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

June 13, 1996

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

FROM: DIVISION OF LEGAL SERVICES (BROWN) MCB RVE JDJ
DIVISION OF ELECTRIC & GAS (TEW)

RE: DOCKET NO. 960468-EC - JOINT PETITION FOR APPROVAL OF TERRITORIAL AGREEMENT BETWEEN SUMTER ELECTRIC COOPERATIVE, INC. AND CENTRAL FLORIDA ELECTRIC COOPERATIVE, INC.

AGENDA: 06/25/96 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\960468EC.RCM

CASE BACKGROUND

On April 11, 1996, Sumter Electric Cooperative, Inc. (Sumter) and Central Florida Electric Cooperative, Inc. (CFEC) filed a Joint Petition for Approval of a Territorial Agreement that delineates their respective territories in Levy and Marion counties. A copy of the territorial agreement between Sumter and CFEC is attached (Attachment A).

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the Joint Petition for Approval of a Territorial Agreement between Sumter Electric Cooperative, Inc. and Central Florida Electric Cooperative, Inc. in Levy and Marion Counties?

RECOMMENDATION: Yes, the Territorial Agreement between Sumter Electric Cooperative, Inc. and Central Florida Electric Cooperative, Inc. is in the public interest and should be approved. The utilities have agreed to notify the Commission of any interim service which is provided in excess of one year.

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STAFF ANALYSIS: The purpose of Sumter and CFEC's territorial agreement is to delineate each utility's respective service area and to prevent the potential uneconomic duplication of electric facilities by these two cooperatives in Levy and Marion Counties. The parties confirmed that upon Commission approval of the agreement, all electric facilities used to serve their retail customers will be located wholly within their respective service areas. In addition, there is to be no transfer of existing customers or facilities.

Section 2.2 of Sumter and CFEC's territorial agreement contains the provision for interim service. Here 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 when exceptional circumstances, economic constraints, good engineering practices, or system planning call for such service. In such instances, a party may submit a written request to the other party to temporarily provide service to the new customer. In Section 5.2, the utilities agree to file annual reports with the Commission if interim service is being provided in excess of one year.

The territorial agreement between Sumter and CFEC will become effective on the date of the Commission order approving it. According to Section 5.1, it shall then remain in effect for a period of thirty years.

Staff recommends that the Commission approve the territorial agreement between Sumter and CFEC because it is in the public interest, and it is consistent with the Commission's goal to eliminate all existing and potential uneconomic duplication of electrical facilities in the State of Florida.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed if no timely protests are filed within 21 days of the issuance of this Order.

STAFF ANALYSIS: Pursuant to Rule 25-22.029(4), Florida Administrative Code, any person whose substantial interests are affected by the proposed agency action shall have 21 days after the issuance of the Order to file a protest. If no timely protest is filed, the docket should be closed.

ATTACHMENT A

AGREEMENT

Section 0.1 - THIS AGREEMENT, made and entered into this 18th day of December, 19 95, by and between CENTRAL FLORIDA ELECTRIC COOPERATIVE, INC., an electric cooperative organized and existing under the laws of the State of Florida (herein called "CFEC") and SUMTER ELECTRIC COOPERATIVE, INC., an electric cooperative organized and existing under the laws of the State of Florida (herein called "SECO");

WITNESSETH

Section 0.2 - WHEREAS, each of the Parties is authorized, empowered and obligated by its corporate charter 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 electric service to members and customers in Levy County, Marion County, and elsewhere in the State of Florida; and

Section 0.4 - WHEREAS, the respective areas of service of the Parties hereto are contiguous in many places in Levy and Marion Counties, with the result that in the future duplication of service facilities may occur unless such duplication is precluded by a Territorial Agreement; and

Section 0.5 - WHEREAS, the Florida Public Service Commission (herein called the "Commission"), has previously recognized that any such duplication of service facilities may

EXHIBIT
"1"

result in needless and wasteful expenditures, and may create hazardous situations; both being detrimental to the public interest; and

Section 0.6 - **WHEREAS**, the Commission is empowered by Section 366.04(2)(d), Florida Statutes, to approve, monitor and enforce territorial agreements between electric utilities, and has recognized the wisdom of such agreements to avoid unnecessary and uneconomic duplication of electric facilities, and costly disputes over service areas, and that such agreements are in the public interest; and

Section 0.7 - **WHEREAS**, the Parties hereto desire to avoid and eliminate the circumstances that may give rise to the aforesaid duplications, hazards, and costly expenditures, and to that end, desire to establish territorial boundaries; and

Section 0.8 - **WHEREAS**, in order to accomplish said area allocation, the Parties have delineated boundary lines in portions of Levy and Marion Counties, hereinafter referred to as "Boundary Lines", and said boundary lines define and delineate the retail service areas of the Parties in portions of Levy and Marion Counties;

Section 0.9 - **NOW, THEREFORE**, in consideration of the premises aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as

being interdependent, the Parties hereto, subject to and upon the terms and conditions herein set forth and Commission approval, 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 the geographic areas on the maps attached hereto as Exhibit "A" which is a composite exhibit, and which differentiate and distinguish the CFEC Territorial Area from the SECO Territorial Area.

Section 1.2 CFEC Territorial Areas - As used herein, "CFEC" Territorial Areas shall mean the geographic areas shown as Composite Exhibit "A" and labeled "CFEC".

Section 1.3 SECO Territorial Areas - As used herein, the term "SECO" Territorial Areas shall mean the geographic areas shown on Composite Exhibit "A" and labeled "SECO".

Section 1.4 Distribution Lines - As used herein, the term "Distribution Lines" shall mean all lines for the flow of electric energy of either Party having a rating up to, but not including, 69 kv.

Section 1.5 Express Distribution Feeders - As used herein, the "Express Distribution Feeder" shall mean a three

phase line, at distribution voltage, that transports power through the other Party's Territorial Area but serves no retail load within such Territorial Area.

Section 1.6 Transmission Lines - As used herein, the term "Transmission Lines" shall mean all lines for the flow of electric energy of either Party having a rating of 69 kv or higher.

Section 1.7 Customers - As used herein, the term "Customer" shall mean a customer or consumer of either Party.

Section 1.8 New Customers - As used herein, the term "New Customers" shall mean all retail electric customers applying for service to either CFEC or SECO after the effective date of this Agreement.

Section 1.9 Existing Customers - As used herein, the term "Existing Customers" shall mean all retail electric customers receiving service on or before the effective date of this Agreement from either Party.

Section 1.10 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. This shall not necessarily mean the geographic location of the meter or the point of connection between a customer and a Party's facilities.

ARTICLE II

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 to End Use Facilities within the CFEC Territorial Area and SECO shall have the exclusive authority to furnish retail electric service to End Use Facilities within the SECO Territorial Area.

Section 2.2 Service to New Customers - The Parties agree that neither of them will knowingly service 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, good engineering practices, and system planning may indicate that a customer should not be immediately serviced by the Party in whose territorial area the customer's End Use Facilities are located, until some time in the future. In such an event, a Party may, in its discretion, request the other Party to provide service to the New Customer on an interim basis. Such request shall be made in writing and the other Party shall promptly notify the requesting Party of its

election, in its sole discretion, to either accept or to decline the request. Notice of the interim service agreement shall be jointly sent by the Parties hereto to the Commission. If the request is accepted, the Party providing interim service shall be deemed to do so only on behalf of the requesting Party, who shall remain entitled to serve the New Customer to the same extent as if it had provided service in the first instances. At such time as the requesting Party elects to begin providing service directly to the New Customer, after reasonable written notice to the other Party, such other Party shall cease providing interim service and the requesting party shall, thereafter, furnish service to the New Customer.

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 Commission, and shall notify the other Party of such request or application. Thereafter, the Parties shall abide by the rights and obligations and Territorial Areas assigned to them under this Agreement, and no attempt, permanent or temporary shall be made to provide service to such customer,

except in accordance with this Agreement, or until an Order of the Commission is entered, after notice and hearing, that would change the rights and obligations of the Parties.

Section 2.3 Bulk Power for Resale - Nothing herein shall be construed to prevent either Party from providing a bulk power supply for resale purposes regardless of where such other electric utility or person 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.

ARTICLE III

OPERATION AND MAINTENANCE

Section 3.1 Facilities to Remain - All generating plants, transmission lines, substations, distribution lines and related facilities now used by either Party in conjunction with their respective electric utility systems, and which are used directly or indirectly and are useful in serving customers in their respective service areas, shall be allowed to remain where situated and shall not be subject to removal hereunder except by the Party owning or using such facilities; PROVIDED, HOWEVER, that each party shall operate and maintain said lines and facilities in such a manner as to minimize any interference with the operations of the other Party.

Section 3.2 Express Distribution Feeders - Either Party may erect and/or operate Express Distribution Feeders in the Territorial Area of the other Party; PROVIDED, HOWEVER, that the Party shall construct, operate and maintain said Express Distribution Feeders in a safe manner so as to minimize any interference with the operation of the other Party's facilities and further provided that such Express Distribution Feeders shall not be used to allow a Third Party electric utility to serve customers in a Party's Territorial Area.

Section 3.3 Transmission Lines - Either Party may erect and/or operate Transmission Lines in the territorial area of the other Party; PROVIDED, HOWEVER, that the Party shall construct, operate and maintain said Transmission Lines in a safe manner so as to minimize any interference with the operation of the other Party's facilities.

ARTICLE IV

PREREQUISITE APPROVAL

Section 4.1 Florida Public Service Commission - The provisions of this Agreement are subject to the regulatory authority of the Florida Public Service Commission, and appropriate approval by that body of the provisions of this Agreement shall be a prerequisite to the validity and applicability hereof and neither Party shall be bound hereunder

until that approval has been obtained. Each Party irrevocably and unconditionally consents to and requests the Commission to approve this Agreement. If approved by the Commission, the effective date of this Agreement shall be the date of the Commission's Order approving it. In addition, the Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance under this Agreement. If the Commission does not approve this Agreement, it shall be of no force and effect whatsoever.

Section 4.2 Liability in the Absence of Approval - In the event approval pursuant to Section 4.1 is not obtained, neither Party will have any cause of action against the other arising under this Agreement.

ARTICLE V

DURATION

Section 5.1 Term - This Agreement shall continue and remain in effect until the earlier of: (a) thirty (30) years after Commission approval of this Agreement, or (b) such time as the Commission or its successor with appropriate jurisdiction, by Order, modifies or withdraws its approval of this Agreement after proper notice and hearing. The Parties recognize that the Commission or its successor, with appropriate jurisdiction, has

continuing jurisdiction over this Agreement, and upon proper petition pursuant to Florida law, including, but not limited to, Section 366.04(2)(d) and (e), Florida Statutes, may modify its Order approving this Agreement. Neither Party shall unilaterally seek the Commission to approve amendment to this Agreement.

Section 5.2 Reports - On or before the first anniversary of the date that this Agreement is approved by the Commission, and annually thereafter, the Parties to this Agreement shall file a report with the Commission if interim service is being provided pursuant to Section 2.2 in excess of one (1) year.

ARTICLE VI

CONSTRUCTION OF AGREEMENT

Section 6.1 Intent and Interpretation - The purpose and intent of this Agreement shall be, and this Agreement shall be interpreted and construed, to further the policy of the State of Florida to actively regulate and supervise the service areas of all electric utilities, to supervise the planning, development and maintenance of a coordinated electric power grid, to avoid the uneconomic duplication of generation, transmission and distribution facilities, and to encourage territorial agreements between and among electric utilities.

ARTICLE VII

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 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 heretc, signed by both Parties, and approved by the Commission.

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

Section 7.3 Notices - Notices given hereunder shall be deemed to have been given to CFEC if mailed by Certified Mail, postage prepaid, to: General Manager, Central Florida Electric Cooperative, Inc., P.O. Box 9, Chiefland, Florida 32626; and

to SECO if mailed by Certified Mail, postage prepaid, to: General Manager, Sumter Electric Cooperative, Inc., P.O. Box 301, Sumterville, FL 33585-0301. Such address to which such notice shall be mailed may be, at any time, changed by designating such new address and giving notice thereof in writing in the manner as herein provided.

IN WITNESS WHEREOF, this Agreement has been caused to be executed in triplicate by Central Florida Electric Cooperative, Inc. in its name by its President, and its Corporate Seal hereto affixed by the Secretary of the Cooperative, and by Sumter Electric Cooperative, Inc., in its name by its President, and its Corporate Seal hereto affixed by the Secretary of the Cooperative, on the day and year first above written; and one of said triplicate copies has been delivered to each of the Parties hereto.

ATTEST:
By Arthur Pinner
Name: Arthur Pinner
As its Secretary

(SEAL)

CENTRAL FLORIDA ELECTRIC COOPERATIVE, INC.
By Thomas Brookins
Name: Thomas Brookins
As its President

ATTEST:
By W.L. "Bud" Hodges
Name: W.L. "Bud" Hodges
As its Secretary

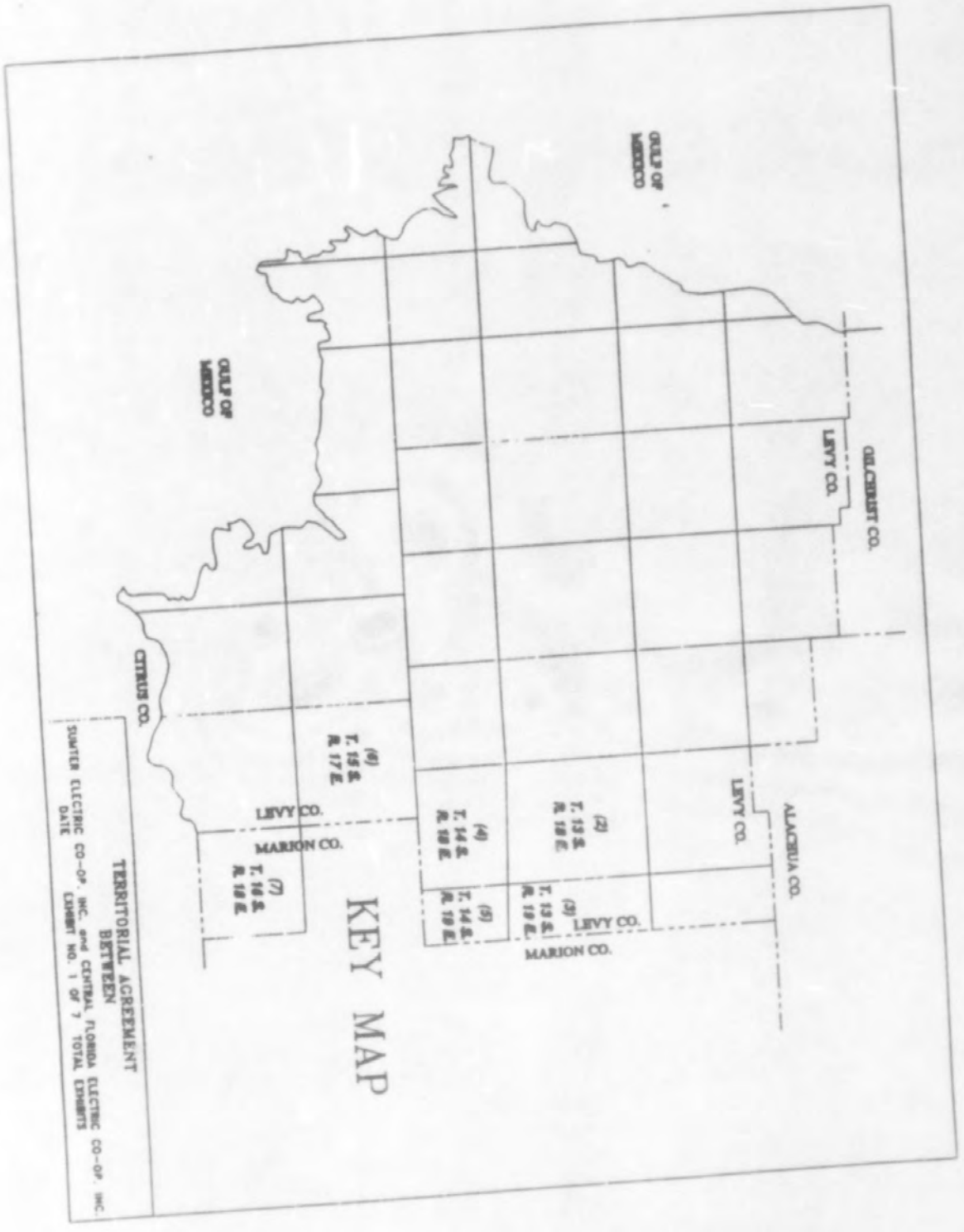
(SEAL)

SUMTER ELECTRIC COOPERATIVE, INC.
By Elmer E. Webb
Name: Elmer E. Webb
As its President

APPROVED: Order No. _____ Florida Public Service Commission

_____ Date

TERRITORIAL AGREEMENT
BETWEEN
SUMTER ELECTRIC COOPERATIVE, INC.
AND
CENTRAL FLORIDA
ELECTRIC COOPERATIVE, INC.


GULF OF MEXICO
GULF OF MEXICO
GILCHRIST CO.
LEVY CO.
CITRUS CO.
ALACHUA CO.
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MARION CO.
(6) T. 15 S. R. 17 E.
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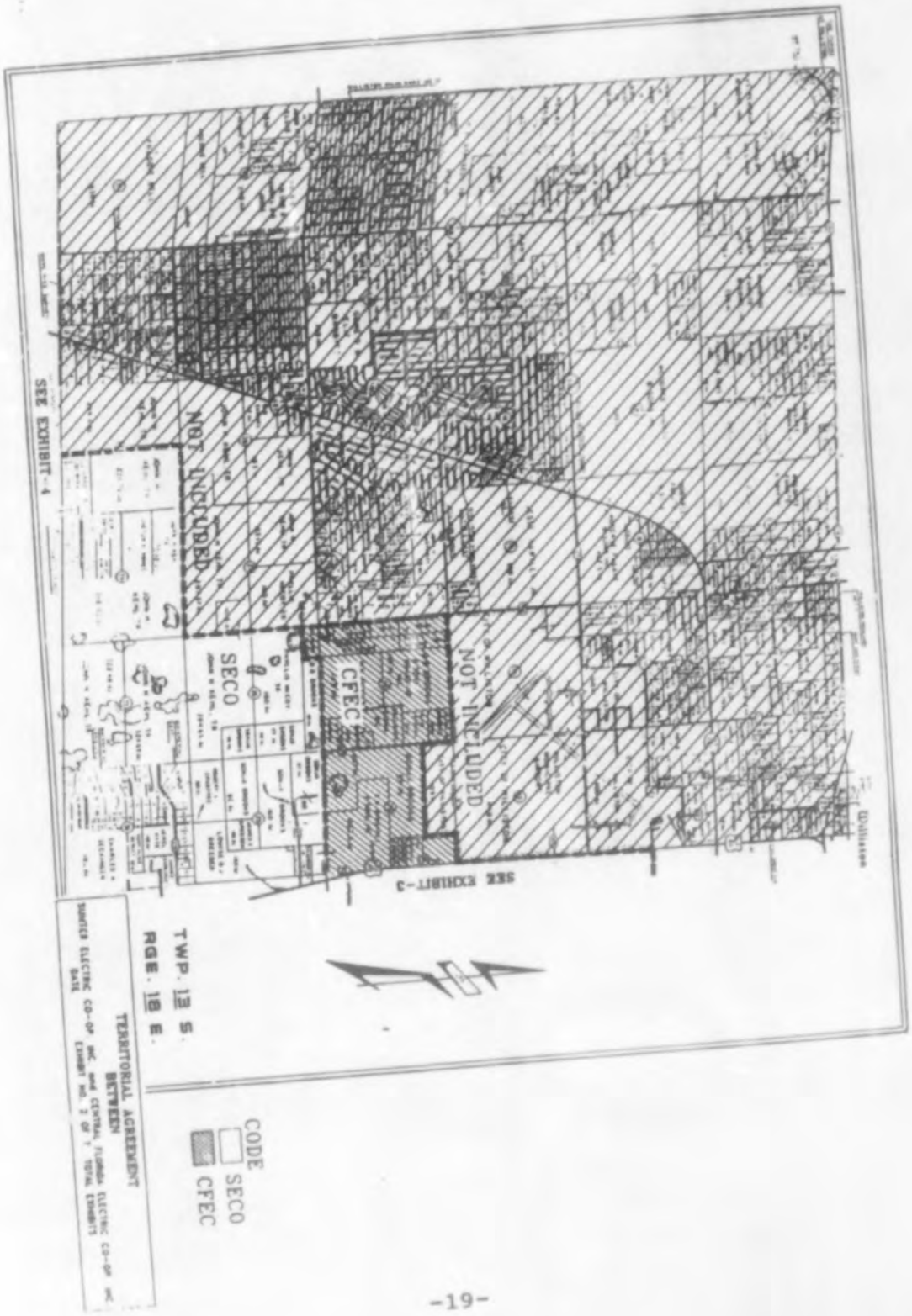
(5) T. 14 S. R. 19 E.
(3) T. 13 S. R. 19 E.
(7) T. 16 S. R. 18 E.
KEY MAP
TERRITORIAL AGREEMENT
BETWEEN
SUMTER ELECTRIC CO-OP, INC. and CENTRAL FLORIDA ELECTRIC CO-OP, INC.
EXHIBIT NO. 1 OF 7 TOTAL EXHIBITS
DATE

DOCKET NO. 960468-EC
DATE: JUNE 13, 1996

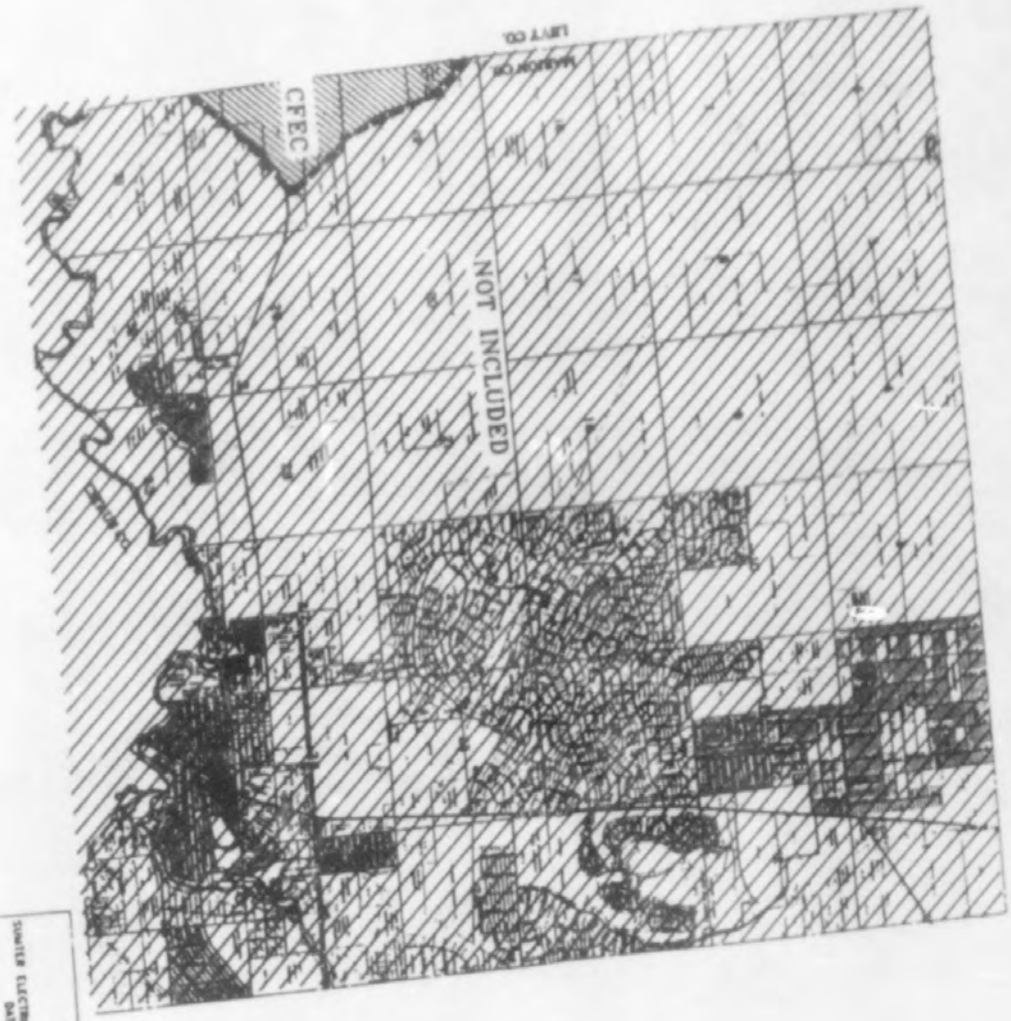


SEE EXHIBIT-2
SEE EXHIBIT-3
CFEC
SECO
NOT INCLUDED
CODE
SECO
CFEC
TWP. 12 S.
RGE. 15 E.
Levy County, Florida
TERRITORIAL AGREEMENT
BETWEEN
SUWANNEE ELECTRIC CO-OP INC. and CENTRAL FLORIDA ELECTRIC CO-OP INC.
EXHIBIT NO. 1 OF 1 TOTAL EXHIBITS
DATE

NOT INCLUDED
SEE EXHIBIT-2
SEE EXHIBIT-3
SECO
TWP. 14 S.
RGE 18 E.
Levy County, Florida
TERRITORIAL AGREEMENT
BETWEEN
SUWANNEE ELECTRIC CO-OP INC. and CENTRAL FLORIDA ELECTRIC CO-OP INC
EXHIBIT NO. 4 OF 5 TOTAL EXHIBITS
DATE
CODE
SECO
CFEC

SEE EXHIBIT-4
SEE EXHIBIT-3
SECO
MARION
COUNTY
CODE
SECO
CFEC
TWP. 14 S.
RGE. 19 E.
Levy County, Florida
TERRITORIAL AGREEMENT
BETWEEN
DATE

CFEC
SECO
NOT INCLUDED
SEE EXHIBIT-4
TWP. 15 S.
RGE. 17 E.
Levy County, Florida
CODE
SECO
CFEC
TERRITORIAL AGREEMENT
BETWEEN
SUWANNEE ELECTRIC CO-OP, INC. and CENTRAL FLORIDA ELECTRIC CO-OP, INC.
DATE
EXHIBIT NO. 8 OF 9 TOTAL EXHIBITS


LEVY CO.
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TERRITORIAL AGREEMENT
BETWEEN
SUWANNEE ELECTRIC CO-OP, INC. and CENTRAL FLORIDA ELECTRIC CO-OP, INC.
DATE
EXHIBIT NO. 7 OF 7 TOTAL EXHIBITS