

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition of Tampa Electric Company and City of Lakeland for approval of amendment to territorial agreement.

DOCKET NO. 981263-EU
ORDER NO. PSC-99-0024-FOF-EU
ISSUED: January 4, 1999

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

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

I. CASE BACKGROUND

On June 25, 1992, we approved a territorial agreement between Tampa Electric Company (TECO) and the City of Lakeland (City) by Order No. PSC-92-0570-FOF-EU (1992 Order), in Docket No. 920251-EU. The territorial agreement states in part:

TECO and LAKELAND recognize that in exceptional circumstances, economic constraints on either utility or good engineering practices may indicate that a Customer's temporary end use and/or small discrete service areas and/or future retail Customers should not be immediately served by the utility in whose service territory they are located. In such instances, upon written request by the utility in whose territory the end use facility is located to the other utility, the other utility may agree in writing to provide service to such Customer's

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00025 JAN-4 99

PSC-RECORDS/REPORTING

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temporary end use, small discrete service areas, and future retail customers.

Pursuant to this clause, TECO and the City filed a joint petition with the Commission to authorize a temporary power service arrangement by the City for the Tenorock Fish and Game Preserve (Tenorock). The Tenorock site was located approximately 5400 feet from the closest City-owned distribution facility. Under the temporary power service arrangement, the City would extend its distribution facilities northeasterly along Tenorock Mine Road at a cost of approximately \$12,400. The City would not require a contribution in aid of construction (CIAC) from either Tenorock or TECO.

This temporary power service arrangement would remain effective until TECO could economically install the necessary equipment to provide the site with permanent service. When TECO could provide permanent service, the City agreed that it would disconnect its service line and once again abide by the terms and conditions of the territorial agreement approved in the 1992 Order. TECO would reimburse the City for the costs of removing the City's distribution facilities serving the Tenorock site. The City had estimated its removal costs at \$1,700. TECO estimated that it could provide permanent service to the Tenorock site by April 30, 1998. We approved TECO and the City's joint petition for temporary power service to Tenorock by Order No. PSC-97-1485-FOF-EU, issued November 24, 1997, in Docket No. 970999-EU.

TECO and the City filed a joint petition on October 5, 1998, requesting that the Commission approve an amendment to their territorial agreement. This amendment would allow the City to continue serving Tenorock permanently. The amendment to the territorial agreement is attached to this Order as Exhibit One.

II. LEGAL AUTHORITY

Section 366.04(2)(d), Florida Statutes, grants the Commission authority to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. Rule 25-6.0440(2), Florida Administrative Code, describes the standards for approval of territorial agreements as follows:

(2) Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:

- (a) the reasonableness of the purchase price of any facilities being transferred;
- (b) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement; and
- (c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

The above standards were adopted to ensure that the general body of ratepayers is not harmed by the approval of territorial agreements. Each of these standards relative to this territorial agreement will be individually addressed.

It should be noted that Utilities Comm'n of the City of New Smyrna Beach v. Florida Public Service Comm'n, 469 So. 2d 731, 732 (Fla. 1985), held that "[t]he PSC should base its approval decision on the effect the territorial agreement will have on all affected customers in the formerly disputed territory, not just whether transferred customers will benefit." The Florida Supreme Court went on to state that "[f]or PSC approval, any customer transfer in a proposed territorial agreement must not harm the public" (at 733). City of New Smyrna Beach announces that, for Commission approval, the agreement as a whole may not contain any detriment to the public. (at 733) It is with this standard as articulated by the Florida Supreme Court in mind that we address the requirements for approving the proposed amendment to the territorial agreement.

III. ANALYSIS OF THE PROPOSED AMENDED TERRITORIAL AGREEMENT

In Docket No. 970999-EU, TECO indicated that it would construct between .75 and 1.50 miles of single phase (7.6 kV) distribution overhead pole line to provide permanent electric service to the Tenorock site. At the site, TECO would install a 10 kVa pole-mounted transformer, service, and meter. TECO estimated its total construction and installation costs between \$13,000 and \$30,000. Also, TECO had agreed to pay the City's costs to remove

the City's distribution facilities which was estimated at \$1,700. Thus, TECO's estimated total cost to serve the Tenorock site permanently should be between \$14,700 and \$31,700.

As previously stated, the City extended its distribution facilities on a temporary basis to Tenorock at a cost of approximately \$12,400. According to the City, it will not incur any incremental costs to provide permanent electric service to the Tenorock site. Tenorock is the only customer affected by the proposed amendment, and TECO and the City have discussed with Tenorock the difference in their respective rates and charges. Tenorock has agreed to continue to receive electric service from the City.

Therefore, approval of TECO and the City's joint petition minimizes costs to Tenorock, and avoids placing an undue burden upon the utilities' ratepayers. We find that the agreement, as amended, reflects a reasonable cost for the installation of the facilities. TECO's estimated cost to serve was stated to be between \$14,700 and \$31,700. The City extended service to the customer at a cost of only \$12,400. Further, we find that approval of the proposed amendment to the territorial agreement will not cause a decrease in electrical service reliability to customers of the City or of TECO, in accordance with Rule 25-6.0440(2)(a) and (b), Florida Administrative Code. We note that this finding is consistent with our finding in Order No. PSC-97-1485-FOF-EU, issued November 24, 1997, in Docket No. 970999-EU. We also find that this agreement, as amended, will eliminate the possibility of uneconomic duplication of facilities in the area served, in accordance with Rule 25-6.0440(2)(c), Florida Administrative Code, because of the remote location of this particular customer.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Petition for Approval of Amendment to Territorial Agreement filed by Tampa Electric Company and the City of Lakeland is approved. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 4th day of January, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

GAJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 January 25, 1999.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date.

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.

**AMENDMENT TO
TERRITORIAL AGREEMENT**

THIS AMENDMENT TO TERRITORIAL AGREEMENT ("Amendment") is made and entered into this 17th day of August, 1998, by and between **THE CITY OF LAKELAND**, a Florida municipal corporation ("Lakeland"), and **TAMPA ELECTRIC COMPANY**, a private Florida corporation ("TEC"). Collectively, LAKELAND and TEC will be referred to herein as the "Parties."

WHEREAS, pursuant to the approval of the Florida Public Service Commission ("FPSC") in Docket No. 920251-EU, Joint Petition of Tampa Electric Company and The City of Lakeland for Approval of Territorial Agreement, TEC and Lakeland are Parties to an FPSC approved territorial agreement dated May 20, 1991 ("the Agreement"); and

WHEREAS, Article I of the Agreement defines the respective territories of the Parties, and

WHEREAS, pursuant to Order No. PSC-97-1485-FOF-EU, Docket No. 970999-EU, TEC and Lakeland have requested from and received approval of the FPSC for Lakeland temporarily to serve a customer in TEC's service territory and to return to the FPSC in certain events relating to that service to effect an adjustment of their respective territories.

NOW THEREFORE, the Parties hereby amend the Agreement as follows:

1. The Parties agree, subject to the approval of the FPSC, the lands described and depicted as "Subject Area" in the map attached hereto as Exhibit A hereby and hereinafter shall be deleted from the TEC Territorial Area and added to the Lakeland Territorial Area.
2. The Parties agree, subject to the approval of the FPSC, that the territorial boundary between their respective areas, as recited in Exhibit A of the Agreement, is hereby amended by including within the metes and bounds description contained in Exhibit A of the Agreement, and at the place within said metes and

bounds description identified in Exhibit B of this Amendment, the additional language set forth in bold type in Exhibit B of this Amendment.

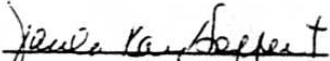
3. All other provisions of the Agreement shall remain in full force and effect.

PREREQUISITE APPROVAL

The provisions of this Amendment are subject to the regulatory authority of the FPSC, and appropriate approval by that body of the provisions of this Amendment shall be a prerequisite to the validity and applicability hereof and neither party shall be bound hereunder until that approval has been obtained.

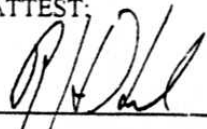
IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly-authorized officers on the day and year first written above.

ATTEST:


PAULA KAY HOFFER, CITY CLERK

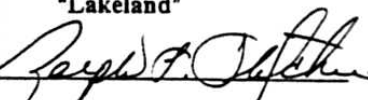
(SEAL)

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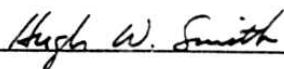


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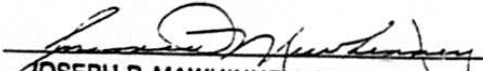
THE CITY OF LAKELAND
"Lakeland"

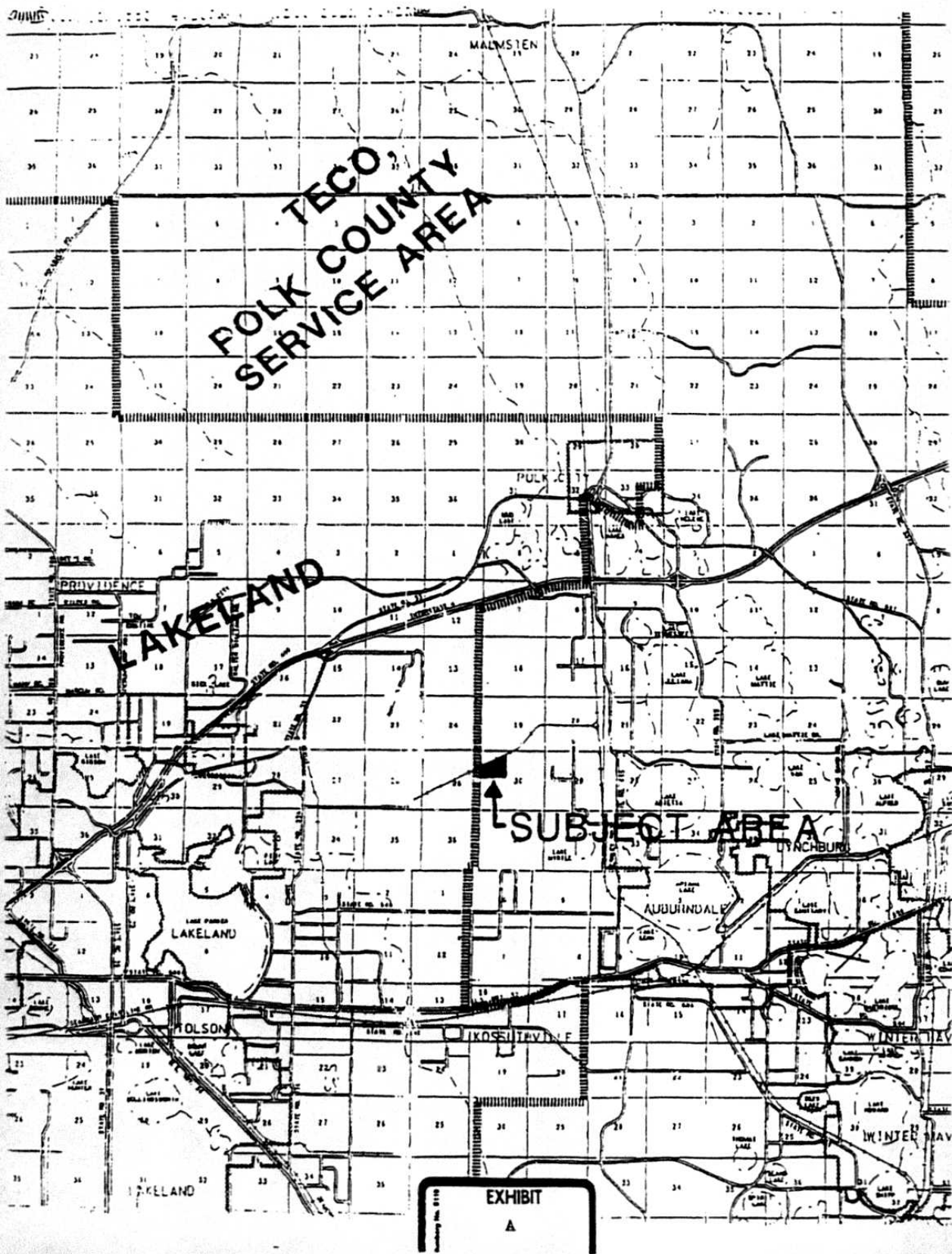
By: 
RALPH L. FLETCHER, MAYOR

TAMPA ELECTRIC COMPANY
"TEC"

By: 

APPROVED AS TO FORM AND CORRECTNESS


JOSEPH P. MAWHINNEY, CITY ATTORNEY



ADDITIONAL LEGAL DESCRIPTION (in bold type below)

thence departing said Southerly limited access right of way boundary and on the East boundary of said Range 24 East

....proceed in a Southerly direction to the intersection of said East boundary with the centerline of the former Seaboard Coastline Railroad right of way; thence Northeasterly along said centerline to an intersection with the East boundary of the West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 30, Township 27 South, Range 25 East; thence departing said centerline, proceed South along said East boundary to the South boundary of the Northwest $\frac{1}{4}$ of said Section 30; thence West along the South boundary of the Northwest $\frac{1}{4}$ of said Section 30 to the East boundary of Section 25, Township 27 South, Range 24 East; thence on the East boundary of said Range 24 East,....

....proceed in a Southerly direction to the Southeast corner of Section 36, Township 27 South, Range 24 East;