



## Public Service Commission

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DIVISION OF RECORDS AND REPORTING

**DATE:** MARCH 22, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF LEGAL SERVICES (ISAAC) *RNF RVEB WBM*  
DIVISION OF SAFETY & ELECTRIC SERVICES (BREMEN, LEE) *JDJ*

**RE:** DOCKET NO. 001707-EU - JOINT APPLICATION FOR APPROVAL OF  
TRANSFER OF CUSTOMERS BY FLORIDA POWER & LIGHT COMPANY AND  
PEACE RIVER ELECTRIC COOPERATIVE, INC.

**AGENDA:** 04/03/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\001707.RCM

### CASE BACKGROUND

Pursuant to Section 366.04(2)(d), Florida Statutes, the Commission has jurisdiction "to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction." As an exercise of its jurisdiction, the Commission approved Florida Power & Light Company (FPL) and Peace River Electric Cooperative, Inc.'s (PRECO) original territorial agreement by Order No. 18332, in Docket No. 870816-EU, issued October 22, 1987. The territorial agreement states in part:

Section 6. Elimination of Overlapping Services. FPL and PRECO agree to use reasonable efforts to eliminate, during the term of this Agreement, electric services by either party in the retail service areas of the other party. This effort shall include the identification of potential customer and facilities transfers which would eliminate duplication of facilities or avoid hazardous

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conditions. Any transfers shall be subject to review and approval by the Florida Public Service Commission.

Pursuant to this clause, FPL and PRECO filed an Application for Transfer of Customers on November 15, 2000. The request seeks approval of a transfer of 298 PRECO customers to FPL.

### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant Florida Power & Light Company (FPL) and Peace River Electric Cooperative's (PRECO) Application for Transfer of Customers?

**RECOMMENDATION:** Yes. The Application for Transfer of Customers should be approved. The proposed transfer of customers is in the public interest.

**STAFF ANALYSIS:** In interpreting the Commission's authority to review territorial agreements, the Florida Supreme Court has held the appropriate standard is the "no-detriment test." Utilities Comm'n of City of New Smyrna v. FPSC, 469 So. 2d 731 (Fla. 1985). The Court stated that PSC approval should be based on the effect the territorial agreement will have on all customers in the territory, not just whether transferred customers will benefit. See id. at 732. "For PSC approval, any customer transfer in a proposed territorial agreement must not harm the public." Id. at 733.

Rule 25-6.0440(2), Florida Administrative Code, describes the standards of approval of territorial agreements as follows:

(2) Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:

- (a) the reasonableness of the purchase price of any facilities being transferred;
- (b) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing

- or future ratepayers of any utility party to the agreement; and  
(c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

The above standards were adopted to ensure that the general body of ratepayers is not harmed by the approval of territorial agreements.

On November 15, 2000, Florida Power & Light Company (FPL) and Peace River Electric Cooperative (PRECO) filed an Application for Transfer of Customers (Application), in accordance with Section 6 of their territorial agreement. Within Section 6 of the 1987 agreement, FPL and PRECO agreed to use reasonable efforts to eliminate service by one utility in the service area of the other utility.

In the Application, the petitioners allege that the transfer will eliminate PRECO's electric service to the identified area and the customers currently served by PRECO in FPL's service area, but will not result in a decrease in electric reliability to the existing or future ratepayers of either utility. Attachment A to the petition identifies the 298 PRECO accounts (280 residential and 18 commercial) which are anticipated to be transferred to FPL within one year of Commission Approval.

PRECO sent a form letter, dated January 11, 2001, to the affected customers. The letter informed customers that their service would be transferred to FP&L with the exact date for transfer of each particular account to be determined following Commission approval of the transfer. This letter also informed the customers of the difference in rates between the utilities for their class of service and included telephone numbers of company contacts. PRECO indicated that it received six inquiries to the letter regarding the time of the transfer, FP&L's deposit, and draft billing.

Any existing customer deposits held by PRECO will be refunded to customers, according to the Application. In addition, the Application indicated that the initial deposits to FPL will be no greater than the customers' previous deposit with PRECO and can be paid over a three-month period.

Provisions in the agreement also give FPL the right to purchase any existing PRECO facilities at current net book value; PRECO will be responsible for removal of facilities not purchased by FPL. The agreement also states that any major repairs due to

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damage from hurricane, tropical storm, tornado, etc., during the transfer period will be repaired by FPL or FPL will be billed for repairs by PRECO. The agreement also states that if relocation is required due to government mandate of any existing PRECO facilities agreed to be transferred to FPL, PRECO shall timely notify FPL by letter to allow FPL to carry out the relocation. Moreover, FPL's purchase right includes any associated easements, street light contracts, franchise agreements, and joint use agreements.

Staff recommends that the Application for Transfer of Customers submitted by FPL and PRECO should be approved. The Application is consistent with the intent of the 1987 territorial agreement approved by the Commission in Order No. 18322 to use reasonable efforts to eliminate service by one utility in the service area of the other utility. The Application is in the public interest and is consistent with the Commission's goal to eliminate all existing and potential uneconomic duplication of electrical facilities in the State of Florida.

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

**RECOMMENDATION:** Yes, if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

**STAFF ANALYSIS:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.