

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for)	DOCKET NO. 911138-EU
approval of territorial agreement))	ORDER NO. 25714
between Florida Power)	ISSUED: 2/12/92
Corporation and Kissimmee)	
Utility Authority.)	
_____)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY
 LUIS J. LAUREDO

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.

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.

By Joint Petition filed on November 18, 1991, Florida Power Corporation (FPC) and Kissimmee Utility Authority (KUA) requested approval of an amendment to territorial agreement in Osceola County, Florida.

The original territorial agreement was entered into in 1970 amended in 1985 then expired in 1990. The present amendment is a continuing effort by the parties to minimize costs to their respective customers by avoiding unnecessary duplication of generation, transmission and distribution facilities. The new amendment specifically addresses certain geographic areas not covered in the original agreement or subsequent amendments.

DOCUMENT NUMBER-DATE

01539 FEB 12 1992

FPSC-RECORDS/REPORTING

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 2

According to the proposed amendment there will be a transfer of twenty-three (23) customer accounts of FPC (3 commercial and 20 residential) to KUA. There will be no customer accounts transferred from KUA to FPC. Section 2.3 of the agreement provides for a transition period in order to minimize any inconvenience to those customers. Under the transition procedure, any affected FPC customer may request to become a customer of KUA once the agreement is approved, or the customer may elect to remain the customer of FPC until the occurrence of a Change in Use, as defined in the agreement (Section 2.5). The customers to be transferred are identified in Appendix B of this Order.

If approved, the agreement will remain in effect for a period of thirty (30) years from the date of this Commission's initial order approving the agreement. The agreement may be extended or terminated as provided for by the agreement.

The agreement does not, and is not intended to prevent either utility from providing bulk power supply to wholesale customers for resale wherever they may be located.

Having reviewed the joint petition and the territorial agreement, the Commission finds that it satisfies the provisions of Subsection 366.04(2)(d), Florida Statutes and Rule 25-6.0440, Florida Administrative Code. We also find that the agreement satisfies the intent of Subsection 366.04(5), Florida Statutes to avoid further uneconomic duplication of generation, transmission, and distribution facilities in the State. We, therefore, find that the agreement is in the public interest and should be approved.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Petition for Approval of the Territorial Agreement between Florida Power Corporation and Kissimmee Utility Authority is granted. It is further

ORDERED that the territorial agreement is incorporated in this Order as Appendix A. It is further

ORDERED that the list of customers be transferred is incorporated in this Order as Appendix B. It is further

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 3

ORDERED that this Order shall become final and the docket closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this 12th day of FEBRUARY, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MRC:bmi
911138.bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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 3/4/92.

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 4

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If this order becomes final and effective on the date described above, 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 wastewater 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.

APPENDIX A
ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 5

A G R E E M E N T

Section 0.1 THIS AGREEMENT, made and entered into this
5th day of November, 1991 by and between the
KISSIMMEE UTILITY AUTHORITY, a municipal authority organized and
existing under the laws of the State of Florida (herein called the
"Authority"), and FLORIDA POWER CORPORATION, a private corporation
organized and existing under the laws of the State of Florida
(herein called the "Company"):

W I T N E S S E T H:

Section 0.2 WHEREAS, the Authority, by virtue of legislative
authority, is authorized and empowered to furnish electricity and
power to private individual and corporations, both within and
without the corporate limits of the City of Kissimmee, and pursuant
to such authority, presently furnishes electricity and power to
customers both inside and outside of the city's corporate limits;
and

Section 0.3 WHEREAS, the Company, by virtue of its Charter,
is authorized and empowered to furnish electricity and power to
persons, firms and corporations throughout the State of Florida and
presently furnishes electricity and power to customers in areas of
Osceola County, Florida, and elsewhere; and

Section 0.4 WHEREAS, the respective areas of retail service
of the parties hereto are contiguous in many places with the result
that duplication of service facilities may occur in the future
unless such duplication is precluded by virtue of this Agreement;
and

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 6

Section 0.5 WHEREAS, the Florida Public Service Commission has previously recognized that any duplication of said service facilities results in needless and wasteful expenditures and creates hazardous situations, both being detrimental to the public interest; and

Section 0.6 WHEREAS, the parties hereto desire to avoid and eliminate the circumstances giving rise to the aforesaid potential hazards and duplications and toward that end have established the Territorial Boundary Line to delineate their respective retail territorial areas in Osceola County; and

Section 0.7 WHEREAS, the Florida Public Service Commission is empowered by the legislature of the State of Florida, pursuant to F.S. 366.04(2)(d), to approve territorial agreements and the Commission has recognized on numerous occasions the wisdom of retail territorial agreements between electric utilities and has adhered to the general opinion that retail territorial agreements, when properly presented to the Commission, in the proper circumstances, are advisable and indeed in the public interest;

Section 0.8 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:

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 7

ARTICLE I
DEFINITIONS

Section 1.1 Territorial Boundary Line. As used herein, the term "Territorial Boundary Line" shall mean the boundary lines so labeled on the maps attached hereto as Exhibit "A" designating the boundary between the Authority Territorial Area, as defined in Section 1.2, and the Company Territorial Area, as defined in Section 1.3. This Agreement does not purport to affect or alter any boundary line of an area served by St. Cloud. Any depiction of such boundary line is merely an approximation for illustrative purposes.

Section 1.2 Authority Territorial Area. As used herein, the term "Authority Territorial Area" shall mean the area so labeled on Exhibit "A" in Osceola County.

Section 1.3 Company Territorial Area. As used herein, the term "Company Territorial Area" shall mean the area so labeled on Exhibit "A" in Osceola County.

Section 1.4 Transmission Lines. As used herein, the term "Transmission Lines" shall mean all electric lines of either party having a rating of 69 Kv or greater.

Section 1.5 Distribution Lines. As used herein, the term "Distribution Lines" shall mean all electric lines of either party having a rating up to but not including 69 Kv.

Section 1.6 New Customers. As used herein, the term "new customers" shall mean those customers applying for electric service during the term of this agreement at a point of service in the

ORDER NO. 25714
DOCKET NO. 911038-EU
PAGE 8

territorial area of either party which has not previously been served by either utility.

Section 1.7 Extra-territorial Customers. As used herein, the term "Extra-territorial Customers" shall mean those customers whose points of service are in the Territorial Area of one party but which are receiving service from the other party on the effective date of this Agreement.

Section 1.8. Existing Customer. As used herein, the term "Existing Customer" shall mean any person receiving retail electric service from either KUA or FPC on the effective date of this Agreement.

Section 1.9. Change in Use. As used herein, the term "Change in Use" shall mean: (1) A change in the use of real property from residential to business or business to residential; (2) a change in the use of real property that would normally require a reclassification of service under the applicable tariff of either party; (3) a change in the use of real property that results in the addition of three or more meters during the term of this Agreement; or (4) a change in the use of real property by reason of a change in the ownership or occupancy thereof to any person other than a widow, widower, or divorced spouse of an Existing Customer who received electric service at the same location.

Section 1.10 Service Facilities. As used herein, the term "Service Facilities" shall mean all easements, poles, lines, meters, transformers, together with appurtenant and related

ORDER NO. 25714
DOCKET NO. 911038-EU
PAGE 9

equipment and facilities, used or required solely to furnish electricity and power to Extra-territorial Customers.

ARTICLE II
RETAIL ELECTRIC SERVICE

Section 2.1 In General. Except as otherwise specifically provided herein, the Authority shall have the exclusive authority to furnish retail electric service to all new customers within the Authority Territorial Area and the Company shall have the exclusive authority to furnish retail electric service to all new customers in the Company Territorial Area. The Territorial Boundary Line shall not be affected by any change that may occur in the corporate limits of any municipality lying within the Authority Territorial Area or the Company Territorial Area.

Section 2.2 Service to Tupperware, (a wholly-owned division of Dart Industries, Inc.) The Company shall continue to serve the present and future electrical requirements of Tupperware, (a wholly-owned division of Dart Industries, Inc.), its successors or assigns, at its present location and expansions thereof within the Authority Territorial Area. This right to serve is limited to service in the North 3/4 of Section 3, Township 25 South, Range 29 East, Osceola County, Florida.

Section 2.3 Service to Extra-territorial Customers. With the exception of Tupperware, (a wholly-owned division of Dart Industries, Inc.), the Extra-territorial Customers are listed on Exhibit "B" to this Agreement. In order to minimize inconvenience to the Extra-territorial Customers, FPC may continue to serve those Extra-territorial Customers listed on Exhibit "B" even though the

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 10

location at which they are using electric service shall be located in the Authority Territorial Area effective upon the approval of this Agreement by the Commission. Extra-territorial Customers may request to become customers of the Authority. In such event, the Parties agree that such customers shall be transferred as soon as is reasonably practicable, taking into account economics, good engineering practices, and the efficient operation of the affected utility.

Section 2.4: Service to New Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any new customer whose end-use facilities are located within the Territorial Area of the other party, except as specifically provided in this Section 2 of the Agreement.

The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a customer's end-use facilities either cannot or should not be immediately served in whose Territorial Area they are located. In such instances, upon written request by the party in whose Territorial Area the end-use facilities are located, to the other party, the other party may agree in writing to temporarily provide service to such customer's end-use facilities. Any such agreement for temporary service shall be submitted to the Florida Public Service Commission for approval in accordance with Article V, Section 5.1 hereof.

In the event that a new customer or prospective new customer requests or applies for service from either party to be provided to

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 11

end-use facilities located in the Territorial Area of the other party, the party receiving such a request or application shall refer the new customer or prospective new customer to the other party with citation to this Agreement as approved by the Commission, and shall notify the other party of such request or application.

If the new customer or prospective new customer delivers a written application for service after being referred to the other party, or continues to demand service under an application made prior to a referral to the other party, the party receiving the application shall file a Petition for Declaratory Statement requesting the Commission to apply this Agreement to the facts presented. The petitioning party shall notify the other party and the applicant of its intent to file a Petition for Declaratory Statement prior to filing such Petition and shall request the joinder of the other party as a party to the proceeding. The petitioning party shall not provide or attempt to provide electric service to such a new customer unless the Commission authorizes such service in an order binding upon both parties.

Section 2.5: Transition. In order to minimize inconvenience to their customers, each party may continue to serve their respective Existing Customers listed on Exhibit "B" as provided in this Section of this Agreement, even though the location of which they are using electric service shall be located in the Territorial Area of the other party effected upon the approval of this Agreement by the Commission. Each of such

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 12

Existing Customers and the party by which they are presently served are listed on Exhibit "B" attached hereto and made a part hereof. This Section of this Agreement shall also apply to additional requirements for electric service by Existing Customers listed on Exhibit "B" at their existing locations, subject to the "Change in Use" limitations set forth below. Existing Customers listed on Exhibit "B" may request to become customers of the other party, at any time after approval of this Agreement by the Commission, in which event the Parties agree that such customer shall then be transferred. A widow, a widower or divorced spouse of an Existing Customer of either party listed on Exhibit "B" who remains at the same service location shall be considered an Existing Customer the same as if he or she had specifically been listed on Exhibit "B" and included in the definition of "Existing Customer" in Section 1.8 above. If there is a "Change in Use", as defined in Section 1.9 above, of the real property at a location at which an Existing Customer listed on Exhibit "B" receives service, the person receiving such service shall cease to be considered an Existing Customer and electric service at that location shall be provided by the party in whose Territorial Area the real property is located.

Section 2.6: Transfer of Facilities. Upon the transfer of any customer or customers pursuant to this Agreement, the transferring party shall sell and the receiving party shall purchase the distribution facilities of the transferring party previously used to serve the transferred customer or customers for the replacement cost of such facilities, less depreciation.

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 13

Section 2.7 Special Conditions. The parties agree that if a distinct phase of a construction development is being constructed at a single period in time and falls on both sides of the Territorial Boundary Line, then the Territorial Boundary Line shall be altered by amendment to this Agreement so that the utility serving the predominant number of customers of that current phase of the construction development would be entitled to serve the entirety of that current phase of the construction development. Any amendment under this Section shall be submitted to the FPSC for approval pursuant to Chapter 366.04(2), Florida Statutes.

ARTICLE III
BULK POWER SUPPLY

Section 3.1: Bulk Power for Resale. Nothing herein shall be construed to prevent either party from providing a bulk power supply for resale purposes as defined in the Final Judgment dated August 19, 1971 in United States of America v. Florida Power Corporation and Tampa Electric Company, United States District Court for the Middle District of Florida, Case No. 68-297-Civ-T ("the Final Judgment"), regardless of where the purchaser for resale may be located. Further, no other section or provision of this Agreement shall be construed as applying to a bulk power supply for resale purposes as defined in the Final Judgment (attached as Exhibit C).

ARTICLE IV
OPERATION AND MAINTENANCE

Section 4.1 Facilities to Remain. No generating plant, transmission line, substation, distribution line or related

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 14

equipment shall be subject to transfer or removal hereunder; PROVIDED, HOWEVER, that each party shall operate and maintain its lines and facilities in such a manner as to minimize any interference with the operations of the other party.

Section 4.2 Authority Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of the Authority to serve any facility of the Authority located in the Company Territorial Area; provided, however, that the Authority shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of the Authority in the Company Territorial Area.

Section 4.3 Company Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of the Company to serve any facility of the Company located in the Authority Territorial Area; provided, however, that the Company shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of the Authority in the Authority Territorial Area.

**ARTICLE V
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

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 15

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 any claim against the other arising under this Agreement.

ARTICLE VI
DURATION

Section 6.1 This Agreement shall continue and remain in effect for a period of thirty (30) years from the date of the Florida Public Service commission's initial Order approving this Agreement. This Agreement shall automatically be extended for a period of ten (10) years unless either party gives notice of intent to terminate at least one (1) year prior to the date of termination herein.

ARTICLE VII
CONSTRUCTION OF AGREEMENT

Section 7.1 Other Electric Utilities. Nothing in this Agreement is intended to define, establish or affect in any manner the rights of either party hereto relative to any other electric utility not a party to this Agreement with respect to the furnishing of retail electric service.

ARTICLE VIII
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

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 16

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, attached hereto, signed by both parties, and approved by the Florida Public Service Commission.

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 provision 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 the Authority if mailed by certified mail, postage prepaid, to: General Manager, Kissimmee Utility Authority, P. O. Box 423219, Kissimmee, Florida 34742-3219, and to the Company if mailed by certified mail, postage prepaid, to: President, Florida Power Corporation, P. O. Box 14042, St. Petersburg, Florida 33733. 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.

ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 17

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

ATTEST:

Harry Rosenstein
Secretary

KISSIMMEE UTILITY AUTHORITY

BY Richard L. Hood
Chairman of the Board

(SEAL)

ATTEST:

[Signature]
Assistant Secretary

FLORIDA POWER CORPORATION

BY M. H. Phillips by M. L. Barron
Executive Vice President

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

By: [Signature]
Legal Counsel to Kissimmee Utility Authority

By: [Signature]
General Counsel to Florida Power Corporation

APPENDIX B
ORDER NO. 25714
DOCKET NO. 911138-EU
PAGE 18

EXHIBIT B

CUSTOMER LISTS

ORDER NO. 25714
 DOCKET NO. 911138-EU
 PAGE 19

EXHIBIT B

I. Florida Power Corporation Existing Customers in Territorial
 Area of Kissimmee Utility Authority

<u>Account Number</u>	<u>Customer Name</u>
57-0524-0500-1	John Trimble
57-0626-6500-2	Penny F. Arzt
57-0626-6600-4	Harold W. Squires
57-0626-6700-7	Ralph W. Tracy
57-0626-6800-7	John B. Bitter Jr.
57-0626-6900-4	Joshua C. Hogate
57-0626-6450-2	Barbara R. Rogers
57-0626-6550-2	Penny F. Arzt
57-0626-6650-6	Inactive
57-0626-6750-7	Peter R. Mason
57-0626-6850-4	Carl C. Dexter
57-0626-6950-6	Effie B. Gilchrist
57-0626-7000-2	Nellie M. Miller
57-0626-7125-1	Kenneth J. Hammell
57-0626-7200-1	Maximo Depaz
57-0626-7400-1	Charline Alexander
57-0626-7455-2	Ricky L. Dedman
57-0626-7050-4	Penny F. Arzt
57-0626-7127-1	Jerry J. Barry
57-0626-7350-4	Miraida S. Garcia
57-0626-7452-1	Marsha L. Watts
57-0630-1350-1	Bronson R. Odell
57-0630-0850-5	Inactive

II. Kissimmee Utility Authority Existing
 Customers in Territorial Area of Florida Power Corporation

<u>Account Number</u>	<u>Customer Name</u>
NONE	