

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for) DOCKET NO. 930360-EU
approval of territorial) ORDER NO. PSC-93-0998-FOF-EU
agreement between Florida Power) ISSUED: July 9, 1993
Corporation and Sumter Electric)
Cooperative, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

The Commission is empowered to approve territorial agreements between and among rural electric cooperatives, municipal, electric utilities, and other electric utilities under its jurisdiction, pursuant to Subsection 366.04(2)(d), Florida Statutes.

On April 6, 1993, Sumter Electric Cooperative, Inc. (SECO) and Florida Power Corporation (FPC) filed a joint petition for approval of a territorial agreement (agreement). This agreement amends an existing territorial agreement, which the Commission approved by Orders Nos. 10675 and 12269, in 1982 and 1983 respectively. The agreement modifies the territorial boundary between SECO and FPC's Mid-Florida Division retail service areas in Lake County. This agreement is an effort to more accurately define portions of the parties' respective service areas.

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The agreement, if approved, will remain in effect for 15 years from its initial approval and will continue in effect as provided for in the agreement. The agreement including its terms and conditions is shown as Appendix A to this Order.

The agreement represents a continuing effort by the parties to minimize cost to their respective customers by avoiding unnecessary and uneconomic duplication of facilities. It contemplates the transfer of 976 SECO customer accounts to FPC.

According to Section 2.3 of the agreement, FPC and SECO have agreed that under exceptional circumstances, economic constraints or good engineering practices and upon written request, the requested utility may serve a customer inside the territory of the other utility on a temporary basis. Our Staff suggests and we agree, that if the temporary service last or is expected to last for more than one year, then that service will have to be approved by this Commission. The parties should be reminded that as they are seeking approval of this agreement, any change to the agreement in the future is subject to Commission prior approval.

This agreement does not, and is not intended to prevent either party from providing bulk power supply to wholesale customers for resale wherever they may be located.

Having reviewed the joint petition and the agreement and as modified herein, the Commission finds that it satisfies the provisions of Subsection 366.04(2)(d), Florida Statutes, and Rule 25-6.0440, Florida Administrative Code. We also find that the agreement satisfies the intent of Subsection 366.04(5), Florida Statutes to avoid further uneconomic duplication of generation, transmission, and distribution facilities in the State. We therefore, find that the agreement is in the public interest and should be approved.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the joint petition for approval of territorial agreement between Florida Power Corporation and Sumter Electric Cooperative, Inc., in Lake County, Florida is granted as modified in the body of this Order. It is further

ORDERED that the territorial agreement is incorporated in this Order as Appendix A. It is further

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ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this 9th day of July, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
MRC:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on July 30, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

A G R E E M E N T

Section 0.1 THIS AGREEMENT, made and entered into this 15th day of February, 1993 by and between the SUMTER ELECTRIC COOPERATIVE, INC., (the "COOPERATIVE"), and FLORIDA POWER CORPORATION, (the "COMPANY") each of which are corporations organized and existing under the laws of the State of Florida:

W I T N E S S E T H:

Section 0.2 WHEREAS, the COOPERATIVE, by virtue of legislative authority, is authorized and empowered to furnish electricity and power to its members, private individuals, corporations, and others, and pursuant to such authority, presently furnishes electricity and power to customers located in certain areas of Lake County, Florida, and elsewhere; and

Section 0.3 WHEREAS, the Company, by virtue of its Charter, is authorized and empowered to furnish electricity and power to persons, firms and corporations throughout the State of Florida and presently furnishes electricity and power to customers in certain areas of Lake County, Florida, and elsewhere; and

Section 0.4 WHEREAS, the respective areas of retail service of the parties hereto are contiguous in many places with the result that duplication of service facilities may occur in the future unless such duplication is precluded by virtue of this Agreement; and

Section 0.5 WHEREAS, the Florida Public Service Commission has previously recognized that any duplication of said service facilities results in needless and wasteful expenditures and

creates hazardous situations, both being detrimental to the public interest; and

Section 0.6 WHEREAS, the parties hereto desire to avoid and eliminate the circumstances giving rise to the aforesaid potential hazards and duplications and toward that end have established the Territorial Boundary Line to delineate their respective retail territorial areas in certain areas of Lake County; and

Section 0.7 WHEREAS, the Florida Public Service Commission is empowered by the legislature of the State of Florida, pursuant to F.S. 366.04(2)(d), to approve territorial agreements and the Commission has recognized on numerous occasions the wisdom of retail territorial agreements between electric utilities and has adhered to the general opinion that retail territorial agreements, when properly presented to the Commission, in the proper circumstances, are advisable and indeed in the public interest;

Section 0.8 WHEREAS, in order to accomplish these goals, COOPERATIVE and COMPANY has previously entered into two territorial agreements, the first dated July 6, 1981 and approved by the Florida Public Service Commission on March 30, 1982 and the second dated March 22, 1983 and approved by the Florida Public Service Commission on July 18, 1983, and;

Section 0.9 WHEREAS, changing circumstances warrant certain modifications to the previous COMPANY and COOPERATIVE agreement dated March 22, 1983 and approved by the Florida Public Service Commission on July 18, 1983 and the parties believe that a new

agreement encompassing these terms, without modifying the territorial agreement dated July 6, 1981, would be desirable;

Section 0.10 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 hereto, subject to and upon the terms and conditions herein set forth, do hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Territorial Boundary Line. As used herein, the term "Territorial Boundary Line" shall mean the boundary lines so labeled on the maps attached hereto as Exhibit "A" designating the boundary between the COOPERATIVE Territorial Area, as defined in Section 1.2, and the COMPANY Territorial Area, as defined in Section 1.3. Any depiction of such boundary line is merely an approximation for illustrative purposes.

Section 1.2 COOPERATIVE Territorial Area. As used herein, the term "COOPERATIVE Territorial Area" shall mean the area so labeled on Exhibit "A" in Lake County, Florida.

Section 1.3 COMPANY Territorial Area. As used herein, the term "COMPANY Territorial Area" shall mean the area so labeled on Exhibit "A" in Lake County, Florida.

Section 1.4 Point of Use The point of use and not the point of connect or metering shall be determinative as to who shall be the provider of electric service under this Agreement.

Section 1.5 Transmission Lines. As used herein, the term "Transmission Lines" shall mean all electric lines of either party having a rating of 69 Kv or greater.

Section 1.6 Distribution Lines. As used herein, the term "Distribution Lines" shall mean all electric lines of either party having a rating up to but not including 69 Kv.

Section 1.7 New Customers. As used herein, the term "new customers" shall mean those customers applying for electric service during the term of this agreement at a point of use in the territorial area of either party which has not previously been served by either utility.

Section 1.8 Extra-territorial Customers. As used herein, the term "Extra-territorial Customers" shall mean those customers whose points of use are in the Territorial Area of one party but which are receiving service from the other party on the effective date of this Agreement.

Section 1.9 Existing Customer. As used herein, the term "Existing Customer" shall mean any person receiving retail electric service from either COOPERATIVE or COMPANY at the location for which the service is existent on the effective date of this Agreement. The term Existing Customer shall include the widow, widower, or divorced spouse of an EXISTING CUSTOMER who received retail electric service at the same location as of the effective date of this Agreement.

Section 1.10 Customer Groups I and II

Customer Group I shall include all Extra-Territorial Customers being served by COOPERATIVE prior to the effective date of this Agreement listed in Section I in the Customer Lists in Exhibit "B" of this Agreement. This Customer Group shall include both Existing Customers who initially received electric service from COOPERATIVE prior to the effective date of the Agreement approved by the Florida Public Service Commission on July 18, 1983 and those Existing Customers who started receiving from COOPERATIVE after that date.

Customer Group II shall include all Extra-Territorial Customers being served by COMPANY prior to the effective date of this Agreement listed in Section II of the Customer Lists in Exhibit "B" of this Agreement.

Section 1.11 Change in Use. As used herein, the term "Change in Use" shall mean: (1) A change in the use of real property from residential to nonresidential or nonresidential to residential; (2) a change in the use of real property that would normally require a reclassification of service under the applicable tariff of either party; (3) a change in the use of real property that results in the addition of three or more meters during the term of this Agreement; or (4) a change in the use of real property by reason of a change in the ownership or occupancy thereof to any person other than a

widow, widower, or divorced spouse of an Existing Customer who received electric service at the same location.

Section 1.12 Service Facilities. As used herein, the term "Service Facilities" shall mean all easements, poles, lines, transformers, together with appurtenant and related equipment and facilities, used or required solely to furnish electricity to Extra-territorial Customers. Service Facilities specifically shall not include meters.

Section 1.13 Consulting Engineer As used herein, the term "Consulting Engineer" will mean a person or firm registered in the State of Florida as a professional engineer.

ARTICLE II

RETAIL ELECTRIC SERVICE

Section 2.1 In General. Except as otherwise specifically provided herein, the COOPERATIVE shall have the exclusive authority to furnish retail electric service to all new customers within the COOPERATIVE Territorial Area and the COMPANY shall have the exclusive authority to furnish retail electric service to all new customers in the COMPANY Territorial Area. The Territorial Boundary Line shall not be affected by any change that may occur in the corporate limits of any municipality lying within the COOPERATIVE Territorial Area or the COMPANY Territorial Area.

Section 2.2 In order to minimize inconvenience to the Extra-territorial Customers, COOPERATIVE may continue to serve those Extra-territorial Customers listed in Section I of Exhibit "B" even though the location at which they are using electric

service shall be located in the COMPANY Territorial Area effective upon the approval of this Agreement by the Commission. The Parties agree that such Extra-territorial customers shall be transferred as soon as is reasonably practicable, taking into account economics, good engineering practices, and the efficient operation of the affected utility but no later than ninety (90) days after approval of this Agreement by the Florida Public Service Commission.

Section 2.3: Service to New Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any new customer whose end-use facilities are located within the Territorial Area of the other party, except as specifically provided in this Section 2 of the Agreement.

The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a customer's end-use facilities either cannot or should not be immediately served by the Party in whose Territorial Area they are located. In such instances, upon written request by the party in whose Territorial Area the end-use facilities are located, to the other party, the other party may agree in writing to temporarily provide service to such customer's end-use facilities.

Section 2.4: Transfer of Facilities Upon the transfer of any customer or customers pursuant to this Agreement, COOPERATIVE shall sell and COMPANY party shall purchase the Service Facilities of COOPERATIVE previously used to serve the transferred customer or customers for the replacement cost of such facilities, less depreciation calculated on a thirty year (30) straight line basis.

With each such transfer, the transferring party will make, execute, and deliver to the receiving party a conveyance, deed or other instrument of transfer as is appropriate in order to convey all rights, title, and interest of the transferring party in any facilities, rights-of-way, easements, road permits or other rights necessary to serve the transferred customers.

Section 2.5 REA and CFC Approval Any property transfer from COOPERATIVE to COMPANY is subject to approval by the United States of America Department of Agriculture, Rural Electrification Administration and the Cooperative Financing Corporation.

Section 2.6 Compensation For Lost Revenues All EXISTING CUSTOMERS subject to transfer in Sections 2.2 together with their associated service facilities shall be transferred in the following matter and for the following considerations:

a) Customer Group I -- Within thirty (30) days of the transfer of the Existing Customers in Customer Group I, COMPANY shall pay to COOPERATIVE all payments due under Section 2.4 of this Agreement for all Service Facilities associated with these transferred customers. In addition, COMPANY shall pay to COOPERATIVE an amount equal to the cost of lost revenues as calculated in Section 2.6 (e) and (f) of this Agreement for all Existing Customers who initiated electric service with COOPERATIVE prior to the effective date of the Agreement approved by the Florida Public Service Commission on July 18, 1983. COMPANY shall make no payments for the cost of lost revenues for any Customer

Group I customers who initiated electric service with COOPERATIVE after that date.

b) Customer Group II -- COMPANY shall pay to COOPERATIVE an amount equal to the cost of lost revenues as calculated in Section 2.6 (e) and (f) of this Agreement for all Existing Customers included in Customer Group II as defined by this Agreement. COMPANY shall make no payments for Service Facilities associated with these customers as these Service Facilities are currently owned by COMPANY.

c) Time of Payment At the time of the transfer of a Customer and their associated service facilities, COMPANY shall pay to COOPERATIVE in cash within thirty (30) days of the transfer, all amounts owed for payments for Service Facilities and for costs of Lost Revenues.

d) Cost of Facilities If the cost of facilities are to be paid, the receiving Party shall compensate the Transferring party an amount based upon the then Replacement Cost (new) less depreciation calculated on a thirty (30) year straight line basis from the date of the installation of the service facilities.

e) Under circumstances where the cost of lost revenues is to be paid, the receiving party shall pay to the transferring party for each service transferred an amount equal to the product of the

transferring party's gross charge per kilowatt hour (which amount includes the Customer charge) for service to such locations at the time of transfer multiplied by the total kilowatt hours used at such location for either the immediately preceding twelve (12) month period in which the account was served at the service location, or a twelve (12) month period annualized in the event less than twelve months were billed during the preceding year.

f) In addition to compensation due, the amount to be paid for street and security lights located in the area of Customer Group I transferred shall be an amount equal to the total billings for such security lights for the immediately preceding twelve (12) month period in which the account was served at the service location, or a twelve (12) month period annualized in the event less than twelve (12) months are billed during the preceding year.

g) With each transfer, the transferring party will make, execute, and deliver to the receiving party a conveyance, deed or other instrument of transfer as is appropriate in order to convey all rights, titles and interests of the transferring party in any facilities, rights-of-way, easements, road permits, or other rights to the receiving party.

Section 2.7 Customer Deposits The parties intend that transferred customers suffer no hardship due to different deposit requirements required by each party. When possible, COOPERATIVE will refund the deposit of a customer to the customer. COMPANY will then bill the customer a deposit no greater than the deposit previously charged by the other party. When the existing deposit

is less than normally required by COMPANY, COMPANY will accept the amount of customer's previous deposit as adequate.

Section 2.8 Preservation of Tax Exempt Status

Notwithstanding the provisions of Section 2.1 - 2.4 above, it is understood that the COOPERATIVE must furnish its service mainly to its members in order to preserve its tax exempt status. Therefore, unless the proposed recipient of electric service will join the COOPERATIVE, the COOPERATIVE may decline to provide electric service, when in the judgment of the COOPERATIVE, the income produced thereby would cause non-member income to exceed the percentage of gross income which the COOPERATIVE may accept from non-members and maintain its tax exempt status.

ARTICLE III

BULK POWER SUPPLY

Section 3.1: Bulk Power for Resale. Nothing herein shall be construed to prevent either party from providing a bulk power supply for resale purposes as defined in the Final Judgment dated August 19, 1971 in United States of America v. Florida Power Corporation and Tampa Electric Company, United States District Court for the Middle District of Florida, Case No. 68-2 7-Civ-T ("the Final Judgment"), regardless of where the purchaser for resale may be located. Further, no other section or provision of this Agreement shall be construed as applying to a bulk power supply for resale purposes as defined in the Final Judgment (attached as Exhibit C).

ARTICLE IV

OPERATION AND MAINTENANCE

Section 4.1 Facilities to Remain. No generating plant, transmission line, substation or related equipment shall be subject to transfer or removal hereunder; PROVIDED, HOWEVER, that each party shall operate and maintain its lines and facilities in such a manner as to minimize any interference with the operations of the other party.

Section 4.2 COOPERATIVE Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of the COOPERATIVE to serve any facility of the COOPERATIVE located in the Company Territorial Area; provided, however, that the COOPERATIVE shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of the Company in the Company Territorial Area. COOPERATIVE specifically reserve the right to serve the COOPERATIVE's District Office currently located in Groveland, Florida.

Section 4.3 Company Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of the Company to serve any facility of the Company located in the COOPERATIVE Territorial Area; provided, however, that the Company shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of the COOPERATIVE in the COOPERATIVE Territorial Area.

Section 4.4 Resolution of Facilities Issues If the parties are unable to agree on the calculation of any payment for facilities pursuant to Section 2.4 of this Agreement, or are unable to agree as to any technical requirement of the contract, including any provision requiring conformance to sound and economical engineering and operating practices, the parties shall agree upon and appoint a Consulting Engineer to resolve the dispute. The parties shall share equally the costs of the Consulting Engineer's fees and expenses for services rendered in connection with this Agreement. The compensation to be paid to the Consulting Engineer for services rendered in connection with this Agreement shall be such fees and expenses as are usually applicable to services of a similar nature.

ARTICLE V

PREREQUISITE APPROVAL

Section 5.1: Commission Approval. The provisions and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by that body of the provisions of this Agreement shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until that approval has been obtained, and the date of the Commission's order, if any, granting initial Commission approval of this Agreement shall be deemed to be the effective date of this Agreement. Any proposed modification to this 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 this Agreement or the Parties' performance of this Agreement.

Section 5.2 Liability in the Event of Disapproval. In the event approval pursuant to Section 5.1 is not obtained, neither party will have any claim against the other arising under this Agreement.

Section 5.3: Supersedes Prior Agreements. Upon its approval by the Commission, this Agreement shall be deemed to specifically supersede the prior agreement between the Parties dated March 22, 1983 and approved by the Florida Public Service Commission on July 18, 1983 defining the boundaries of their respective Territorial Areas within certain areas of Lake County, Florida. This Agreement shall not supersede the prior agreement between the Parties dated July 6, 1981 and approved by the Florida Public Service Commission on March 30, 1982

ARTICLE VI

DURATION

Section 6.1 This Agreement shall continue and remain in effect for a period of fifteen (15) years from the date of the Florida Public Service Commission's initial Order approving this Agreement. This Agreement shall automatically be extended for a period of ten (10) years unless either party gives notice of intent to terminate at least one (1) year prior to the date of termination herein.

ARTICLE VII

CONSTRUCTION OF AGREEMENT

Section 7.1 Other Electric Utilities. Nothing in this Agreement is intended to define, establish or affect in any manner the rights of either party hereto relative to any other electric utility not a party to this Agreement with respect to the furnishing of retail electric service.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 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, modification, enlargement or supplement to this Agreement shall be binding upon either of the parties hereto unless the same shall be in writing, attached hereto, signed by both parties, and approved by the Florida Public Service Commission.

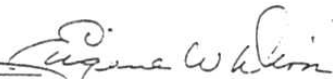
Section 8.2 Successors and Assigns. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon or give to any person or corporation, other than the parties hereto, any right, remedy or claim under or by reason of this Agreement or any provision or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding

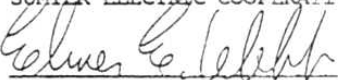
only upon the parties hereto and their respective representatives, successors and assigns.

Section 8.3 Notices. Notices given hereunder shall be deemed to have been given to the COOPERATIVE if mailed by certified mail, postage prepaid, to: General Manager, SUMTER ELECTRIC COOPERATIVE, INC., P.O. Box 301, Sumterville, FL 33585-0301, and to the Company if mailed by certified mail, postage prepaid, to: President, Florida Power Corporation, P. O. Box 14042, St. Petersburg, Florida 33733. Such address to which such notice shall be mailed may be, at any time, changed by designating such new address and giving notice thereof in writing in the manner as herein provided.

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.


ATTEST:


BY 
Secretary
Eugene W. Dion, Secretary

SUMTER ELECTRIC COOPERATIVE

Chairman of the Board
Elmer E. Webb, President

(SEAL)

ATTEST:

BY 
Corporate Counsel
Charles F. Reischmann


FLORIDA POWER CORPORATION

Executive Vice President
Maurice H. Phillips

(SEAL)

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APPROVED AS TO LEGALITY OF FORM:

By:



Legal Counsel to COOPERATIVE

By:



Legal Counsel to Florida Power Corporation