

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

April 2, 1997

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

FROM: DIVISION OF LEGAL SERVICES (KEATING) WCK
DIVISION OF ELECTRIC & GAS (TEW) KJ *Call* *RET*
RVE

RE: DOCKET NO. 970105-EU - PETITION FOR APPROVAL OF CHANGE IN
TERRITORIAL BOUNDARY UNDER TERRITORIAL AGREEMENT WITH LEE
COUNTY ELECTRIC COOPERATIVE, INC. BY FLORIDA POWER &
LIGHT COMPANY

AGENDA: 04/14/97 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\970105EU.RCM

CASE BACKGROUND

On January 23, 1997, Florida Power & Light Company (FPL) filed a petition requesting the Commission's approval of a small change in the existing territorial boundary in Lee County, Florida between FPL and Lee County Electric Cooperative, Inc. (LCEC). The existing territorial boundary was approved by the Commission in 1993 in Order No. PSC-93-0705-FOF-EU. The Territorial Variance Agreement (TVA) between FPL and LCEC, a map depicting the proposed change in the territorial boundary, and a legal description of the section of the boundary to be changed upon Commission approval are attached to this recommendation (Attachment A).

DOCUMENT NUMBER-DATE

03387 APR-25

FPSC-RECORDS/REPORTING

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve Florida Power and Light Company's Petition for Approval of a Change in the Territorial Boundary Under the Territorial Agreement with Lee County Electric Cooperative, Inc.?

RECOMMENDATION: Yes, Florida Power and Light Company's Petition for Approval of a Change in the Territorial Boundary Under the Territorial Agreement with Lee County Electric Cooperative, Inc. is in the public interest and should be approved. The Territorial Variance Agreement, if approved, should remain in effect until modified by the Commission, on the petition of either utility, or on its own motion. Any future instances in which FPL begins to provide service to customers in another electric utility's service territory before the Commission approves a permanent boundary change should be initially considered an interim service arrangement and should be reported to this Commission.

STAFF ANALYSIS: The purpose of FPL and LCEC's TVA is to make a small modification to the existing boundary line between these two utilities in Lee County. The existing boundary was previously approved by the Commission in Order No. PSC-93-0705-FOF-EU. Modification to the boundary line became necessary as customers located along the south side of Dykes Road, which currently serves as a part of the Commission-approved boundary line between FPL and LCEC. According to the territorial agreement between FPL and LCEC in Lee County, the north side of Dykes Road should be served by FPL, while the south side of Dykes Road should be served by LCEC. FPL, with the concurrence of LCEC, maintains in its petition that due to FPL's existing distribution facilities along Dykes Road, "...it is neither economical nor efficient for LCEC to extend its facilities one to two miles in parallel with FPL's to provide service to seven tracts of land..." Electric service by FPL to these seven tracts of land necessitates a change in the previously approved territorial boundary in this area. Staff believes that the proposed change in the territorial boundary is necessary to avoid uneconomic duplication of facilities and is therefore in the public interest.

FPL considers service to these seven tracts of land south of Dykes Road as a permanent service variance from the existing territorial boundary which was approved in Order No. PSC-93-0705-FOF-EU. Therefore, FPL filed the TVA with the Commission to request that the area be reflected as part of FPL's permanent service territory. Although the TVA states that FPL will not provide service to the identified seven tracts of land south of

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Dykes Road until the TVA is approved by the Commission, FPL is currently providing service in this specific area. Given the location of FPL's existing distribution facilities along Dykes Road and the Commission's desire to avoid uneconomic duplication of facilities, staff agrees with FPL's decision to provide electric service to the identified seven tracts of land. However, in accordance with Order No. PSC-93-0705-FOF-EU, the parties should have notified the Commission that FPL was serving this area in the interim period between the date the customers initially requested electric service and the date the Commission decides whether to approve a permanent change in the territorial boundary. Service to the customers south of Dykes Road before Commission approval of the boundary change should have been considered interim service and should have been reported to the Commission in the manner outlined in the order. Otherwise, FPL should have gotten prior Commission approval to serve the customers south of Dykes Road indefinitely. In fact, Order No. PSC-93-0705-FOF-EU specifically states that any permanent change to the parties' territorial boundary requires prior approval from the Commission.

Any future instances in which FPL begins to provide service to customers in LCEC's service territory before the Commission approves a permanent boundary change should be initially considered an interim service arrangement and should be reported to this Commission. This allows for the customers to be served in the interim period, between the date they initially request electric service and the date the Commission approves a permanent change in the territorial boundary, without unnecessary expense to the utility who is responsible for serving them under an existing territorial agreement.

If approved by the Commission, the TVA should become effective on the date the Commission's Proposed Agency Action Order becomes final. According to Order No. PSC-93-0705-FOF-EU, the current territorial agreement is to remain in effect until modified by the Commission, on the petition of either utility, or on its own motion. Since this TVA is simply a modification to a small segment of the boundary approved in Order No. PSC-93-0705-FOF-EU, staff recommends that the TVA, if approved, should remain in effect until modified by the Commission, on the petition of either utility, or on its own motion.

Staff recommends that FPL's Petition for Approval of a Change in the Territorial Boundary Under the Territorial Agreement with LCEC be approved because it is in the public interest and is consistent with the Commission's goal to eliminate all existing and potential uneconomic duplication of electrical facilities in the State of Florida.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed if no timely protest is 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.

**LEE COUNTY ELECTRIC COOPERATIVE, INC.
AND
FLORIDA POWER & LIGHT COMPANY**

TERRITORIAL VARIANCE AGREEMENT

Lee County Electric Cooperative, Inc. ("LCEC") and Florida Power & Light Company ("FPL"), pursuant to Florida Public Service Commission ("FPSC") Order No. 20817 (89 FPSC 2:321), hereby agree to a variance to the territorial boundary established by Order No. PSC-93-0705-FOF-EU (93 FPSC 5:166) as set forth below:

1. In accordance with paragraph no. 3 at pages 5-6 of FPSC Order No 20817, LCEC and FPL hereby agree that "good engineering practices... indicate" that FPL should serve residential customers located in LCEC's territory on the North boundary of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East, in Lee County, Florida.
2. Service by FPL at the location identified in paragraph 1 hereof will not commence until a copy of this Territorial Variance Agreement is approved by the FPSC in accordance with Order No. PSC-93-0705-FOF-EU.
3. This variance is not intended as a waiver of any other terms and conditions of FPSC Orders Nos. 20817 and PSC-93-0705-FOF-EU, which are hereby ratified and remain in full force and effect.

IN WITNESS WHEREOF, LCEC and FPL have caused this Territorial Variance Agreement to be executed by their respective authorized officers.

Lee County Electric Cooperative, Inc.

By: 

William Hetherington
Director of Engineering and Operations

Florida Power & Light Company

By: 

William W. Hamilton
Vice-President Customer Service

S31-T46-R27

MAP LEGEND

- PARCEL DIMENSIONS/ACREAGE 25
- NON-SUBDIVISION PARCEL NUMBER ①
- SUBDIVISION BLOCK NUMBER ②
- SUBDIVISION NUMBER ③
- EASEMENT ④
- COMMERCIAL BUILDINGS ⑤
- RESIDENTIAL BUILDINGS ⑥
- ZONING ⑦
- RIVERS ⑧
- LAKES AND PONDS ⑨
- CANNALS ⑩
- CULTIVATED FIELDS ⑪
- HORIZONTAL CONTROL U.S.C.G.S. ⑫
- FLORIDA S.O.T. CONTROL ⑬
- GEODETIC CONTROL BY DEPT. ASSOC. ⑭

ABBREVIATIONS

- SE - SPECIAL EXCEPTION
- SP - SPECIAL PERMIT
- INS - INSURANCE
- CD - DIVISION OF COMMUNITY DEVELOPMENT
- UN - UNUSUAL USE
- OS - ORDINANCE

LOCATION DIAGRAM

6	9	1	3	2	1
7	8	5	10	11	12
18	17	16	15	14	13
17	26	21	22	23	24
20	24	28	27	26	25
31	30	33	34	25	26



SCALE 1"=308.1'



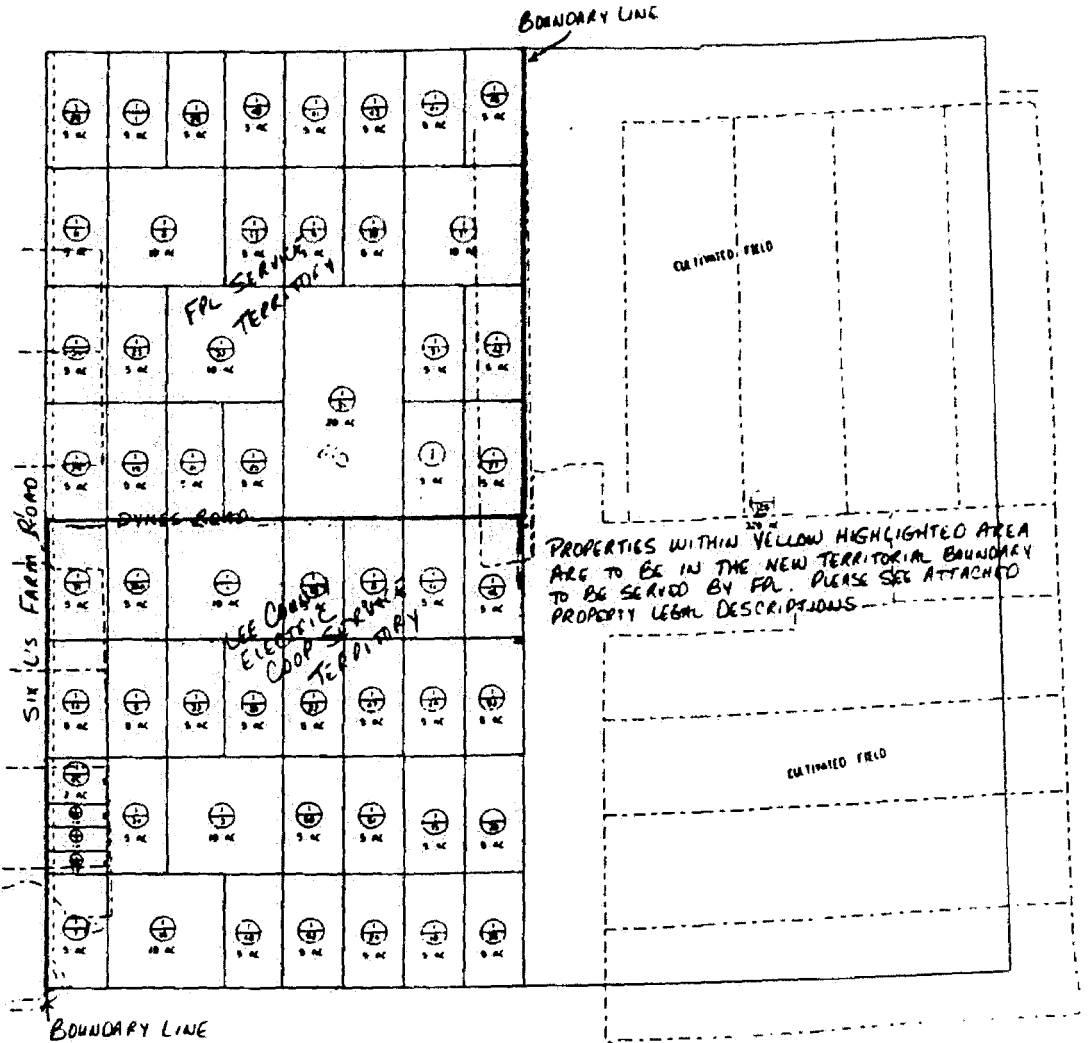
NOTICE: IT IS ADVISED THAT THE SHADING COLOR FOR THE PROPERTY MAP ACCURACY STANDARDS FOR THE YEAR 2000 IS NOT SHOWN BY THE COLOR OF THE MAP. IT IS NOT SHOWN BY THE COLOR OF THE MAP.

LAND USE APPROPRIATION: THIS MAP IS A COMPILED MAP OF THE BEST AVAILABLE DATA AND DOES NOT NECESSARILY REPRESENT THE LAND USE LEGAL.

SCALE BASED ON FLORIDA STATE PLANE GEODETIC SYSTEM 1983.

CERTIFICATION

THIS IS TO CERTIFY THAT THIS IS THE BEST COPY OF THE ORIGINAL AS SHOWN BY THE OFFICIAL RECORDS AND REPORTED TO AND ADAPTED BY THE OFFICE OF THE COUNTY CLERK OF THE COUNTY OF LEE, FLORIDA, UNDER CHAPTER 111, F.S.



S31-T46-R27

ORGANIZED, COMPILED, AND PUBLISHED BY
LEE COUNTY LAND INFORMATION SYSTEMS
T.P. GRAY, COORDINATOR
IN A JOINT EFFORT WITH
LEE COUNTY PROPERTY APPRAISERS' OFFICE
SERVING THE BIRMINGHAM PROPERTY APPRAISERS

TERRITORIAL VARIANCE AGREEMENT WITH LEE COUNTY ELECTRIC COOP

New territorial boundary described as follows:

The North 660' of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

Properties to be served by Florida Power & Light Company run 2640' East of the centerline of Six L's Farm Road and extends 660' South of the centerline of Dykes Road.

This description includes the following properties:

The West 1/2 of the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

The East 1/2 of the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

The Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

The West 1/2 of the Northwest 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

The East 1/2 of the Northwest 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

The West 1/2 of the Northeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.

The East 1/2 of the Northeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 31, Township 46 South, Range 27 East of Lee County, Florida.