

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

November 8, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (CULPEPPER) *bc RVE*  
DIVISION OF ELECTRIC & GAS (BASS, DUDLEY, TEW) *KJ CSK*  
*RD. John RLT*

RE: DOCKET NO. 950307-EU - PETITION TO RESOLVE A TERRITORIAL  
DISPUTE WITH FLORIDA POWER AND LIGHT COMPANY IN ST. JOHNS  
COUNTY, BY JACKSONVILLE ELECTRIC AUTHORITY.

AGENDA: 11/21/95 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\950307EU.RCM

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CASE BACKGROUND

On March 20, 1995, Jacksonville Electric Authority (JEA) petitioned the Florida Public Service Commission (Commission) to resolve a territorial dispute with Florida Power and Light Company (FPL). Pursuant to Section 366.04, Florida Statutes, the Commission has jurisdiction to resolve this dispute.

On August 28, 1995, JEA filed a Joint Motion to Suspend Remaining Filing and Hearing Dates. In that motion, the parties stated that they had reached a settlement of this matter and intended to file the appropriate documentation at a future date. By Order No. PSC-95-1086-PCO-EU, issued on August 31, 1995, the remaining filing and hearing deadlines scheduled for this docket were suspended and held in abeyance pending resolution of matters concerning the settlement agreement.

On October 6, 1995, JEA and FPL filed a Joint Motion to Approve a Territorial Agreement. Attached to this recommendation as Attachment A is the new territorial agreement. This agreement is intended to replace the previous agreement between the two utilities in Clay, Duval, Nassau and St. Johns Counties, that was approved by Order No. 9363, issued May 9, 1980, in Docket No. 790886-EU. The new Territorial Agreement is the subject of this recommendation.

DOCUMENT NUMBER-DATE

11022 NOV-8 1995

FPSC-RECORDS/REPORTING

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### SUMMARY OF PROVISIONS

There are 447 FPL customer accounts transferring to JEA and 16 JEA customer accounts transferring to FPL as a result of the territorial agreement. The agreement eliminates all grandfathered customers and effectively separates the two respective electric distribution systems. In accordance with Section 3.7 of the agreement, each of the transferred customers will be refunded their deposit from their respective utility. The receiving utility will then bill the customer for a new deposit, if any, in an amount no greater than that required by the transferring utility. In addition, customers will be allowed to take up to three months to pay the deposit.

All transfers of distribution facilities necessary to accomplish the customer account transfers under the agreement should be completed within one year of the Commission's final order approving this territorial agreement. In the event that a customer is unable to be transferred during this period, the transferring utility shall begin paying the other utility all non-fuel revenues received from the customer until the customer is transferred. The parties have agreed that JEA will pay FPL \$1,730,000 as net compensation for the transfer of all customers and associated facilities including customer revenue compensation, net book value of facilities, relocation costs, feeder tie construction costs, and cost recovery for all area improvements.

Section 3.10 of the agreement states that, in the case of exceptional circumstances, economic constraints, or good engineering practices, it may be necessary, upon written request, to provide interim service to a new customer whose end use facilities are located within the other party's territory. If the interim service lasts or is expected to last for more than one year, the parties will request formal approval of the service from the Commission.

The agreement provides that it shall remain in effect until the Commission modifies or withdraws its approval after proper notice and hearing. Any modifications, changes, or corrections to this agreement are subject to Commission approval.

### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission approve Jacksonville Electric Authority and Florida Power and Light Company's Territorial Agreement for Clay, Duval, Nassau and St. Johns Counties?

**RECOMMENDATION:** Yes. The agreement establishes a comprehensive boundary between the utilities' service territories in Clay, Duval, Nassau and St. Johns counties which is in the best interest of the public. However, the utilities should notify the Commission in the event that a customer is not transferred within one-year of the Commission's final order approving the agreement.

**STAFF ANALYSIS:** All customers subject to transfer pursuant to this agreement were notified of the pending transfer, advised of the differences in rates and advised of this proceeding. Only five customers responded to the transfer notification letter. Four of the five customers opposed the transfer, citing dissatisfaction with previous JEA service. The remaining customer was concerned about losing FPL's Budget Billing Program. Staff has confirmed that JEA's average length of a service interruption is lower than FPL's and that JEA offers a similar billing program.

The utilities have agreed to transfer 463 customer accounts and the related distribution facilities within one year of the Commission's final order approving this territorial agreement. If either utility is unable to transfer a customer account within this period, staff recommends that the utilities notify the Commission and submit a timeline of when the customer account will be ultimately transferred. Staff believes that this reporting requirement will ensure finality of the transfers.

Staff recommends that Jacksonville Electric Authority and Florida Power and Light Company's territorial agreement be approved. The agreement will benefit the public's interest by establishing a boundary between the two utilities' respective distribution systems and by avoiding and eliminating uneconomic duplication of electric facilities in Clay, Duval, Nassau and St. Johns Counties.

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**ISSUE 2:** Should these dockets be closed?

**RECOMMENDATION:** Yes. If no person whose substantial interests are affected by the Commission's proposed agency action, timely files a protest within twenty-one days, this docket should be closed.

**STAFF ANALYSIS:** If no person whose substantial interests are affected files a timely request for a Section 120.57, Florida Statutes, hearing within twenty-one days, no further action will be required and this docket should be closed.

**ATTACHMENT "A"**  
**TERRITORIAL AGREEMENT**

**TERRITORIAL AGREEMENT  
BETWEEN  
FLORIDA POWER & LIGHT COMPANY  
AND  
JACKSONVILLE ELECTRIC AUTHORITY**

**Section 0.1**     **Territorial Agreement** - This is a Territorial Agreement made and entered into by and between FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida ("COMPANY"), and JACKSONVILLE ELECTRIC AUTHORITY ("AUTHORITY") for the express purpose of seeking an Order of the Florida Public Service Commission adopting the following recommended Territorial Agreement;

**Section 0.2**     WHEREAS, the COMPANY, by virtue of its Charter and the laws of the State 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 of St. Johns, Nassau and Duval Counties, Florida, and elsewhere; and

**Section 0.3**     WHEREAS, the AUTHORITY, as an electric utility created by the Charter of the Consolidated City of Jacksonville, Florida, is authorized under that Charter and the laws of the State of Florida to produce and provide electricity and power to customers in Duval County and elsewhere; and

**Section 0.4**     WHEREAS, the respective areas of service of the parties in Duval, St. Johns and Nassau Counties are contiguous in

many places with the result that future duplication of service facilities will occur unless such duplication is precluded by a territorial agreement; and

Section 0.5 WHEREAS, the Florida Public Service Commission ("COMMISSION") has previously recognized that any such duplication of said service facilities by the parties will result in needless and wasteful expenditures; and

Section 0.6 WHEREAS, the COMPANY and AUTHORITY have previously entered into territorial agreements and such agreements have been approved by the Commission; and

Section 0.7 WHEREAS, the COMPANY and AUTHORITY desire to avoid and eliminate any circumstances giving rise to possible duplication of service facilities and, to that end, desire to re-affirm and re-establish territorial boundaries; and

Section 0.8 WHEREAS, the Commission is empowered by Section 366.04, Florida Statutes, to approve territorial agreements;

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**  
**DEFINITIONS**

**Section 1.1**     **Territorial Boundary Lines** - As used herein, the term "Territorial Boundary Lines" shall mean boundary lines which delineate areas on the map and legal description attached hereto as to Exhibit "A" and which differentiate and divide the COMPANY Territorial Area from the AUTHORITY Territorial Area in the counties of St. Johns, Nassau, Clay and Duval, Florida.

**Section 1.2**     **COMPANY Territorial Area** - As used herein, the term "COMPANY Territorial Area" shall mean the geographic area shown on Exhibit "A" labeled "FPL."

**Section 1.3**     **AUTHORITY Territorial Area** - As used herein, the term "AUTHORITY Territorial Area" shall mean the geographic area shown on Exhibit "A" labeled "JEA."

**Section 1.4**     **End Use Facilities** - As used herein, the term "End Use Facilities" shall mean a geographic location where the electric energy used by a customer is ultimately consumed.

**Section 1.5**     **Distribution Facilities** - As used herein, the term "Distribution Facilities" shall mean all electric facilities of either party having a voltage rating of up to but not including 69 KV.



**ARTICLE II**  
**TERMINATION OF PRE-EXISTING TERRITORIAL AGREEMENTS**

**Section 2.1**     **Pre-Existing Territorial Agreements** - Upon final approval of this agreement by the Commission, the Territorial Agreement between the COMPANY and the AUTHORITY dated April 13, 1979 and approved by the Commission pursuant to Order Number PSC-9363 on May 9, 1980 is terminated as are any previous territorial agreements referenced in the 1979 agreement.

**ARTICLE III**  
**ELIMINATION OF OVERLAPPING FACILITIES**

**Section 3.1**     **Transfer of Customers** - 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 1.1. Until such transfers are accomplished pursuant to Section 3.5, each utility is authorized to continue providing service to those identified customer locations.

**Section 3.2**     Those customer accounts identified in Exhibit "B" shall be transferred from the AUTHORITY to the COMPANY.

**Section 3.3**     Those customer accounts identified in Exhibit "C" shall be transferred from the COMPANY to the AUTHORITY.

**Section 3.4**     Each party is responsible for making the necessary modifications to its facilities to effect the transfers in Sections

3.2 and 3.3. The COMPANY understands that the improvements necessitated by movement of its distribution lines to the south side of C.R. 210 and Palm Valley Road must be completed prior to the completion of construction of the AUTHORITY's distribution facilities necessary to serve customers transferred from the COMPANY to the AUTHORITY. Accordingly, the COMPANY agrees to work with the AUTHORITY to expedite the COMPANY's construction of new distribution facilities along C.R. 210 and Palm Valley Road in an orderly manner.

In addition, in the event of the failure to complete the transfer of all customers and facilities within one year from the date of final Commission approval of this agreement, the transferring utility shall pay the other utility all non-fuel revenues received from every customer not transferred until such time as the customer is transferred to the other utility. For purposes of this penalty provision, any payments due shall be calculated based upon the first day of a new billing period occurring after one year from the date of final Commission approval of this agreement and extending until the date the customer is actually transferred.

**Section 3.5** **Timing of Transfers** - The distribution facilities of either party that are located in the other party's Territorial Area, not including the express feeders referred to by section 3.11 of this Agreement, and the identified customer accounts, shall be transferred to the appropriate party within one year of the

COMMISSION's final order approving this Territorial Agreement. The one year period beginning with the Commission's final order of approval shall be the "transfer period".

If during the transfer period major repairs to the facilities to be transferred occur before the transfer due to damage from a hurricane, tropical storm, or tornado, 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.

Prior to and after transfer of these facilities, it may be necessary for the parties to jointly use certain facilities and the COMPANY and AUTHORITY 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 and oil-filled equipment will not be transferred. Upon transfer of any facilities, the receiving utility shall be solely responsible for any maintenance, removal, upgrading or improvements to those facilities.

**Section 3.6**      **Bulk Power** - No provision of this Agreement shall be construed as applying to either bulk power supply for resale, or to facilities dedicated to such bulk power supply that operate at a voltage of 69 KV or higher.

**Section 3.7**      **Customer Deposits** - The utilities intend that transferred customers suffer no hardship due to different deposit requirements of each utility. The transferring utility will refund and/or apply to the final bill any deposit currently applicable. The receiving utility may then bill the customer a deposit, provided that such deposit is no greater than the deposit required by the transferring utility. The customer will be allowed to make up to three equal payments over three months to meet the deposit requirements of the receiving utility.

**Section 3.8**      All easements, street light contracts and joint use agreements held by either the COMPANY or the AUTHORITY necessary or appurtenant to serving customers transferred pursuant to this Agreement are hereby assigned to the utility receiving the transferred customers.

**Section 3.9**      **Allocations** - The COMPANY Territorial Area, as herein defined, is hereby allocated to the COMPANY as its service area, and the AUTHORITY Territorial Area, as herein defined, is hereby allocated to the AUTHORITY as its service area. The parties shall each have the right to provide retail

distribution electric service to all customers within their respective territorial area. Neither party shall hereafter serve or offer to serve a retail customer whose End Use Facilities are located in the territorial area of the other party except as provided in Section 3.10 below.

**Section 3.10 Temporary Service** - 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 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.

During the Transfer Period, as defined in Section 3.5, in the event any customer located within one party's service territory requests service from the other party, and the party within who's territory the customer is located approves the provision of such service, then, upon final transfer of that customer, that party shall reimburse the other party for the difference in revenues received from that customer and capital costs expended in providing such service. Transformers and meters shall not be considered as capital costs with respect to the provision of new service.

The party within whose territory the new customer is located may elect to perform any or all work necessary for the establishment of new service for a new customer; however the party actually providing service shall set a meter for the customer, bill the customer, and receive revenues from the customers until such time as a final transfer of such customer occurs.

**Section 3.11 Express Feeders** - The COMPANY and AUTHORITY shall each have the right to construct and maintain underground 3-phase feeder lines within the Territorial Area of the other party for the purpose of express feed through the area. No such facilities shall be used by the COMPANY or the AUTHORITY to provide service to customers located in the service area of the other party.

**ARTICLE IV  
PREREQUISITE APPROVAL**

**Section 4.1 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 hereof. Neither party shall be bound hereunder until such approval has been obtained.

**ARTICLE V  
DURATION**

**Section 5.1 Duration** - 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.

**ARTICLE VI**  
**CONSTRUCTION OF AGREEMENT**

**Section 6.1**     **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, duplication of facilities and potentially hazardous situations, which would otherwise result from unrestrained competition, between the parties operating in overlapping service areas.

**Section 6.2**     **Annexation** - Annexation or de-annexation shall not affect this Agreement.

**ARTICLE VII**  
**MISCELLANEOUS**

**Section 7.1**     **Negotiations** - Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Agreement, the only terms and conditions 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. However, nothing in this Agreement shall be construed as prohibiting either party from unilaterally initiating an action before the Florida Public Service Commission, or other entity with appropriate

jurisdiction, seeking modification or cancellation of this Agreement.

**Section 7.2** **No Assumption of Liabilities by COMPANY** - The COMPANY shall not assume or be responsible for any financial obligations or liabilities of the AUTHORITY. Without limiting the generality of the foregoing, the COMPANY shall not assume or be responsible for:

(a) Any tax, penalty or fee assessed on the AUTHORITY arising out of or resulting from the transfer or facilities;

(b) Any tax, penalty or fee resulting from the operations of the facilities before the date of transfer;

(c) Any attorney's, accountant's or other fees or expenses incurred by the AUTHORITY in connection with this Agreement or any transaction made necessary by this Agreement;

(d) Any liabilities or obligations resulting from any lawsuit or proceeding in any way related to the AUTHORITY arising out of transactions or events in any way related to the facilities;  
or

(e) Any accrued but unpaid obligation of the AUTHORITY.

**Section 7.3** **No Assumption of Liabilities by AUTHORITY** - The AUTHORITY will not be responsible for any financial obligations or liabilities of the COMPANY. Without limiting the generality of the foregoing, the AUTHORITY shall not assume or be responsible for:

(a) Any tax, penalty or fee assessed on the COMPANY



arising out of or resulting from the transfer of facilities;

(b) Any tax, penalty or fee resulting from the operations of the facilities after the date of transfer;

(c) Any attorney's, accountant's or other fees or expenses incurred by the COMPANY in connection with this Agreement or any transaction made necessary by this Agreement;

(d) Any liabilities or obligations resulting from any lawsuit or proceeding in any way related to the COMPANY arising out of transactions or events in any way related to the facilities; or

(e) Any occurred but unpaid obligation of the COMPANY.

**Section 7.4 Environmental Indemnification** - The AUTHORITY shall indemnify and hold the COMPANY harmless from and against any claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including but not limited to attorney's fees, paralegal charges and expenses, arising directly, or indirectly, in whole or in part, out of:

(a) Any activity by the AUTHORITY'S employees, contractors or agents, in connection with the treatment, decontamination, handling, removal, storage, cleanup, transport or disposal or hazardous material related to the AUTHORITY'S facilities transferred to the COMPANY; and

(b) The presence caused by the AUTHORITY, its employees, agents or contractors of any hazardous materials or releases or

discharges of hazardous materials associated with the AUTHORITY'S facilities transferred to the COMPANY occurring before the transfers.

The COMPANY shall indemnify the AUTHORITY in the same manner for (a) and (b) above, as they relate to the COMPANY'S facilities transferred to the AUTHORITY.

IN WITNESS WHEREOF, this Agreement has been caused to be executed in triplicate by the AUTHORITY in its name by its Manager and by the COMPANY in its name by its Vice President; and one of said triplicate copies has been delivered to each of the parties hereto.

JACKSONVILLE ELECTRIC AUTHORITY

By: 

**FORM APPROVED**

  
ASSISTANT GENERAL COUNSEL

FLORIDA POWER & LIGHT COMPANY

By: \_\_\_\_\_  
R.M. Marshall, Vice President

discharges of hazardous materials associated with the AUTHORITY'S facilities transferred to the COMPANY occurring before the transfers.

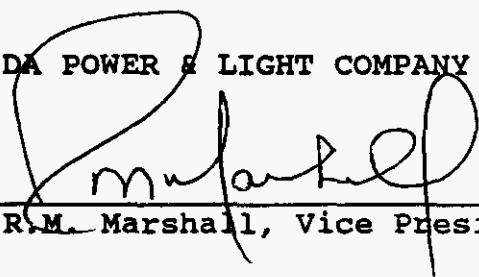
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JACKSONVILLE ELECTRIC AUTHORITY

By: \_\_\_\_\_

FLORIDA POWER & LIGHT COMPANY

By:  \_\_\_\_\_  
R.M. Marshall, Vice President

**EXHIBIT "A"**

**TERRITORIAL MAP & LEGAL DESCRIPTION**

EXHIBIT "A"

JEA/FPL SERVICE AREA BOUNDARIES  
PREPARED BY JEA, OCTOBER 2, 1995

LEGAL DESCRIPTION

The lines of demarcation defining to each the territory of the other are depicted upon the maps appended to this Agreement, and said maps shall be a part hereof. the lines of demarcation are verbally described as follows:

Begin at the center line of Nassau River at its Atlantic Ocean outfall, also being the Nassau County-Duval County coterminous border, and the territorial boundary between JEA and Florida Power and Light Company as established in 1964 under Florida Public Service Commission Docket 7421-EU; thence Westerly and Southwesterly along the above-described Nassau-Duval County line and territorial boundary line, to a point where said JEA-FP&L boundary departs the Nassau-Duval border in a Southerly direction, said point being the West line of Section 14, Township 1 South, Range 24 East; thence Southerly along said JEA-FP&L boundary, also being the West line of Sections 14, 23, 26 and 35, said Township and Range, and continuing Southerly along the West line of Sections 2, 11, 14, 23, 26 and 35, Township 2 South, Range 24 East; thence Westerly continuing along said JEA-FP&L boundary, also being the Southerly line of Sections 34, 33, 32 and 31; thence Southerly along said JEA-FP&L boundary, also being the West line of Sections 6, 7, 18, 19 and the North one-eighth of Section 30, Township 3 South Range 24 East, to the Northerly right-of-way line of Normandy Boulevard (State Road 228) as now established; thence Southeasterly diagonally across Sections 30 and 31 and to the South line of Section 32, Township 3 South Range 24 East, also being the Duval County - Clay County coterminous border; thence continuing Southeasterly along said JEA-FP&L boundary diagonally across Sections 5, 4, 9, 10, 15, 14, 23, 24 and to the East line of Section 25, Township 4 South Range 24 East; thence continuing Southeasterly diagonally across Sections 30, 31 and to the South line of Section 32 Township 4 South Range 25 East; thence continuing Southeasterly diagonally across Sections 5, 4, 9, 10, 15, 14, 23, 24, and to the Northerly terminus of the West line of Section 30 Township 5 South Range 26 East; thence Southerly along said JEA-FP&L boundary also being the West line of Sections 30 and 31 Township 5 South Range 26 East; thence continuing Southerly along the West line of Sections 6 and 7; thence Easterly along said JEA-FP&L boundary also being the South line of Sections 7, 8 and 9 to a point where the West Corporate limits of the City of Green Cove Springs joins the South line of Section 9; thence Southerly and Easterly along said Corporate limits line to the centerline of State Road 209; thence meandering in a Southerly direction along the centerline of State Road 209 to the intersection with County Road 15; thence Easterly

to the center of the St. Johns River; thence Northerly along said JEA-FP&L boundary, also being the prolongation of the West lines of Sections 4 and 9, Township 6 South, Range 27 East and continuing Northerly along the West line of Section 33, Township 5 South, Range 27 East to the center of State Road 210; thence Easterly and Northeasterly along said JEA-FP&L boundary, also being the centerline of State Road 210 to the Westerly terminus of Micklers Landing Road as now established and meandering Northeasterly and Easterly along the centerline of said Micklers Landing Road through Sections 15, 73 and 46, Township 4 South Range 29 East, to State Road 203 and along the Easterly prolongation of said Micklers Landing Road to the Atlantic Ocean.

exhibccw.doc  
10/02/95