

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida) DOCKET NO. 891245-EU
Power and Light Company for) ORDER NO. PSC-92-0526-PHO-EU
resolution of a territorial) ISSUED: 6/18/92
dispute with Fort Pierce Utility)
Authority.)
_____)

Pursuant to Notice, a Prehearing Conference was held on June 5, 1992, in Tallahassee, Florida, before Commissioner Betty Easley, as Prehearing Officer.

APPEARANCES:

K. Crandal McDougall, Esquire, Post Office Box 029100,
Miami, Florida 33102-9100.
On behalf of Florida Power and Light Company.

William J. Peebles, Esquire, Moore, Williams, Bryant,
Peebles & Gautier, P.A., 306 East College, Tallahassee,
Florida 32301.
On behalf of Fort Pierce Utilities Authority.

Michael A. Palecki, Esquire, Florida Public Service
Commission, 101 E. Gaines Street, Tallahassee, Florida
32399-0863
On behalf of the Commission Staff.

Prentice P. Pruitt, Esquire, Florida Public Service
Commission, 101 E. Gaines Street, Tallahassee, Florida
32399-0862
On behalf of the Commissioners.

PREHEARING ORDER

I. CASE BACKGROUND

On October 23, 1989, Florida Power & Light Company (FPL) filed with the Commission a petition to resolve a territorial dispute with Fort Pierce Utility Authority (FPUA). The petition stated that FPL provided electric service to areas in and around the corporate limits of Ft. Pierce and the FPUA had extended its service area so as to duplicate FPL's facilities.

DOCUMENT NUMBER-DATE

06390 JUN 18 1992

FILED IN 89000000 (REPORTING)

After several motions were exchanged by the parties, on March 29, 1990 the parties filed with the Commission a joint motion for substitution of parties, and a stipulation and petition for suspension of CASR. The joint motion stated that the parties were negotiating a settlement.

On January 29, 1992, FPL and FPUA filed a joint motion seeking approval of a territorial agreement (agreement) and dismissal of territorial dispute pursuant to Rules 25-6.0439 and 25-6.0440, Florida Administrative Code. The agreement included detailed terms and conditions and specifically identified the geographic area to be served by each utility. The agreement also contained a detailed map of the area.

On March 27, 1992, the Commission issued a Notice of Proposed Agency Action Approving Territorial Agreement. Numerous protests to the Proposed Agency Action were timely filed with the Commission by customers in the affected areas. This matter was thereafter scheduled for hearing.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Robert E. Lloyd	FPL	All issues.
Gary Peterson	FPL	All issues.
Harry M. Schindehette	FPUA	All issues.
Paul A. Arsuaga	FPUA	1,2,3,9,10
John Doran	Hutchinson Intervenor	All issues.
Edmund A. Flynn	Hutchinson Intervenor	All issues
John Taggart	Hutchinson Intervenor	All issues.

V. BASIC POSITIONS

FLORIDA POWER AND LIGHT COMPANY/FORT PIERCE UTILITIES AUTHORITY (FPL/FPUA): (Joint statement of basic position) The parties' basic position calls on the Commission to approve the FPL-FPUA

Territorial Agreement filed on January 29, 1992, and upon approval thereof, to dismiss FPL's Petition to Resolve Territorial Dispute. FPL initiated this proceeding through the filing of the petition identified above. That petition was filed due to the growing service area conflicts FPL was experiencing in and about the City of Ft. Pierce with respect to electric service provided by the Authority. After experiencing several instances of electric facilities duplications, FPL filed the instant dispute to preclude future uneconomic duplications of electric utility facilities through the establishment of a territorial boundary between FPL and the Authority. Through settlement negotiations FPL and the Authority have placed before the Commission a proposed territorial agreement which establishes a service area boundary between FPL and the Authority and which provides for the orderly elimination of overlapping service areas.

The standard of review for approval of a territorial agreement is the "no detriment" test established by the Florida Supreme Court. See Utilities Com'n of New Smyrna Beach v. Fla. PSC, 469 So. 2d 731 (Fla. 1985). The no detriment test specified in the New Smyrna Beach case requires the approval of a territorial agreement unless the application of the agreement is detrimental to the public interest. The evidence in this matter will clearly show that the territorial agreement "works no detriment to the public interest", and in fact, will benefit the public interest through the preclusion of future uneconomic duplications of electric utility facilities and the elimination of overlapping service areas.

STAFF: No position at this time.

VI. ISSUES AND POSITIONS

ISSUE 1: What is the size of the electrical load in the areas requested to be transferred under the territorial agreement?

FPL: The expected summer peak electric load for 1992 in the areas to be transferred under the proposed territorial agreement is approximately 18 megawatts (MW).

FPUA: In 1990, the electrical sales in the areas requested to be transferred from FPUA to FPL were 39,291 MWh.

HUTCHINSON

INTERVENORS: No position at this time.

STAFF: No position at this time.

ISSUE 2: What will the load be for each of the next five years and what new facilities will be needed to serve the load, in each of the areas requested to be transferred?

FPL: The following matrix identifies the areas to be transferred between FPL and FPUA and the expected summer peak for the years, 1992 through 1997:

AREAS TO BE TRANSFERRED TO FPL

	1992	1993	1994	1995	1996	1997
North US 1 AREA	2.5	2.6	2.7	2.8	2.9	3.0
Ten Mile Creek area	3.9	4.0	4.2	4.4	4.6	4.8
N/O Orange W/O 33rd	0.2	0.2	0.2	0.2	0.2	0.2
West SR 70 area	1.4	1.4	1.5	1.6	1.7	1.8
W/O Sunrise S/O RR	0.2	0.2	0.2	0.2	0.2	0.2
Total	8.2	8.4	8.8	9.2	9.6	10.0

AREAS TO BE TRANSFERRED TO FPUA

	1992	1993	1994	1995	1996	1997
Cortez & Edwards	1.7	1.8	1.9	2.0	2.1	2.2
N Hutchinson Island	6.6	6.8	7.1	7.4	7.7	8.0
Canal Ave & Ave Q	0.2	0.2	0.2	0.2	0.2	0.2
N/O Okeech W/O 33rd	0.4	0.4	0.4	0.4	0.4	0.5
S US1 & Weatherbee	0.9	0.9	1.0	1.0	1.1	1.1
Total	9.8	10.1	10.6	11.0	11.5	12.0

The addition of new facilities to serve the load being transferred to FPL will be required. FPL estimates that it will invest approximately one million dollars in new distribution facilities over the next three to five years for assimilation, improvement, and growth purposes to accommodate present, future and transferred customers. While these proposed new facilities relate to and are

designed to accommodate the transfer from FPUA, they are not necessarily all required as a consequence of the agreement nor will they be solely dedicated to picking up new load. They are designed to integrate FPL's system with the new areas to be acquired, improve reliability for all customers (not just transferred), and accommodate growth.

FPUA:

The demand for each of the next five years in the areas requested to be transferred from FPL to FPUA will be approximately 1 MW. This load is not expected to increase significantly in the five year period.

HUTCHINSON
INTERVENORS:

No position at this time.

STAFF:

No position at this time.

ISSUE 3:

Does each utility have the ability to provide adequate reliable service to all areas currently served and areas requested to be transferred?

FPL:

FPL has adequate generation capacity and the ability to provide reliable service to all areas required to be served.

FPL is without knowledge of the capacity of FPUA.

FPUA:

FPUA has adequate generation capacity and the ability to provide reliable service to all areas currently served and requested to be transferred.

HUTCHINSON
INTERVENORS:

No position at this time.

STAFF:

No position at this time.

ISSUE 4:

What conservation programs are in place or projected to be in place over the next five years for each utility?

FPL: Please see Robert E. Lloyd Document No. 6, attached to Mr. Lloyd's rebuttal testimony for a complete list of FPL conservation programs and programs under consideration.

FPUA: FPUA has implemented the following conservation programs:

1. Home and commercial energy surveys.
2. New construction and renovation design assistance.
3. Education outreach.

FPUA is in the process of implementing a load management trial program and a High efficiency HVAC system installation program. In addition, FPUA is projected to become a FEECA utility within the next five years and will then be required to have its conservation programs approved by the Commission.

HUTCHINSON
INTERVENORS:

FPL has a vast array; of programs beneficial to the customer, and to the conservation of energy. FPUA at this time can only offer an energy survey.

STAFF: No position at this time.

ISSUE 5: How will any differences in these programs affect customers who are proposed to be transferred?

FPL: FPL has no position at this time.

FPUA: FPUA has no position at this time.

HUTCHINSON
INTERVENORS:

In our case, as heretofore mentioned, we are in the process of taking advantage of many FPL energy saving programs - any transfer would thwart that effort.

STAFF: No position at this time.

ISSUE 6: What is the anticipated capital and incremental cost to each utility of any transmission or

distribution facilities required to serve areas to be transferred under the agreement?

FPL: See response to Issue 3.

FPUA: FPUA has no position at this time.

HUTCHINSON INTERVENORS: No position at this time.

STAFF: No position at this time.

ISSUE 7: What areas of potential conflict or duplication now exist?

FPL: There is a potential conflict or duplication throughout the current service territory of both utilities as more specifically set forth in FPL's exhibits attached to the petition for resolution of a territorial dispute and attached to R. E. Lloyd's testimony.

FPUA: There is a potential conflict or duplication throughout the current service territory of both utilities as more specifically set forth in FPL's exhibits attached to the petition for resolution of a territorial dispute and attached to Harry M. Schindehette's testimony.

HUTCHINSON INTERVENORS: There are no areas of conflict or duplication on North Hutchinson Island, and those on the mainland, we believe, are not sufficient to disrupt service to over three thousand customers of FPL.

STAFF: No position at this time.

ISSUE 8: Will potential conflict or duplication be avoided if the agreement is approved?

FPL: Yes.

FPUA: Yes.

HUTCHINSON INTERVENORS: No.

STAFF: No position at this time.

ISSUE 9: How will the transfer process affect service to customers in the transferred areas?

FPL: FPL does not anticipate any deterioration in service to customers within the transferred areas.

FPUA: FPUA does not anticipate any deterioration in service to customers within the transferred areas. In addition, the service reliability for customers on North Hutchinson Island should improve if the emergency distribution tie with Vero Beach is implemented.

HUTCHINSON INTERVENORS: No position at this time.

STAFF: No position at this time.

ISSUE 10: Will the agreement result in a decrease in reliability to existing or future ratepayers?

FPL: Customers transferred to FPL under the agreement should enjoy increased reliability as FPL will have the ability to provide dual feeds to the distribution system.

FPUA: No. All existing and future FPUA ratepayers should enjoy increased reliability as FPUA will have the availability to provide more customers with dual (loop) feeds from the distribution system. In addition, the response time to service interruptions should be reduced due to the compacting of FPUA's service territory.

HUTCHINSON INTERVENORS: The agreement will result in a decrease in reliability to customers on North Hutchinson Island.

STAFF: No position at this time.

ISSUE 11: What are the present rates of each utility?

FPL: The components of FPL's current residential rate for 1,000 KWH's are as follows:

BASE AMOUNT	= \$47.38
FUEL ADJUSTMENT CHARGE	= 18.24
ENERGY CONSERVATION CLAUSE	= 1.35
OIL BLACKOUT COST	= (.15)
CAPACITY PAYMENT RECOVERY CLAUSE	= 5.90
TOTAL FPL AMOUNT	= \$72.72
GROSS RECEIPTS TAX	= .56
TOTAL CUSTOMER BILL	= \$73.28

FPUA: The rates of each utility are not relevant to this proceeding.

HUTCHINSON
INTERVENORS:

The rates on North Hutchinson Island will be subject to a higher rate if we are transferred to FPUA. Additionally, since we are outside the city limits, a surcharge will be added to our bill each month. Yes.

STAFF: No position at this time.

ISSUE 12: Is the transfer of customers and facilities as proposed in the territorial agreement detrimental to the public interest?

FPL: No.

FPUA: No.

HUTCHINSON
INTERVENORS:

Transfer of customers and facilities as proposed is detrimental to the public interest.

STAFF: No position at this time.

ISSUE 13: Will approval of the agreement be detrimental to the public interest?

FPL: Any elimination of duplication of facilities should result in improved efficiency and contribute positively to the public interest.

FPUA: No.

HUTCHINSON

INTERVENORS: Approval of the agreement will be detrimental to the public interests.

STAFF: No position at this time.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Lloyd	FPL/FPUA	(REL-1)	Summary of Facilities Locations by Utility before Territorial Agreement.
Lloyd	FPL/FPUA	(REL-2)	Summary of Facilities Locations by Utility with Territorial boundary before Transfers.
Lloyd	FPL/FPUA	(REL-3)	Summary of Facilities Locations by Utility with Territorial Boundary after Transfers.
Lloyd, Peterson, Schindehette	FPL/FPUA	(J-1)	Proposed FPL-FPUA Territorial Agreement.
Arsuaga	FPUA	(PAA-1)	Exh. 1 - Analysis of Proposed Transfer of Loads
Taggart	Taggart	(JT-1)	Map of affected area
Doran	Doran	(JPD-1)	Land description contained in territorial agreement
Doran	Doran	(JPD-2)	April 7, 1992 letter to Mr. Dale Medes
Doran	Doran	(JPD-3)	April 3, 1992 letter to Mr. Frank J. Varella

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Doran	Doran	(JPD-4)	April 8, 1992 letter to Mr. Eley Ladyman
Doran	Doran	(JPD-5)	Minutes of regular meeting of the City Commission, City of Ft. Pierce, Florida
Flynn	Flynn	(EAF-1)	November 1, 1991 letter from H. Schindehette
Flynn	Flynn	(EAF-2)	Chart describing FPL conservation programs

REBUTTAL

Schindehette	FPUA	(HMS-1)	Exh. 1, Authority Billing Format-Exh. 2, Authority Historical Rates
Lloyd	FPL	(REF-1)	FPL/FPUA Combined Primary Facilities Map
Lloyd	FPL	(REF-2)	FPL Conservation Programs Presently available to FPL customers and conservation proposals under consideration by FPL as possible conservation programs

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

There are no proposed stipulations at this time

IX. PENDING MOTIONS

There are no pending motions at this time.

It is therefore,

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ORDERED by Commissioner Betty Easley, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 18th day of June, 1992.



BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

MAP:bmi

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary,

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procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.