

REQUEST TO ESTABLISH DOCKET
(Please Type)

EW

Date	10/28/03	Docket No.	031017-
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1. Division Name/Staff Name:	Appeals/Stern
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2. OPR:	Appeals/Stern
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3. OCR:	ECR/Breman
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4. Suggested Docket Title:	Request for declaratory statement from TECO regarding a territorial dispute between TECO and the City of Bartow
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5. Suggested Docket Mailing List (attach separate sheet if necessary)

A. Provide NAMES OR ACRONYMS ONLY if a regulated company.

B. Provide COMPLETE NAME AND ADDRESS for all others. (Match representatives to companies.)

1. Parties and their representatives (if any):

TECO	
City of Bartow	

2. Interested persons and their representatives (if any):

Polk County Clerks (see Docket 011333-EI)	
Mayor for City of Bartow (see Docket 011333-EI)	

6. Check one:

Yes Documentation is attached.

Documentation will be provided with recommendation.

This declaratory statement was originally filed in 011333-EI. It is being separated out and put into ~~its~~ its own docket.

10628 OCT 28 03

AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

October 8, 2003

HAND DELIVERED

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OCT - 8 2003

PUBLIC SERVICE COMMISSION
OFFICE OF THE GENERAL COUNSEL

Ms. Blanca S. Bayo, Director
Division of Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Petition of City of Bartow, Florida, Regarding a Territorial Dispute with Tampa Electric Company, Polk County, Florida; FPSC Docket No. 011333-EI

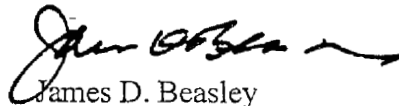
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Petition for Declaratory Statement.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



James D. Beasley

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JDB/pp
Enclosure

cc: All Parties of Record (w/enc.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of City of Bartow, Florida,)
Regarding a Territorial Dispute with Tampa)
Electric Company, Polk County, Florida)
_____)

DOCKET NO. 011333-EI
FILED: October 8, 2003

Petition For Declaratory Statement

Pursuant to Section 120.565, Florida Statutes and Rules 28-105.001 and 28-105.002 and 28-105.003, F.A.C, Tampa Electric Company ("Tampa Electric" or the "Company") hereby respectfully requests that the Commission issue a declaratory statement defining the rights and obligations of Tampa Electric under that certain service territory agreement between the City of Bartow ("City" or "Bartow") and Tampa Electric (the "Service Territory Agreement") approved by the Commission and embodied in Order No. 15437 (the "Order"), issued in Docket No. 850148-EU on December 11, 1985. Specifically, Tampa Electric requests an order declaring that, pursuant to Order No. 15437: 1) The Service Territory Agreement is valid and binding upon Tampa Electric and Bartow; 2) Tampa Electric has the exclusive right and obligation under the Service Territory Agreement to provide end use electric service to fire stations, police stations, sewer lift stations, street lights or other non-electric utility facilities owned and/or operated by Bartow and located within Tampa Electric's service territory; and 3) Any attempt by Bartow to self-provide end use electric service to such facilities in Tampa Electric's service territory, without prior Commission approval, would constitute a violation of the Service Territory Agreement and Order No. 15437. In support whereof, Tampa Electric says:

1. The Petitioner's name and address are as follows:

Tampa Electric Company
702 North Franklin Street
Tampa, Florida 33602

2. The names, addresses, telephone and facsimile numbers of the Petitioner's representatives in this matter and the persons to whom all notices and other documents should be sent in connection with this docket are as follows:

Angela Llewellyn
Administrator, Regulatory Coordination
Tampa Electric Company
P.O. Box 111
Tampa, FL 33602
(813) 228-1752
(813) 228-1770 (fax)

Lee L. Willis
James D. Beasley
Ausley & McMullen
P.O. Box 391
Tallahassee, FL 32302
(850) 224-9115
(850) 222-7952 (fax)

Harry W. Long Jr.
Assistant General Counsel – Regulatory
Tampa Electric Company
P.O. Box 111
Tampa, FL 33602
(813) 228-1702
(813) 228-1770 (fax)

3. Tampa Electric is an investor-owned public utility subject to the statutory jurisdiction of this Commission. Tampa Electric provides electric service to customers in Hillsborough and portions of Polk, Pasco and Pinellas Counties.
4. Bartow operates a municipal electric utility that is subject to the statutory jurisdiction of this Commission for certain purposes. Bartow provides electric service to customers within and adjacent to the City of Bartow, Polk County, Florida.

5. Pursuant to Section 366.04(2)(d), Florida Statutes, the Commission has authority *to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction.*
6. In addition, pursuant to Section 366.04(2)(e). Florida Statutes, the Commission has authority *to resolve any territorial dispute involving service areas between and among rural electric cooperatives, municipal electric utilities and other electric utilities under its jurisdiction.*
7. On April 16, 1985, Tampa Electric and Bartow entered into the Service Territory Agreement for the purpose of creating and establishing boundary lines between their respective electric service areas in Polk County, Florida, subject to the prior approval of this Commission. The express purpose and intent of the Service Territory Agreement was to “avoid uneconomic waste, potential safety hazards and other adverse effects that would result from duplication of electric facilities in the same area.” Tampa Electric and the City expressly agreed “that neither party ...{would} provide or offer to provide electric service at retail rates to future customers within the territory reserved to the other party.”
8. On April 30, 1985, the Company and the City jointly filed a petition with this Commission in Docket No. 850148-EU asking this Commission to approve the Service Territory Agreement. On December 11, 1985, the Commission issued Order No. 15437 incorporating by reference and approving the Service Territory Agreement. The Commission reviewed the proposed service territory boundaries and concluded that the Service Territory Agreement was in the best interests of the parties and the public.

9. On October 4, 2001, Bartow initiated the currently pending proceedings under Docket No. 011333-EU by filing with the Commission its *Petition To Modify Territorial Agreement Or, In The Alternative; To Resolve Territorial Dispute in Polk County, Florida*. The relief sought by Bartow was modification of the existing service territory boundary established in the Order. The existing service territory boundary between Bartow and Tampa Electric bisects a proposed, new residential development known as the Old Florida Plantation (“OFP”). Bartow sought the right to serve the entire OFP development, including the portion currently located in Tampa Electric’s service territory.
10. At Paragraph 16 of its petition in Docket No. 011333-EU, Bartow made the following assertion:

The city of Bartow will own and operate certain of its own facilities located in that portion of the development lying north of its territorial boundary line, including a fire station, auxiliary police station, sewer lift stations, and street lights, all of which it will serve with its electrical power.

11. Bartow has repeated this assertion in several subsequent pleadings in Docket No. 011333-EU, most recently at Paragraph 13 of its July 11, 2003, Protest and Petition For Formal Hearing. The question of whether Bartow is authorized to provide end use electric service to city-owned, non-electric utility facilities located in Tampa Electric’s service territory is not at issue in Docket No. 011333-EU. Bartow has merely asserted the right to provide such service in that docket but has not asked the Commission to modify the Service Territory Agreement to permit such extra-territorial electric service.

12. On February 17, 2003, the Commission Staff issued its First Data Request to Bartow in Docket No. 011333-EU (attached as Exhibit A). Staff Data Request No.3 read as follows:

Please provide a copy of the specific language in Commission Orders, Supreme Court Decisions, statutes, and/or ordinances that the City of Bartow relied on to support the opinion expressed in paragraph 16 of its October 4, 2001, petition in Docket No. 011333-Eu that the City of Bartow will serve north of its territorial boundary.

13. In response, Bartow offered two arguments in support of its position, both of which suggest a profound misunderstanding of relevant law, the Service Territory Agreement and Commission precedent. Bartow's response to the Staff (omitting the Notice of Service, Certificate of Service and service territory maps that accompanied that response) is attached hereto as Exhibit B.

14. First, Bartow argued that the existing Service Territory Agreement, as embodied in Commission Order No. 15437, allows Bartow to serve City-owned facilities in Tampa Electric's service territory. This assertion is remarkable in light of Bartow's acknowledgement, at the outset of its response to the Staff, that:

Most territorial agreements have a clause in them that specifically states that the parties to those agreements reserve the right to service their own facilities located outside of the territorial boundaries

15. The Service Territory Agreement between Bartow and Tampa Electric contains no such general provision and at no time did Tampa Electric agree to any such general reservation of rights. A copy of Order No. 15437 and the attached Service Territory Agreement, as amended, is attached hereto as Exhibit C.

16. In Section 2.4 of the Service Territory Agreement, as amended, Tampa Electric is specifically given the right to "provide retail electric service all customers

requiring service at transmission voltage (69 KV and above) in the corridor described in the "Corridor Description" attached hereto and made a part hereof. All customers requiring service below transmission voltage (i.e. below 69 KV) in the corridor shall be served by Bartow". In Section 2.6 of the Service Territory Agreement, it was agreed that "nothing in this Agreement is intended to affect the power plants, transmission lines, or substations of one party which are now located or may in the future be located in the service area of the other party..." (Emphasis added). The agreement, as adopted by the Commission, is quite specific as to the rights reserved by the parties to serve their own facilities located in the service territory of the other party. City-owned facilities such as police stations, fire stations, lift stations and streetlights are not among the categories of facilities listed in Section 2.6. As Bartow itself recognizes, if the Commission had intended to authorize Bartow to serve these kinds of City-owned facilities in Tampa Electric's service territory, then that reservation of authority would have been explicitly stated.

17. In the absence of any such express or implied reservation of rights, the City argues that the provision of electric service to its facilities located outside of its service territory would amount to simple self-service rather than the provision of electric service at retail, which would be prohibited under the existing Service Territory Agreement. However, this reasoning is both circular and transparent. The police stations and fire stations that the City proposes to build in Tampa Electric's service territory would be indistinguishable from any other retail load in Tampa Electric's service territory. These facilities would be the ultimate

consumers of the electric energy delivered. Therefore, such deliveries could only be described as retail electric service. Tampa Electric has planned its generation, transmission and distribution facilities and has made the necessary financial investments to meet this anticipated retail load. In this context, the City of Bartow is not just any other retail customer who might have the option to self-generate. Instead, the City is a neighboring electric utility that is bound by a Service Territory Agreement that does not give it the right to serve these facilities in Tampa Electric's service territory. Bartow cannot justify service to such facilities in Tampa Electric's service territory by pretending that its obligations under the currently effective Service Territory Agreement do not exist. Moreover, since Bartow has no electric distribution facilities in Tampa Electric's service territory, service to such proposed facilities by Bartow would necessarily involve precisely the uneconomic duplication of Tampa Electric's existing distribution facilities that the current Service Territory Agreement is intended to avoid.

18. Bartow's second argument is premised on a basic misunderstanding of Commission Order No. PSC-97-1132-FOF-EU¹ concerning the Service Territory Agreement between the City of Homestead, Florida (Homestead), and Florida Power and Light (FP&L). At issue in that case was the proper interpretation of the following language that appeared in Paragraph 8 of the Homestead/FP&L Service Territory Agreement:

"The City's right to furnish service to the City-owned facilities, or those owned by agencies deriving their power through and from the City (including but not limited to the Homestead

¹ Issued in Docket No. 970022-EU on September 29, 1997; 1997 Fla. PUC-LEXIS 1249, 97 FPSC 9:302.

Housing Authority) may be served by the said City, notwithstanding that the said facilities are located within the service territory of [FPL]”.

19. Homestead contended that non-governmental facilities owned and operated by third parties but built on land leased from the City and located in FPL's service territory qualified as "City-owned facilities" that Homestead was entitled to serve pursuant to the above-quoted language in the Homestead/FP&L Service Territory Agreement. In rejecting Homestead's contention, the Commission concluded that the City, itself, must carry out some proprietary function on the property in question in order for the facility to qualify as a "City-owned facility". Bartow suggests that since it will own and operate the facilities that it proposes to build in Tampa Electric's service territory, unlike the City of Homestead, the Commission decision in the Homestead case somehow provides legal support for Bartow's assertion of authority to serve such facilities. The fallacy of this assertion is obvious. The Commission decision in the Homestead case turned on the interpretation of the exception for "City-owned facilities" contained in the Homestead/FP&L service territory agreement. No such exception exists in the Tampa Electric/Bartow Service Territory Agreement. Therefore, the question of whether or not the facilities that Bartow intends to build in Tampa Electric's service territory are "City-owned facilities" is irrelevant. As discussed above, the existing Tampa Electric/Bartow Service Territory Agreement does not give Bartow the right to provide end use electric service to city-owned, non-electric utility facilities located in Tampa Electric's service territory.

20. As discussed above, failure to grant the declaratory relief requested in this petition is likely to result in the uneconomic duplication of facilities by Bartow and the creation of stranded costs incurred by Tampa Electric in anticipation of its public utility obligation to serve anticipated electric load within its Commission-approved service territory.

WHEREFORE, Tampa Electric respectfully requests that the Commission issue an order declaring that:

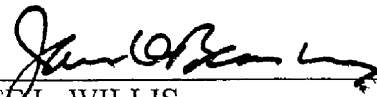
- 1) The Service Territory Agreement is valid and binding upon Tampa Electric and Bartow;
- 2) Tampa Electric has the exclusive right and obligation under the Service Territory Agreement to provide end use electric service to fire stations, police stations, sewer lift stations, street lights or other non-electric utility facilities owned and/or operated by Bartow and located within Tampa Electric's service territory; and
- 3) Any attempt by Bartow to self-provide electric service to such facilities in Tampa Electric's service territory, without prior Commission approval, would constitute a violation of the Service Territory Agreement and Order No. 15437.

DATED this 8th day of October 2003.

Respectfully Submitted,

HARRY W. LONG, JR.
Assistant General Counsel
Tampa Electric Company
Post Office Box 111
Tampa, Florida 33601
(813) 228-1702

and



LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC
COMPANY

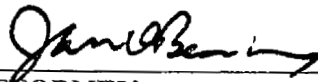
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Declaratory Statement, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 8th day of October 2003 to the following:

Ms. Adrienne Vining*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. Joseph J. DeLegge
City of Bartow
P. O. Box 1069
Bartow, FL 33830-1069

Mr. Davisson F. Dunlap, Jr.
Dunlap & Toole, P.A.
2057 Delta Way
Tallahassee, FL 32303



ATTORNEY

STATE OF FLORIDA

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY



OFFICE OF THE GENERAL COUNSEL
HAROLD A. MCLEAN
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

February 17, 2003

Davisson F. Dunlap, Jr.
Dunlap & Toole, P. A.
2057 Delta Way
Tallahassee, FL 32303

STAFF'S 1ST DATA REQUEST

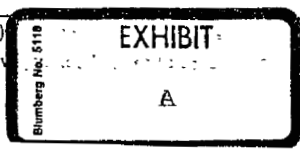
RE: Docket No. 011333-EU - Petition of City of Bartow to Modify Territorial Agreement or, in the Alternative, to Resolve Territorial Dispute with Tampa Electric Company in Polk County.

Dear Mr. Dunlap:

By this letter, the Commission staff requests that City of Bartow (Bartow or utility) please provide responses to the following data requests:

1. Please provide a list of all existing self service loads, such as pump stations, police stations, fire stations, sewer lift stations, and streetlights, which are not within the City of Bartow's electric territorial boundary, pursuant to Section 2.1 of the territorial agreement approved by Commission Order No. 15473. Please include in your response the location of each such self service load, peak demand, average kwh usage, the name of the feeder serving the self service location, transformer size, date when such self service began, the cost for installing all necessary electric distribution facilities to serve the respective self service load, whether Tampa Electric Company (TECO) was notified pursuant to Section 2.4 of the territorial agreement, and whether the City of Bartow compared the cost to provide self service to the costs of receiving service from TECO for each of the respective self service loads.
2. The City of Bartow, at paragraph 17 of its October 4, 2001, petition in Docket 011333-EU, indicates that its substations currently have the capacity to serve Old Florida Plantation (OFP). Please explain why the City of Bartow installed capacity sufficient to serve OFP and list the dates that such capacity became available to serve OFP, and the costs associated with installing such capacity.
3. Please provide a copy of the specific language in Commission Orders, Supreme Court Decisions, statutes, rules, and/or ordinances that the City of Bartow relied on to support the opinion expressed in paragraph 16 of its October 4, 2001, petition in Docket 011333-EU that

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Davisson F. Dunlap, Jr.
Page 2
February 17, 2003

the City of Bartow will self serve north of its territorial boundary.

4. Please provide a copy of the work papers, spreadsheets, reports, or other analyses that the City of Bartow relied on to support the view expressed in paragraph 17 of its October 4, 2001, petition in Docket 011333-EU that the City of Bartow can serve the OFP property more economically than can TECO.
5. Please provide a single composite exhibit based on the City's Production of Document Number "BAR-0117". Please include on the composite exhibit the following:
 - a) Pole line distance(s) from the City's proposed facilities to serve Old Florida Plantation to the substation(s) from which the City proposes to serve Old Florida Plantation. Please include the name of the substation(s).
 - b) The existing capacity of the substation transformer that is planned to serve Old Florida Plantation.
 - c) The highest peak load recorded on the substation transformer that is planned to serve Old Florida Plantation.
 - d) Estimated capacity of the substation transformer that is planned to serve Old Florida Plantation at full build out.
 - e) Estimated peak loading of the substation transformer that is planned to serve Old Florida Plantation at full build out.
 - f) Existing electric retail service area boundary.
 - g) Proposed new electric retail service area boundary.
 - h) Estimated total cost for all planned retail electric distribution facilities to serve Old Florida Plantation at full build out.
6. Would a territorial boundary line bisecting the OFP property following the primary entrance road into OFP and then crossing a conservation area to Lake Hancock result in lower construction costs to both the City of Bartow and TECO than the current territorial boundary line? Please explain.
7. Would a territorial boundary line bisecting the OFP property following the primary entrance road into OFP and then crossing a conservation area to Lake Hancock result in higher reliability and better customer service to future customers served by both the City of Bartow and TECO than the current territorial boundary line? Please explain.

Davisson F. Dunlap, Jr.

Page 3

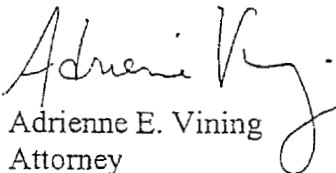
February 17, 2003

8. Would a territorial boundary line modification following the OFP property such that the City of Bartow was obligated to service the entire OFP property result in lower construction costs, higher reliability and better customer service to future customers than the current territorial boundary line? Please explain.

9. Would a territorial boundary line modification following the OFP property such that the TECO was obligated to service the entire OFP property result in lower construction costs, higher reliability and better customer service to future customers than the current territorial boundary line? Please explain.

Please file the original and five copies of the requested information by March 19, 2003, with Ms. Blanca Bayó, Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850. Please feel free to call me at (850) 413-6183 if you have any questions.

Sincerely,


Adrienne E. Vining
Attorney

AEV/jb

cc: Division of the Commission Clerk and Administrative Services
Division of Economic Regulation (Breman, D.Lee, Redemann)

DUNLAP & TOOLE, P.A.

LAWYERS

DAVISSON F. DUNLAP, JR.
DANA G. TOOLE
DAVISSON F. DUNLAP, III

2057 DELTA WAY
TALLAHASSEE, FLORIDA 32303-4227
PHONE: 850-385-5000
FACSIMILE: 850-385-7636

Of Counsel:
DAVISSON F. DUNLAP

March 20, 2003

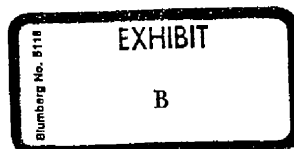
Ms. Adrienne Vining
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0863

Re: Territorial Dispute Between City of Bartow and
Tampa Electric Company ("TECO"); PSC Docket No. 011333-EU
Current Status of Old Florida Plantation Development

Dear Adrienne:

The following is in response to your letter of February 17, 2003, requesting data from the City of Bartow.

1. We understand there are none.
2. Capacity was expanded at Odom Substation in 1974 to serve system loads as they were converted to 12.47 kV. Capacity was installed at Northwest Substation in 1996 at a cost of approximately \$1,270,000. Northwest Substation was built to serve anticipated system load growth in the north and west portions of the service territory and to provide capability of maintaining proper level of service under contingency loss of a power transformer at either Church Street Substation or Odom Substation. Capacity was expanded at Connersville Substation in 2001 to replace unreliable and aging equipment, at a cost of approximately \$750,000. The capacity available to serve OFP is a result of contingency-based planning, planning for eventual service to undeveloped lands, and purchase of transformers in standard sizes.
3. Territorial agreements, statutes, and Public Service Commission rules that govern resolutions of territorial disputes are limited to retail electrical customers. Most territorial agreements have a clause in them that specifically states that the parties to those agreements reserve the right to service their own facilities located outside of the territorial boundaries.



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Florida Public Service Commission

Letter to Ms. Adrienne Vining
Florida Public Service Commission
March 20, 2003
Page 2

Section 2.5 of the agreement between TECO and Bartow states in part: "This AGREEMENT shall apply only to the provision of retail electric service by the parties hereto . . ." Section .02 and section .03 cite that TECO and Bartow are presently both providing retail electrical service. Section .04 begins: "Whereas, the areas in which each party is supplying retail electric service . . ." (Emphasis supplied.) Section 2.1 of the contract states in part: "The boundary line delineating the retail electric service areas of the parties . . ." (Emphasis supplied.) Section 2.3 of the territorial agreement states: "The parties agree that neither party, except as provided in Section 2.4, will provide or offer to provide electric service at retail to future customers within the territory reserved by the other party."

In this instance, the City of Bartow, by serving its own city-owned facilities, such as fire stations, police stations, lift stations, and street lights, would not be serving itself within its city limits and would not be serving retail electric customers. The same would be true if TECO owned facilities within the Bartow service territory and sought to supply them with electrical power.

The City of Bartow is aware of a Public Service Commission order and a Florida Supreme Court case that deals with this subject matter but not the exact factual circumstances. On September 29, 1997, in docket no. 970022-EU, the Florida Public Commission issued its order in a case styled "In re: Petition by Florida Power & Light Company for enforcement of Order 4285, which approved a territorial agreement and established boundaries between the Company and the City of Homestead." In that case, the City of Homestead acquired real property that was in the territorial service area of Florida Power & Light. The city then leased the property to third parties, who built buildings and conducted businesses on those properties. The City of Homestead sought to serve those customers on the grounds that they were city-owned facilities. The Florida Public Service Commission found that, because the city only owned the real property and did not own the buildings or conduct the businesses, that they were not city-owned utilities and would not therefore come within an exception within their contract for city-owned facilities. The Florida Supreme Court in the case of *City of Homestead v. Johnson*, 760 So. 2d 80 (Fla. 2000) agreed with the Florida Public Service Commission.

In contrast to the case in the *City of Homestead*, the facilities will be owned and operated by the City of Bartow.

The territorial boundary agreement between TECO and the City of Bartow, in section 2.6, specifically exempts from the agreement transmission lines and substations of one of the parties which may in the future be located in the service area of the other party and further refers to these types of facilities. While section 2.6 does not have an extensive list of TECO or Bartow-owned facilities, the clear implication at section 2.6 is to exempt facilities owned by either party from the agreement.

There is no prohibition in the statutes or Florida Public Service Commission rules that prevents a customer from providing its own electrical service. A given individual, including a city, if it so chooses, can install a generator, install solar collectors, produce and provide its

own electric power needs. This is exactly what the City of Bartow would be doing within its city limits when it provides electrical power to its city-owned and operated facilities. Under those circumstances, the city is not an electric customer of any kind and there is no sale of electrical power involved.

In summary, Bartow's serving its city-owned and operated facilities within TECO service territory of Old Florida Plantation would not constitute supplying retail electric service within that territory. Such facilities are not covered by the territorial agreement. The city's providing electric power to itself does not involve the sale of electric power and is not the type of electrical service controlled by the territorial agreements or the statutes and rules that govern them.

4. Our letter dated June 26, 2001 (updated January 9, 2002), and its enclosures provided the conceptual basis for service to OFP. The assertion that service by Bartow would be more economical is intuitive, based on knowledge that the TECO Gordonville Substation does not have sufficient capacity to serve OFP, and thus would have to be upgraded or supplanted at a relatively high cost. Bartow's service centers are also closer than TECO's.

5. Attached are three exhibits. Exhibit 1 depicts diagrams and loads assuming Bartow serves the entire territory. Exhibit 2 assumes that there is a split of the territory along lines consistent with sound engineering principles. Exhibit 3 is identified as "Master Plan" and depicts the proposed spine road and a division of territory shown in Exhibit 2.

6. Yes. The current territorial boundary line splits some villages. The inability to cross such a boundary would likely result in longer underground loops that would be more expensive.

7. Yes. The current territorial boundary line splits some of the villages. The inability to cross such a boundary may eliminate the ability to loop altogether, which would be less reliable. Customer service would likely be impacted negatively due to village neighbors being served by different electric utilities. This would be confusing to both customers and to field service personnel.

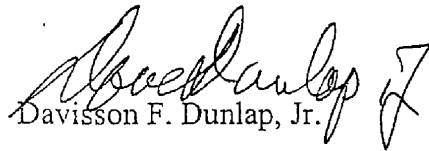
8. Yes. The cost of one utility providing the infrastructure instead of two utilities would be less. Infrastructure costs within OFP would cost essentially the same regardless of which utility provides service. However, the City's overall construction costs should be lowered since no additional substation transformer capacity will be required. The conceptual design for build-out envisions six major feeds into OFP served from four different substation transformers, resulting in a flexible and reliable system. Customer service will be handled from City Hall and the Electric Utility, both only about four miles from the entrance to OFP, and a material storage yard will be located on the nearby Bartow airbase property. The city will be providing electric power to its own city-owned and operated facilities with the OFP development. In addition, the city will be providing water and sewer utility service and other municipal services within the

Letter to Ms. Adrienne Vining
Florida Public Service Commission
March 20, 2003
Page 4

entirety of OFP, its meter reader will have to be in this area. A single utility contact is desirable from a customer service standpoint.

9. "No" for cost and "No" for reliability and customer service for the reasons outlined in our response to 8. We understand the conceptual design of TECO would provide service from only two different substation transformers. We understand customer service would be handled out of Winter Haven, approximately 10 miles away.

Sincerely yours,


Davisson F. Dunlap, Jr.

Enclosures

cc Mr. Richard A. Williams
Mr. James D. Beasley

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition For Approval) DOCKET NO. 850148-EU
Of Territorial Agreement Between) ORDER NO. 15437
the City of Bartow and Tampa) ISSUED: 12-11-85
Electric Company.)
_____)

The following Commissioners participated in the disposition of this matter:

JOHN R. MARKS, III, Chairman
JOSEPH P. CRESSE
GERALD L. GUNTER
MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING JOINT PETITION FOR APPROVAL
OF 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 formal proceeding pursuant to Rule 25-22.29, Florida Administrative Code.

On April 30, 1985, the City of Bartow (Bartow) and Tampa Electric Company (TECO) filed a joint petition seeking this Commission's approval of a territorial agreement between the parties.

This Commission is empowered to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction, pursuant to Section 366.04(2)(d), Florida Statutes.

On April 16, 1985, the parties entered into an agreement for the purpose of creating and establishing boundary lines between electric service areas in Polk County for Bartow and TECO. The purpose and intent of the agreement is to eliminate and avoid needless and wasteful expenditures and hazardous situations which result from unrestrained competition between utilities operating in overlapping service areas. By its terms, the agreement establishes boundary lines which delineate the retail service areas of the parties. Pursuant to this agreement, two existing customers will be transferred: one from TECO to Bartow, and one from Bartow to TECO. There will be no sale or exchange of facilities among the utilities. The Territorial Boundary Agreement of the parties is attached to this Order as Appendix A, and hereby incorporated by reference. Section 2.4 of the Agreement was subsequently modified by the parties and included as Appendix B, and is hereby incorporated by reference.

This Commission has reviewed the service boundaries set out in the Agreement and has found that the Agreement is in the best interests of the parties and the public. Therefore, we approve the Territorial Agreement between the parties. In view of the above, it is

ORDERED by the Florida Public Service Commission that the Joint Petition For Approval of Territorial Agreement Between the City of Bartow and Tampa Electric Company is hereby approved.

DOCUMENT NUMBER-DATE

850148 DEC 11 1985

12-11-85

EXHIBIT

-C

Shumberg No. 5118

By ORDER of the Florida Public Service Commission, this 11th
day of December, 1985.



STEVE TRIBBLE
Commission Clerk

(S E A L)

CRD

NOTICE OF FURTHER PROCEEDINGS
OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes (Supp. 1984), to notify parties of any administrative hearing or judicial review of Commission orders that may be available, as well as the procedures and time limits that apply to such further proceedings. This notice should not be construed as an endorsement by the Florida Public Service Commission of any request nor should it be construed as an indication that such request will be granted.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.29, Florida Administrative Code. Any person adversely affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.29(4), Florida Administrative Code, in the form provided by Rule 25-22.36(7)(a) and (f), Florida Administrative Code. This petition must be received by the Commission Clerk at his office at 101 East Gaines Street, Tallahassee, Florida 32301, by the close of business on December 30, 1985. In the absence of such a petition, this order shall become effective December 31, 1985 as provided by Rule 25-22.29(6), Florida Administrative Code, and as reflected in a subsequent order.

If this order becomes final and effective on December 31, 1985, any party adversely affected may request judicial review by the Florida Supreme Court by the filing of a notice of appeal with the Commission Clerk and the filing of a copy of the notice and filing fee with the Supreme Court. This filing must be completed within 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.

APPENDIX "A"

TERRITORIAL BOUNDARY AGREEMENT
BETWEEN
TAMPA ELECTRIC COMPANY
AND
THE CITY OF BARTOW, FL.

Section 0.1 THIS AGREEMENT, made and entered into this 16th day of APRIL, 1985, by and between TAMPA ELECTRIC COMPANY, a corporation organized and existing under the laws of the State of Florida, herein referred to as "TECO" and the CITY of BARTOW - Electric Department, a city incorporated and existing under the laws of the State of Florida, herein referred to as "BARTOW";

WITNESSETH:

Section 0.2 WHEREAS, TECO is presently providing retail electric service in a portion of Polk County near and adjacent to the BARTOW city limits.

Section 0.3 WHEREAS, BARTOW is presently providing retail electric service in a portion of Polk County near and adjacent to the BARTOW city limits.

Section 0.4 WHEREAS, the areas in which each party is supplying retail electric service are in close proximity and abut in Polk County, TECO and BARTOW desire to cooperate in the public interest in supplying service in a manner so as to avoid uneconomic waste, potential safety hazards and other adverse effects that would result from duplication of electric facilities in the same area.

Section 0.5 WHEREAS, the execution of this AGREEMENT by the parties hereto is not conditioned upon the acceptance of or agreement to any other contractual arrangements pending or contemplated by or between the parties.

Section 0.6 NOW, THEREFORE, in consideration of the foregoing premises and of the mutual benefits to be obtained from the covenants herein set forth, the parties hereto do hereby agree as follows:

ARTICLE I

TERM OF AGREEMENT

Section 1.1 . TERM: After this AGREEMENT becomes effective pursuant to Section 3.4 hereof, it shall continue in effect until termination or until modification shall be mutually agreed upon, or until termination or modification shall be mandated by governmental entities or courts with appropriate jurisdiction. Fifteen (15) years from the date above first written, but not before, either of the parties hereto shall have the right to initiate unilateral action before any governmental entity or court with appropriate jurisdiction, seeking to obtain modification or cancellation of this AGREEMENT.

ARTICLE II

ESSENCE OF AGREEMENT

Section 2.1 The boundary line delineating the retail electric service areas of the parties is marked on the map attached hereto and labeled Exhibit A, and said boundary line is further described in (a) and (b) as follows:

WINTER HAVEN

(a) Commence at the southeast corner of the northeast 1/4 of Section 30, Township 29, Range 26 east, run thence north along the east boundary of said Section 30 to the northeast corner of said Section 30, run thence west along the north boundary of said Section 30 to the southeast corner of the southwest 1/4 of Section 19, Township 29 south, Range 26 east, run thence north to the southeast corner of the southwest 1/4 of Section 18, Township 29 south, Range 26 east, run thence west along the south boundary of said Section 18 to the southwest corner of said Section 18, run thence north along the

west boundary of said Section 18 to the intersection of the said west boundary and the south right-of-way of State Road 559, run thence westerly in a straight line along the projected right-of-way of State Road 559 to the easterly right-of-way of line of State Road 555, run thence southwesterly along said right-of-way line to a point 900 feet west of the east boundary of Section 22, Township 29 south, Range 25, run thence south parallel to and 900 feet west of the east boundary of said Section 22 to the south boundary of said Section 22, run thence west along the south boundaries of Sections 22 and 21, Township 29 south, Range 25 east, to the southwest corner of said Section 21, run thence north along the west boundary of said Section 21 into Lake Hancock to a point of intersection with the westerly projected north boundary of Section 22, Township 29 south, Range 25 east, run thence west along the projected north boundary of said Section 21 to a point in Lake Hancock located 1,900 feet east of the southeast corner of Section 13, Township 29 south, Range 24 east, for a point of termination. All lying in Polk County, Florida.

PLANT CITY

(b) Commence at the southeast corner of the southwest 1/4 of Section 3, Township 31 south, Range 24 east, run thence north to the northeast corner of the northwest 1/4 of Section 15, Township 30 south, Range 24 east, run thence east along the north boundaries of Sections 15 and 14, Township 20 south, Range 24 east, to the northeast corner of the northwest 1/4 of said Section 14, run thence

north to the center of Section 2, Township 30 south, Range 24 east, run thence west to the center of Section 3, Township 30 south, Range 24 east, run thence north to the northeast corner of the northwest 1/4 of said Section 3, run thence east along the north boundary of said Section 3 to the southeast corner of the southwest 1/4 of Section 34, Township 29, south Range 24 east, run thence north to the northeast corner of the northwest 1/4 of said Section 34 for a point of termination. All lying in Polk County, Florida.

Section 2.2 The area generally north of said boundary line (a) and generally west of said boundary line (b) is reserved to TECO (as relates to BARTOW), and the area generally south of said boundary line (a) and generally east of said boundary line (b) is reserved to BARTOW (as relates to TECO), with respect to service to retail customers.

Section 2.3 The parties agree that neither party, except as provided in Section 2.4, will provide or offer to provide electric service at retail to future customers within the territory reserved to the other party.

Section 2.4 The parties recognize that, in specific instances, good engineering practices (or economic constraints on either of the parties) may from time to time indicate that small service areas and/or future retail electric customers should not be served by the party in whose territory they are located. In such instances, upon written request by the party in whose territory they are located to the other party, the other party may agree in writing to provide service to such small service areas and/or future retail electric customers, and it is understood that no additional regulatory approval will be required for such agreement(s). By the execution of this AGREEMENT, the parties acknowledge that TECO may continue to provide retail electric service to existing and future phosphate customers and/or customers served at transmission voltage (69 KV and above) in the area of Polk County reserved for BARTOW.

Section 2.5 This AGREEMENT shall apply only to the provision of retail electric service by the parties hereto and shall have absolutely no application or effect with respect to either party's sale of "bulk power supply for resale," which is defined to mean all arrangements for supply of electric power in bulk to any person for resale, including but not limited to, the taking of utility responsibility for supply of firm power in bulk to fill the full requirements of any person engaged or to be engaged in the distribution of electric power at retail, and/or interconnection with any persons for the sale or exchange of emergency power, economy energy, deficiency power, and such other forms of bulk power sales or exchanges for resale made for the purpose or with the effect of achieving an overall reduction in the cost of providing electric power supply.

Section 2.6 Nothing in this AGREEMENT is intended to affect the power plants, transmission lines, or substations of one party which are now located, or may in the future be located in the service area of the other party, and any problems between the respective parties involving these types of facilities shall be settled at the General Office level of the parties.

ARTICLE III

MISCELLANEOUS PROVISIONS

Section 3.1 The failure of either party to enforce any provision of this AGREEMENT in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

Section 3.2 Neither party shall assign, transfer or sublet any privilege granted to it hereunder without the prior consent in writing of the other party, but otherwise, this AGREEMENT shall insure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 3.3 This AGREEMENT shall be governed by the laws of the State of Florida.

Section 3.4 The parties recognize and agree that both companies are subject to the jurisdiction of the Florida Public Service Commission (hereinafter called the "Commission") and further agree that this AGREEMENT shall have no force and effect unless and until it is submitted to and approved by the Commission in accordance with applicable procedures. The parties further agree that the AGREEMENT, if and when approved by the Commission, shall be subject to the continuing jurisdiction of the Commission and may be terminated or modified only by Order of the Commission. No modification or termination of this AGREEMENT by the parties hereto shall be effective unless and until approved by the Commission. Each party agrees to promptly notify the other in writing of any petition, application or request for modification of the AGREEMENT made to the Commission and to serve upon the other party copies of all pleadings or other papers filed in connection therewith.

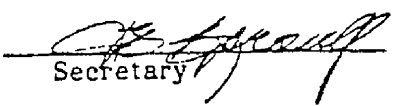
Section 3.5 This AGREEMENT shall be effective on the date it is approved by the Florida Public Service Commission in accordance with Section 3.4 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.


ATTEST:

TAMPA ELECTRIC COMPANY

BY:


Secretary

BY:



Vice President

APR 16 1985
Date

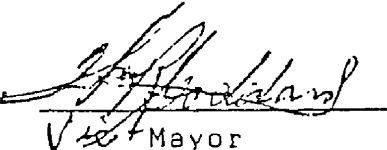
ATTEST:

CITY OF BARTOW, FL

BY:


City Clerk

BY:


Vice Mayor

APR 4 1985
Date

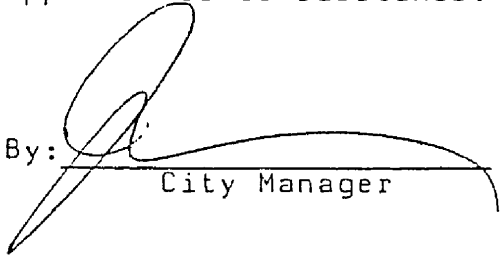
Approved as to correctness
and form:

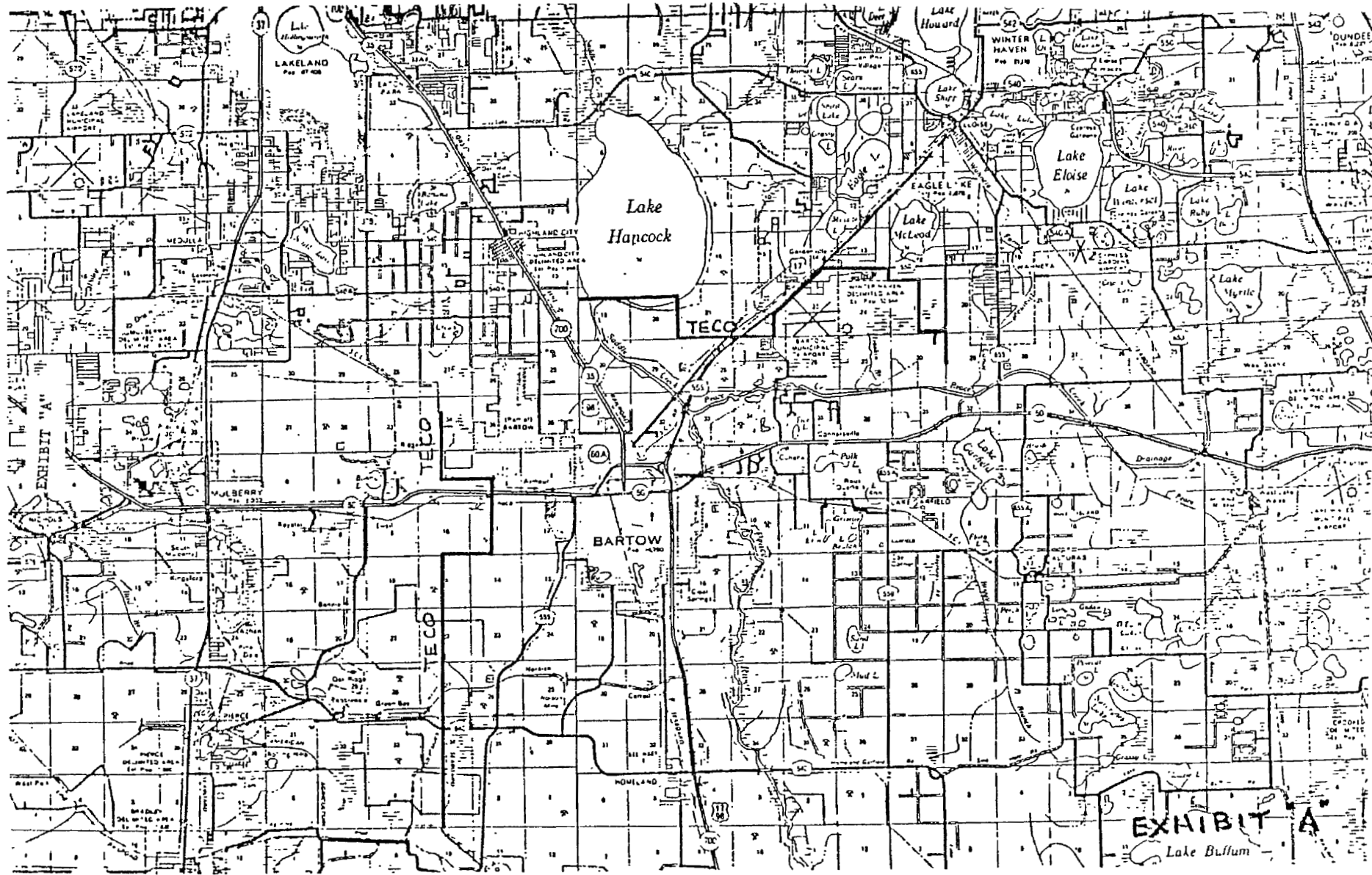
Approved as to substance:

By:


City Attorney

By:


City Manager



Section 2.4 The parties recognize that, in specific instances, good engineering practices (or economic constraints on either of the parties) may from time to time indicate that small service areas and/or future retail electric customers should not be served by the party in whose territory they are located. In such instances upon written request by the party in whose territory they are located to the other party, the other party may agree in writing to provide service to such small service areas and/or future retail electric customers, and it is understood that no additional regulatory approval will be required for such agreement(s).

By the execution ~~Upon the effective date~~ of this AGREEMENT the parties acknowledge that TECO may ~~continue to~~ shall provide retail electric service to existing and future phosphate customers and/or all customers served requiring service at transmission voltage (69 KV and above) in the area of Polk County reserved for BARTOW corridor described in the "Corridor Description" attached hereto and made a part hereof.

All customers requiring service below transmission voltage (i.e., below 69 KV) in the corridor shall be served by BARTOW.