

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition for Approval of) DOCKET NO. 870816-EU
Territorial Agreement Between Florida) ORDER NO. 18332
Power & Light Company and Peace River) ISSUED: 10-22-87
Electric Cooperative, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

KATIE NICHOLS, Chairman
THOMAS M. BEARD
GERALD L. GUNTER
JOHN T. HERNDON
MICHAEL McK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING TERRITORIAL AGREEMENT BETWEEN FLORIDA
POWER & LIGHT COMPANY AND PEACE RIVER ELECTRIC COOPERATIVE, INC.

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.

By Joint Petition filed July 27, 1987, Florida Power & Light Company and Peace River Electric Cooperative, Inc. requested approval of a territorial agreement. The purpose and intent of the agreement is to eliminate and avoid needless and wasteful expenditures which result from unrestrained competition between utilities operating in overlapping service areas. The agreement delineates the utilities' respective service territories in Manatee, Sarasota, DeSoto and Hardee Counties. There are no customers or facilities to be exchanged by the parties pursuant to this agreement.

This 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 Section 366.04(2)(d), Florida Statutes. The agreement is appended to this order as Attachment A.

Having reviewed all documents filed in this docket, we find that it is in the best interest of the public and the utilities to approve the territorial agreement. This agreement will enhance the utilities' ability to plan for and serve the expected growth in their respective electrical service areas and reduce wasteful conflict. It is, therefore,

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's and Peace River Electric Cooperative, Inc.'s Joint Petition for Approval of Territorial Agreement is approved.

DOCUMENT FILED - DATE

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By ORDER of the Florida Public Service Commission,
this 22nd day of October, 1987.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MRC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (1985), as amended by Chapter 87-345, Section 6, Laws of Florida (1987), 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 November 11, 1987. In the absence of such a petition, this order shall become effective November 12, 1987 as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

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 November 12, 1987, 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 sewer 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.

TERRITORIAL AGREEMENT

This Territorial Agreement (Agreement) is made and entered into this 17th day of July, 1987, by and between Florida Power & Light Company, ("FPL"), an investor-owned electric utility, and Peace River Electric Cooperative, Inc. ("PRECO"), an Electric Cooperative, referred to herein collectively as the parties.

WHEREAS, FPL & PRECO furnish electric service to the public within the following counties: Manatee, Sarasota, DeSoto and Hardee; and

WHEREAS, the respective areas in which the parties are providing service are contiguous and overlapping in some areas with the result that in the future substantial and uneconomic duplication of service facilities may occur unless such duplication is precluded by a territorial agreement; and

WHEREAS, the Florida Public Service Commission has determined that territorial agreements which preclude the duplication of facilities between utilities with contiguous and overlapping areas of service are in the public interest; and

WHEREAS, the Florida Public Service Commission is empowered by Section 366.04, Florida Statutes, to approve territorial agreements; and

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WHEREAS, the parties desire to avoid the duplication of facilities and to otherwise realize the benefits of defined retail service boundary;

NOW, THEREFORE, in fulfillment of the premises, and in consideration of the mutual obligations contained herein, the parties agree as follows:

Section 1 - Term. This Agreement shall become effective upon approval as a territorial agreement by the Florida Public Service Commission and shall continue in effect until termination, or until supplemented or amended by mutual written agreement of the parties and approval by the Florida Public Service Commission, but in no event for a period exceeding thirty (30) years from the date of the rendering of the Florida Public Service Commission's Order approving this Agreement. Thereafter, the Agreement may automatically be extended for succeeding periods of five (5) years except that this Agreement may be terminated by either party after expiration of the thirty (30) year period or succeeding five (5) year period upon one (1) year's written notice to the other party.

Section 2 - Scope. This Agreement shall be applicable to retail electric service by the parties in the counties mentioned above as depicted on the maps contained in Exhibit A hereto.

Section 3 - Service Areas. The areas identified as "FPL" areas on the maps contained in Exhibit A are hereby allocated to FPL as its retail service areas. The areas identified as "PRECO" areas on the maps contained in Exhibit A are hereby allocated to PRECO as its retail service areas.

Section 4 - Service Obligations. Each party shall have the exclusive right and obligation to provide retail electric service to the public in its designated retail service areas as set forth in Section 3. Except as provided in Section 5, the parties agree that neither party will provide nor offer to provide electric service at retail at points of delivery located in the territory allocated to the other party.

Section 5 - Extra-territorial Service. Each party hereby retains the right and obligation to continue to provide retail electric service at existing points of delivery, which are in the retail service areas of the other party, at the time this Agreement becomes effective. Existing points of delivery shall mean service drops and underground service laterals which are physically connected to the customer's property, whether energized or not. Each party may maintain, repair and replace its facilities used to service such existing points of delivery.

For purposes of this section, the party in whose retail service area the customer is located is referred to as the "host utility." The party serving a customer in the retail service area of the other party is referred to as the "foreign utility."

A. If service is being provided at an existing point of delivery by a foreign utility and the service requirements change or if service is to be provided at a new point of delivery which is near the facilities of a foreign utility, the host utility shall provide the service except the host utility may request in writing, and the foreign utility may in its discretion agree, that the service be provided by the foreign utility subject to a transfer of the service to the host utility when the host utility determines that it is appropriate to extend its facilities.

B. Customers to be transferred as provided in subsection A shall be notified at the time the parties agree on the service arrangement that, at such time as it becomes economic and efficient for the host utility to provide service, thereafter their service shall be provided by the host utility.

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

Section 7 - Utility Facilities. Nothing in this Agreement shall be construed to prevent or restrict either party from locating, constructing, maintaining, repairing or replacing its transmission, substation, or other related facilities in the retail service areas of the other party.

Section 8 - Wholesale Electric Services. Nothing in this Agreement shall be construed to apply to the provision by either party of bulk power supply for resale, transmission, interchange or other similar wholesale electric services between electric utilities.

Section 9 - Regulatory Approval. This Agreement shall become effective only upon approval by, and shall be subject to the authority of the Florida Public Service Commission. Neither party shall be bound hereunder in any way until that approval is obtained. The Agreement of the parties hereto is conditioned upon approval of this Agreement without modification.

Section 10- Notices. Any notices given under this Agreement to FPL shall be provided to Division Commercial Manager, Florida Power & Light Company, P. O. Box 1119, Sarasota, Florida. Any notices given under this Agreement to PRECO shall be provided to General Manager, Peace River Electric Cooperative, Inc., P. O. Box 1310, Wauchula, Florida 33873.

Section 11 - Amendment. This Agreement may be amended only by mutual written agreement of the parties.

Section 12 - 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.

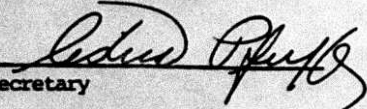
Section 13 - Headings. The section headings in this Agreement are for reference purposes only and shall not be considered in construing or interpreting this Agreement.

Section 14 - Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the establishment of defined retail electric service areas where the areas served by the parties are contiguous or overlapping. All prior agreements, understandings or practices with respect to retail electric service areas shall be deemed to have been merged herein and superseded by this Agreement.

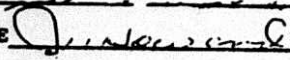
IN WITNESS WHEREOF, the parties have executed this

Territorial Agreement as set forth below.

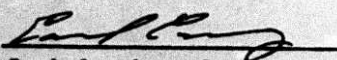
ATTEST:


Secretary

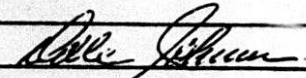
FLORIDA POWER & LIGHT COMPANY

BY: _____
NAME 
TITLE Division Vice President

ATTEST:


Earl Crawley, Secretary

PEACE RIVER ELECTRIC COOPERATIVE,
INC.

BY: _____
NAME 
TITLE President