

**Florida Power**  
CORPORATION

Charles F. Reischmann  
ASSISTANT COUNSEL

SUBMITTED FOR FILING: October 11, 1991

October 11, 1991

911046-EU

Mr. Steven C. Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
1010 East Gaines Street  
Tallahassee, Florida 32399-0870

FPC - EI 801  
CFEC - EC 901

Re: Territorial Agreement Between Central Florida Electric  
Cooperative, Inc., and Florida Power  
Corporation, in Chiefland, Florida

Dear Mr. Tribble:

Enclosed for filing please find the original and fifteen  
copies of the Stipulation and Agreement, with attached exhibits,  
between Florida Power Corporation and Central Florida Electric  
Cooperative, Inc. regarding the above-referenced matter.

Please acknowledge your receipt of the above filing on the  
enclosed copy of this letter and return to the undersigned. Thank  
you for your assistance.

Respectfully submitted,

*Charles F. Reischmann*  
Charles F. Reischmann  
Assistant Counsel

CFR:eh

cc: Gregory V. Beauchamp, Esq.  
Mr. Edward Ricketson  
Albert H. Stephens, Esq.  
Mr. William Howell  
Mr. Ken Dyer

RECEIVED & FILED

*[Signature]*

FPC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE  
10105 001 14 1991  
FPC-BUREAU OF RECORDS

13  
no maps

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Joint Petition for Approval  
of Territorial Agreement. )  
Florida Power Corporation, a )  
regulated utility, and Central )  
Florida Electric Cooperative, Inc., )  
a regulated utility )

DOCKET NO:

Submitted for Filing:

**JOINT PETITION FOR  
APPROVAL OF TERRITORIAL AGREEMENT**

Florida Power Corporation ("FPC") and Central Florida Electric Cooperative, Inc. ("CFEC") jointly petition the Commission for approval of a territorial agreement dated July 16, 1991, ("the Agreement"), entered into by and between FPC and CFEC, and in support thereof, say:

1. FPC and CFEC are Commission-regulated electric utilities. FPC's principal place of business is located in St. Petersburg, Florida, and CFEC's principal place of business is located in Chiefland, Florida.

2. All notices and pleadings in this matter should be served upon the following:

**FOR FLORIDA POWER CORPORATION**

Mr. Albert H. Stephens  
General Counsel  
Florida Power Corporation  
Post Office Box 14042  
St. Petersburg, Florida 33733

Mr. Charles F. Reischmann  
Assistant Counsel  
Florida Power Corporation  
Post Office Box 14042  
St. Petersburg, Florida 33733

DOCUMENT NUMBER-DATE

10165 OCT 14 1991

FPSC-RECORDS/REPORTING

FOR CENTRAL FLORIDA ELECTRIC COOPERATIVE, INC.

Edward Ricketson,  
Executive Vice President  
and General Manager  
Central Florida Electric  
Cooperative  
Post Office Box 1129  
Chiefland, FL 32626

Gregory V. Beauchamp, Esq.  
Counsel for Central Florida  
Electric Cooperative, Inc.  
107 E. Park Ave.  
Post Office Box 9  
Chiefland, Florida 32626

3. On July 16, 1991, FPC and CFEC entered into an Agreement in an effort to more accurately define the parties' respective service areas which are contiguous in many places. Such Agreement provides expressly that it is contingent upon the subsequent approval of the Florida Public Service Commission. The parties have not previously entered into any territorial agreements.

4. The Agreement addressed in this petition likewise represents the continued effort by the parties to minimize costs to their respective customers by avoiding unnecessary duplications of generation, transmission and distribution facilities. Toward that end, the parties have established the territorial boundary line described in the Agreement to delineate their respective retail territorial areas, subject to the approval of the Commission.

5. The Commission is authorized by Section 366.04(2)(d), Fla. Stat., to approve and enforce territorial agreements by and between electric utilities. The Commission has promulgated Fla. Admin. Code Rule 25-6.0440 to implement this authority. The Commission 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.

FOR CENTRAL FLORIDA ELECTRIC COOPERATIVE, INC.

Edward Ricketson,  
Executive Vice President  
and General Manager  
Central Florida Electric  
Cooperative  
Post Office Box 1129  
Chiefland, FL 32626

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6. There are certain geographic areas not specifically addressed in the prior territorial agreements, or in the subsequent amendments thereto, where the parties more recently have had some concern as to which of them should provide electric service to customers requesting such service. These areas are addressed in detail in the proposed Agreement. FPC and CFEC have discussed the provision of service to these areas and have reached tentative agreement, again subject to the approval of this Commission, as to which of the two utilities would be the most appropriate to serve the areas in question. Attached hereto as Exhibit No. 1 is a copy of the Agreement dated July 16, 1991, which embodies the tentative agreement reached between the parties.

Effect on Existing Customers

7. Attached to the Agreement as Composite Exhibit A are maps and legal descriptions defining the territorial boundaries which the parties seek to have the Commission approve in this proceeding.

8. Exhibit B of the Agreement identifies 11 customer accounts of CFEC (4 commercial and 7 residential) which ultimately are to be transferred to FPC pursuant to the Agreement, and 388 customer accounts of CFEC (29 commercial and 359 residential) which ultimately are to be transferred to FPC pursuant to this Agreement. Section 2.3 of the Agreement provides for a transition period in order to minimize any inconvenience to these customers. Under this transition procedure, any affected current CFEC customer may request to become a customer of FPC once the Agreement is approved, or the customer may elect to remain a customer of CFEC until the

occurrence of a change of use as defined in the Agreement. A widow, widower or divorced spouse of an existing customer listed in Exhibit B of the Agreement who remains at the same service location is considered an existing customer, the same as if he or she specifically had been listed on Exhibit B of the Agreement.

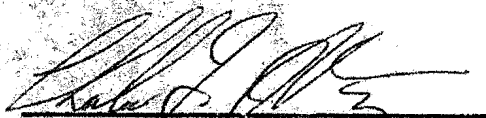
Effect on Service

9. There is no reasonable likelihood that the Agreement will cause a decrease in the reliability of electric service to the existing or future ratepayers of FPC or CFEC. The parties believe the provisions of the tentative Agreement will help avoid future uneconomic duplications of facilities and prevent disputes and uncertainties.


10. Both parties believe that Commission approval of the Agreement would be consistent with the criteria set forth in Section 366.04 of Fla. Stat., and would complement the objectives of assuring an adequate and reliable source of energy in Florida and avoiding uneconomic duplications of generation, transmission and distribution facilities.

WHEREFORE, FPC and CFEC urge that the Commission enter its order approving the Agreement attached hereto as Exhibit No. 1.

DATED this 10<sup>th</sup> day of October, 1991.



Mr. Charles F. Reischmann  
Assistant Counsel  
Florida Power Corporation  
Post Office Box 14042  
St. Petersburg, Florida 33733



Mr. Gregory V. Beauchamp  
Counsel for Central Florida  
Electric Cooperative, Inc.  
Post Office Box 1129  
Chiefland, FL 32626

## **AGREEMENT**

**Section 0.1:** THIS AGREEMENT, made and entered into this 16th day of July, 1991 by and between Florida Power Corporation, (herein called "FPC"), and Central Florida Electrical Cooperative, (herein called "CFEC"), each of which are corporations organized and existing under the laws of the State of Florida and electrical utilities as defined in, and whose retail service territories are subject to regulation pursuant to, Chapter 366, Florida Statutes and which corporations are herein collectively called 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 the areas of Dixie and Gilchrist counties of Florida; and

**Section 0.4:** WHEREAS, the respective areas of service of the Parties are contiguous in many places, and the Parties seek to minimize costs to their respective rate payers by avoiding duplication of generation, transmission, and distribution facilities; and

**Section 0.5:** WHEREAS, the Florida Public Service Commission (herein called 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 continue to avoid and eliminate the circumstances giving rise to potential duplications of facilities and hazardous situations, and toward that 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 herein, the term "Territorial Boundary Line" shall mean the boundary lines which circumscribe the geographic areas shown on the maps attached hereto as composite Exhibit "A", which differentiate and divide the CFEC Territorial Area from the FPC Territorial Area.

Section 1.2: CFEC Territorial Area. As used herein, the term "CFEC Territorial Area" shall mean the geographic area shown on composite Exhibit "A" and designated "CFEC".

Section 1.3: FPC Territorial Area. As used herein, the term "FPC Territorial Area" shall mean the geographic area shown on composite Exhibit "A" and designated "FPC".

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

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

Section 1.6. Person. As used herein, 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 herein, the term "New Customer" shall mean any person that applies to either CFEC or FPC for retail electric service after the effective date of this Agreement.

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

Section 1.9. Change in Use. As used herein, the term "Change in Use" shall mean: (1) A 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 widow, widower, or divorced spouse of an Existing Customer who received electric service at the same location.

## ARTICLE 2

### AREA ALLOCATIONS AND NEW CUSTOMERS

Section 2.1: Territorial Allocations. Except as otherwise specifically provided herein, during the term of this Agreement CFEC shall have the exclusive authority to furnish retail electric service for end use within the CFEC 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 in 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 in whose Territorial Area they are located. In such instances, 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'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 IV, Section 4.1 hereof.

In the event that a new customer or prospective new customer requests for applies for service from either party to be provided to end-use facilities located in the Territorial Area of the other party, then 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 and approved by the 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. 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 of which they are using electric service shall be located in the Territorial Area of the other party effected 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 "C" attached hereto and made a part hereof. This Section of this Agreement shall also apply to additional requirements for electric service by Existing Customers 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, in which event the Parties agree that such customer shall then be transferred. A widow, a widower or divorced spouse of an Existing Customer of either party listed on Exhibit "B" who remains at the same service location shall be considered an Existing Customer the same as if he or she had specifically been listed on Exhibit "B" and included in the definition of "Existing Customer" in Section 1.8 above. If there is a "Change in Use", as defined in Section 1.9 above, of the real property at a location at which an Existing Customer listed on Exhibit "B" receives service, the person receiving such service shall cease to be considered an Existing Customer and electric service at that location shall be provided by the party in whose Territorial Area the real property is located.

Section 2.4: Transfer of Facilities. Upon the transfer of any customer or customers pursuant to this Agreement, the transferring party shall sell and the receiving party shall purchase the distribution facilities of the transferring party previously used to serve the transferred customer or customers for the replacement cost of such facilities, less depreciation.

**Section 2.5: 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 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, in a 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 that body 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 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 disputes 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 or on account of such nonattainment of 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.

## 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 Florida Public Service 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 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 generations, 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 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 CPEC if mailed by certified mail, postage prepaid, to Edward Ricketson, Executive Vice President and General Manager, or his successor, Central Florida Electrical Cooperative, P.O. Box 9, Chiefland, Florida 32626 and to FPC if mailed by certified mail, postage prepaid to Patricia A. Brown, Resident Agent for service of process, 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.

IN WITNESS WHEREOF, the parties hereby 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:

COOPERATIVE

Clyde Townsend  
Secretary

BY W. J. Howell  
Chairman of the Board

(SEAL)

ATTEST:

FLORIDA POWER CORPORATION

[Signature]  
Assistant Secretary

BY W. J. Howell  
Executive Vice President

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_  
Legal Counsel to COOPERATIVE

By: [Signature]  
General Counsel to  
Florida Power Corporation