

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint petition for ) DOCKET NO. 950785-EU  
approval of territorial ) ORDER NO. PSC-95-1215-FOF-EU  
agreement between Florida Power ) ISSUED: October 3, 1995  
Corporation and Talquin Electric )  
Cooperative, Inc. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING 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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On July 10, 1995, Florida Power Corporation (FPC) and Talquin Electric Cooperative, Inc. (Talquin) filed a Joint Petition for Approval of a Territorial Agreement. The agreement, titled Territorial Agreement Between Talquin Electric Cooperative, Inc. and Florida Power Corporation Franklin and Liberty Counties, delineates each utility's respective service area in Franklin and Liberty Counties as described and illustrated in Composite Exhibit "A" of the agreement. The agreement is attached to this Order and incorporated herein.

The purpose of the agreement is to identify the parties' respective service areas in portions of Franklin and Liberty Counties. The parties have confirmed that neither will have any electric facilities providing retail service to customers located in the other utility's territory as defined by this agreement. In addition, no existing customers or electrical facilities will be subject to transfer upon approval of the agreement.

DOCUMENT NUMBER-DATE

09775 OCT-3 95

FPSC-RECORDS/REPORTING

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Section 2.2 of the agreement states that neither utility 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 in the case of exceptional circumstances, economic constraints, or good engineering practices and upon written request. The parties agree to jointly notify the Commission when such arrangements are necessary. We approve the parties' agreement on interim service which provides that the parties shall request formal Commission approval of interim service that lasts or is expected to last for more than one year. Of course, if the parties wish to make a permanent boundary change, they must seek prior approval from the Commission.

FPC and Talquin's territorial agreement provides that it shall remain in effect for a period of fifteen years from the date of our order approving the agreement.

We find that the territorial agreement, as filed with this Commission and described above, is in the public interest and its adoption will further our longstanding policy to avoid unnecessary and uneconomic duplication of facilities.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the territorial agreement entered into by Florida Power Corporation and Talquin Electric Cooperative, Inc., as described and incorporated herein, is hereby approved. It is further

ORDERED that this Order shall become final and effective and this docket shall be closed unless an appropriate petition for formal proceedings is received by the Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

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By ORDER of the Florida Public Service Commission, this 3rd  
day of October, 1995.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Jensen  
Chief, Bureau of Records

( S E A L )

LW

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 24, 1995.

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.

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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 substantially 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.

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ATTACHMENT

**Territorial Agreement  
Between  
Talquin Electric Cooperative, Inc.  
and  
Florida Power Corporation  
Franklin and Liberty Counties  
950785-E4**

**AGREEMENT**

**Section 0.1** THIS AGREEMENT, made and entered into this 5<sup>th</sup> day of July, 1995 by and between TALQUIN ELECTRIC COOPERATIVE, INC., ("Talquin"), and FLORIDA POWER CORPORATION, ("FPC") each of which are corporations organized and existing under the laws of the State of Florida:

**WITNESSETH:**

**Section 0.2** WHEREAS, Talquin, by virtue of legislative authority, is authorized and empowered to furnish electricity and power to its members, private individuals, corporations, and others, and pursuant to such authority, presently furnishes electricity and power to customers located in certain areas of Franklin and Liberty Counties, Florida, and elsewhere; and

**Section 0.3** WHEREAS, FPC, 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 certain areas of Franklin and Liberty Counties, 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

**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 certain areas of Franklin and Liberty Counties; 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 08 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:

## 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 Talquin Territorial Area, as defined in Section 1.2, and the FPC Territorial Area, as defined in Section 1.3.

Section 1.2 Talquin Territorial Area. As used herein, the term "Talquin Territorial Area" shall mean the area so labeled on Exhibit "A" in Franklin and Liberty Counties, Florida.

Section 1.3 FPC Territorial Area. As used herein, the term "FPC Territorial Area" shall mean the area so labeled on Exhibit "A" in Franklin and Liberty Counties, Florida.

Section 1.4 Point of Use The point of use and not the point of connect or metering shall be determinative as to who shall be the provider of electric service under this Agreement.

Section 1.5 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 1.6 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 1.7 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 use in the territorial area of either party which has not previously been served by either utility.

## ARTICLE II

### RETAIL ELECTRIC SERVICE

Section 2.1 In General. Except as otherwise specifically provided herein, Talquin shall have the exclusive authority to furnish retail electric service to all new customers within the Talquin Territorial Area and FPC shall have the exclusive authority to furnish retail electric service to all new customers in the FPC 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 Talquin Territorial Area or the FPC Territorial Area.

Section 2.2: 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 by the Party 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 which lasts, or is expected to last, for more than one (1) year 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 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.

**Section 2.3: REA and CFC Approval.** Any property transfer from Talquin to FPC is subject to approval by the United States of America Department of Agriculture, Rural Electrification Administration and the Cooperative Financing corporation.

**Section 2.4: Preservation of Tax Exempt Status.** Notwithstanding the provision of Sections 2.1 and 2.2 above, it is understood that Talquin must furnish its service mainly to its members in order to preserve its tax exempt status. Therefore, unless the proposed recipient

of electric service will join Talquin, Talquin may decline to provide electric service, when in the judgment of Talquin, the income produced thereby would cause non-member income to exceed the percentage of gross income which Talquin may accept from non-members and maintain its tax exempt status.

Section 2.5: Timber Energy Resources, Inc. The parties recognize that FPC has an existing agreement to purchase electric energy from Timber Energy Resources, Inc., (TER), an electric generation facility located at Telogia, Liberty County, Florida, and that in conjunction with said agreement, FPC may continue to provide to TER retail electric service only for the purpose of standby and backup power.

### 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 B).

#### ARTICLE IV

##### OPERATION AND MAINTENANCE

Section 4.1 Facilities to Remain. No generating plant, transmission line, substation, distribution line or related 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 Talquin Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of Talquin to serve any facility of Talquin located in the FPC Territorial Area; provided, however, that Talquin shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of FPC in the FPC Territorial Area.

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

#### ARTICLE V

##### PREREQUISITE APPROVAL

Section 5.1: Commission Approval. The provisions and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by that body of the provisions of this Agreement shall be an absolute condition precedent to the

validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until that approval has been obtained, and the date of the Commission's order, if any, granting initial Commission approval of this Agreement shall be deemed to be the effective date of this Agreement. Any proposed modification to this Agreement shall be submitted to the Commission for approval. In addition, the Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance of this Agreement.

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 fifteen (15) years from the date of the Florida Public Service Commission's initial Order approving this Agreement.

#### 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 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 Talquin if mailed by certified mail, postage prepaid, to: General Manager, Talquin Electric Cooperative, Inc., Post Office Box 1679, Quincy, Florida 32353, and to FPC if mailed by certified mail, postage prepaid, to: President, Florida Power Corporation, Post Office 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.

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:

TALQUIN ELECTRIC COOPERATIVE,  
INC.

BY: Bernard Lewis  
Secretary  
(SEAL)

Colin English  
Colin English  
President

ATTEST:

FLORIDA POWER CORPORATION

BY: Paula E. Winters  
Assistant Secretary  
(SEAL)

Wayne C. Forehand  
WAYNE C. FOREHAND  
Vice President

APPROVED AS TO FORM AND LEGALITY:

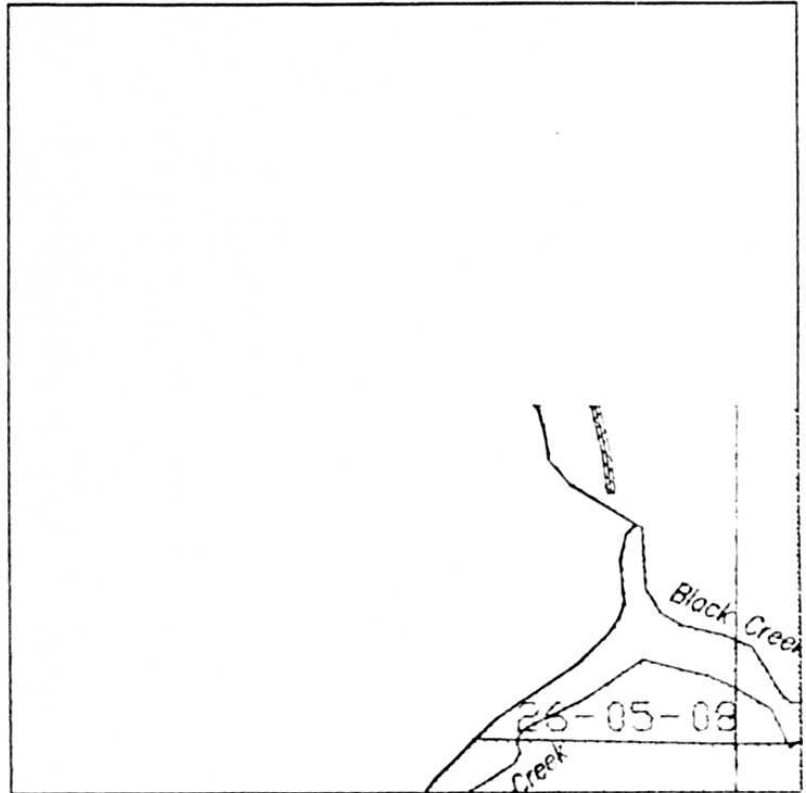
By: John Halden  
Legal Counsel to Talquin Electric Cooperative, Inc.

By: J. Bradford Hines  
Corporate Counsel to Florida Power Corporation

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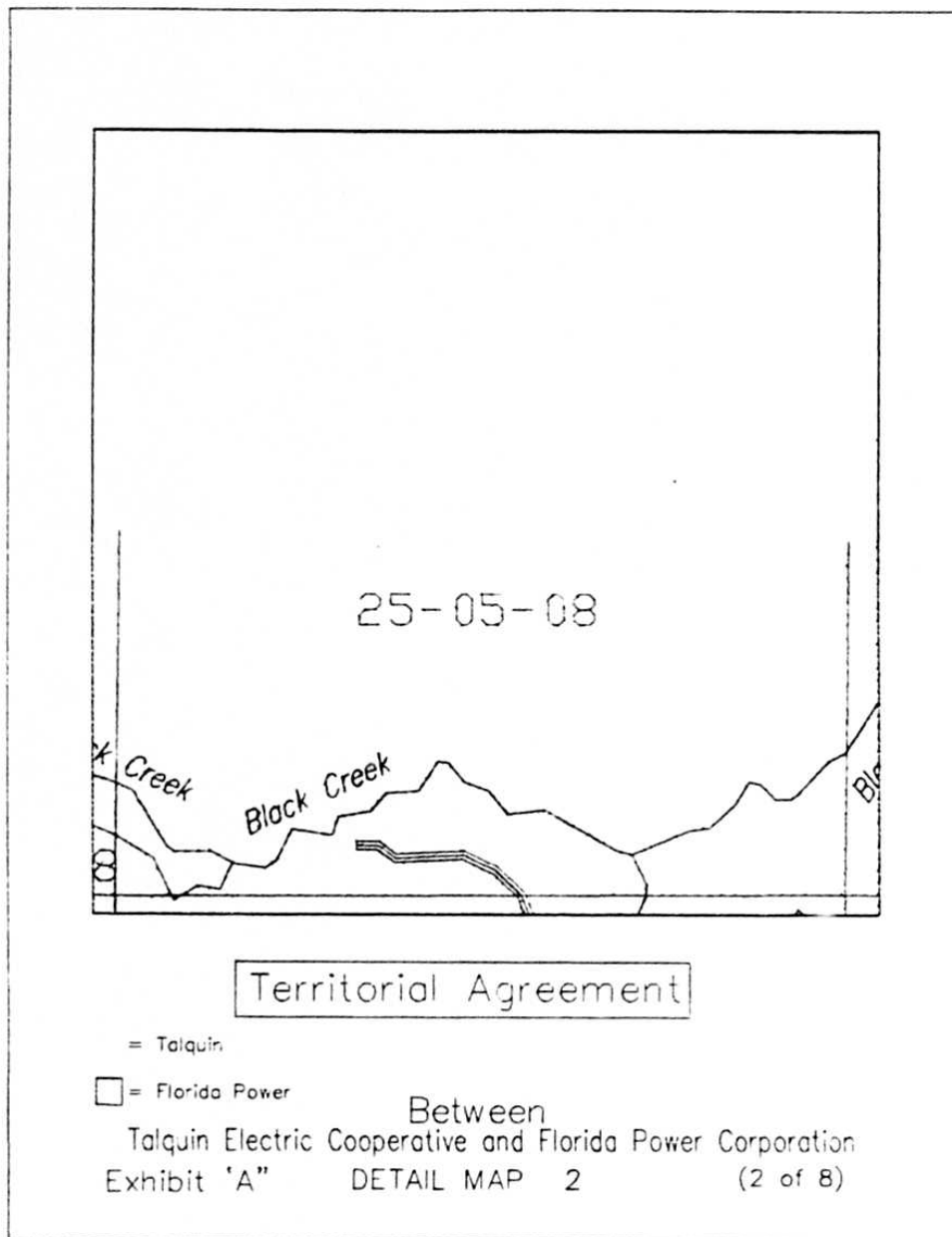
# ***EXHIBIT A***

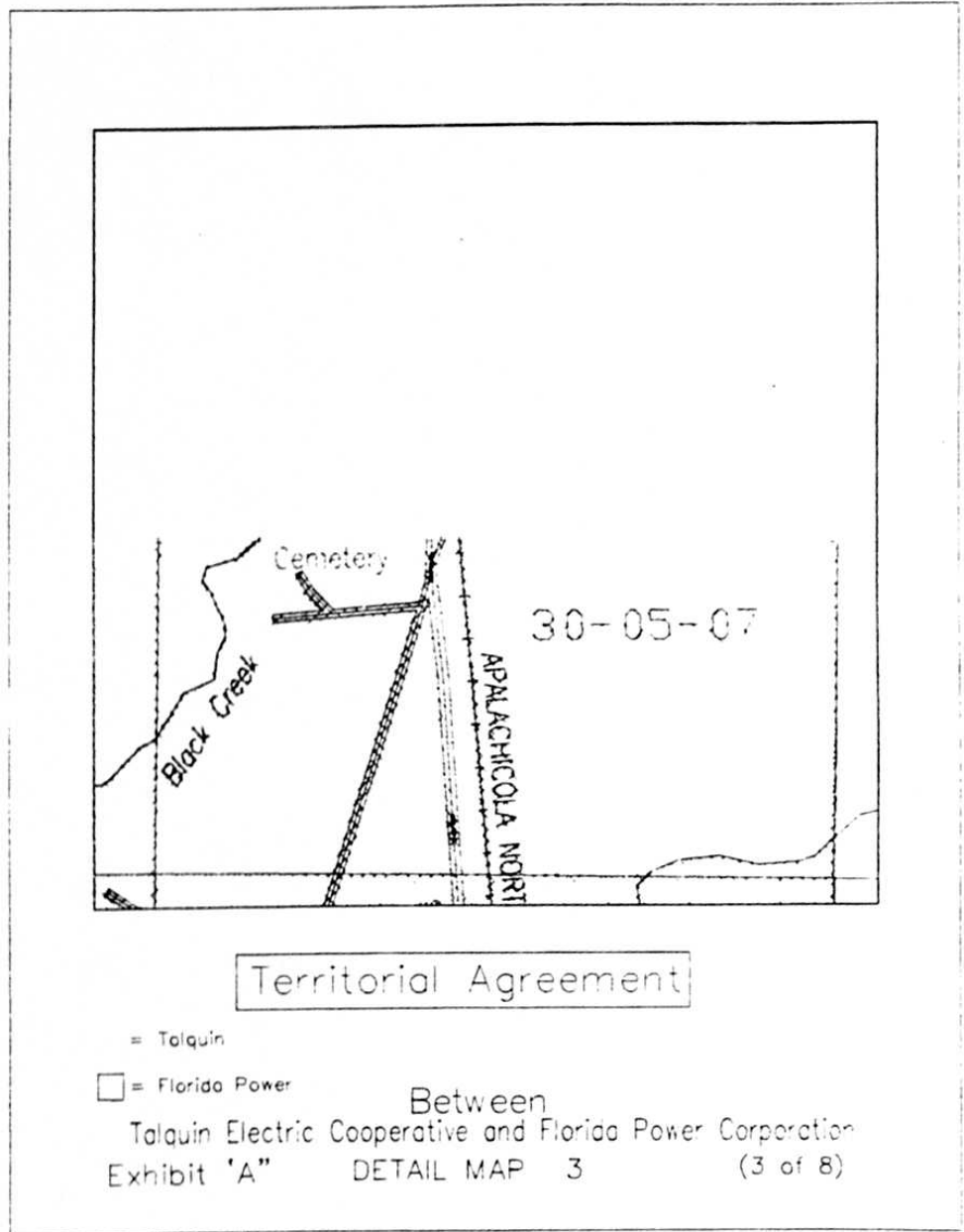


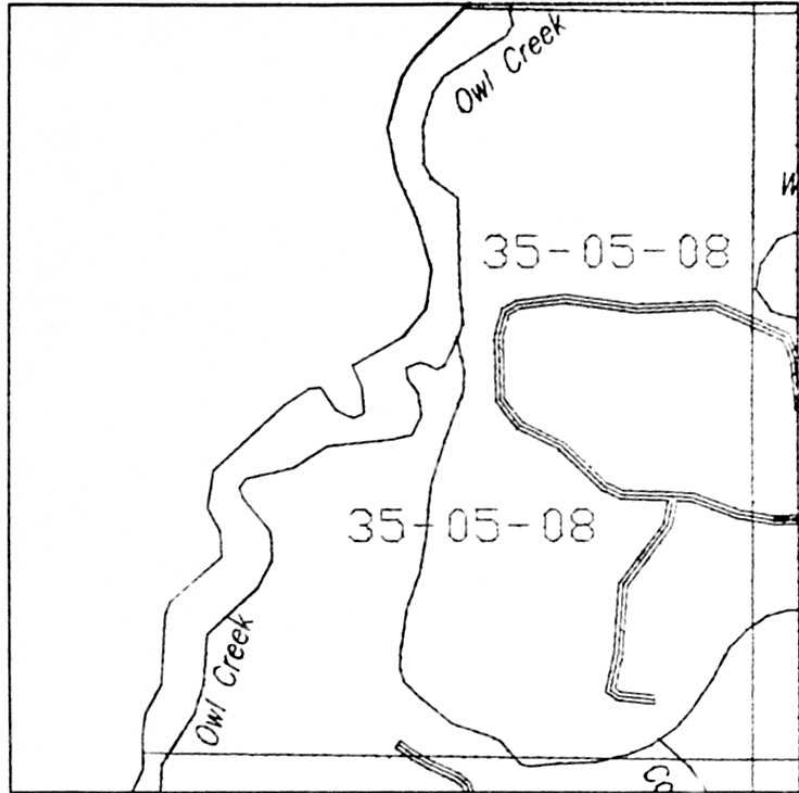
Territorial Agreement

= Talquin  
 = Florida Power  
Between  
Talquin Electric Cooperative and Florida Power Corporation  
Exhibit 'A'      DETAIL MAP 1      (1 of 8)



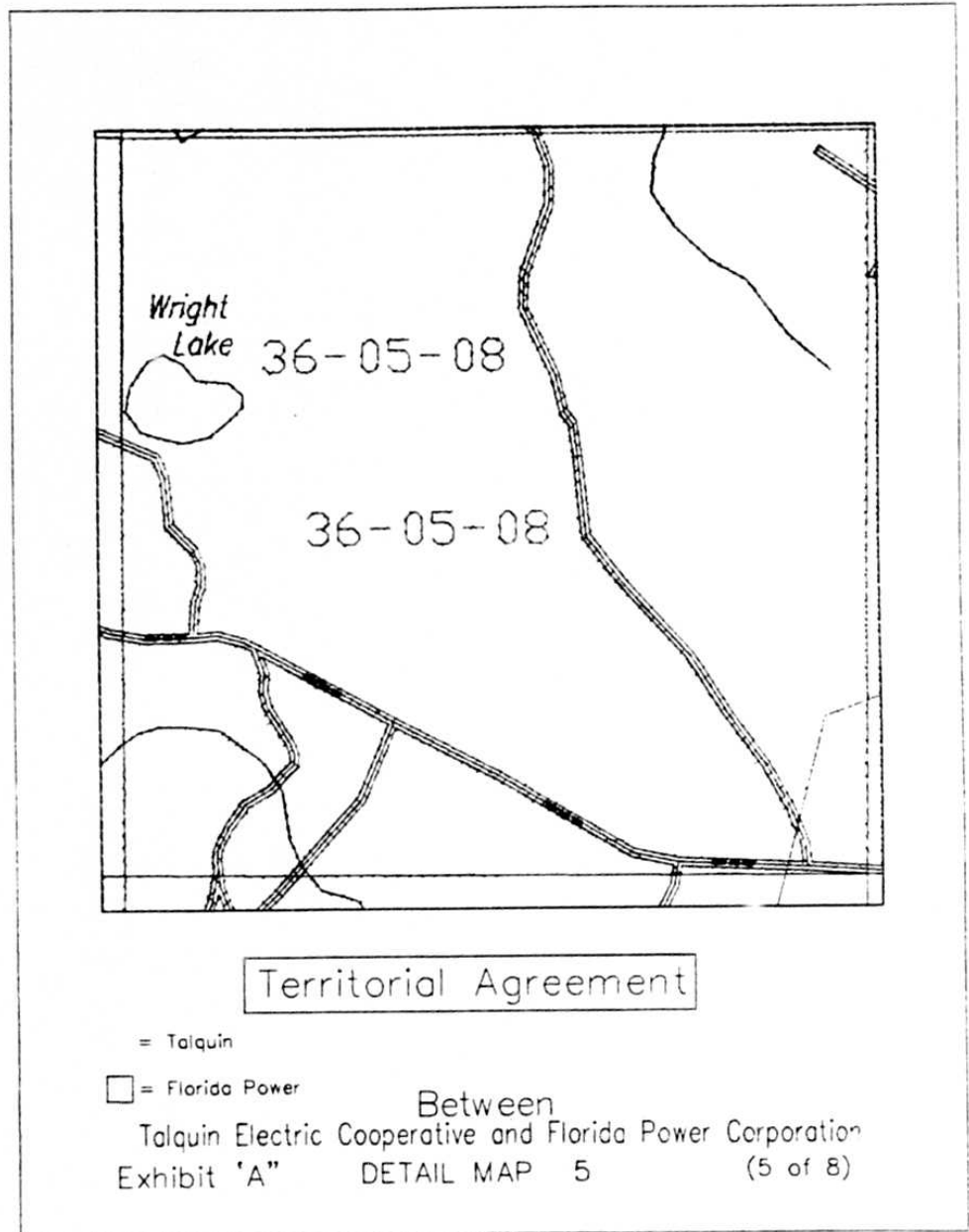


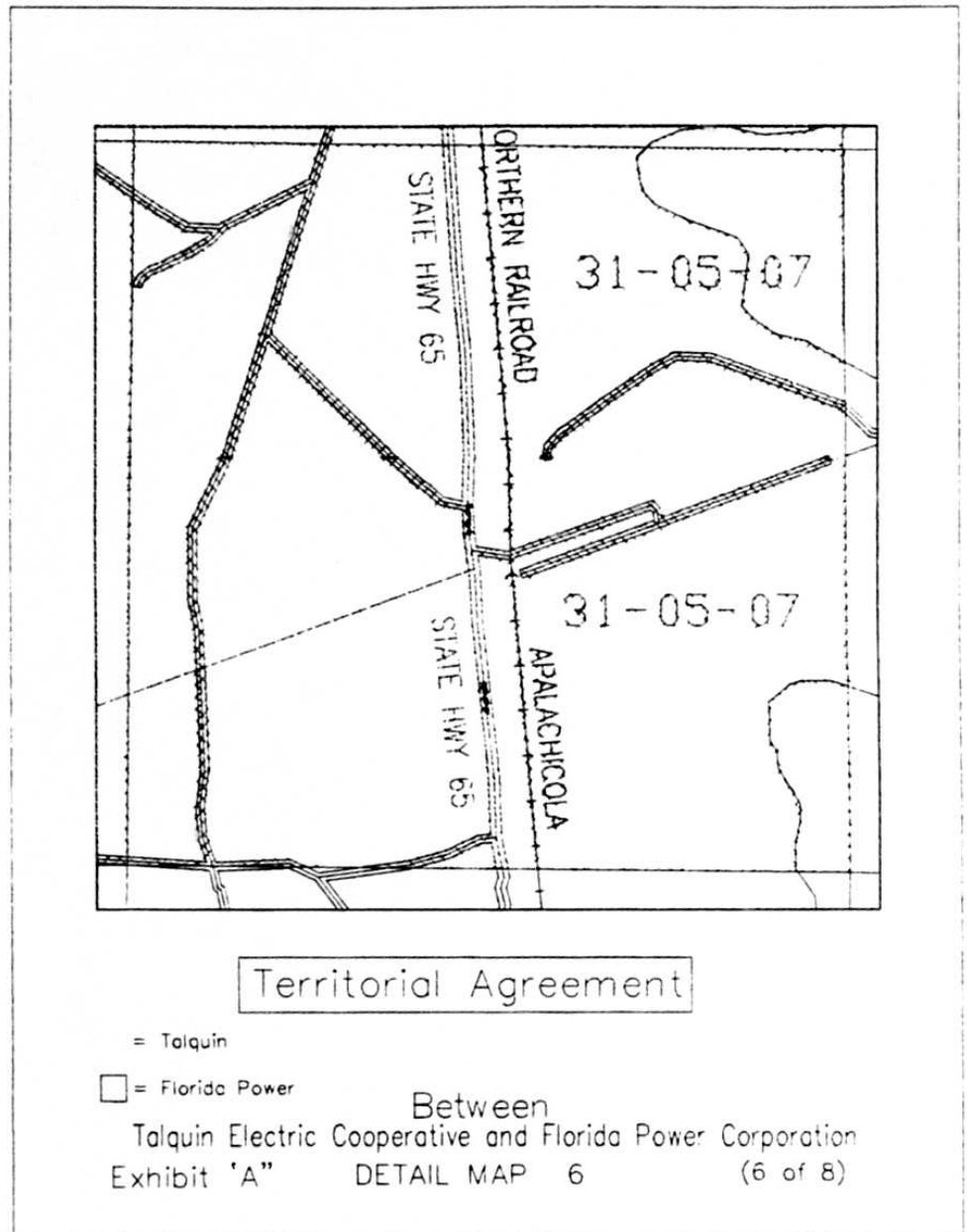


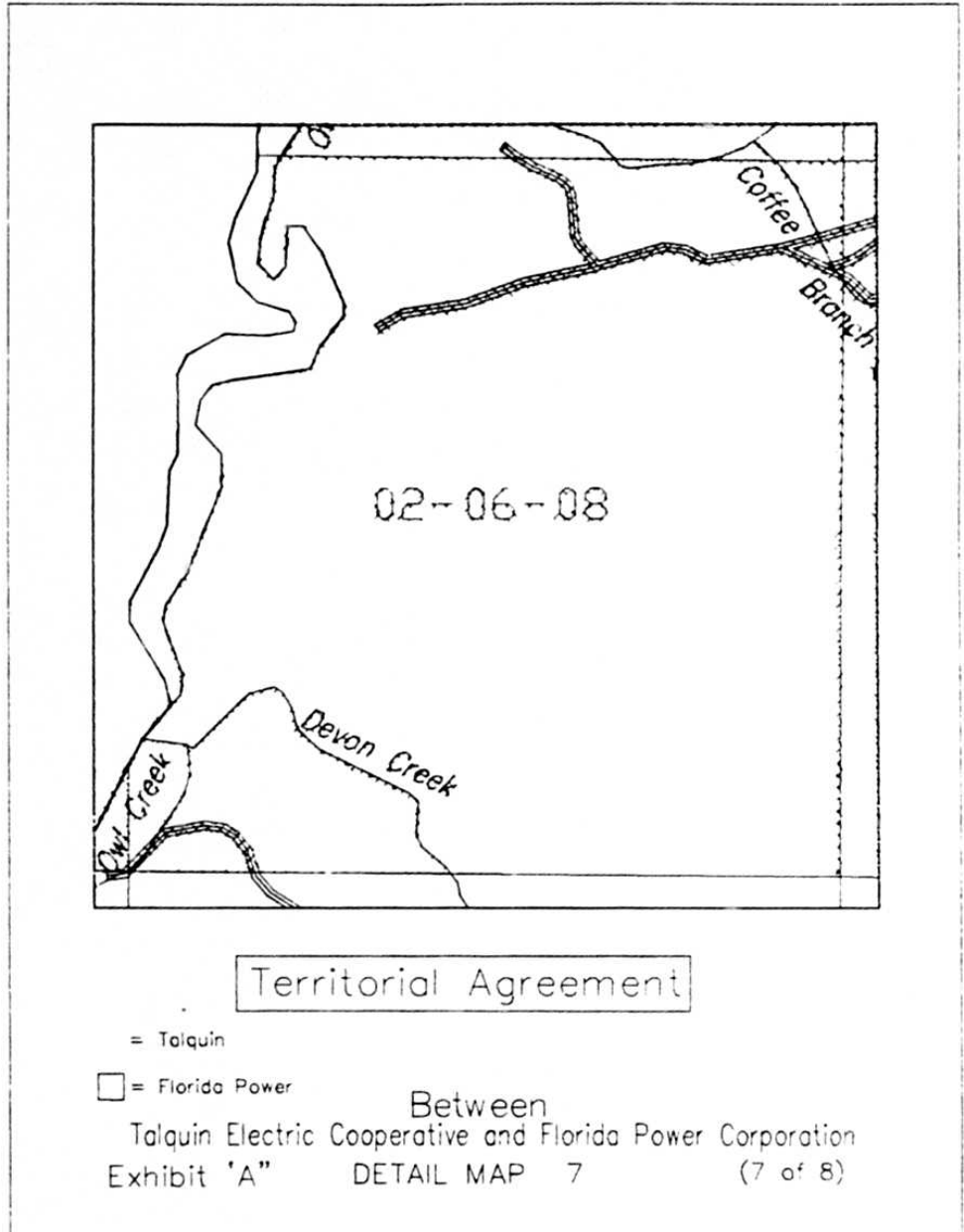


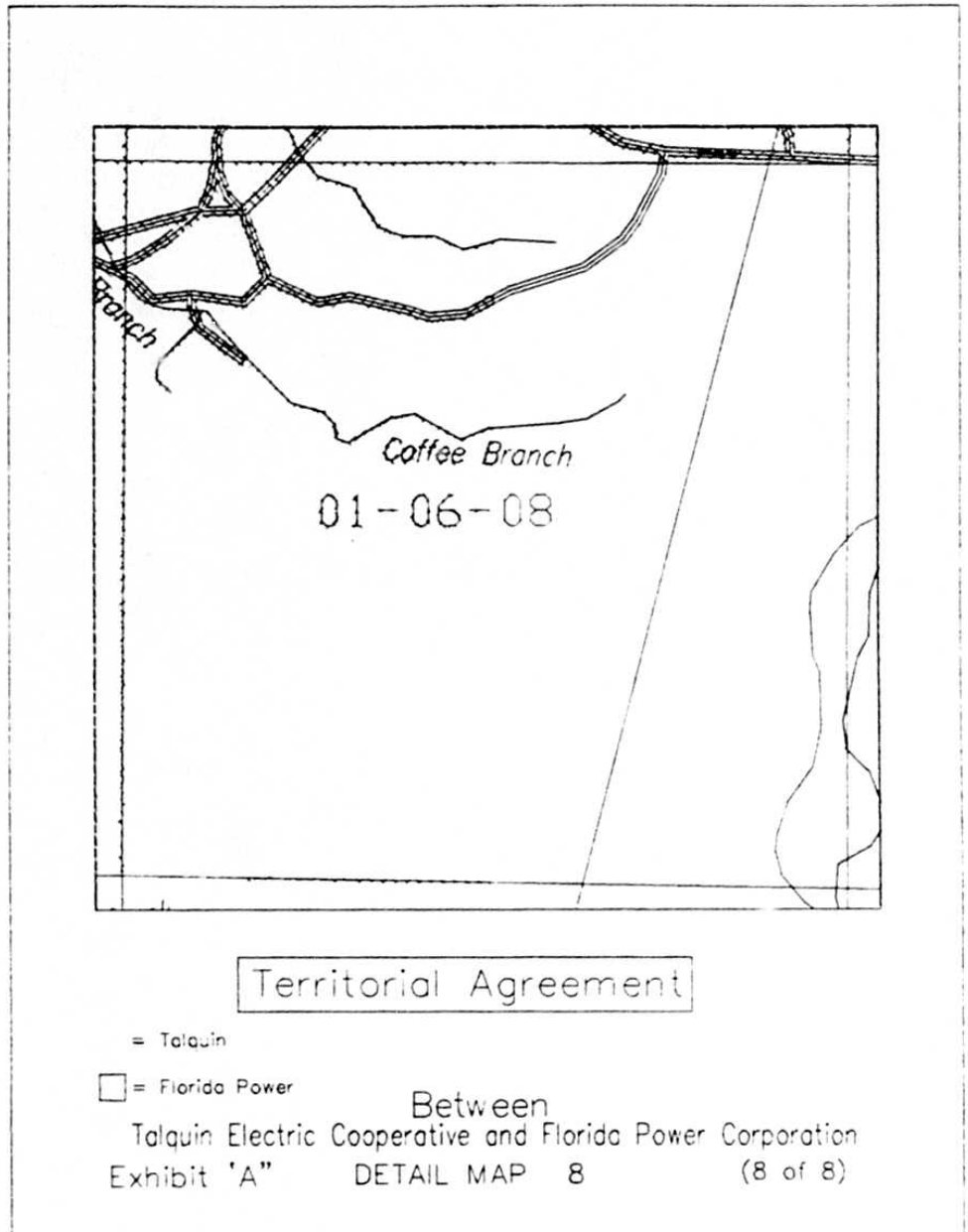
Territorial Agreement

= Talquin  
□ = Florida Power  
Between  
Talquin Electric Cooperative and Florida Power Corporation  
Exhibit 'A'      DETAIL MAP 4      (4 of 8)









COMPOSITE EXHIBIT A

TERRITORY BOUNDARY LINES  
METES AND BOUNDS

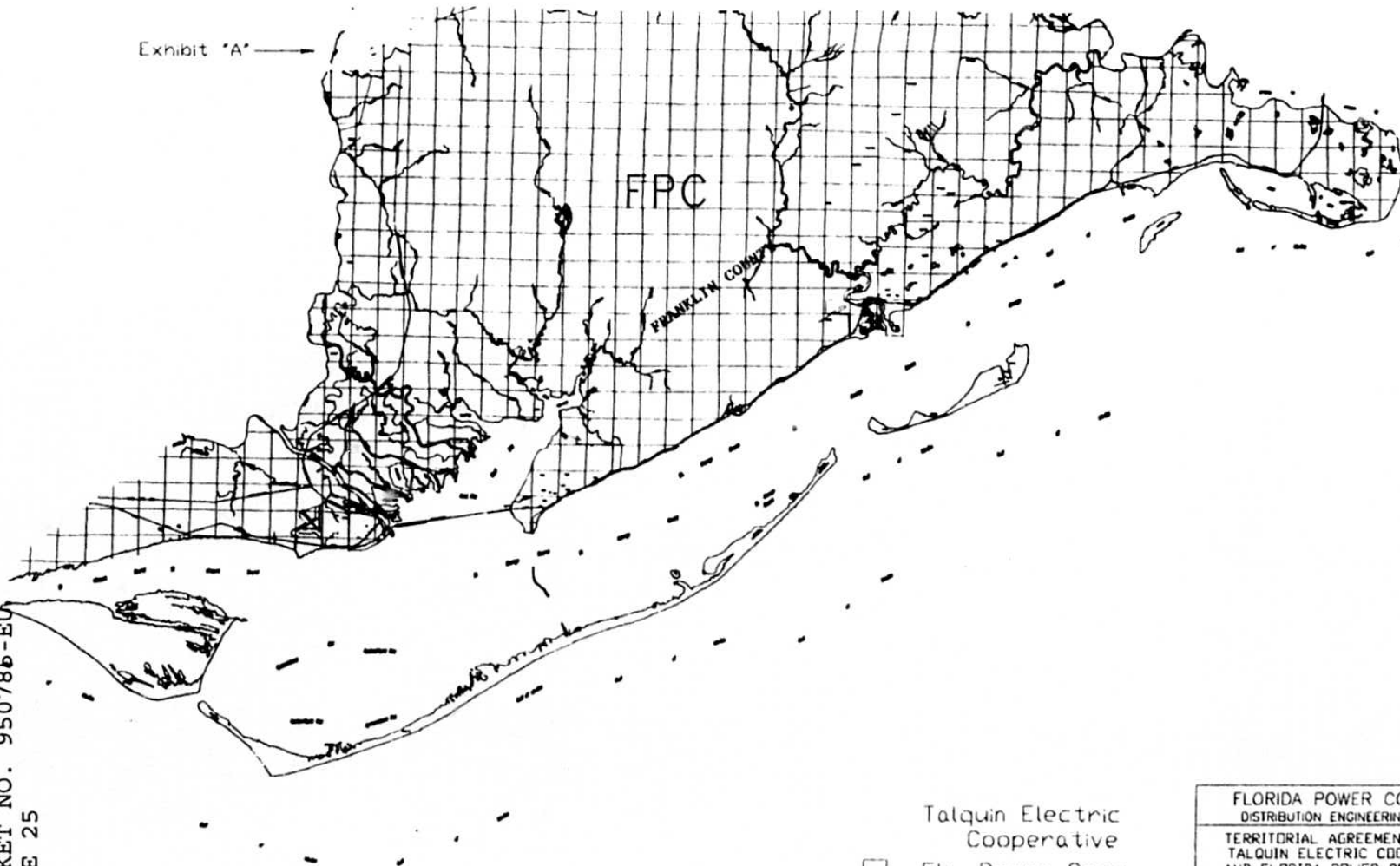
Beginning at a point on the north boundary line of Franklin County, Florida (also being the south boundary line of Liberty County, Florida), said point being where the north boundary line of Franklin County intersects the middle of the Ochlockonee River, Section 28, Township 5 South, Range 3 West; thence west along the north boundary line of Franklin County to a point where said north boundary line intersects the section line between Sections 29 and 30, Township 5 South, Range 7 West; thence south along said section line to the southeast corner of Section 31, Township 5 South, Range 7 West; thence west along the south boundary of Section 31, Township 5 South, Range 7 West and continue along the south boundary of Section 36, Township 5 South, Range 8 West to a point on the east boundary of the west half of Section 1, Township 6 South, Range 8 West; thence south along said east boundary to a point on the south boundary of said Section 1; thence west along said south boundary and continue along the south boundary of Section 2, Township 6 South, Range 8 West to the middle of Owl Creek.



ATTACHMENT

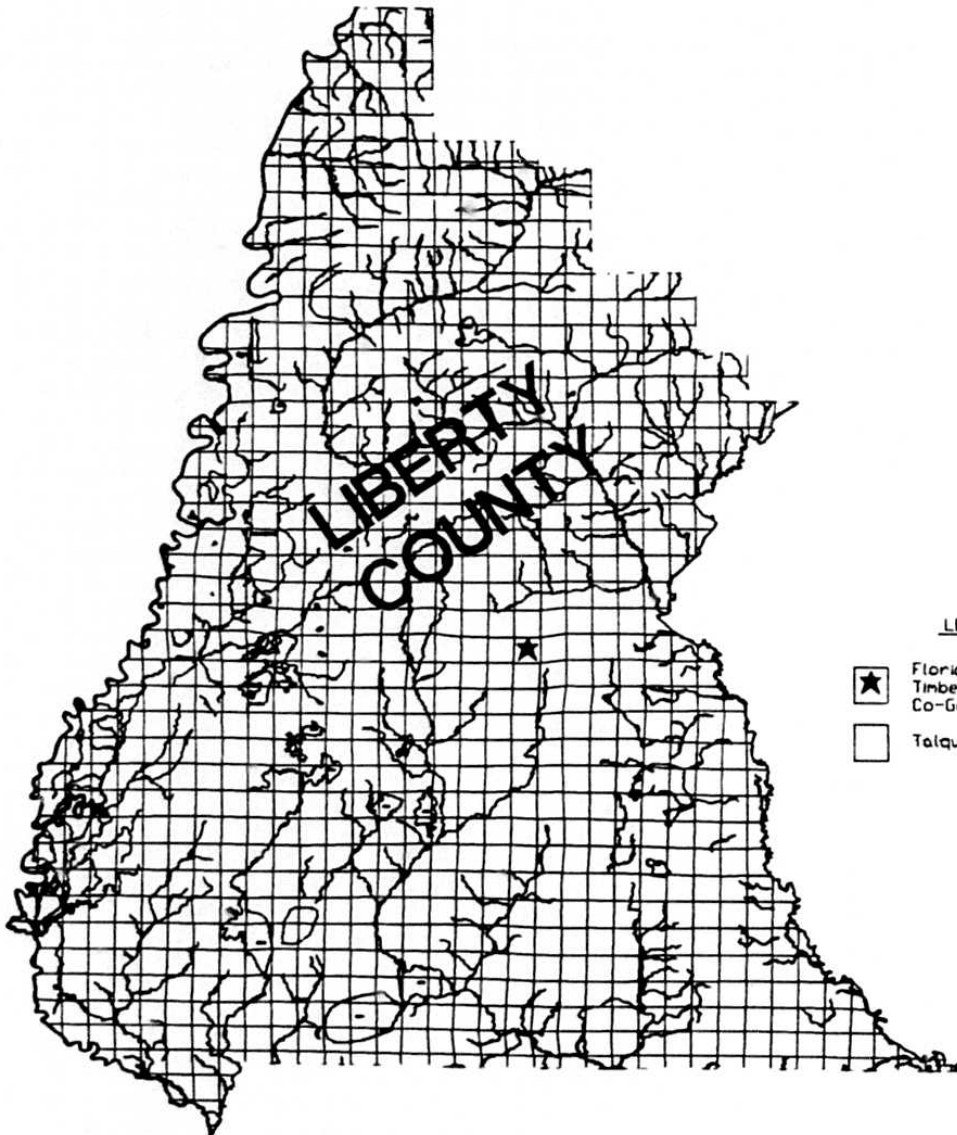
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Exhibit 'A' →



Talquin Electric  
Cooperative  
□ Fla. Power Corp.

FLORIDA POWER CORPORATION DISTRIBUTION ENGINEERING DEPARTMENT	
TERRITORIAL AGREEMENT BETWEEN TALQUIN ELECTRIC COOPERATIVE AND FLORIDA POWER CORPORATION	
W.O.No. _____	Date 1/12/95
Drawn _____	Checked _____
Approved _____	
Scale 1" = 25,000'	Dwg.No. _____



LEGEND

- ★ Florida Power Corp.  
Timber Energy  
Co-Gen
- Talquin Electric Co-op

FLORIDA POWER CORPORATION DISTRIBUTION ENGINEERING DEPARTMENT	
TERRITORIAL AGREEMENT BETWEEN TALQUIN ELECTRIC COOPERATIVE AND FLORIDA POWER CORPORATION	
W.O.No. _____	Date <u>3/24/95</u>
Drawn _____	Checked _____
Approved _____	
Scale <u>1" = 24,000'</u>	Dwg.No. _____

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# ***EXHIBIT B***

EXHIBIT "B"

(CITE AS: 1971 WL 543 (M.D.FLA.))

United States  
v.  
Florida Power Corp. and Tampa Electric Co.  
Civil No. 68-297-T  
United States District Court;  
M.D. Florida, Tampa Division  
Entered August 19, 1971

TJOFLAT, D. J.

Final Judgment  
\*1 Plaintiff, United States of America, having filed its complaint herein on July 8, 1968, and its amended complaint on January 10, 1969, defendants having appeared by their counsel, and the parties hereto, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or an admission by either party hereto with respect to any such issue; Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed as follows:

I  
[Jurisdiction]  
This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against defendants under Section I of the Act of Congress of July 2, 1890, as amended, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," (15 U. S. C., Sec. 1), commonly known as the Sherman Act.

II  
[Definitions]  
As used in this Final Judgment:  
(A) "Defendant(s)" means FLORIDA POWER CORPORATION or TAMPA ELECTRIC COMPANY and each of them.  
(B) "Person" means any individual, partnership, firm, association, private corporation, state or municipal corporation or subdivision thereof, electric cooperative corporation or other business or legal entity engaged or proposed to be engaged in the generation and transmission of electric power at wholesale for resale and/or the distribution of electric power at retail; provided, however, that "person" shall not include owners, lessors, operators or managers of rental property, such as, trailer parks, apartment houses, shopping centers or office buildings, who re-meter and charge for electric power distributed to their tenants.  
(C) "Bulk power supply for resale" means any, some or 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 person 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.

III

[Applicability]

The provisions of this Final Judgment applicable to the defendants shall also apply to each of their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[Allocation of Territories]

A. Each defendant is enjoined and restrained from, directly or indirectly, entering into, adhering to, continuing, maintaining, renewing, enforcing or claiming any rights under any contract, agreement, understanding, joint plan or joint program with the other defendant or any other person to limit, allocate, restrict, divide or assign, or to impose or attempt to impose any limitations or restrictions respecting, the persons to whom, or the markets or territories in which, either defendant or any other person may hereafter sell electric bulk power supply for resale.

\*2 (B) Nothing herein shall be construed as enjoining or restraining defendants, from engaging jointly in lawful attempts to petition any federal or state governmental body (other than "persons" as defined herein) respecting any aspect of either defendant's business, including without limitation, sale of electric bulk power supply for resale.

V

[Contract Cancellation]

(A) Within 90 days from the date of entry of this Final Judgment, defendants shall take all necessary action to cancel each provision of every contract between the defendants and between or among each of the defendants and other persons, which is contrary to or inconsistent with any provision of this Final Judgment.

(B) Within 90 days from the date of entry of this Final Judgment, defendant shall send to each person presently engaged in the generation and transmission and sale of electric bulk power supply for resale or in the distribution of electric power at retail in the State of Florida a copy of this Final Judgment, and shall, at the same time, advise each such other person affected by the provisions of paragraph V(A) that it is free to sell electric bulk power supply for resale to such persons and in such areas as it may freely choose.

(C) Within 120 days from the date of entry of this Final Judgment, defendant shall file with this Court, and serve upon the plaintiff, an affidavit as to the fact and manner of compliance with Subsections (A) and (B) of this Section V.

VI

[Compliance and Inspection]

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division given to defendant at its principal office, be permitted, subject to any legally recognized privilege:

(A) Access during the office hours of defendant to all contracts, agreements, correspondence, memoranda, and other business records and documents in the possession or control of defendant relating to any of the matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview the officers and employees of defendant, who may have counsel present, regarding any such matters; and

(C) Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports relating to any of the matters contained in this Final Judgment as may be requested.

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

[Jurisdiction Retained]

\*3 Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.