

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: MARCH 20, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (VINING) *AEV*
DIVISION OF ECONOMIC REGULATION (D.LEE) *W* *JDT*

RE: DOCKET NO. 030117-EU - JOINT PETITION FOR APPROVAL OF
TERRITORIAL AGREEMENT BETWEEN SUMTER ELECTRIC COOPERATIVE,
INC. AND OCALA ELECTRIC UTILITY/CITY OF OCALA.

AGENDA: 04/01/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030117.RCM

CASE BACKGROUND

On February 3, 2003, the City of Ocala, Florida d/b/a Ocala Electric Utility (OEU) and the Sumter Electric Cooperative, Inc. (SECO), filed a Joint Petition for approval of a territorial agreement. The territorial agreement between OEU and SECO dated September 24, 2002, or "Agreement" (Attachment A), creates boundary lines which define and delineate the retail service areas of OEU and SECO in Marion County.

The Agreement expressly provides that its effectiveness is contingent upon approval of the Commission. Pursuant to Section 366.04(2)(d), Florida Statutes, territorial agreements by and between electric utilities, including municipal electric utilities and rural electric cooperatives, are under the Commission's jurisdiction. The Commission approved a previous territorial agreement between the two parties by Order No. 18324, in Docket No.

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

DOCKET NO. 030117-EU
DATE: March 20, 2003

860871-EU, issued October 21, 1987. The previous agreement expired on October 21, 2002.

The Commission has jurisdiction to consider this matter pursuant to Sections 366.04 and 366.05, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the joint petition of OEU and SECO for approval of the Agreement?

RECOMMENDATION: Yes. The Agreement between OEU and SECO is in the public interest and should be approved, effective the date that the Commission order approving the agreement is final. (VINING, D.LEE)

STAFF ANALYSIS: Staff reviewed the Agreement and the previous agreement approved in 1987. There are no substantial changes other than minor modifications in the territorial boundaries and the deletion of language specific to the territorial swap in the previous agreement. The territorial swap provision, contained in Sections 2.4 through 2.8 of the previous agreement, was established to resolve a territorial dispute and the duplication of services between the two parties at that time.

Upon examination of the maps provided by the parties, staff found the service territory of OEU and SECO based on the Agreement to be contiguous in many areas of Marion County, Florida. Compared with maps in the previously approved agreement, the minor modifications in the territorial boundaries appear to demonstrate the ongoing effort between OEU and SECO to prevent future duplication of services. No existing customer of OEU or SECO will be transferred pursuant to the September 24, 2002, territorial agreement.

Further, there is no reasonable likelihood that the Agreement will cause a decrease in the reliability of electric service to the existing or future ratepayers of OEU or SECO. Staff believes the provisions of the Agreement will help to avoid future uneconomic duplication of facilities, and will prevent future disputes and uncertainties. It will allow the two utilities to make economical long-range plans for expansion of electrical facilities necessary to serve customers in areas of Marion County. Therefore, staff believes the Agreement between OEU and SECO is in the public interest and should be approved, effective the date that the Commission order approving the agreement is final.

DOCKET NO. 030117-EU

DATE: March 20, 2003

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order. If a protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving this agreement, the agreement should remain in effect pending resolution of the protest and the docket should remain open. (VINING)

STAFF ANALYSIS: If a protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving this agreement, the agreement should remain in effect pending resolution of the protest and the docket should remain open. If no protest is filed, this docket should be closed upon the issuance of a Consummating Order.

THIS AGREEMENT, made and entered into this 24 day of September, 2002, by and between SUMTER ELECTRIC COOPERATIVE, INC., an electric cooperative organized and existing under the laws of the State of Florida (herein called "SECO"), party of the first part, and the CITY OF OCALA, a Municipal Government organized and existing under the laws of the State of Florida, doing business as "Ocala Electric Utility" (herein called "Ocala"), party of the second part;

WITNESSETH:

WHEREAS, SECO, by virtue of Florida Statutes, Chapter 425 (1985), and the Charter issued to it thereunder, is authorized and empowered to furnish electricity and power to its members, private individuals, corporations and others, as defined by the laws of Florida, and pursuant to such authority, presently furnishes electricity and power to members customers in areas of Marion County, Florida, and elsewhere; and

WHEREAS, Ocala, by virtue of the laws of Florida, is authorized and empowered to furnish electricity and power to persons, firms and corporations in the County of Marion, State of Florida, and pursuant to such authority presently furnishes electricity and power to customers in areas of Marion County, Florida; and

WHEREAS, the respective areas of service of the parties hereto are contiguous in many places in Marion County, with the result that in the future duplication of service facilities may occur unless such duplication is precluded by a territorial agreement; and

WHEREAS, the Florida Public Service Commission has previously recognized that any such duplication of service facilities may result in needless and wasteful expenditures detrimental to the public interest; and

WHEREAS, the Florida Public Service Commission is empowered by Section 366.04, Florida Statutes (1985), to approve territorial agreements and resolve territorial disputes; and

WHEREAS, SECO and Ocala have previously entered into a Territorial Agreement which has been in effect since approval of the Florida Public Service Commission in October of 1987, which Agreement has controlled the parties' development and planning of their respective service areas; and

WHEREAS, said Agreement shall expire by its terms in October of 2002.

WHEREAS, the parties hereto desire to avoid and eliminate the circumstances giving rise to the aforesaid duplications and to that end desire to operate within delineated retail service areas; and

WHEREAS, in order to accomplish said area allocation as to future customers the parties have delineated boundary lines in portions of the aforementioned County, hereinafter referred to as "Boundary Lines," and said boundary lines define and delineate the retail service areas of the parties in portions of the aforementioned County;

NOW, THEREFORE, in fulfillment of the purposes and desires 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, do hereby agree as follows:

DEFINITIONS

Section 1.1 Territorial Boundary Lines - As used herein, the term "Territorial Boundary Lines" shall mean boundary lines which delineate the shaded areas on the county maps attached hereto as Exhibits "A" through "G", and which differentiate and divide SECO Territorial Area from Ocala Territorial Area.

Section 1.2 SECO Territorial Areas - As used herein, the term "SECO Territorial Areas" shall mean the geographic areas shown on Exhibits "A" through "G" as lying outside the shaded areas designated OEU.

Section 1.3 Ocala Territorial Areas - As used herein, the term "Ocala Territorial Areas" shall mean the geographic areas shown on Exhibits "A" through "G" as lying within the shaded areas designated OEU.

Section 1.4 Distribution Facilities - As used herein, the term "Distribution Lines" shall mean all lines and related facilities 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 term "Express Distribution Feeder" shall mean a three phase line and related facilities, at distribution voltage, that transports power through the other party's territory but serves no load within such territory.

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 over.

Section 1.7 New Customers - As used herein, the term "New Customers" shall mean all retail electric consumers applying for service, whether or not at a new or existing meter location, to either Ocala or SECO after the effective date of this Agreement, and located within the territorial area of either party at the time such application is made.

AREA DESIGNATIONS AND NEW CUSTOMERS

Section 2.1 Service Areas - The SECO Territorial Areas, as herein defined, are hereby set aside to SECO as its retail service areas for the term hereof; and the Ocala Territorial Areas, as herein defined, are hereby set aside to Ocala as its retail service areas for such period, and, except as otherwise

specifically provided herein, neither party shall deliver any Electric energy across any Territorial Boundary Line for use at retail in the territorial area of the other.

Section 2.2 New Customers - The parties shall each have the right and the responsibility to provide retail electric service to all New Customers within their respective territorial areas. Neither party shall hereafter serve or offer to serve a New Customer located in the territorial area of the other party except on an interim basis as provided in Section 2.3 below.

Section 2.3 Interim Service - Where a party entitled to serve a New Customer pursuant to Section 2.2 above believes that the extension of its facilities to such New Customer would be more appropriate or compatible with its operational requirements and plans at a future time, the 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 decline the request. If such 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 instance. The parties shall notify the Public Service Commission of any such agreement for interim service which is anticipated to last for more than one (1) year. Provided, however, the party providing interim service hereunder shall not be required to pay the other Party for any loss of revenue associated with the provision of such interim service. 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: (i) the party providing interim service shall cease providing interim service and, thereafter, service shall be

furnished to the New Customer in accordance with Section 2.1 and 2.2 above; and (ii) the requesting party shall pay the party providing interim service the depreciated cost (calculated on a straight line basis) for facilities installed by the party providing interim service exclusively for such New Customer.

Section 2.4 Bulk Power Supply for Resale - Nothing herein shall be construed to prevent either party from providing bulk power supply to another utility for resale purposes wheresoever they may be located. Further, no other provision of this Agreement shall be construed as applying to bulk power supply for resale.

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; 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 Joint Use - The parties hereto realize that it may be necessary, under certain circumstances and in order to carry out this Agreement, to make arrangements for the joint use of their respective service facilities. In such event arrangement shall be made by separate instruments incorporating standard engineering practices and providing proper clearance with respect thereto.

Section 3.3 New Facilities in Territory of Other Party - Neither party shall construct Distribution Facilities in the territory of the other party without the express written consent

of the other party. Express Distribution Feeders are exempt from this provision; 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.

Section 3.4 Facilities to be Served - Nothing herein shall be construed to prevent or in any way inhibit the right and authority of Ocala or SECO to serve any of its own facilities if the party is obligated by law to provide the services which require the construction of the facilities and good engineering practice dictates that such facility be located in the other party's territory.

Either party shall notify the other party as soon as possible of any action which is specifically directed at that party and which may give rise to such an obligation.

Nothing herein shall be construed to prevent or in any way inhibit the right of either party to serve its own electric transmission or generation facilities wherever located.

Section 4.1 Annexed Areas - In the event any portion of the area within SECO's Territorial Area or Future Territorial Area is subsequently annexed by and into the city limits of Ocala, Ocala may (and currently does) impose a franchise fee upon Grantee in return for Ocala's permission to occupy Rights-of-Way within the city boundaries. Territories are not affected by annexation for purposes of service, provided however that those Customers annexed into the municipal boundaries of Ocala shall be subject to a franchise fee pursuant to such franchise.

ANNEXATIONS

PREREQUISITE APPROVAL

Section 5.1 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.

Section 5.2 Liability in the Event of Disapproval - In the event approval pursuant to Section 5.1 is not obtained, neither party will have action against the other arising under this Agreement.

Section 5.3 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.

DURATION

Section 6.1 - This Agreement shall continue and remain in effect for a period of fifteen (15) years from the date of the rendering of the Florida Public Service Commission's order approving this Agreement.

CONSTRUCTION OF AGREEMENT

Section 7.1 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 construed, to eliminate and avoid the needless and wasteful expenditures, duplication of facilities and potentially hazardous situations, which might otherwise result from unrestrained competition between the parties operating in overlapping service areas.

MISCELLANEOUS

Section 8.1 Negotiations - Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Agreement, the only ones 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 and hereto attached and signed by both parties.

Section 8.2 Successors and Assigns - 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 8.3 Notices - Notices given hereunder shall be deemed to have been given to SECO if mailed, by Certified Mail, postage prepaid, to General Manager, Sumter Electric Cooperative, Inc., Post Office Box 301, Sumterville, Florida 34267-0301 and to Ocala if mailed by Certified mail, postage prepaid, to: Director of Electric Utility, City of Ocala, 2100 N.E. 30th Avenue, Ocala, Florida 34470-4875. 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.

Section 8.4 Severability - The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provision hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceability provision were omitted.

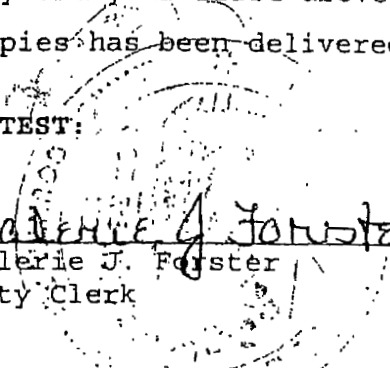
Section 8.5 Waiver of Jury Trial - The parties waive the right to a trial by jury and consent to a bench trial in the event trial becomes necessary to enforce this Agreement.

IN WITNESS WHEREOF, this Agreement has been caused to be executed in triplicate by SECO in its name by its President, and

its Corporate Seal hereto affixed by the Secretary of SECO, and by Ocala in its name by its President of the City Council, and its Seal hereto affixed and attested by its City Clerk, on the day and year first above written; and one of said triplicate copies has been delivered to each of the parties hereto.

ATTEST:

CITY OF OCALA


Valerie J. Forster
Valerie J. Forster
City Clerk

By: Michael S. Amsden
Michael S. Amsden
President, Ocala City Council

ATTEST:

SUMTER ELECTRIC COOPERATIVE, INC.

By: Ray F. Vick
Ray F. Vick
As its Secretary

By: Jerry D. Hatfield
Jerry D. Hatfield
As its President

Approved as to form and
legality:

Approved as to form and
legality:

Patrick G. Gilligan
Patrick G. Gilligan
City Attorney

Lewis W. Stone
Lewis W. Stone
Attorney for Sumter Electric
Cooperative, Inc.

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THIS IS TO CERTIFY THE FOREGOING TO
BE A TRUE AND ACCURATE COPY

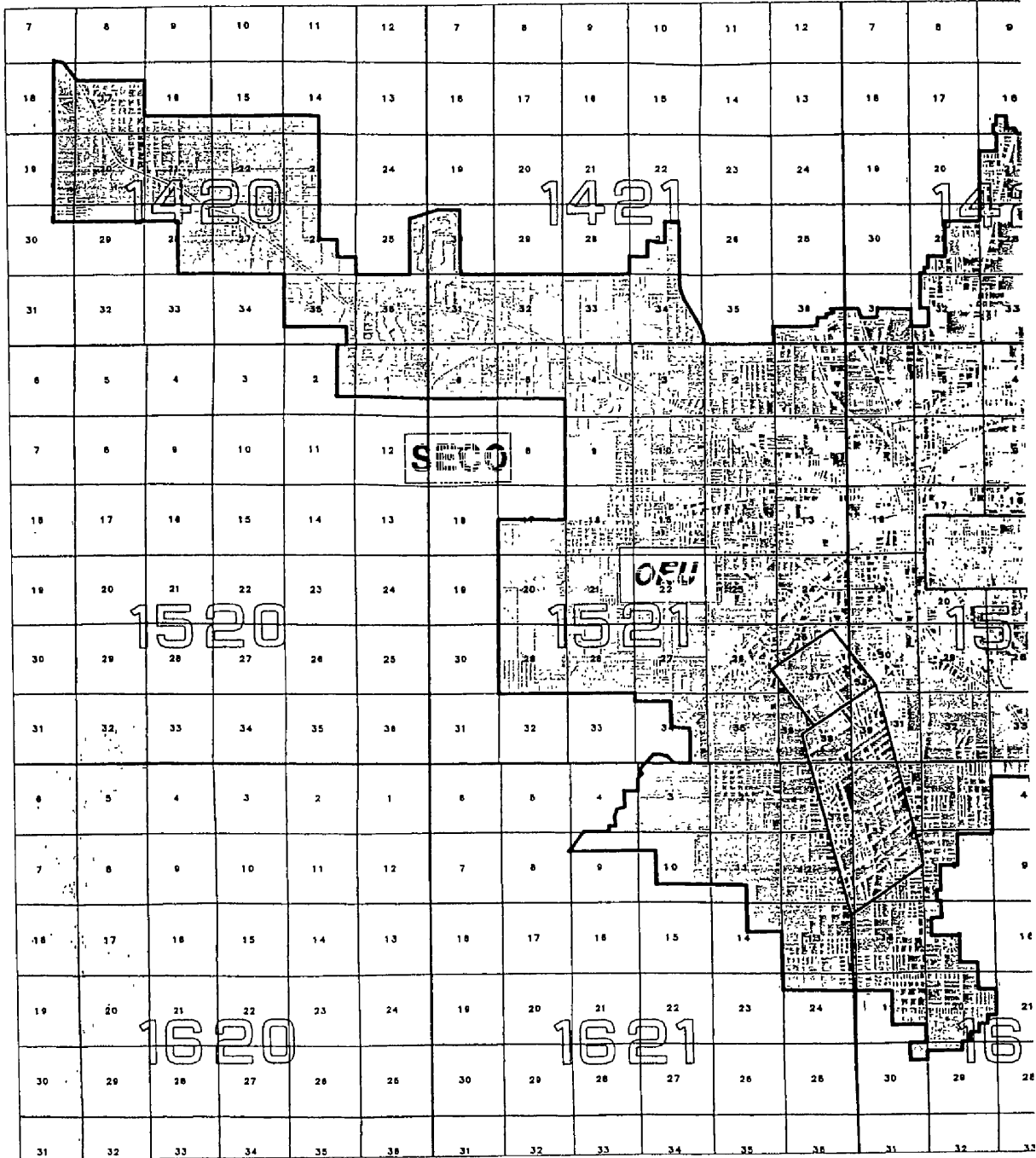
Sail Hargreaves
DEPUTY CITY CLERK

ACCEPTED BY CITY COUNCIL

September 24, 2002
DATE

OFFICE OF THE CITY CLERK

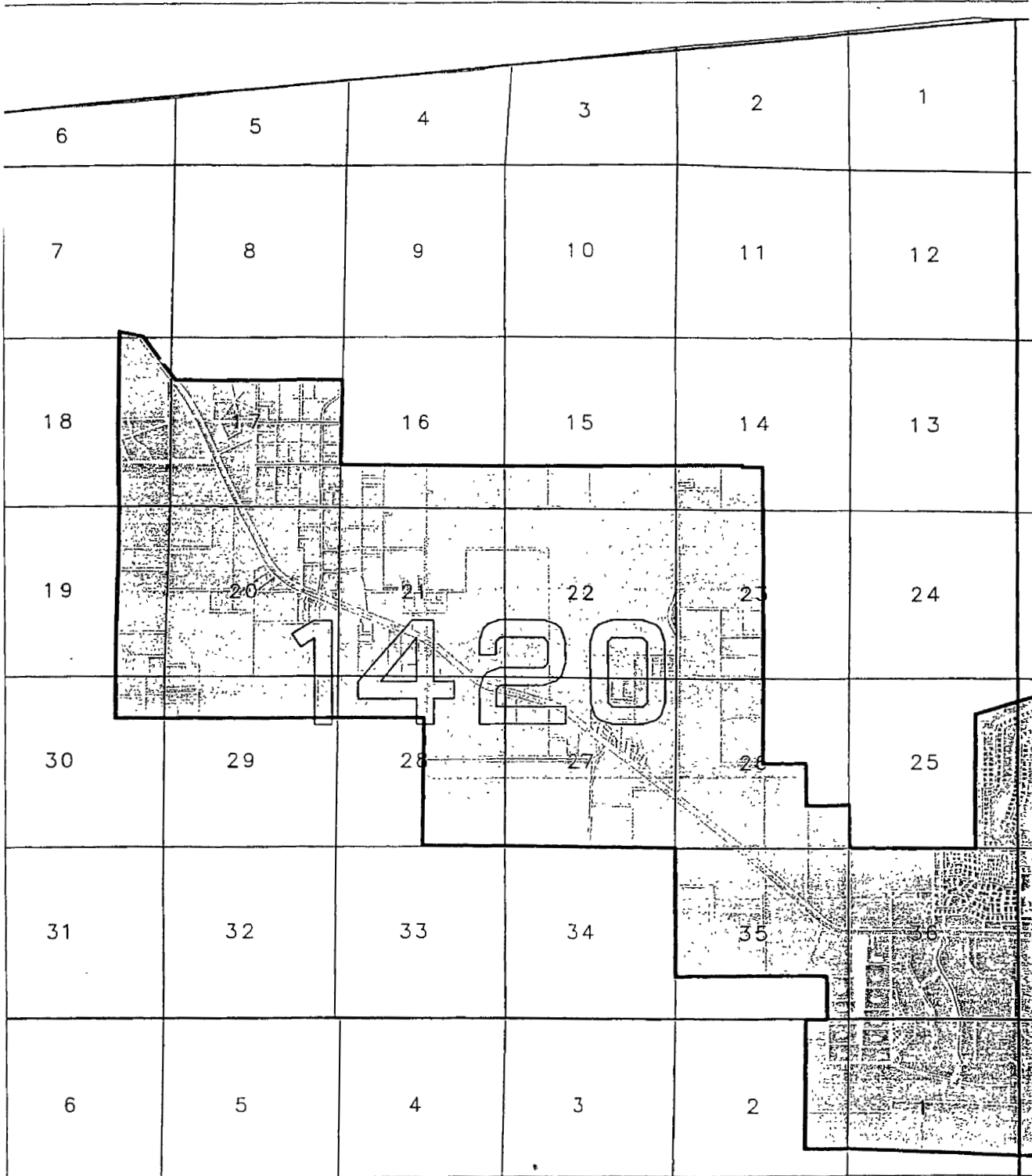
SECO & OCALA ELECTRIC UTILITY ADJOINING SERVICE AREA



OEU TERRITORY
 SECO TERRITORY
 SERVICE TERRITORY BOUNDARY



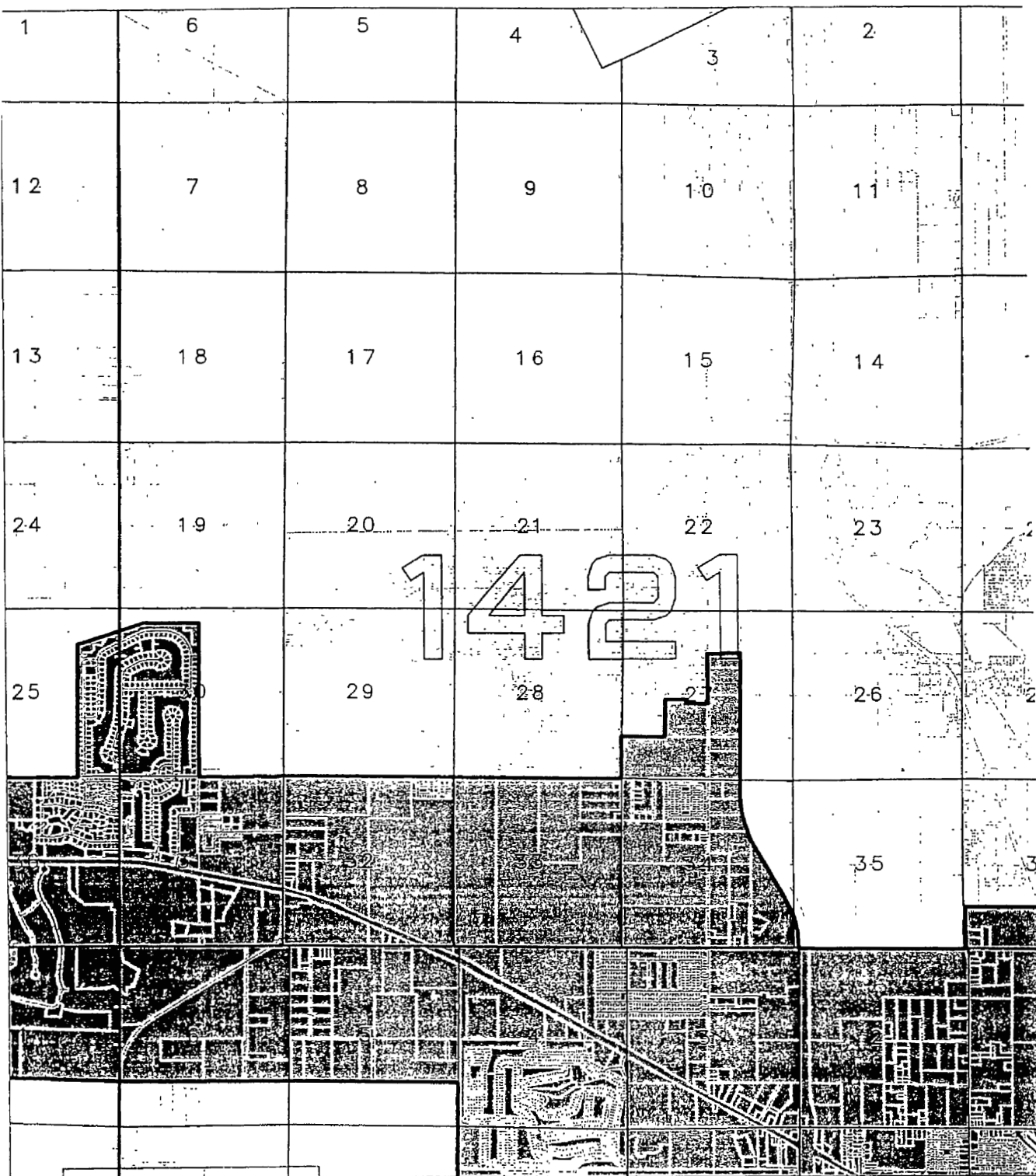
TWP. 14S.- RNG.20E. SERVICE AREA



- OEU TERRITORY
- SECO TERRITORY
- SERVICE TERRITORY BOUNDARY

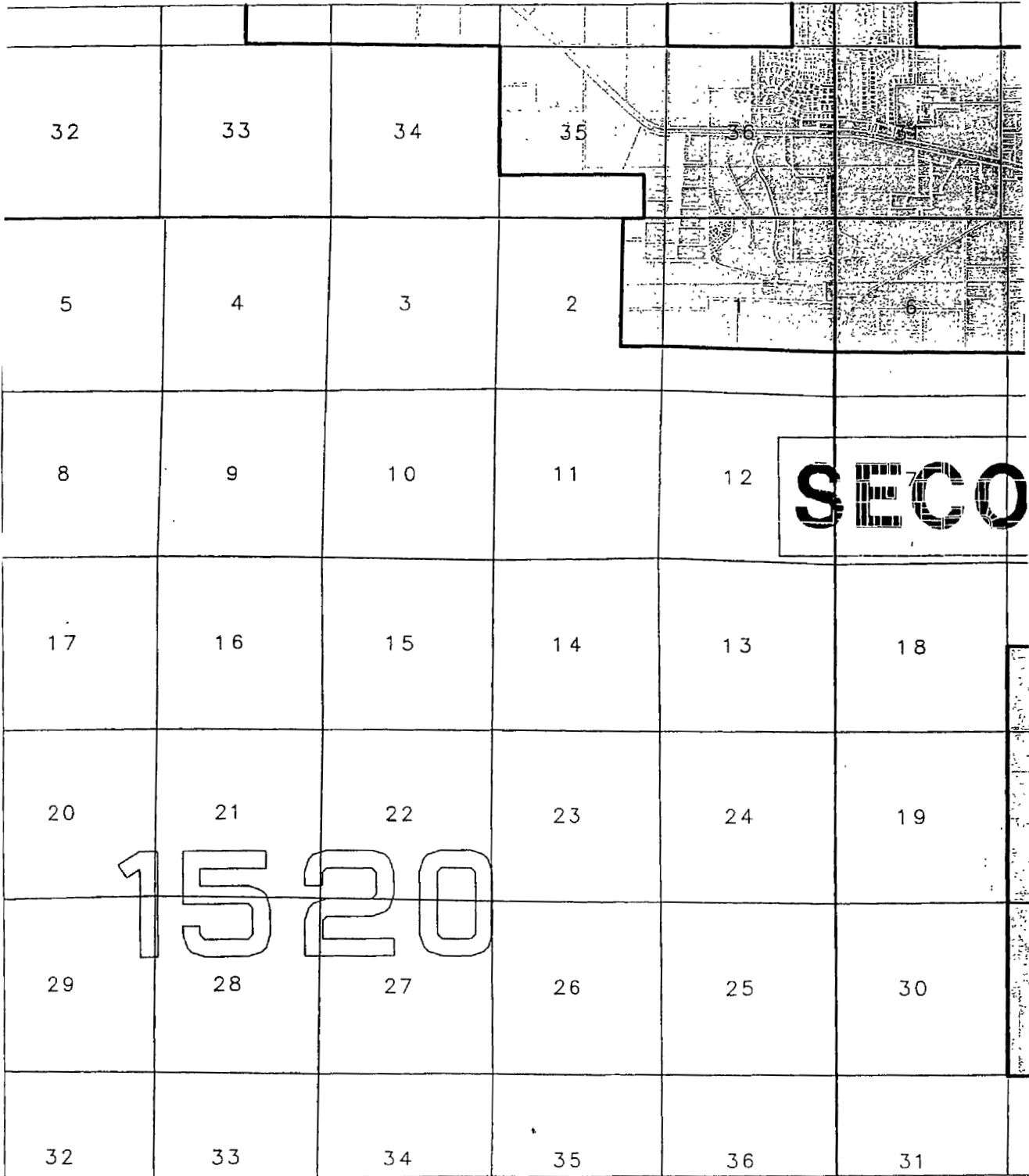


TWP. 14S.- RNG.21E. SERVICE AREA



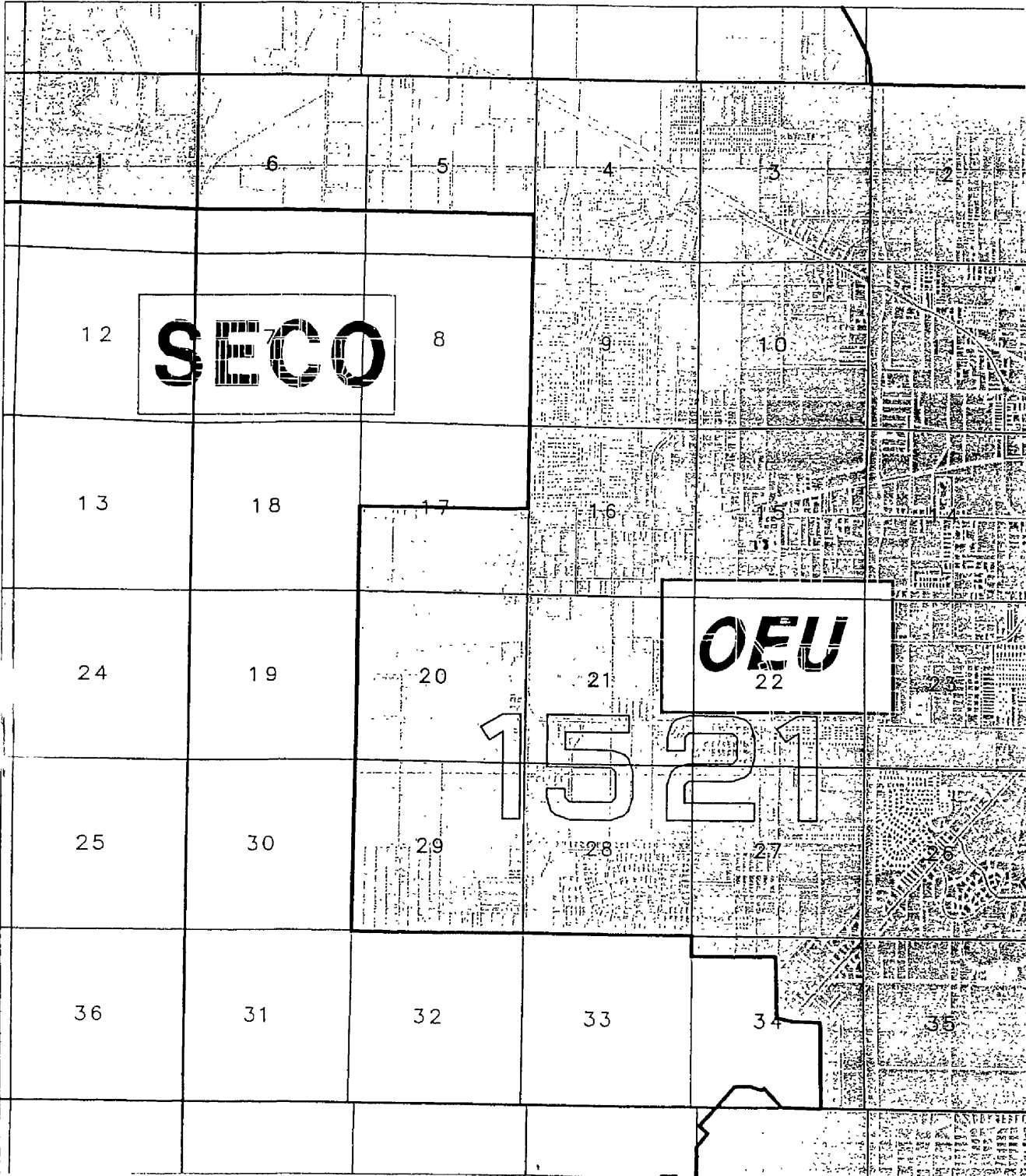
- OEU TERRITORY
- SECO TERRITORY
- SERVICE TERRITORY BOUNDARY

TWP. 15S.- RNG.20E. SERVICE AREA



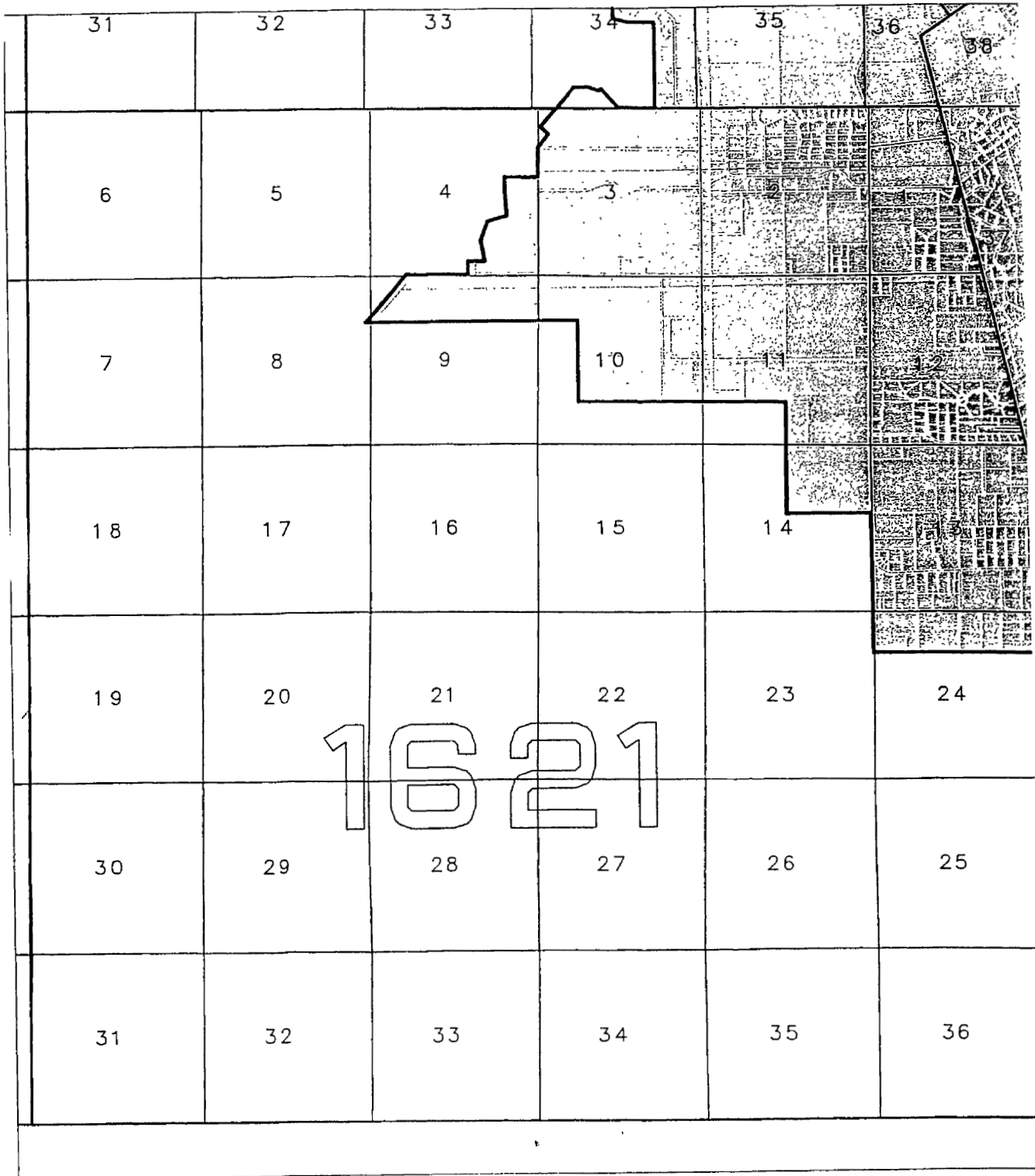
OEU TERRITORY
SECO TERRITORY
— SERVICE TERRITORY BOUNDARY

TWP. 15S.- RNG.21E. SERVICE AREA



OEU TERRITORY
SECO TERRITORY
— SERVICE TERRITORY BOUNDARY

TWP. 16S.- RNG.21E. SERVICE AREA

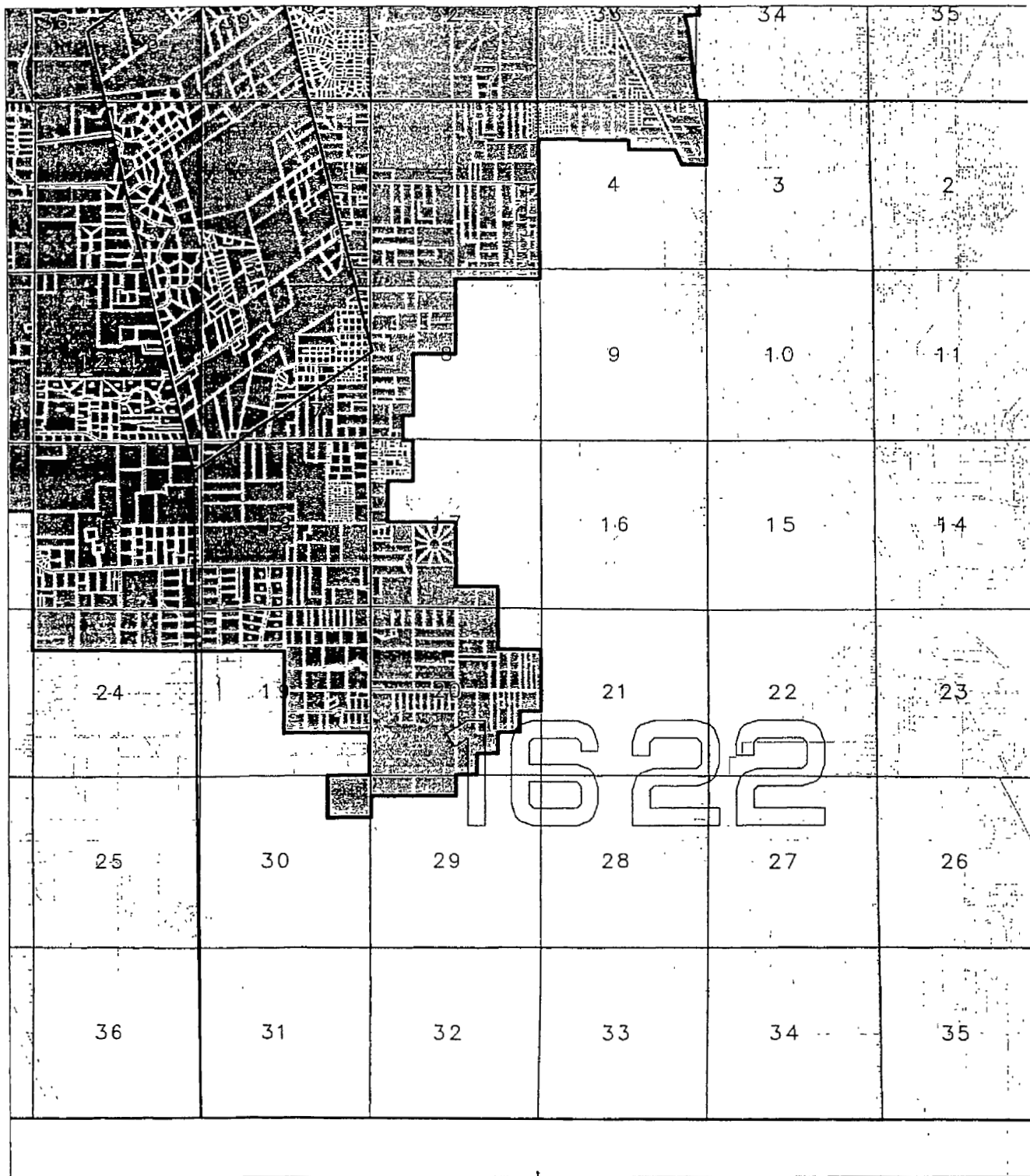


- OEU TERRITORY
- SECO TERRITORY
- SERVICE TERRITORY BOUNDARY



EXHIBIT "F" City of Ocala

TWP. 16S.- RNG.22E. SERVICE AREA



- OEU TERRITORY
- ▨ SECO TERRITORY
- SERVICE TERRITORY BOUNDARY

