

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:** November 13, 2014

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

**FROM:** Division of Economics (Garl) *J.W.D.*  
Office of the General Counsel (Villafrate) *J.C.*

**RE:** Docket No. 140179-EU – Joint petition for approval of amendment to territorial agreement between the City of Tallahassee and Talquin Electric Cooperative, Inc.

**AGENDA:** 11/25/14 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brisé

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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## Case Background

On September 11, 2014, the City of Tallahassee (City) and Talquin Electric Cooperative, Inc. (Talquin) filed a joint petition for approval of an amendment to their existing territorial agreement (agreement). The Commission approved the 30-year agreement in 1990, resolving a litany of disputes between the City and Talquin dating back to 1970.<sup>1</sup> The agreement requires Commission approval of any amendment to the agreement.

The agreement established service area boundaries, transfer of customers and facilities, and service to remaining and new customers. Specifically, the agreement divided Leon County

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<sup>1</sup> See Order Nos. 22506 and 22506-A, issued February 7, 1990, and February 20, 1990, respectively, in Docket Nos. 881602-EU and 890326-EU, In re: Petition of Talquin Electric Cooperative, Inc. to resolve territorial disputes with City of Tallahassee and Petition of City of Tallahassee for interpretation of its rights and duties pursuant to Chapter 366, F.S., respectively.

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into two electric service area rings, Zone A, the inner ring, to be served by the City, and Zone B, the outer ring, to be served by Talquin. The agreement also provides for the transfer of facilities from one zone to the other over the first 15 years of the agreement. The proposed amendment primarily addresses the transfer of the remaining facilities as not all facility transfers contemplated in the agreement were completed within the 15-year timeframe. 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 proposed amendment to the existing territorial agreement between the City and Talquin?

**Recommendation:** Yes. The amendment to the territorial agreement between the City and Talquin will not cause a detriment to the public interest; therefore, it should be approved. (Garl)

**Staff Analysis:** Pursuant to Section 366.04(2)(d), F.S., 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 (F.A.C.), 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 Beach v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

The City's and Talquin's joint resolution states a three-fold purpose for the proposed amendment to the agreement. First, the utilities wish to complete the transfer of facilities contemplated by the agreement. Second, the parties expanded the portion of the agreement dealing with solicitation for the transfer of customers. Finally, the amendment extends the term of the agreement until March 31, 2050. The amendment does not alter the existing boundaries or result in customer transfers.

#### Transfer of facilities

The utilities explained that the delay in service facility transfers contemplated in the agreement has centered around the valuation of the facilities being transferred, as the City and Talquin could not agree on the value of certain facilities. The agreement contains the methodology to price facilities which appears to resolve the previous valuation disagreements between the City and Talquin. In response to a staff data request, the utilities jointly stated that the facility transfers of Talquin's facilities to the City scheduled from 1989 through 1992 were completed. Portions of the transfers from Talquin to the City scheduled for 1993, 2000, 2001, and 2002 were also completed. There have been no transfers of City facilities to Talquin to date.

To address the remaining transfers, the amendment replaces the transfer of facilities schedule (Section 5.1) and procedures for transfer (Section 5.2) contained in the existing agreement with new Sections 5.1 and 5.2. The new transfer of facilities schedule provides a modified approach to describing the location of the facilities to be transferred and states the intent to have all service facility transfers completed no later than December 31, 2019.

Section 5.2, procedures for transfer, adds specificity to the value of the service facilities. For the transfer of 1993/1994 Talquin service facilities to the City, the City will pay Talquin the lump sum of \$1.4 million. Going forward, all other non-substation facilities will be valued by multiplying the total number of service points (i.e., customers) served by the facilities being

transferred by \$2,500. The amounts were derived based on current replacement cost of the facilities less depreciation.

For substation facilities, the amendment states that payment will also be calculated using the current replacement cost less depreciation methodology. When the utilities cannot agree on the valuation of facilities to be transferred, the amendment directs to the appraisals and arbitration procedures already contained in the agreement.

Staff notes that reference is made in the agreement and in the amendment to “fair market value” for valuation of equipment and materials that have salvage values. Fair market value, however, is not defined. In approving the existing agreement the Commission addressed its limitation on asset valuation:<sup>2</sup>

Were the Agreement between investor-owned utilities which are subject to rate base regulation, we would, in performing our responsibility to ratepayers, look with more specificity at the methodology used to value facilities subject to transfer. Because the Agreement is between a cooperative and a municipal-owned utility over which we have no ratemaking jurisdiction, our role is not to pass on the wisdom of the elected methodology, but to assure the methodology used does not adversely affect the public interest.<sup>3</sup>

Staff believes the same limitation applies to the proposed amendment. Staff also believes that since the amendment includes agreed-upon amounts for payments of facilities, the public interest is not adversely affected, and the transfer process will not cause a decrease in the reliability of electrical service to the existing or future ratepayers.

#### Solicitation of customers

The utilities explained that the proposed amendment does not change the transfer of customers provisions in the existing agreement. Existing customers of one utility located in an area served by the other utility will continue to be transferred on a voluntary basis or as ownership changes as specified in the agreement.

The proposed amendment only addresses details for the solicitation of voluntary customer transfers. Restrictions on solicitations include frequency of contact, prohibition of incentives to transfer, ceasing solicitations upon customer request, providing information about the other utility, and sharing the solicitation materials and process with the other utility.

#### Term extension

The existing agreement, approved by the Commission on February 7, 1990, was for a term of 30 years. The proposed amendment extends the term by an additional 30 years until March 31, 2050.

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<sup>2</sup>See Order No. 22506, issued February 7, 1990, in Docket No. 881602-EU, In re: Petition of Talquin Electric Cooperative, Inc. to resolve territorial disputes with City of Tallahassee at p. 4.

<sup>3</sup>Id.

Staff believes the mutually agreed upon extension of the term of the agreement demonstrates that the past discord between the City and Talquin has been resolved, and that both parties are productively working together in their and their customers' best interests.

Conclusion

Staff believes that the proposed amendment to the existing agreement is in the best interests of the City, Talquin, and their respective customers. Furthermore, the amendment to the territorial agreement between the City and Talquin will not cause a detriment to the public interest; therefore, it should be approved.

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

**Recommendation:** Yes. If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Villafrate)

**Staff Analysis:** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.