BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of territorial | DOCKET NO. 110099-EU agreement in Bradford County by Florida Power & Light Company and City of Starke.

ORDER NO. PSC-11-0472-PAA-EU ISSUED: October 18, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman LISA POLAK EDGAR RONALD A. BRISÉ EDUARDO E. BALBIS JULIE I. BROWN

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029. Florida Administrative Code (F.A.C.).

BACKGROUND

On April 12, 2011, Florida Power & Light Company (FPL) and the City of Starke, Florida (City) filed a joint petition for approval of a territorial agreement. The petition requests the establishment of a service territory boundary between the two utilities in Bradford County. The agreement will result in the transfer of 86 customer accounts and related distribution facilities between the parties. This is the first territorial agreement between these utilities.

As explained below, we approve the territorial agreement. We have jurisdiction over the matter pursuant to Section 366.04, Florida Statutes (F.S.).

DECISION

The joint petition states that the parties initially entered into an agreement on February 27, 2009, but did not seek Commission approval of the initial agreement until all necessary filing requirements, including obtaining a legal description of the territorial boundaries, were satisfied. By the time those requirements were satisfied, the list of affected customers referenced in the initial agreement needed to be updated to reflect the fact that customers had relocated in and out of the respective service territories. As a result, the parties decided to enter into a restated

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agreement instead of creating an addendum to the original agreement. FPL and the City entered into a restated territorial agreement on March 21, 2011. The restated territorial agreement was attached to the petition as Exhibit 1, and is attached hereto as Attachment A, and incorporated herein.

The agreement establishes a geographic boundary between the two utilities that is depicted on the map attached to the agreement as Composite Appendix A. The map also includes a legal description of the proposed boundary line.¹

As mentioned above, the proposed territorial agreement addresses the transfer of a total of 86 customer accounts between the parties. Under the agreement, 20 customer accounts (15 residential and 5 commercial) will be transferred from the City to FPL and 66 accounts (54 residential and 12 commercial) will be transferred from FPL to the City. Written notice to all affected customers has been made, as required by Rule 25-6.0440(1)(d), F.A.C. The petition states that 6 City customers responded that they were not opposed to the transfer, while 12 FPL customers responded to the proposal, 11 of whom were opposed to the transfer.

The petition states that the transfer of customers will be completed within two years of our approval of the agreement. The parties have indicated that a transfer schedule will be established once we make a ruling on the petition. The parties also indicated that they will work with all affected customers regarding deposits, so applicable deposit policies are followed and the customers will not suffer any hardship as a result of the transfer.

Pursuant to Section 366.04(2)(d), F.S., we have the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Pursuant to Rule 25-6.0440(2), F.A.C., in approving territorial agreements, we 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 we determine that the agreement will cause a detriment to the public interest, the agreement should be approved. <u>Utilities Commission of the City of New Smyrna v. Florida Public Service Commission</u>, 469 So. 2d 731 (Fla. 1985).

According to the parties, the proposed territorial agreement eliminates existing or potential uneconomic duplication of facilities, does not cause a decrease in the reliability of electric service to existing or future ratepayers, will not occur at any significant cost, and prevents wasteful expenditures by the parties. Based on all of the above, we find that the proposed territorial agreement is in the public interest and we approve it. Since the agreement contemplates the transfer of customers over a two year period, we direct the parties to file status reports on the transfers every six months until the transfers are complete.

¹ City and Clay Electric Cooperative (Clay) also have a territorial agreement that encompasses some of the same geographical areas. See Order No. PSC-08-0105-PAA-EU, issued February 18, 2008, in Docket No. 070669-EU, In re: Joint petition for approval of territorial agreement in Bradford County by Clay Electric Cooperative, Inc. and City of Starke, Florida. Clay has been apprised of this territorial agreement, and it does not have any objections to

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint petition for approval of a territorial agreement in Bradford County by Florida Power & Light Company and the City of Starke is approved. It is further

ORDERED that the territorial agreement attached to the petition, and all related maps, are incorporated by reference into this Order as Attachment A. It is further

ORDERED that the parties to the territorial agreement shall file status reports on the customer transfers identified in the territorial agreement every six months until the transfers are complete. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

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

By ORDER of the Florida Public Service Commission this 18th day of October, 2011.

ANN COLE

Commission Clerk

Florida Public Service Commission 2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

(850) 413-6770

www.floridapsc.com

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 that is available under Section 120.57, 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 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. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 8, 2011.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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

RESTATED TERRITORIAL AGREEMENT BETWEEN FLORIDA POWER & LIGHT COMPANY AND THE CITY OF STARKE

- THIS AGREEMENT, made and entered into this 21 day of MARCH, 2011. by and between FLORIDA POWER & LIGHT COMPANY, a Florida corporation organized and existing under the laws of the State of Florida (herein called the "FPL"), and the CITY OF STARKE, a municipal corporation created under the laws of the State of Florida (herein called "CITY"); and
- Section 0.2 WHEREAS, this Restated Territorial Agreement replaces the Territorial Agreement which

 FPL and STARKE entered into on February 27, 2009, but did not seek approval by the

 Florida Public Service Commission (herein called the "COMMISSION"); and
- Section 0.3 WHEREAS, STARKE, by virtue of its Charter and the Laws of Florida, is authorized and empowered to furnish electricity and power to persons, firms and corporations, and pursuant to such authority, presently furnishes electricity and power to customers in areas within and without the city limits of Starke, Florida; and
- Section 0.4 WHEREAS, FPL, by virtue of its Charter and the Laws of Florida, is authorized and empowered to furnish electricity and power to persons, firms and corporations throughout the State of Florida and pursuant to such authority presently furnishes electricity and power to customers in areas within and without the city limits of Starke, Florida, and elsewhere; and
- Section 0.5 WHEREAS, the respective areas of service of the parties hereto are contiguous in many places with the result that in the future duplication of service facilities will occur unless such duplication is precluded by a territorial agreement; and

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- Section 0.6 WHEREAS, the COMMISSION has previously recognized that any such duplication of said service facilities by the parties results in needless and wasteful expenditures, may create hazardous situations, and fails to provide the most economical cost effective service to the utility customer; and
- Section 0.7 WHEREAS, the COMMISSION is empowered by Section 366.04, Florida Statutes, to approval territorial agreements; and
- Section 0.8 WHEREAS, the parties hereto desire to avoid and eliminate the circumstances giving rise to the aforesaid possible duplications and possible hazards and to that end desire to establish territorial boundaries.
- Section 0.9 NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, the parties hereto, subject to the approval of the COMMISSION, and subject to the terms and conditions herein set forth, do hereby agree as follows:

ARTICLE I

TERRITORIAL BOUNDARY

- Section 1.1 Boundary. The territorial boundary to be observed by both parties is depicted on the map attached hereto as Appendix A.
- Section 1.2 Allocation. The area labeled in Appendix A as "CITY", is reserved to the City of Starke as its service territory (as it relates to FPL), and the area labeled in Appendix A as "FPL" is reserved to FPL as its service territory (as it relates to the CITY), with respect to service to retail customers.

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Scope. The parties agree that neither party will provide or offer to provide electric service at retail to customers within the territory reserved to the other party except as provided in Section 2.1.

ARTICLE II

ELIMINATION OF OVERLAPPING FACILITIES

- As a result of the establishment of the boundary herein, certain customer accounts and distribution facilities shall be transferred between the parties to comply with Section 1.3.

 Until such transfers are accomplished pursuant to Section 2.5, each utility is authorized to continue providing service to those identified customer locations.
- Section 2.2 Those customer accounts identified in Appendix B shall be transferred from the CITY to FPL.
- Section 2.3 Those customer accounts identified in Appendix C shall be transferred from FPL to the CITY.
- Section 2.4 Each party is responsible for making the necessary modifications to its facilities to effect the transfers in Sections 2.2 and 2.3
- Section 2.5 (a) The distribution facilities necessary to effect the transfers required by Sections 2.2 and 2.3, and the identified customer accounts, shall be transferred to the appropriate party within a reasonable period of time, not to exceed two years, after the COMMISSION's final order approving this Territorial Agreement. Transfers of accounts and facilities shall not require further COMMISSION approval.
 - (b) Notwithstanding the foregoing, the parties recognize that in certain circumstances, economic constraints or good engineering practices may indicate that a customer's end

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use facilities either cannot or should not be immediately served by the party in whose territorial area they are located. In such situations, 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. If such temporary service lasts, or is expected to last for more than one year, the parties will seek formal approval of the service from the COMMISSION.

- (c) If prior to the transfer major repairs to the facilities to be transferred occur before the transfer due to storm damage, then the party which is to acquire those facilities shall pay, upon presentation of appropriate cost information, all capital costs only of the aforesaid repairs. However, before any major storm damage repairs are made, the acquiring party shall be given the opportunity to do the repairs itself, and effectuate the transfer of those storm damage customers at the time of repair. The parties hereto agree to timely notify each other, by letter, of any governmental mandate to relocate, for road modifications, facilities scheduled for transfer, and coordinate the customer transfers to allow the receiving party to carry out the relocation.
- (d) Prior to and after transfer of these facilities, it may be necessary for the parties to jointly use certain facilities and FPL and CITY shall enter into, as necessary, an appropriate joint use agreement for those specific facilities. Facilities are to be transferred in good operating condition. Customer meters are not to be transferred. Upon transfer of any facilities, the receiving utility shall be solely responsible for any maintenance, removal, upgrading or improvements to those facilities.
- (e) All electric generating plants, transmission lines, substations, distribution lines and related service facilities now or hereafter constructed and/or used by either party in

conjunction with its respective electric utility systems, and which are directly or indirectly used or useful in serving Customers of either party shall be allowed to remain where situated and shall not be subject to removal hereunder, PROVIDED, HOWEVER, that each party shall operate and maintain said lines and facilities in such a manner as to minimize any interference with the operations of the other party.

(f) Nothing herein shall be construed to prevent or in any way inhibit the right and authority of either Party to serve any of its facilities now or hereafter constructed located in the other Party's territorial area, which facility is used in connection with that Party's business as an electric, waster, wastewater, natural gas or telecommunications utility, where such service is feasible and does not in any way interfere with or hinder the other Party from serving other customers within their service area in a reliable and cost effective way.

<u>Section 2.6</u>
No provision of this Agreement shall be construed as applying to bulk power supply for resale, or to facilities dedicated to such bulk power supply.

Section 2.7 Customers of transferred accounts shall be subject to the deposit policies of the utility receiving the transferred customers.

Section 2.8 All easements and joint use agreements held by either FPL or the CITY necessary or appurtenant to serving customers transferred pursuant to this Agreement are hereby assigned to the utility receiving the transferred customers.

ARTICLE III

PREREQUISITE APPROVAL

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Section 3.1 Regulatory Approval. The provisions of this Agreement are subject to the regulatory authority of the COMMISSION whose approval shall be a prerequisite to the validity and applicability of this Agreement.

ARTICLE IV

DURATION

<u>Section 4.1</u> <u>Duration.</u> This Agreement shall continue and remain in effect until the COMMISSION, by order, modifies or withdraws its approval of this Agreement after proper notice and hearing. Modification or withdrawal of the COMMISSION's order of approval of this Agreement shall be based upon the finding that modification or withdrawal is necessary in the public interest because of changed conditions or other circumstances not present at the time this Agreement was approved by the COMMISSION. Either party to this Agreement may petition the COMMISSION, consistent with the previous sentence, at any time for modification or withdrawal of the COMMISSION's order of approval of this Agreement.

ARTICLE V

CONSTRUCTION OF AGREEMENT

Section 5.1 Intent and Interpretation. It is hereby declared to be the purpose and intent of this Agreement, in accordance with which all provisions of this Agreement shall be interpreted and constructed, to eliminate and avoid needless and wasteful expenditures, and duplication of facilities which would otherwise result from unrestrained competition, between the parties operating in overlapping service areas.

<u>Section 5.2</u> <u>Annexation.</u> Modification of the boundaries of the City of Starke shall not be grounds for modification of the Agreement under Section 4.1.

Section 5.3 Nothing contained in this Agreement shall preclude the future exercise of any franchise rights the City of Starke may have or hold. Provided, however, that this clause shall not be used as an admission or denial that any such franchise rights exist in the City of Starke.

ARTICLE VI

MISCELLANEOUS

Section 6.1 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, signed by both parties, and approved by the COMMISSION.

Section 6.2 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 including but not limited to the service territory of either party hereto relative to the service territory of any other electric utility not a party to this Agreement.

Section 6.3 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 provisions or conditions hereof; and all of the provisions, representations, covenants and

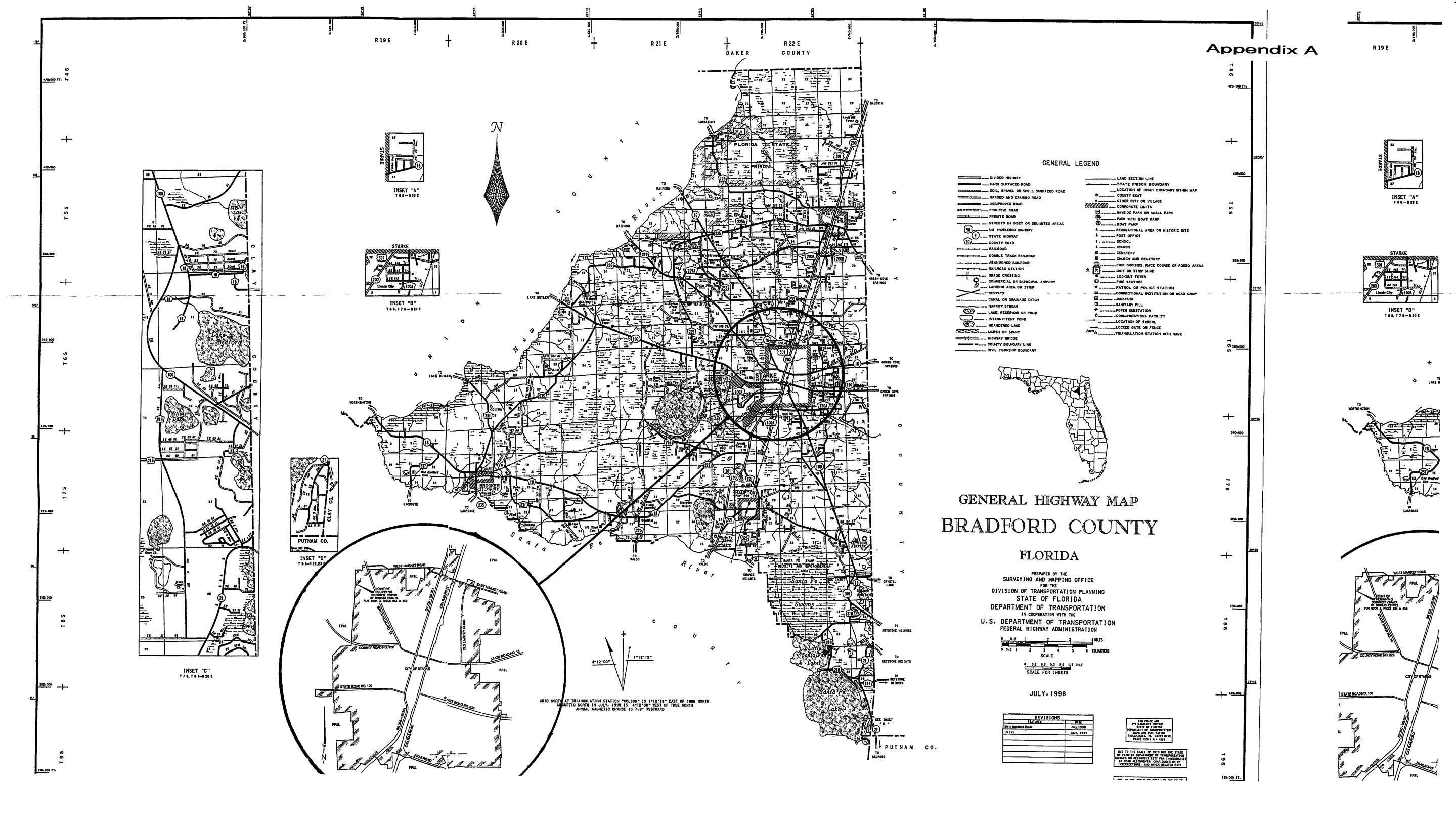
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conditions herein contained shall inure to the sole benefit of and shall be binding only upon the parties hereto and their respective representatives, successors and assigns.

IN WITNESS WHEREOF, this Agreement has been caused to be executed by the City of Starke in its name by its Mayor, and by FPL in its name by its Vice President, on the day and year first above written.

CITY OF STARKE	
By: <u>Gravis V. Woods</u> Name: Travis V. Woods	Date: March 14, 2011
Title: Mayor	
Approved as to form and legality Attorney, City of Starké	
Attest: Audu W Johns Clerk of the Commission	
FLORIDA POWER & LIGHT COMPANY By: Walker L	Date: March 21, 2011
Name: Keith HARdy	

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WO NO D-08-322

DATE 10-30-08

DRAFTED BY DHB

W O NO 08-322

SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER