

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for)
 approval of territorial agreement)
 between Florida Power Corporation)
 and Withlacoochee River Electric)
 Cooperative, Inc.)

DOCKET NO. 910940-EU
 ORDER NO. 25309
 ISSUED: 11/7/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTIONORDER 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.

On September 9, 1991, Florida Power Corporation (FPC) and Withlacoochee River Electric Cooperative, Inc. (WREC) filed with this Commission a joint petition seeking approval of a territorial agreement (agreement) executed by the parties on July 16, 1991. The joint petition was filed pursuant to Rules 25-6.0439 and 25-6.0440, Florida Administrative Code. The agreement including its terms and conditions and the identity of the geographic areas to be served by each utility are shown in Appendix A.

The agreement represent a continuing effort by the parties to minimize the cost to their respective customers by avoiding unnecessary duplication of facilities. Although the Commission has previously approved territorial agreements between the parties, there are certain geographic areas not specifically addressed in prior agreements. This agreement covers the geographic areas of Hernando County.

DOCUMENT NUMBER-DATE

11118 NOV-7 1991

FPSC-RECORDS/REPORTING

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The agreement contemplates the transfer of 275 customer accounts of WREC (54 Commercial and 221 residential) to FPC. FPC has no customers located in the proposed territory assigned to WREC. According to Section 2.3 of the agreement there will be a transition period in order to minimize any inconvenience to the customers. Under this transition procedure, any affected WREC customer may request to become a customer of FPC if the agreement is approved, or the customer may elect to remain a customer of WREC until the occurrence of a change in use, as defined by Section 1.9 of the agreement.

If approved, this agreement will continue and remain in effect for a period of fifteen (15) years from the date of this Order.

Having reviewed the joint petition, 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 above, it is

ORDERED by the Florida Public Service Commission that the joint petition for approval of the territorial agreement between Florida Power Corporation and Withlacoochee River Electric Cooperative, Inc. is granted. It is further

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

ORDERED that this Order shall become final and the docket 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.

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By ORDER of the Florida Public Service Commission, this 7th
day of NOVEMBER, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MRC:bmi
910940.bmi

A TRUE COPY
ATTEST Ray J. Jernigan
Chief, Bureau of Records

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 12/02/91.

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.

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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.

APPENDIX A
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AGREEMENT

Section 0.1: THIS AGREEMENT, made and entered into this 16th day of July, 1991 by and between Florida Power Corporation, (referred to in this Agreement as "FPC") a corporation organized and existing under the laws of the State of Florida and an electric utility as defined in Chapter 366, Florida Statutes, and Withlacoochee River Electric Cooperative, Inc. (referred to in this Agreement as "WREC"), a rural electric cooperative organized and existing under Chapter 425, Florida Statutes, and Title 7, Chapter 31, United States Code each of whose retail service territories are subject to regulation pursuant to Chapter 366, Florida Statutes and which are collectively referred to in this Agreement as the "Parties";

WITNESSETH:

Section 0.2: WHEREAS, each of the Parties is authorized, empowered and obligated by its corporate charters and the laws of the State of Florida to furnish retail electric service to persons desiring to use such service within their respective areas of service; and

Section 0.3: WHEREAS, each of the Parties presently furnishes retail electrical service to customers in Hernando County, Florida; and

Section 0.4: WHEREAS, the respective areas of service of the Parties are contiguous in many places, and the Parties desire to minimize costs to their respective ratepayers by avoiding

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duplication of generation, transmission, and distribution facilities; and

Section 0.5: WHEREAS, the Florida Public Service Commission (referred to in this Agreement as the "Commission"), has previously recognized that any such duplication of facilities results in needless and wasteful expenditures and may create hazardous situations, both being detrimental to the public interest; and

Section 0.6: WHEREAS, the Parties desire to avoid and eliminate the circumstances giving rise to potential duplications of facilities and hazardous situations, and toward that end have established the Territorial Boundary Line to delineate their respective retail Territorial Areas; and

Section 0.7: WHEREAS, the Commission is empowered by Section 366.04(2)(d), Florida Statutes, to approve and enforce territorial agreements between electric utilities, has often recognized the wisdom of such agreements, and has held that such agreements, when properly presented to the Commission, are advisable in proper circumstances, and, indeed, in the public interest;

Section 0.8: NOW, THEREFORE, in consideration of the premises aforesaid and the mutual covenants and agreements herein set forth the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1: Territorial Boundary Line. As used in this Agreement, the term "Territorial Boundary Line" shall mean the boundary lines which define the geographic areas shown on the maps

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attached hereto as composite Exhibit "A", which differentiate and divide the WREC Territorial Area from the FPC Territorial Area.

Section 1.2: WREC Territorial Area. As used in this Agreement, the term "WREC Territorial Area" shall mean the geographic areas of Hernando County shown on composite Exhibit "A" designated "WREC".

Section 1.3: FPC Territorial Area. As used in this Agreement, the term "FPC Territorial Area" shall mean the geographic areas of Hernando County, shown on composite Exhibit "A", designated "FPC".

Section 1.4: Transmission Line. As used in this Agreement, the term "Transmission Line" shall mean any Transmission Line of either Party having a rating of 69kV or greater.

Section 1.5. Distribution Line. As used in this Agreement, the term "Distribution Line" shall mean any Distribution Line of either Party having a rating of up to, but not including 69kV.

Section 1.6. Person. As used in this Agreement, the term "Person" shall have the same inclusive meaning given to it in Section 1.01(3), Florida Statutes.

Section 1.7. New Customer. As used in this Agreement, the term "New Customer" shall mean any Person that applies to either WREC or FPC for retail electric service after the effective date of this Agreement.

Section 1.8. Existing Customer. As used in this Agreement, the term "Existing Customer" shall mean any Person receiving retail electric service from either WREC or FPC on the effective date of

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this Agreement or a surviving or divorced spouse of an Existing Customer who remains at the same service location.

Section 1.9. Change in Use. As used in this Agreement, the term "Change in Use" shall mean: (1) change in the use of real property from residential to business or business 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 surviving or divorced spouse of an Existing Customer who received electric service at the same location.

Section 1.10. End Use. As used in this agreement, the term "end use" means the use of electric energy by a customer at a geographic location where the electric energy is ultimately consumed.

Section 1.11. End Use Facilities. As used in this agreement, the term "end use facilities" means those facilities at a geographic location where the electric energy used by a customer is ultimately consumed.

ARTICLE 2

AREA ALLOCATIONS AND NEW CUSTOMERS

Section 2.1: Territorial Allocations. Except as otherwise specifically provided herein, during the term of this Agreement, WREC shall have the exclusive authority to furnish retail electric

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service for end use within the WREC Territorial Area and FPC shall have the exclusive authority to furnish retail electric service for end use within the FPC Territorial Area.

Section 2.2: 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 of the Agreement.

The Parties recognize that 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 the end-use facilities are located. In such instances, upon written request to the other party by the Party in whose Territorial Area the end-use facilities are located, the other Party may agree in writing to temporarily provide service to such customer's end-use facilities. Any such agreement for temporary service shall be submitted to the Florida Public Service Commission for approval in accordance with Article 4, Section 4.1 hereof.

In the event that a New Customer or prospective New Customer requests or applies for service from either Party to be provided to end-use facilities located in the Territorial Area of the other Party, the Party receiving such a request or application shall refer the New Customer or prospective New Customer to the other Party with citation to this Agreement as approved by the

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Commission, and shall notify the other Party of such request or application.

If the New Customer or prospective New Customer delivers a written application for service after being referred to the other Party, or continues to demand service under an application made prior to a referral to the other Party, the Party receiving the application shall file a Petition for Declaratory Statement requesting the Commission to apply this Agreement to the facts presented. The petitioning Party shall notify the other Party and the applicant of its intent to file a Petition for Declaratory Statement prior to filing such Petition and shall request the joinder of the other Party as a Party to the proceeding. The petitioning Party shall not provide or attempt to provide electric service to such a New Customer unless the Commission authorizes such service in an order binding upon both Parties.

Section 2.3: Transition Period. In order to minimize inconvenience to their customers, each Party may continue to serve their respective Existing Customers listed on Exhibit "B" as provided in this Section of this Agreement, even though the location at which they are using electric service shall be located in the Territorial Area of the other Party effective upon the approval of this Agreement by the Commission. Each of such Existing Customers and the Party by which they are presently served are listed on Exhibit "B" attached to and made a part of this Agreement. This Section of this Agreement shall also apply to additional requirements for electric service by Existing Customers

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listed on Exhibit "B" at their existing locations, subject to the "Change in Use" limitations set forth below. Existing Customers listed on Exhibit "B" may request to become customers of the other party at any time after approval of this agreement by the Commission. The parties again realize that economic constraints, good engineering practices or other exceptional circumstances may prevent the party requested to provide service from providing service immediately to the requesting Existing Customer. The parties therefore agree that the party requested to provide service shall, within the constraints referred to above, proceed expeditiously to provide the service. Until such service is available, however, the other party shall continue to provide service to the Existing Customer. In addition, Existing Customers listed on Exhibit "B" shall be transferred to the other Party (in whose territory they lie) whenever there is a "Change in Use." In either event, the parties agree that such customer shall be transferred as soon as is reasonably practicable, taking into account economics, good engineering practices, and the efficient operation of the affected utility.

Section 2.4: 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. 68-297-Civ-T ("the Final Judgment"), regardless of where the purchaser for

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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 3

OPERATION AND MAINTENANCE

Section 3.1: Facilities to Remain. Except as expressly provided herein, any generating plant, transmission line, substation, distribution line or related facility now or hereafter constructed or used by either Party in conjunction with its electric utility system, which is directly or indirectly used and useful in service to its customer by either of the Parties in its Territorial Area, shall be allowed to remain where situated and shall not be subject to removal or transfer hereunder; provided, however, that each Party shall operate and maintain all such plants, lines, substations or facilities in such a manner as to minimize any interference with the operations of the other Party.

ARTICLE 4

PREREQUISITE APPROVAL

Section 4.1: Commission Approval. The provisions and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by the Commission 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

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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 4.2: No Liability in the Event of Disapproval. In the event approval of this Agreement pursuant to Section 4.1 hereof is not obtained, neither Party will have any cause of action against the other arising under this document due to such non-approval.

Section 4.3: Supersedes Prior Agreements. Upon its approval by the Commission, this Agreement shall be deemed to specifically supersede any and all prior agreements between the Parties defining the boundaries of their respective Territorial Areas in Hernando County.

ARTICLE 5

DURATION

Section 5.1: This Agreement shall continue and remain in effect for a period of fifteen (15) years from the date of the Commission's initial Order approving this Agreement, and shall be automatically renewed for additional fifteen (15) year periods unless either Party gives written notice to the other of its intent not to renew at least six (6) months prior to the expiration of any fifteen (15) year period; provided, however, that each such

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renewal of this Agreement shall require prerequisite approval of the Commission with the same effect as the original Commission approval of this Agreement as required and provided for in Article 4 hereof.

ARTICLE 6

CONSTRUCTION OF AGREEMENT

Section 6.1: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further this State's policy of actively regulating and supervising the service territories of electric utilities; supervising the planning, development, and maintenance of a coordinated electric power grid throughout Florida; avoiding uneconomic duplication of generation, transmission and distribution facilities; and encouraging the installation and maintenance of facilities necessary to fulfill the Parties' respective obligations to serve.

ARTICLE 7

MISCELLANEOUS

Section 7.1: Negotiations. Regardless of any other terms or conditions that may have been discussed during the negotiations leading up to the execution of this Agreement, the only terms or conditions agreed upon by the parties 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 of

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the parties and approved by the Commission in accordance with Article 4, Section 4.1 hereof.

Section 7.2: Successors and Assigns; for Benefit Only of Parties. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person other than the Parties hereto, or their respective successors or assigns, any right, remedy, or claim under or by reason of this Agreement, or any provision or condition hereof; and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of the Parties or their respective successors or assigns.

Section 7.3: Notices. Notices given hereunder shall be deemed to have been given to WREC if mailed by certified mail, postage prepaid, to

Billy E. Brown (General Manager), or his successor
Withlacoochee River Electric Cooperative, Inc.
P.O. Box 278
Dade City, FL 33526-0278

and to FPC if mailed by certified mail, postage prepaid to:

Patricia A. Brown (registered agent), or her successor
Legal Department, Florida Power Corporation
3201 Thirty-Fourth Street South,
St. Petersburg, Florida 33711.

The person or address to which such notice shall be mailed may, at any time, be changed by designating a new person or address and giving notice thereof in writing in the manner herein provided.

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IN WITNESS WHEREOF, the Parties hereto 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: FLORIDA POWER CORPORATION

(SEAL)

By: WJ Howell
Vice President
Title: Central and Northern Divisions

ATTEST: WITHLACOCHEE ELECTRIC COOPERATIVE, INC.

(SEAL)

By: C.M. Overstreet
Title: President