it to do so, in writing, on an interim basis. Upon receipt of such written request the other party will within 15 days of receipt of said request respond to the requesting party whether or not they are willing to serve the new Distribution Customer. Any such interim service must be preapproved by the Commission. If such request for service is completed by the other party, the party providing interim service shall be deemed to do so only on behalf of the requesting party, who shall retain all rights to serve the new Distribution Customer to the same extent as if it had provided service in the first instance. When the other party makes its reply to the requesting party accepting responsibility to provide the new Distribution Customer interim service, they will include in such reply the estimated cost for improvements to their system needed to provide service to the new Distribution Customer. Said estimated cost is to be paid to the party prior to the other party extending interim service to the new Distribution Customer.

Upon subsequent written request by the requesting party that it elects to provide service to the new Distribution Customer and pay the cost of removal to the other party, such other party shall cease providing interim service and thereafter service shall be furnished to the new Distribution Customer by the requesting party.

The parties shall report to the Commission on an annual basis the status of such interim service and when the interim service is concluded and service is taken over by the party in whose service territory the new Distribution Customer is located.

Notwithstanding the foregoing, each party reserves the right to refuse to serve a new Distribution Customer outside its respective territorial area, even though a written request to do so has been made by the other party.

3. TRANSMISSION CUSTOMERS - The parties, by execution of this agreement, acknowledge that TECO presently provides retail electric service to certain phosphate customers and other customers served at transmission voltage (69 KV and above) in the area of Polk and Hillsborough Counties reserved for PRECO (the "PRECO Polk/Hillsborough Area."). TECO shall continue to serve these existing customers and any new applications for transmission voltage service to these customers. TECO shall serve any new applications for transmission voltage service to phosphate and phosphate industry related load, including but not limited to phosphate mining, associated pumping and other load associated with linear facilities that are part of such operations, phosphate beneficiation plants, phosphate washers, phosphate industry chemical plants, and other plants and loads related to providing service to the phosphate industry, in the PRECO Polk/Hillsborough Area. PRECO shall serve any new applications for transmission voltage service that is not phosphate or phosphate industry related load in the PRECO Polk/Hillsborough Area.

In addition, the parties have entered into certain agreements for variances to this Agreement ("Variances") and may agree to extend such Variances or enter into other Variances in the future. It is the intent of the parties that the terms of existing Variances (and extended or future Variances that have been approved by the Commission) shall control the parties' obligations regarding the subject matter thereof, rather than the terms of this Agreement.

ARTICLE III

OPERATION AND MAINTENANCE

1. RETENTION OF EXTRA-TERRITORIAL CUSTOMERS - Each of the parties hereto shall continue to serve their respective Extra-Territorial Customers as they presently exist, or until such time as they are transferred to the party in whose territorial area they reside.

2. FACILITIES TO REMAIN - All Generating Plants, Transmission lines, Substations, Distribution Lines and related facilities now or hereafter constructed and/or used by either party to serve any Extra-Territorial Customer shall be allowed to remain where situated and shall not be subject to removal, as long as such facility serves any useful purpose in maintaining the integrity of the electrical system of the party.

PROVIDED, HOWEVER, that each party shall operate and maintain said lines and facilities in such manner as to minimize any interference with the operations of the other party.

ARTICLE IV

APPROVALS REQUIRED

1. FLORIDA PUBLIC SERVICE COMMISSION - The provisions of this Agreement are subject to the regulatory authority of the Florida Public Service Commission, and the appropriate approval by that body of the provisions of this Agreement shall be a prerequisite to the validity and applicability hereof and neither party shall be bound hereunder until that approval has been obtained.

ARTICLE V

DURATION

1. This Agreement shall continue and remain in effect for a period of twenty five (25) years from the effective date hereof, which shall be deemed to be the date of approval by the Florida Public Service Commission as provided for in Article IV above. After the initial twenty five (25) year period, either party may terminate this Agreement by giving the other party a one (1) year notice prior to the desired termination date. This Agreement shall continue from year to year until terminated as provided above.

ARTICLE VI

CONSTRUCTION OF AGREEMENT

1. INTENT AND INTERPRETATION- It is hereby declared to be the purpose and intent of this Agreement, in accordance with which all provisions of this Agreement shall be interpreted and construed, to eliminate and avoid the needless and wasteful expenditures and potentially hazardous situations which may otherwise result from unrestrained competition between the parties operating in contiguous and overlapping distribution service areas.

2. This AGREEMENT shall apply only to the provision of retail electric service by the parties hereto and shall have absolutely no application or effect with respect to either party's sale of "bulk power supply for resale", which is defined to mean all arrangements for supply of electric power in bulk to any person for resale, including but not limited to, the taking of utility responsibility for supply of firm power in bulk to fill the full requirements of any person engaged or to be engaged in the distribution of electric power at retail, and/or interconnection with any persons for the sale or exchange of emergency power, economy energy, deficiency power, and such other forms of bulk power sales or exchanges for resale made for the purpose or with the effect of achieving an overall reduction in the cost of providing electric power supply.

ARTICLE VII
MISCELLANEOUS

1. **NEGOTIATIONS** - Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Agreement, the only ones agreed upon are those set forth herein, and no alteration or modification of this Agreement shall be binding upon either of the parties hereto unless the same shall be in writing and signed by both parties and approved in the manner set forth in Article IV above.

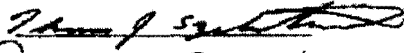
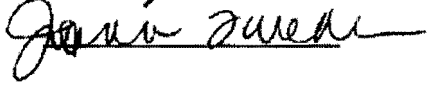
2. **SUCCESSORS AND ASSIGNS** - Nothing in this Agreement, expressed or implied, is intended nor shall it be construed to confer upon or give to any person or corporation, other than the parties hereto, any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding only upon the parties hereto and their respective representatives, successors and assigns.

3. **WAIVERS** - The failure of either party to enforce any provision of this AGREEMENT in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

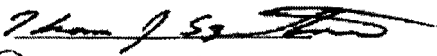
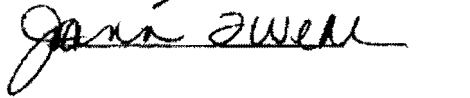
4. **NOTICES** - Notices given hereunder shall be deemed to have been given to PRECO if served by United States mail, postage prepaid to: Manager, PEACE RIVER ELECTRIC COOPERATIVE, INC., P.O. Box 1310, Wauchula, Florida 33873; and to TECO if served by United States mail, postage prepaid to: Regulatory Affairs; TAMPA ELECTRIC COMPANY, P.O. Box 111, Tampa, Florida 33601. The addresses to which such notices shall be mailed may be, at any time, changed by designating such new address and giving notice thereof in the manner as herein provided.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate, by PRECO in its name by its General Manager-CEO, and by TECO in its name by its Vice President, on the day and year written by each execution below; and one of the executed copies has been delivered to each of the parties hereto.


Witnesses:

Witnesses:

TAMPA ELECTRIC COMPANY

By: 
its Vice President

PEACE RIVER ELECTRIC
COOPERATIVE, INC.

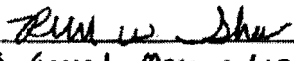
By: 
its General Manager / CEO

EXHIBIT A

**TERRITORIAL BOUNDARY BETWEEN TAMPA ELECTRIC COMPANY
And
PEACE RIVER ELECTRIC COOPERATIVE, INC.
As Indicated on the Attached Maps of Hillsborough And Polk County**

HILLSBOROUGH COUNTY

Starting with the intersection of the Manatee-Hillsborough County lines with Tampa Bay, proceeding east to a section line between Sections 33 and 34, Range 19 East, Township 32 South; thence north to the Little Manatee River; thence follow the Little Manatee River to its intersection with said Manatee-Hillsborough County Line; thence east to the section line between Sections 34 and 35, Range 21 East, Township 32 South, thence north along said section line to the northwest corner of Section 2, Range 21 East, Township 32 South; thence east along the township line between Township 31 South and Township 32 South to the line between Hillsborough and Polk County.

POLK COUNTY

Beginning at the northwest corner of Section 6, Township 32 South, Range 23 East, run east 2.25 miles, thence south 1.5 miles to the center line of Section 9, Township 32 South, Range 23 East, thence west 2.25 miles to the Hillsborough-Polk County line, thence south along the Hillsborough-Polk County line to Four Corners, thence east 9.5 miles along the Polk-Hardee County line, to the southwest corner of the southeast 1/4 of Section 34, Township 32 South, Range 24 East, thence north along the north-south center lines of Sections 34, 27, 22, 15, 10 and 3 of Township 32 South and Range 24 East, continue north along the north-south center lines of Sections 34, 27, 22, 15, 10, and 3 of Township 31 South, Range 24 east, continue north along the north-south center lines of Sections 34, 27, 22, 15 and 10 of Township 30 South, Range 24 East, to the Point of Termination at the mid-point of the north boundary line of Section 10, Township 30 South, range 24 East.

