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May 9, 1989

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Mr. Steve C. Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

890646-EI

Re: Tampa Electric Company's Complaint
for Resolution of Territorial Dispute

Dear Mr. Tribble:

Enclosed for filing are the original and fifteen (15) copies of Tampa Electric Company's Complaint for Resolution of Territorial Dispute and Request for Hearing.

On March 20, 1989 Tampa Electric filed in Docket No. 890415-EI a Petition for Declaratory Statement regarding the proposed transfer of service described in the enclosed Complaint. On May 4, 1989 the Commission's Staff issued a Staff Recommendation in Docket No. 890415-EI to the effect that the issues raised in Tampa Electric's Petition for a Declaratory Statement create a factual dispute which would be more appropriately considered by the Commission in a complaint proceeding to resolve the territorial dispute. Accordingly, Tampa Electric has prepared and submits the enclosed Complaint in order to afford the Commission a choice of which procedure the Commission feels is more appropriate for addressing the issues raised in both the Petition for Declaratory Statement and in the enclosed Complaint.

Tampa Electric will await Commission action on the Staff Recommendation in Docket No. 890415-EI, now scheduled for the May 16, 1989 Agenda Conference. If the Commission elects to continue with the declaratory statement proceeding and to address the issues raised therein, the enclosed Complaint need not be addressed. However, should the Commission elect to proceed with the enclosed Complaint proceeding, the company can simply withdraw its Petition for Declaratory Statement. Regardless of which vehicle is used, Tampa Electric's primary goal is to obtain a prompt resolution of the issues raised in the Petition for Declaratory Statement and in the enclosed Complaint. Tampa Electric will be better able to carry out its duties as a public utility with the benefit of the Commission's guidance in resolving this and any other similar situations which now exist or may arise in the future.

RECEIVED & FILED

J.B.
EPSC-BUREAU OF RECORDS

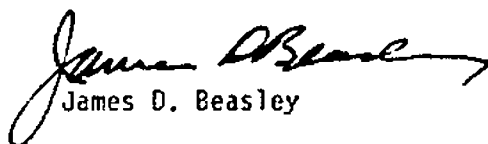
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Mr. Steve C. Tribble
May 9, 1989
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Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer. In addition, we would appreciate your placing a copy of this transmittal letter in the Commission's file in Docket No. 890415-EI.

Thank you for your assistance in connection with this matter.

Sincerely,



James D. Beasley

JDB/pp
encls.

cc: William Harrold (w/enc.)
Parties on Enclosed Certificate of Service (w/enc.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

TAMPA ELECTRIC COMPANY,

Complainant,

vs.

FLORIDA POWER CORPORATION,

Respondent.

DOCKET NO. _____
Submitted for Filing 5/9/89

**COMPLAINT FOR RESOLUTION OF TERRITORIAL DISPUTE
AND REQUEST FOR HEARING**

Tampa Electric Company ("Tampa Electric" or "the company") submits this its Complaint against Florida Power Corporation ("FPC") to resolve a territorial dispute between the parties regarding FPC's proposed provision of electric service to the Polk County facilities of Agrico Chemical Company, a large industrial Customer, which facilities are located within Tampa Electric's service area and which traditionally have been provided electric service by Tampa Electric. As grounds therefor, the company states:

1. Any pleading, motion, notice, order or other document required to be served on Petitioner, should be forwarded to:

Mr. Russell D. Chapman
Manager, Regulatory
Coordination
Tampa Electric Company
Post Office Box 111
Tampa, Florida 33601

Mr. Lee L. Willis
Mr. James D. Beasley
Mr. John P. Fons
Ausley, McMullen, McGehee,
Carothers and Proctor
Post Office Box 391
Tallahassee, Florida 32302

2. Tampa Electric and FPC are public utilities subject to the jurisdiction of the Commission pursuant to Section 366, Fla Stat. The address of Tampa Electric's principal offices is 702 North Franklin Street.

DOCUMENT NUMBER-DATE
04633 MAY-9 1989
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Tampa, Florida 33602 and the address of FPC's principal offices is Post Office Box 14042, St. Petersburg, Florida 33733.

3. Tampa Electric will be better able to carry out its duties as a public utility with the benefit of the Commission's guidance in resolving this and any other similar situations which now exist or may arise in the future.

Background

4. Agrico Chemical Company ("Agrico") is a large industrial phosphate company with both mining and chemical operations in Tampa Electric's service area in Polk County. Agrico also owns contiguous property and conducts mining operations in Hardee County within the area served by FPC.

5. Agrico currently operates two phosphate processing plants in Polk County located at Fort Green and Payne Creek. Both of these facilities are located in Tampa Electric's service area and traditionally have been served by Tampa Electric. The associated mining operations that feed phosphate ore to these plants are typically metered for electrical usage by the same equipment which records energy consumption for these plants. The one current exception is North Fort Green. This currently has a separate service point to one dragline which mines ore for the Fort Green plant. North Fort Green will be transferring and receiving service at the processing plant service point beginning in January, 1990.

6. Agrico also operates a chemical plant at South Pierce within Polk County, also in Tampa Electric's service territory. This plant traditionally has been served by Tampa Electric. In addition, a

Customer-owned and operated electrical generator meets a portion of the electrical requirements of this facility.

7. FPC has recently commenced providing service to Agrico at a point in Hardee County, Florida, not far from the territorial boundary with Tampa Electric.

8. 69 KV service has typically been provided by Tampa Electric to a service point at or near the processing plant in Polk County. The 69 KV transmission voltage is then stepped down to subtransmission levels by either a Tampa Electric or Agrico owned substation. Agrico, in turn, has then constructed its own distribution lines (13 KV or less) from this service point at the processing plant, to the draglines which move about to mine the phosphate ore at various locations for the plant to process. These Customer owned distribution lines also provide power to the pumps associated with each dragline. The pumps are used to transport a slurry mixture containing the phosphate ore from the dragline mining location back to the processing plant.

9. Agrico presently operates five draglines. On December 20, 1988 Agrico informed Tampa Electric that Agrico had requested FPC to provide service beginning in February of 1989 to two of Agrico's draglines then served by Tampa Electric which had been moved into Hardee County, as well as the Fort Green plant. Tampa Electric had not been apprised of Agrico's extension of mining operations into Hardee County until October 24, 1988. Thereafter, Tampa Electric continued to serve this dragline load just across the Polk-Hardee County line until the longer term location of the draglines could be determined under the 1960 Territorial Agreement between

Tampa Electric and FPC, which was approved in Order No. 2948, issued in Docket No. 6081-EU on July 5, 1960.

10. In response to Agrico's request, FPC commenced construction of a 69 KV feeder line and an enlarged substation to serve these two draglines. FPC recently commenced service to these draglines.

11. On January 20, 1989 Agrico again advised Tampa Electric that Agrico intended to construct a 61 KV transmission line from the Fort Green processing plant within Polk County to FPC's transmission feeder in Hardee County. However, Agrico stated that this line would not be expected to be in service until the end of 1989, at the earliest, because of the nonavailability of certain insulators needed for the line. In response to this Tampa Electric clearly stated that Tampa Electric is obligated and committed to providing reliable electric service to all Customers within Tampa Electric's service area. Tampa Electric also made clear its view that service by FPC of Agrico's Polk County facilities, within Tampa Electric's service territory, over Agrico's proposed transmission line would violate the Commission approved territorial agreement between Tampa Electric and FPC.

12. In further response to Agrico's announced intent to take service for its Polk County facilities from FPC, Tampa Electric has pursued every reasonable means of avoiding the loss of this valuable Customer. Tampa Electric has communicated with Agrico and attempted to persuade Agrico to avoid a confrontation over the matter. However, on March 10, 1989 Tampa Electric was informed that Agrico conclusively intended to go forward with the 69 KV transmission line construction sooner than previously expected because Agrico had located a source for certain insulators which had been

in short supply. Thus, Agrico indicated, the line construction could proceed on a more expedited basis than Agrico had indicated to Tampa Electric on December 20, 1988 and January 20, 1989.

13. Attached hereto as Exhibit "A" is a diagram depicting those Agrico facilities within Tampa Electric's service area which FPC proposes to serve.

1960 Territorial Agreement

14. Tampa Electric and FPC are parties to a territorial letter agreement dated February 29, 1960 which was approved by Commission Order No. 2948 issued July 5, 1960 in Docket No. 6081-EU. Such agreement defines all of the approved service area boundaries between FPC and Tampa Electric relative to Polk, Pinellas and Pasco Counties as of the time the agreement was executed.

15. The 1960 agreement has been twice amended over the years but neither amendment affects the Commission approved territorial border line dividing Tampa Electric's provision of electric service within Polk County, Florida from the electric service provided by FPC to the south in Hardee County, Florida. Each amendment to the 1960 agreement has been approved by this Commission.

FPC's Agreement to Provide Extraterritorial Electric Service to Agrico is Inconsistent with Section 366.04(3) and 366.05(1), Fla. Stat.

16. Agrico's Polk County facilities are located in an area traditionally served by Tampa Electric and, indeed, all electricity utilized by Agrico within Polk County has been purchased from Tampa Electric. Agrico's proposal to switch to service by FPC and FPC's

agreement to provide such service into Tampa Electric's service territory is based on the view that a Customer may designate the electric utility from which service may be taken. This view is inconsistent with the regulatory policy of Section 366.04(3), Fla. Stat. That section details the critical legislative policy to avoid further uneconomic duplication of generation, transmission and distribution facilities.

17. Section 366.05(1), Fla. Stat., provided the Commission with authority to require electric utilities to have facilities necessary to meet the obligation to serve by authorizing it "to require repairs, improvements, additions, and extensions to the plant and equipment of any public utility. . . ."

18. Section 366.04(32), Fla. Stat., complements the above authority by giving the Commission jurisdiction over the planning, development and maintenance of a coordinated electric power grid. This jurisdiction is for the purposes of assuring an adequate and reliable source of energy and avoiding further uneconomic duplication of generating, transmission and distribution facilities. The full text of Section 366.04(3), Fla. Stat., is:

(3) The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

19. Agrico's proposal, and FPC's acceding to that proposal, is inconsistent with Section 366.04(3), Fla. Stat., because a Customer does not have the right to designate the utility from which service may be

taken. This has been established by the Florida Supreme Court in Storey v. Mayo, 217 So.2d 304, at 307-308 (Fla. 1968):

An individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself. If he lives within the limits of a city which operates its own system, he can compel service by the city. However, he could not compel service by a privately-owned utility operating just across his city limits merely because he preferred that service.

20. Allowing electric utility Customers the discretion to unilaterally determine the use of electric facilities would totally frustrate this Commission's authority under Section 366.04(3), Fla. Stat., regarding the planning, development and maintenance of a coordinated electric power grid throughout Florida. In addition, Agrico's apparent belief that it should be able to switch at its own discretion from one utility to another is inconsistent with Section 366.04(3), Fla. Stat. In this section the Legislature has embraced the goal of avoiding further uneconomic duplication of generation, transmission and distribution facilities.

21. This Commission recently considered a somewhat similar proposal In re: Petition of Florida Power & Light Company for a Declaratory Statement Regarding Request for Wheeling. In its Order No. 20808 issued on February 24, 1989 in Docket No. 881326-FI, this Commission observed:

. . . FPL has been serving Union Carbide for some time. To have Union Carbide switch to FPC would invite rate shopping throughout the state. This would create confusion as to who has the obligation to serve and how much generation each utility must maintain. This would limit the Commission's ability to maintain a coordinated electric power grid.

22. Tampa Electric has considerable capital invested in the plant and facilities with which the company provides electric service to Agrico's Fort Green mining operations in Polk County. In Tampa Electric's 1986 cost study, the company's investment to serve Agrico's Fort Green mining operation was approximately \$18.5 million (\$17.1 million of this was production plant investment based on the equivalent peaker cost of service methodology). This investment will be stranded if Agrico successfully abandons service from Tampa Electric and takes substitute service from FPC.

Lee County Electric Cooperative v. Marks

23. The Supreme Court of Florida has addressed very similar factual circumstances in its decision in Lee County Electric Cooperative v. Marks, 501 So.2d 585, 587 (Fla. 1987). In that decision the Court addressed a declaratory statement issued by the Commission which stated that FPL had the obligation to serve a Customer who would build a transmission line to a point just within FPL's service territory. In the instant case, like in Lee County Cooperative, the Customer proposes to build its own transmission line (an "extension cord") from its facility within one utility's service territory to a point just within the service territory of the nonserving electric utility with whom the Customer desires to interconnect.

24. The Court relied not only upon the provisions of the territorial agreement between FPL and the electric cooperative, but also

the PSC's duty to police 'the planning, development and maintenance of a coordinated electric power grid throughout Florida to assure. . .the avoidance of further uneconomic duplication of generation,

transmission and distribution facilities.
(Section 366.04(3), Fla. Stat. (1985))

The Court went on to point out that as in Storey v. Mayo,

An individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself.

Inconsistency with Section 366.03, Fla. Stat.

25. Section 366.03, Fla. Stat., prohibits electric utilities from giving "any undue or unreasonable preference or advantage" to a Customer or location or subjecting a Customer or location "to any undue or unreasonable prejudice or disadvantage in any respect." If Agrico is permitted to leave Tampa Electric's system for that of FPC, simply in order to shop for cheaper rates, Tampa Electric's remaining Customers, who are unable to build transmission lines or otherwise take service from other utilities, would be adversely affected. All other things being equal under well established regulatory precedent, the remaining Customers would have to pick up the revenue requirements which Tampa Electric had been able to recover from Agrico prior to its departure for FPC.

The Tampa Electric/FPC Territorial Agreement

26. As was indicated earlier, Tampa Electric and FPC are parties to a territorial agreement approved by Commission Order No. 2948 issued July 5, 1960 in Docket No. 6081-EU. The territorial agreement provides that Tampa Electric should serve north of the Polk/Hardee County line and FPC should serve south of such county line. That agreement contained the following

two provisions making it clear that neither party should serve outside its respective service area:

1. Neither company will serve, or offer to serve, a Customer outside its service area as shown on the attached maps.
2. In the event a Customer applies for service to the company not serving the area, the Customer will be promptly referred to the company serving the area in which the Customer is located.

These provisions are very similar to the language contained in the Lee County Electric Cooperative/FPL territorial agreement:

It is agreed that neither [utility] will offer to serve a Customer outside its service area, . . . without first consulting and reaching an agreement with the other party.

27. Pursuant to the comprehensive regulatory scheme set forth in Chapter 366, Fla. Stat., the Commission, for more than 30 years, has entered orders approving territorial agreements allocating service areas for regulated public utilities. The Florida Supreme Court has expressly and repeatedly upheld the Commission's statutory authority to do so. The State of Florida has declared the public's interest in service areas and the elimination of unrestrained competition for retail electric Customers. The Commission has repeatedly held that, even where no territorial agreement is in force between utilities, a utility cannot honor a potential Customer's request to extend service into an area historically served by another utility. There is no dispute in this case that the Fort Green facility of Agrico has historically been and is being served by Tampa Electric. FPC has not historically provided service in the area of Agrico's Fort Green facility.

28. FPC's provision of electric service to Fort Green over a transmission line constructed by Agrico would effect a violation of the Commission approved territorial agreement between Tampa Electric and FPC and, therefore, should be prohibited by this Commission. As the Supreme Court observed in the Lee County Cooperative case:

Had FPL and not FMM constructed the line into FPL's territory, the PSC would unquestionably have found a flagrant violation of the territorial agreement to exist. We find that no different result follows from the Customer's construction of the line. . . .

Similarly, FPC should not be permitted to rely upon Agrico's construction of the transmission line as a basis for FPC's violation of the 1960 Territorial Agreement.

29. The Commission has long encouraged territorial agreements between electric utilities, recognizing that they avoid the unnecessary duplication of facilities. As the Commission observed in approving the 1960 Tampa Electric/FPC Agreement:

. . . Duplication of public utility facilities is an economic waste and results in higher rates which the public must pay for essential services. . . . In the absence of a specific statute limiting the service areas of various public utilities, territorial agreements such as we are concerned with here constitute no unreasonable restriction on the Commission's powers, but actually assist the Commission in the performance of its primary function of procuring for the public essential utility services at reasonable costs.

An approved agreement, such as the Tampa Electric/FPC Agreement, becomes "an order of the Commission, binding as such on the parties." City Gas Company v. Peoples Gas System, Inc., 181 So.2d 429, 435 (Fla. 1965). Tampa Electric is clearly entitled to an order resolving in its favor the

above-described territorial dispute with FPC and declaring that Tampa Electric, and not FPC, should provide electric service to Agrico's Fort Green facility. Tampa Electric would further request that the Commission order FPC to refrain from providing electric service to Agrico's Fort Green facility over any transmission line constructed by Agrico into FPC's service area inasmuch as such activity would be inconsistent with the territorial agreement between Tampa Electric and FPC, with Order No. 2948 approving such agreement, and with Section 366.04(2) and 366.05(1), Fla. Stat.

WHEREFORE, Tampa Electric respectfully requests that the Commission will enter its order finding and determining the following:

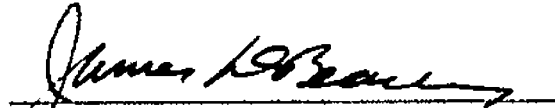
- (1) That Tampa Electric, and not FPC, is the appropriate electric utility to provide service to the facilities owned by Agrico and operated within Polk County, Florida;
- (2) That any provision of such service by FPC would be inconsistent with Sections 366.04(3), 366.05(1) and 366.03, Fla. Stat.;
- (3) That FPC's provision of power to Agrico's facilities within Polk County, Florida would be inconsistent with the rights of Tampa Electric and the obligations of FPC under the territorial agreement approved in Order No. 2948 in Docket No. 6081-EU on July 5, 1960, and with Sections 366.04(2) and 366.05(1), Fla. Stat.;
- (4) That FPC be required to refrain from providing electric service to Agrico's facilities in Polk County, Florida;
- (5) That the Commission grant such other relief as it may deem appropriate.

REQUEST FOR HEARING

Tampa Electric, a person substantially affected by the matters alleged above, requests that a formal evidentiary hearing be convened in this docket pursuant to §120.57(1), Fla. Stat.

DATED this 9th day of May, 1989.

Respectfully submitted,



LEE L. WILLIS
JAMES D. BEASLEY
JOHN P. FONS
Ausley, McMullen, McGehee,
Carothers and Proctor
Post Office Box 391
Tallahassee, Florida 32302
(904) 224-9115

Attorneys for Tampa Electric Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail on this 9th day of May, 1989 to the following:

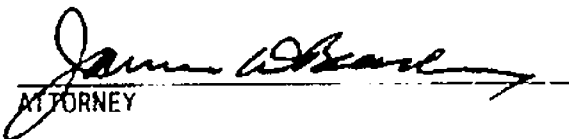
Mr. Albert H. Stephens
Office of the General Counsel
Florida Power Corporation
Post Office Box 14042
St. Petersburg, Florida 33733

Ms. Sylvia H. Walbolt
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Ms. Cynthia S. Tunnickliff
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Post Office Drawer 190
Tallahassee, Florida 32302

Mr. John W. McWhirter, Jr.
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Tampa, Florida 33601-3350

Mr. Joseph A. McGlothlin
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522 East Park Avenue, Suite 200
Tallahassee, Florida 32301


ATTORNEY

AGRICO FACILITIES
(Located in Tampa Electric's
Service Area and Proposed to be Served by FPC)

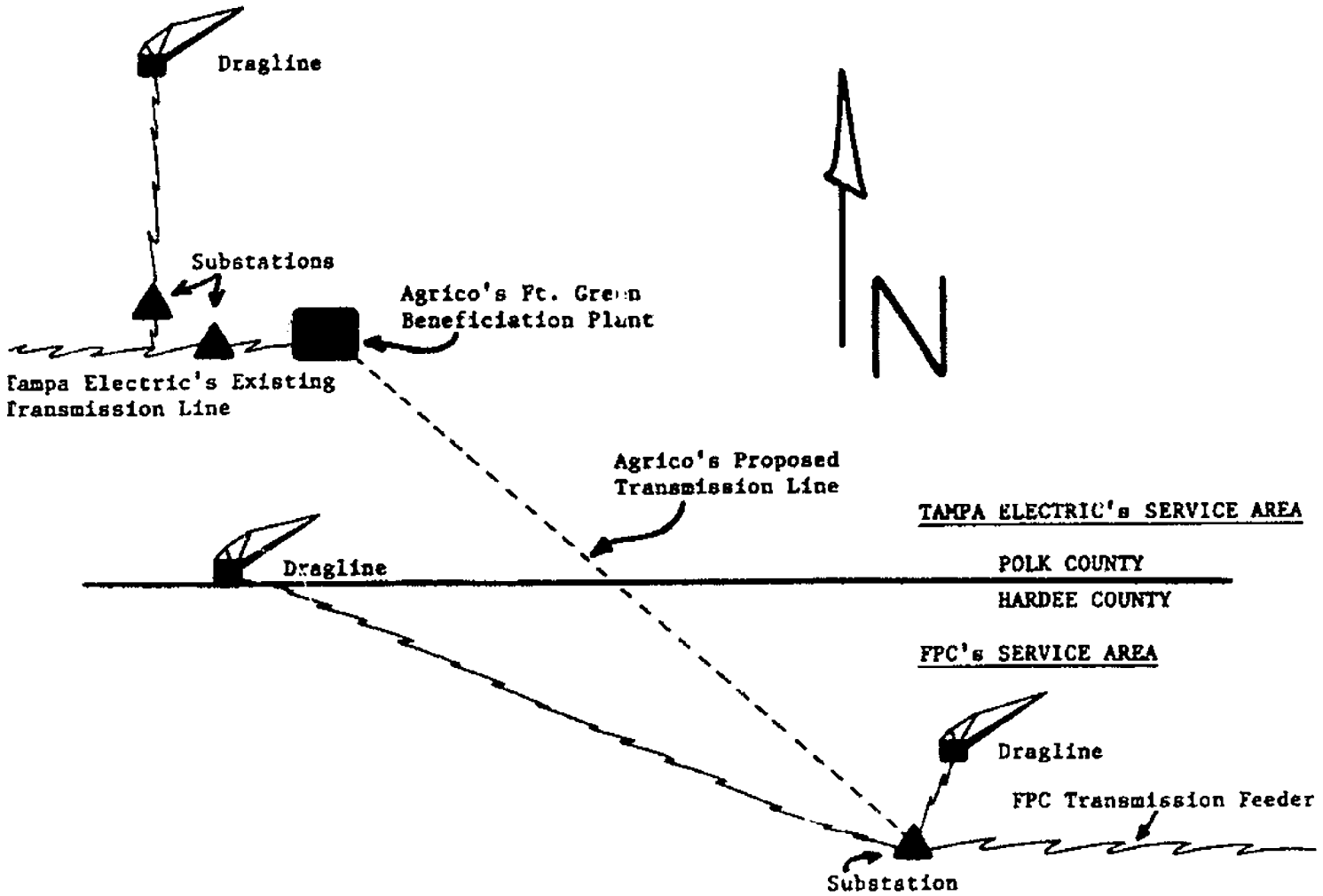


Exhibit "A"