

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Florida Power Corporation and Florida Power & Light Company for Approval of Amendment to Territorial Agreement.)	DOCKET NO. 890403-EI
)	ORDER NO. 21309
)	ISSUED: 6-2-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTIONORDER APPROVING AMENDMENT TO TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On March 20, 1989, Florida Power Corporation (FPC) and Florida Power & Light Company (FPL) filed a joint application for approval of an amendment to their territorial agreement.

As stated in the application, a Territorial Agreement exists between FPC and FPL pursuant to Commission Order Nos. 3799, 5255 and 6184. Order No. 3977, issued on April 28, 1965, approved a territorial boundary between FPC and FPL. Order No. 5255, issued on October 29, 1971, specifically amended the Territorial Agreement to clarify that the Agreement did not apply to the sale of bulk power supply for resale. Order No. 6184, issued on June 28, 1974, amended the territorial boundary in and about the city of Sanford in Seminole County.

Applicants state that the territorial boundary approved by Order No. 3799 was identified by two writings, with maps, between FPC and FPL dated November 26, 1958 and September 17, 1962. Those writings, Attachments D and E, and the maps attached thereto, constituted the territorial agreement between FPC and FPL that was presented for approval to the Commission by an application dated June 2, 1964 (Attachment F), which application was approved by Order No. 3799.

Applicants seek to amend paragraph 3 and delete paragraph 4 of the Agreement. The proposed amended paragraph clarifies an existing procedure for agreed variance of territorial boundaries in exceptional circumstances. Applicants also propose to delete paragraph 4 which permits modification of territorial boundaries according to changes in municipal boundaries due to annexation.

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According to Applicants, the existing paragraph 3 of the Agreement provides a procedure for exceptional circumstances where engineering, economic, or geographic constraints require a variance to the territorial boundary. A prospective customer in one utility's service area may be located at or adjacent to the territorial boundary, and the goal of avoiding uneconomic or duplicative distribution facilities can be achieved if the other utility undertakes service. The existing Paragraph 3 of the Agreement provides that the parties may agree that the other utility will provide service in such cases. Applicants state that since inception of the Agreement, they have recognized that the purpose of paragraph 3 is to avoid uneconomic or duplicative extensions of distribution services to retail customers located near territorial boundaries.

Applicants state that the amendment to Paragraph 3 will make its purpose more explicit, and provides for notification to the Commission of agreed variances. However, given the Commission's authority to approve territorial agreements between the parties, we find that the proposed agreement should be approved only if it provides that the utilities will seek the Commission's approval for agreed variances, rather than merely providing notification. We further note that the utilities have agreed to the following modification of their proposed Paragraph 3:

FPL and FPC (suppliers) recognize that, in exceptional instances, engineering, economic, or geographical constraints on either suppliers' distribution system may indicate that future retail electric applicants located at or adjacent to the territorial boundary should not be served by the supplier in whose territory they are located. Where the supplier in whose territory the applicant is located determines that a constraint exists as described above, then said supplier may request the other supplier to provide service on either a temporary or permanent basis. In such instances, the suppliers shall mutually determine, in writing, which supplier should provide service, and shall then seek approval of the Florida Public Service Commission for such modification to this Agreement.

Applicants also seek to amend the Territorial Agreement by deleting paragraph 4 which permits the modification of the territorial boundary to conform to changes in municipal boundaries due to annexation. We agree with Applicants that changes in retail electric service territories should not be made solely to conform to changes in municipal boundaries, and that redesign and adjustment of electric distribution systems necessary to accommodate changes in retail service territories caused by municipal boundary changes could require uneconomic duplication of facilities.

It is, therefore,

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ORDERED by the Florida Public Service Commission that the application proposed by Florida Power & Light Company and Florida Power Corporation to amend their territorial agreement is granted, subject to our modification which requires that the utilities seek the Commission's approval for agreed variances. It is further

ORDERED that this Order shall become final unless a petition for formal proceeding is received by the close of business on June 7, 1989.

By ORDER of the Florida Public Service Commission, this 2nd day of June, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 23, 1989. In the absence of such a petition, this order shall become effective June 26, 1989, as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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If this order becomes final and effective on June 26, 1989, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.