

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of) DOCKET NO. 970105-EU
change in territorial boundary) ORDER NO. PSC-97-0527-FOF-EU
under territorial agreement with) ISSUED: May 7, 1997
Lee County Electric Cooperative,)
Inc., by Florida Power & Light)
Company)
_____)

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING CHANGE IN TERRITORIAL BOUNDARY

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On January 23, 1997, Florida Power & Light Company (FPL) filed a petition requesting the Commission's approval of a minor change in the existing territorial boundary in Lee County, Florida, between FPL and Lee County Electric Cooperative, Inc. (LCEC). The existing territorial boundary was approved by this Commission in Order No. PSC-93-0705-FOF-EU, issued May 10, 1993. A Territorial Variance Agreement (TVA) between FPL and LCEC, a map depicting the proposed change in the territorial boundary, and a legal description of the section of the boundary to be changed upon Commission approval were filed as attachments to the petition. Copies of these documents are incorporated in this Order as Attachment A.

According to FPL's petition, The purpose of the TVA is to make a minor modification to the existing boundary line between FPL and LCEC in Lee County. Modification to the boundary line became necessary as customers became located along the south side of Dykes Road, which currently serves as a part of the Commission-approved

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boundary line between FPL and LCEC. According to the existing territorial agreement between FPL and LCEC in Lee County, the north side of Dykes Road should be served by FPL, while the south side of Dykes Road should be served by LCEC. FPL, with the concurrence of LCEC, maintains in its petition that because FPL has existing distribution facilities along Dykes Road, ". . . it is neither economical nor efficient for LCEC to extend its facilities one to two miles in parallel with FPL's to provide service to seven tracts of land" If FPL is to provide electric service to these seven tracts of land, a change in the previously-approved territorial boundary in this area is necessary. We find that the proposed change in the territorial boundary is necessary to avoid uneconomic duplication of electric facilities and is therefore in the public interest.

FPL considers service to these seven tracts of land as a permanent service variance from the existing territorial boundary approved in Order No. PSC-93-0705-FOF-EU. Therefore, FPL filed the TVA with this Commission to request that the area be reflected as part of FPL's permanent service territory. Although the TVA states that FPL will not provide service to the identified seven tracts of land south of Dykes Road until the TVA is approved by this Commission, FPL is currently providing service in this specific area.

Given the location of FPL's existing distribution facilities along Dykes Road and our desire to avoid uneconomic duplication of facilities, we agree with FPL's decision to provide electric service to the identified seven tracts of land. However, in accordance with Order No. PSC-93-0705-FOF-EU, service to customers south of Dykes Road, prior to our approval of the boundary change, should have been considered interim service and should have been reported to this Commission. Otherwise, FPL should have received our prior approval to serve the customers south of Dykes Road indefinitely. Order No. PSC-93-0705-FOF-EU specifically states that any permanent change to the parties' territorial boundary requires prior approval from this Commission.

Any future instances in which FPL provides service to customers in LCEC's service territory before we approve a permanent boundary change shall be initially considered an interim service arrangement and shall be reported to this Commission. This will allow customers to be served in the interim period, between the date they initially request electric service and the date we approve a permanent change in the territorial boundary, without unnecessary expense to the utility who is responsible for serving them under an existing territorial agreement.

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The TVA shall become effective on the date that this Order becomes final. According to Order No. PSC-93-0705-FOF-EU, the current territorial agreement is to remain in effect until modified by this Commission, on the petition of either utility, or on our motion. Because the TVA is simply a modification to a small segment of the boundary approved in Order No. PSC-93-0705-FOF-EU, we find that Order No. PSC-93-0705-FOF-EU, as modified by the TVA, shall remain in effect until modified by this Commission, on the petition of either utility, or on our motion.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Petition for Approval of Change in Territorial Boundary is granted. The Territorial Variance Agreement between Florida Power & Light Company and Lee County Electric Cooperative, Inc., is in the public interest and is therefore approved. It is further:

ORDERED that Order No. PSC-93-0705-FOF-EU, as modified by the Territorial Variance Agreement approved herein, shall remain in effect until modified by this Commission, on the petition of Florida Power & Light Company or Lee County Electric Cooperative, Inc., or on our motion. It is further

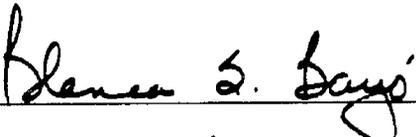
ORDERED that any future instances in which Florida Power & Light Company provides service to customers in another electric utility's service territory before this Commission approves a permanent boundary change shall be initially considered an interim service arrangement and shall be reported to this Commission. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" below. It is further

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ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 7th day of May, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 28, 1997.

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 substantially 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.

**LEE COUNTY ELECTRIC COOPERATIVE, INC.
AND
FLORIDA POWER & LIGHT COMPANY
TERRITORIAL VARIANCE AGREEMENT**

Lee County Electric Cooperative, Inc. ("LCEC") and Florida Power & Light Company ("FPL"), pursuant to Florida Public Service Commission ("FPSC") Order No. 20817 (89 FPSC 2:321), hereby agree to a variance to the territorial boundary established by Order No. PSC-93-0705-FOF-EU (93 FPSC 5:166) as set forth below:

1. In accordance with paragraph no. 3 at pages 5-6 of FPSC Order No 20817, LCEC and FPL hereby agree that "good engineering practices...indicate" that FPL should serve residential customers located in LCEC's territory on the North boundary of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East, in Lee County, Florida.
2. Service by FPL at the location identified in paragraph 1 hereof will not commence until a copy of this Territorial Variance Agreement is approved by the FPSC in accordance with Order No. PSC-93-0705-FOF-EU.
3. This variance is not intended as a waiver of any other terms and conditions of FPSC Orders Nos. 20817 and PSC-93-0705-FOF-EU, which are hereby ratified and remain in full force and effect.

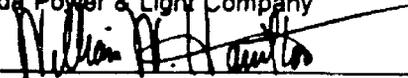
IN WITNESS WHEREOF, LCEC and FPL have caused this Territorial Variance Agreement to be executed by their respective authorized officers.

Lee County Electric Cooperative, Inc.

By: 

William Hetherington
Director of Engineering and Operations

Florida Power & Light Company

By: 

William W. Hamilton
Vice-President Customer Service

TERRITORIAL VARIANCE AGREEMENT WITH LEE COUNTY ELECTRIC COOP

New territorial boundary described as follows:

The North 660' of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

Properties to be served by Florida Power & Light Company run 2640' East of the centerline of Six L's Farm Road and extends 660' South of the centerline of Dykes Road.

This description includes the following properties:

The West 1/2 of the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

The East 1/2 of the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

The Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

The West 1/2 of the Northwest 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

The East 1/2 of the Northwest 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

The West 1/2 of the Northeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

The East 1/2 of the Northeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.