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January 31, 1992

BY HAND DELIVERY

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\*Admitted in Georgia Only

Mr. Steven C. Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
The Fletcher Building  
101 East Gaines Street  
Tallahassee, FL 32399

910811-EL

Re: Petition for resolution of territorial uncertainty  
as to whether electric service should be provided  
to certain facilities of an industrial phosphate  
customer by Tampa Electric Company or by Peace  
River Electric Cooperative

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG** \_\_\_\_\_
- LEG 1
- LIN 6
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Dear Mr. Tribble:

Enclosed for filing in the docket referred to above are the original and fifteen (15) copies of Florida Power & Light Company's Objections to the Stipulation and Settlement Agreement Filed by Tampa Electric, Peace River, and IMC; and Motion for Hearing.

Please acknowledge receipt and filing of the above by stamping the copy of this letter attached and returning same to me.

Yours truly,

*Wilton R. Miller*  
Wilton R. Miller *mg*

WRM:lms  
Enclosures

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

01136 JAN 31 1992

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for resolution of )  
territorial uncertainty as to whether )  
electric service should be provided to ) Docket No. 910811-EU  
certain facilities of an industrial )  
phosphate customer by Tampa Electric )  
Company or by Peace River Electric )  
Cooperative )  
\_\_\_\_\_ )

FLORIDA POWER & LIGHT COMPANY'S OBJECTIONS TO THE  
STIPULATION AND SETTLEMENT AGREEMENT FILED BY  
TAMPA ELECTRIC, PEACE RIVER, AND IMCF;  
AND MOTION FOR HEARING

Florida Power & Light Company ("FPL") hereby (1) objects to the Stipulation and Settlement Agreement filed by Tampa Electric Company ("Tampa Electric"), Peace River Electric Cooperative ("Peace River") and IMC Fertilizer, Inc. ("IMCF"); and (2) requests that a hearing be set to determine which electric utility is authorized to provide service to IMCF's end use facilities located in Manatee County. In support hereof, FPL further states:

1. FPL is a party, as defined in Florida Public Service Commission ("Commission") Rule 25-22.026, F.A.C., in this docket pursuant to Commission Order No. 25574 dated January 7, 1992, which granted FPL's Petition to Intervene.

2. On January 16, 1992, Tampa Electric, Peace River, and IMCF filed their Joint Motion for Approval of Stipulation and Settlement Agreement and Stipulation and Settlement Agreement purporting to be a settlement of Tampa Electric's July 30, 1991, Petition filed in this docket. These pleadings were not served on FPL and therefore, the parties thereto are in violation of Commission Order No. 25574 and Commission Rule 25-22.0375(3).

DOCUMENT NUMBER-DATE

01136 JAN 31 1992

FPSC-RECORDS/REPORTING

3. The Stipulation and Settlement Agreement is defective since it does not include all parties to this docket and should be rejected outright.

4. The Stipulation and Settlement Agreement does not provide the Commission with a factual foundation upon which the Commission's jurisdiction may be exercised. Pursuant to Chapter 366, F.S., with respect to territorial matters, the Commission has the jurisdiction to (1) interpret its previous orders, (2) modify its prior orders, (3) approve territorial agreements, or (4) resolve territorial disputes. The proposed stipulation provides the Commission neither (1) an agreement regarding the application of territorial boundaries and conditions established by previous orders of the Commission, (2) a request to modify a prior Commission order, (3) a proposed territorial agreement for the Commission to consider pursuant to Commission Rule 25-6.0440, nor (4) a statement of stipulated facts on which to base a request for resolution of a territorial dispute. Consequently, the stipulation provides no basis upon which the Commission may enter an order authorizing service by any particular electric utility.

5. The Stipulation and Settlement Agreement violates the principles established by Storey v. Mayo, 217 So.2d 304 (Fla. 1968), by providing a retail electric customer the right to switch suppliers at a future date on the basis of rates.

6. The Stipulation and Settlement Agreement is based upon the improper premise that there is an uncertainty regarding the interpretation of Commission Order No. 17585 which adopted the

Tampa Electric-Peace River Territorial Agreement. There is no ambiguity or uncertainty in the order, or in the territorial agreement incorporated therein, regarding electric service in Manatee County. The temporary point of delivery established by Tampa Electric in Hillsborough County to serve IMCF's end use facilities in Manatee County is an illegal "extension cord" arrangement prohibited by the Florida Supreme Court's decision in Lee County Elec. Co-op v. Marks, 501 So.2d 585 (Fla. 1987), and therefore, violates Commission Order No. 17585, the Tampa Electric-Peace River Territorial Order, and Order No. 10677, the FPL-Tampa Electric Territorial Order. Article II, subsection 3, of the Tampa Electric-Peace River Territorial Agreement which allows Tampa Electric to "continue to serve . . . existing customers" in areas reserved to Peace River for retail electric service by the Agreement is unambiguously limited to "Polk and Hillsborough Counties." In fact, at the time this language was entered, and subsequently approved, any intent for Tampa Electric to serve in Manatee County, whether by implication or otherwise would have resulted in a direct conflict with the FPL-Tampa Electric territorial Order No. 10677. Furthermore, the FPL-Peace River Territorial Agreement had not yet been entered. And finally, the end use facilities for which service was sought by IMCF, represent new points of service. Any representation that these end use facilities are existing points of service for purposes of Article II, subsection 3, of the Tampa Electric-Peace River Territorial Agreement would be an admission of violation of Commission Order

No. 10677, the FPL-Tampa Electric territorial order, and the principles established in Lee County Elec. Co-op v. Marks.

7. The Stipulation and Settlement Agreement is further defective in that it presents, for approval by the Commission wholesale provisions outside of the Commission's jurisdiction and lacks a necessary condition precedent, i.e., Commission acceptance pursuant to Commission Rule 25-9.052, F.A.C., of a Peace River retail tariff (GS-INT).

8. FPL has a substantial interest in this matter. FPL was not a party to Order No. 17585, the Tampa Electric-Peace River territorial order, and that order may not be found to have superseded Order No. 10677, the FPL-Tampa Electric territorial order. On May 10, 1991, IMCF applied for service from FPL. FPL responded to IMCF's request for service by indicating that if Peace River should not serve IMCF for whatever reason, or be found incapable of providing service, FPL was ready, willing, and able to serve IMCF pursuant to FPL's obligations as defined in Commission Order No. 10677. (See the letters attached in Appendix A hereto.) FPL has since repeated its position to all parties. Further, Tampa Electric is precluded from serving in Manatee County by Order No. 10677.

9. FPL recommends that the Commission enter an order interpreting Order No. 17585 as precluding Tampa Electric from serving end use facilities in Manatee County and finding that should Peace River not serve IMCF for any reason, or be found in

a subsequent docket to be incapable of serving IMCF, that FPL is the public utility obligated to provide service.

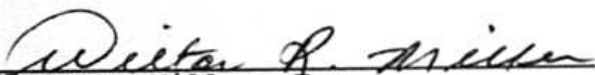
10. This matter should be resolved without delay. FPL has not objected to IMCF receiving temporary service from Tampa Electric (even though such service is in violation of Commission Order Nos. 17585 and 10677). However, FPL would point out that the conditions precedent contained in the Stipulation and Settlement Agreement, and the uncertainties of obtaining the approvals necessary for the wholesale arrangements to satisfy the conditions precedent, could involve months or years of delay. This Commission should not establish the precedent of conditioning territorial orders on the ability of suppliers to obtain approval at some time in the future of wholesale power supply arrangements or any other form of supply.

11. For the foregoing reasons, in the event the Commission does not reject the Stipulation and Settlement Agreement, FPL hereby requests a hearing pursuant to §120.57, F.S.

WHEREFORE, FPL prays that the Commission reject the Stipulation and Settlement Agreement and enter an Order finding that Tampa Electric is precluded from providing service to end use facilities in Manatee County pursuant to Commission Order Nos. 17585 and 10677; in the alternative, FPL requests a hearing and the opening of discovery.

Dated this 31st day of January, 1992.

Respectfully submitted,


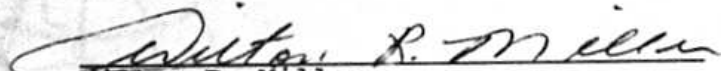
  
Wilton R. Miller, Esq.  
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Florida Power & Light Company  
9250 W. Flagler St., Suite 6527  
Miami, Florida 33174  
(305) 552-3921

Attorneys for Florida Power &  
Light Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and fifteen copies of Florida Power & Light Company's Objections to the Stipulation and Settlement Agreement filed by Tampa Electric, Peace River, and IMCF; and Motion for Hearing have been hand-delivered to Mr. Steven C. Tribble, Director, Division of Records and Reporting, Florida Public Service Commission, The Fletcher Building, 101 East Gaines Street, Tallahassee, FL 32399; and copies of Florida Power & Light Company's Objections to the Stipulation and Settlement Agreement filed by Tampa Electric, Peace River, and IMCF; and Motion for Hearing have been mailed by regular U.S. Mail, postage prepaid, to: Andrew B. Jackson, Esquire, P. O. Box 2025, Sebring, FL 33871, Attorney for PRECO, and Richard Maenpaa, Manager, Peace River Electric Cooperative, Inc., P. O. Box 1310, Wauchula, FL 33873; Lee L. Willis, Esquire, and James D. Beasley, Esquire, Ausley, McMullen, McGehee, Carothers and Proctor, P. O. Box 391, Tallahassee, FL 32302, Attorneys for TECO, and Mr. Russell D. Chapman, Manager, Regulatory Coordination, Tampa Electric Company, P. O. Box 111, Tampa, FL 33601; and John W. McWhirter, Jr., Esquire, Lawson, McWhirter, Grandoff & Reeves, P. O. Box 3350, Tampa, FL 33601-3350, and Vicki G. Kaufman, Esquire, Lawson, McWhirter, Grandoff & Reeves, 522 East Park Avenue, Suite 200, Tallahassee, FL 32301, Attorneys for IMCF, this 31st day of January, 1992.

  
  
Wilton R. Miller



May 10, 1991

Mr. Grover W. Whidden  
District General Manager  
Florida Power & Light Company  
Box 149 Bradenton, Florida 33506

RE: FOUR CORNERS OPERATIONS - ELECTRIC POWER REQUIREMENT

Dear Mr. Whidden:

IMC Fertilizer re-opened our Four Corners Plant and Mining operations in January, 1989. Prior to startup, we contacted FP&L to obtain interruptible service for the complex's load. We were told at that time that FP&L did not have sufficient capacity or infrastructure and would not be able to provide service. Tampa Electric Company has been serving the operations since then, and service has been satisfactory.

We are currently implementing plans to commence mining in Section 21, Township 33 S., Range 22 E. We plan to start operations early this summer, and estimate it will take two to three years to mine out the area in question. Service will not be needed in this area beyond the period in which mining takes place.

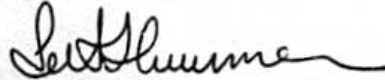
Tampa Electric has informed us that although they have facilities in close proximity, the area falls within FP&L's service territory. They have indicated reluctance to provide service without some agreement from FP&L, and have requested that we contact you. Because of our mining schedule, we need to know within the next two weeks whether FP&L has facilities and capacity and whether you can arrange to serve our load in this area during the next three years.

RECEIVED  
MAY 13 1991  
BA-MGR.

Mr. Grover W. Whiaden  
May 10, 1991  
Page Two

We request an expeditious response to our request so we can move forward with our operations. Please contact me as soon as possible.

Sincerely,



L. F. Thurner  
Manager, Engineering &  
Production Services

dk

cc: J. V. Burleson  
K. A. Dickinson  
R. H. Kinsey  
E. Melnyk  
B. E. Pryor  
S. N. Sisson



**FERTILIZER, INC.**

May 20, 1991

Florida Power and Light  
Box 149  
Bradenton, Florida 33508

Attn: Mr. Grover Whidden

Dear Mr. Whidden:

This letter is to follow up our telephone conversation of Friday, May 17, relative to the potential for your company to provide electric service to the Manatee County portion of our Four Corners Mine.

The information you requested is as follows:

- Initial anticipated connected load: 17 MW
- Maximum anticipated connected load: 30 MW
- Expected diversity factor: 75%
- Service voltage desired: 69 KV
- Location of metering point desired: SW 1/4 of SE 1/4 of Section 3, Range 22 E, Township 33 South
- Routing of transmission line desired: North along Taylor-Gill Road to approximately the south line of Section 5/4/3, thence east to metering point. This route is approximate. INOCF easements would require one no-cost relocation of the east-west portion during the life of the mine to allow mining the initial line location. Provisions for passage of mine equipment through the line would also be required.

Preparatory to further discussion, we request the following information:

- Please provide definition of FP&L's available interruptible rates by class and by billing method.
- What is FP&L's history of interruption of its interruptible customers over the past three years, and what has been the cost of alternative third-party purchased power, if such was available?
- Does FP&L have a system for forewarning interruptible customers of incipient interruption or transfer to third-party purchased power? If so, what is the nature of the system?

MAY 22 1991

MA-MGR.

Mr. Grover Whidden  
Page 2

Once these questions are answered, it may be beneficial for us to meet to discuss the project in greater detail.

Thank you for your interest in providing service to our operations.

Sincerely,



Lee F. Thurner  
Manager, Engineering and  
Production Services

dh

cc: E. J. Arnbrister  
J. V. Burleson  
E. H. Kinsey  
E. Melnyk  
B. E. Pryor  
S. H. Sisson



August 16, 1991

Mr. Gene Pryor  
Engineering and Production Services  
IMC Fertilizer, Incorporated  
P. O. Box 867  
Bartow, Florida 33830

Dear Mr. Pryor:

In previous conversations, meetings and by my letter of June 21, 1991, I have informed you of FPL's position regarding IMC's May 10, 1991, request for service. That is, if Peace River Electric Cooperative, Inc. (PRECO) cannot serve your mine site, then FPL is prepared, and expects, to provide service in PRECO's absence. It was FPL's understanding that you were seeking permanent service from PRECO, and that IMC and PRECO would inform FPL if PRECO were unable to provide service.

With respect to your previous comments that your company desired temporary service from Tampa Electric Company (TECO), please be advised that FPL has not received any contact from TECO regarding the provision of service, temporary or otherwise, by TECO to your mine site in Manatee County. We expect that TECO would contact us without delay regarding any possibility of its providing service in Manatee County.

As you may or may not be aware, the regulatory policy of the State of Florida does not recognize customer choice as the primary factor in determining which utility should serve a particularly situated customer or area. Moreover, we believe that existing regulatory policy, as reflected in orders of the Public Service Commission, makes it clear that FPL would serve your mine site if, for any reason, PRECO does not.

Sincerely,

A handwritten signature in dark ink that reads "C. T. Tate, II". The signature is written in a cursive style with a large, sweeping initial 'C'.

C. T. Tate, II  
Area Manager  
Large Commercial Industrial Group

CTT:gp

cc: Crandal McDougall ✓  
George Sullivan



June 21, 1991

Mr. Gene Pryor  
Engineering and Production Services  
IMC Fertilizer, Inc.  
P. O. Box 867  
Bartow, Florida 33830

Dear Mr. Pryor:

FPL appreciates our recent opportunity to discuss your company's need for service in Manatee County; however, pursuant to an order of the Florida Public Service Commission, the area in Manatee County which you identified as your proposed point of service is in the service territory of Peace River Electric Cooperative (PRECO). Based upon our discussions with you, it is our understanding that PRECO intends to, and has indicated to you that it will, provide service to your proposed mine site. Consequently, FPL may not provide service to your company in this instance. Should PRECO determine and inform you that it will not serve your mine site, FPL is prepared, and would expect to provide service in PRECO's absence.

If you would like information regarding FPL's rates or service for future reference, or have additional points of service you would like to discuss, please call me at 813-379-7140.

Sincerely,

*C. T. Tate II*

C. T. Tate, II  
Western Division  
Customer Service & Sales Manager

CTT:gp

cc: G. E. Sullivan  
K. C. McDougall ✓  
J. T. Blount