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PLEASE REPLY TO

Tampa

June 1, 1989

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

Re: Tampa Electric Company vs. Florida Power Corporation  
Docket No. 890646 EI

Dear Mr. Tribble:

I enclose for filing an original and fifteen (15) copies of Florida Power Corporation's Answer to Complaint for Resolution of Territorial Dispute.

Thank you for your assistance in this matter.

Very truly yours,

*Sylvia H. Walbolt*

SYLVIA H. WALBOLT

- ACK   y
- AFA            SHW:rcd
- APP            Enclosures
- CAF            cc: All Counsel of Record
- CMU
- CTR
- EAG
- LEG            1
- LIN            4
- OPC            1
- RCH
- SEC
- WIS
- OTH

MAIL ROOM  
JUN 5 1989  
DOCUMENT NUMBER-DATE  
05554 JUN-5 1989  
FPSC-RECORDS/REPORTING

BEFORE THE PUBLIC SERVICE COMMISSION

TAMPA ELECTRIC COMPANY,

Complainant,

vs.

DOCKET NO. 890646 EI

FLORIDA POWER CORPORATION,

Respondent.

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ANSWER TO COMPLAINT FOR  
RESOLUTION OF TERRITORIAL DISPUTE

Florida Power Corporation ("Florida Power" or "FPC") submits this Answer to the Complaint for Resolution of Territorial Dispute filed by Tampa Electric Company in the captioned matter and states as follows:

1. With respect to the original, unnumbered paragraph of the Complaint, Florida Power denies that it proposes to provide electric service to the Polk County facilities of Agrico Chemical which are located within Tampa Electric's service area.

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

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

Sylvia H. Walbolt, Esquire  
Carlton, Fields, Ward,  
Ward, Emmanuel, Smith &  
Cutler, P. A.  
Post Office Box 3239  
Tampa, Florida 33601

3. The allegations of numbered paragraph 2 of the Complaint are admitted.

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4. The allegations of numbered paragraph 3 of the Complaint are admitted.

5. The allegations of numbered paragraph 4 of the Complaint are admitted.

6. The community of Fort Green Springs, as well as several facilities of FPC bearing the "Fort Green" name, are actually located in Hardee County, as demonstrated by the map attached hereto marked Exhibit "A". Notwithstanding this sometimes confusing geographical reference by TECO, FPC admits that two phosphate processing plants operated by Agrico and referred to by Agrico as its Fort Green and Payne Creek plants are located in Polk County. FPC admits the allegations in the second sentence of numbered paragraph 5 of the Complaint. Florida Power is without knowledge of the remaining allegations of numbered paragraph 5 of the Complaint and therefore denies those allegations.

7. The allegations of numbered paragraph 6 of the Complaint are admitted.

8. It is admitted that Florida Power has recently commenced providing service to Agrico's substation located in Hardee County more than two miles south of the territorial boundary between TECO and FPC. Florida Power provides electric services to other phosphate mining customers in that same vicinity which are closer to the boundary line. Agrico is providing service from its substation to its various mining facilities, including one or more

draglines and slurry pumps, which are owned, located and operated by Agrico within Hardee County, Florida. The remaining allegations of numbered paragraph 7 of the Complaint are denied.

9. Florida Power admits that it has traditionally been considered a good practice in the phosphate mining business to link the draglines and pumps furnishing phosphate ore to the same source of electric power that serves the plant that processes that phosphate ore. Florida Power is without knowledge of the remaining allegations of numbered paragraph 8 of the Complaint and therefore denies those allegations.

10. Florida Power is without knowledge of the allegations of the first three sentences of numbered paragraph 9 of the Complaint. Florida Power alleges that Tampa Electric knew or should have known that any movement of one or more of the Agrico draglines into Hardee County was coincident to a long term movement of the primary situs of Agrico's mining operations into Hardee County due to the depletion or near depletion of its minable phosphate reserves in Polk County. Florida Power further alleges that Agrico intends to move its Fort Green plant into Hardee County and that this relocation of Agrico's mining facilities is consistent with Agrico's long-term mining plan. The remaining allegations of numbered paragraph 9 of the Complaint are denied.

11. Florida Power alleges that, in response to Agrico's request for service to its facilities within Hardee County, which Florida Power was obligated to comply with under Florida Statute

366.03 and the rules and regulations of the PSC governing requests for electric service, Florida Power constructed a 69 KV transmission line and Agrico constructed a new substation, owned by Agrico, to serve its various mining facilities which had been moved from Polk County to Hardee County in order for Agrico to mine phosphate within Hardee County. At Agrico's request, Florida Power recently commenced service to that substation owned by Agrico and located within Hardee County. The allegations of numbered paragraph 10 of the Complaint are denied except to the extent affirmatively admitted above.

12. Florida Power is without knowledge of the allegations of numbered paragraph 11 of the Complaint and therefore denies those allegations.

13. Florida Power is without knowledge of the allegations of numbered paragraph 12 of the Complaint and therefore denies those allegations.

14. Florida Power denies that Exhibit "A" to the Complaint is a diagram accurately depicting the Agrico facilities within Tampa Electric's service area, and Florida Power further denies that it proposes to serve any Agrico facilities located within Tampa Electric's service area. Florida Power alleges that it provides electric service to Agrico's substation located within Hardee County. The allegations of numbered paragraph 13 of the Complaint are denied except to the extent affirmatively admitted above.

15. Florida Power admits the allegations of numbered paragraph 14 to the Complaint.

16. Florida Power admits the allegations of numbered paragraph 15 to the Complaint, except that it alleges that the 1960 Territorial Agreement has been amended three rather than two times.

17. Florida Power denies the assertion in the heading between numbered paragraphs 15 and 16 of the Complaint that Florida Power has agreed to provide extraterritorial electric service to Agrico.

18. Florida Power admits the first sentence of numbered paragraph 16 to the Complaint. Florida Power denies that Agrico proposes to "switch" to service by Florida Power; Florida Power alleges that Agrico has requested, and Florida Power has agreed to provide, new service to a new facility owned and operated by Agrico and located within Hardee County. Florida Power further alleges that Agrico's Polk County facilities are located in an area traditionally served by Tampa Electric but Agrico's Hardee County facilities are located in an area traditionally served by Florida Power. Florida Power denies that it has agreed to provide electric service into Tampa Electric's service territory and Florida Power denies that it takes the view that a customer may unilaterally designate the electric utility from which service may be taken. Florida Power alleges that a customer may request service from a regulated utility, such as Florida Power, when such service is mandated by the statutes of the State of Florida, Florida case law, and the rules, regulations, and orders promulgated by the Public Service Commission. Florida Power admits that any view that a customer may unilaterally designate,

without regard for the Florida Statutes and the rules, regulations and orders of the Commission governing electric service, whatever electric utility it wishes to take service from is inconsistent with the regulatory policy of Section 366.04(3) Fla. Stat.; here, Agrico is in the unique position of having services to facilities located in different areas within its own contiguous property, which property falls within the service areas of two regulated electric utilities which are required to provide service upon the demand of a customer located within its service area. Florida Power further admits that Section 366.04(3) details the critical legislative policy to avoid uneconomic duplication of generation, transmission and distribution facilities. The allegations of numbered paragraph 16 of the Complaint are denied except to the extent affirmatively admitted above.

19. Florida Power admits the allegations of numbered paragraph 17 of the Complaint.

20. Florida Power admits the allegations of numbered paragraph 18 of the Complaint but affirmatively denies that Agrico's facilities are part of the coordinated electric power grid of Florida.

21. Florida Power denies the allegation of numbered paragraph 19 of the Complaint that Agrico's proposal, and FPC's acceding to that proposal, is inconsistent with Section 366.04(3), Fla. Stat. Florida Power alleges that Agrico's proposal was simply that Florida Power provide service to Agrico's facilities within Hardee County, where Florida Power is obligated by law and by express PSC

order to provide service. Florida Power admits that a customer does not have the unilateral right to designate the utility from which it wishes to take service, without regard for the Florida Statutes, Florida case law, and the rules, regulations, and orders of the Commission governing electric service by regulated electric utilities. Florida Power admits that the Florida Supreme Court made the statement quoted in the case cited in numbered paragraph 19. Florida Power denies the allegations of numbered paragraph 19 except to the extent affirmatively admitted above.

22. Florida Power admits that allowing electric utility customers the discretion to determine unilaterally the use of utility owned electric facilities, without regard for the Florida Statutes, Florida case law, and the rules, regulations, and orders of the Commission, would totally frustrate this Commission's authority under Section 366.04(3), Fla. Stat. Florida Power is without knowledge of the allegation that Agrico has the apparent belief that it should be able to switch at its own discretion from one utility to another and Florida Power therefore denies that allegation, but Florida Power admits that it would be inconsistent with Section 366.04(3), Fla. Stat., to allow customers to unilaterally switch, at their own sole discretion, from one utility to another. Florida Power further admits that, in Section 366.04(3), the Legislature has embraced the goal of avoiding uneconomic duplication of generation, transmission and



distribution facilities. The allegations of numbered paragraph 20 of the Complaint are denied except to the extent affirmatively admitted above.

23. Florida Power denies that this Commission recently considered a somewhat similar proposal In re: Petition of Florida Power & Light Company for a Declaratory Statement Regarding Request for Wheeling. Florida Power alleges that the Agrico request for service is completely dissimilar to the Union Carbide request for retail wheeling service. Among other things, Agrico seeks service to facilities which it owns and operates on its own property within Hardee County, which is in Florida Power's service area. The Agrico load moved into Hardee County due to natural causes (available phosphate to be mined), not to a desire to switch electric suppliers. Florida Power admits that the Commission made the quoted statement in the order cited in numbered paragraph 21. The allegations of numbered paragraph 21 of the Complaint are denied except to the extent affirmatively admitted above.

24. Florida Power is without knowledge of the allegations in numbered paragraph 22 of the Complaint and therefore denies those allegations.

25. Florida Power denies that the Supreme Court of Florida has addressed very similar factual circumstances in its decision in Lee County Electric Cooperative vs. Marks, 501 So.2d 585, 587 (Fla. 1987). Florida Power admits the second sentence of numbered paragraph 23 of the Complaint. Florida Power denies the third

sentence of numbered paragraph 23 of the Complaint. Among other things, in the instant case, unlike Lee County Cooperative, the customer has not built a line solely for the purpose of establishing a point of delivery for electric power within one utility's service area to be transmitted to a facility located within another utility's service area. Rather, this situation involves, among other things, contiguous property owned by the customer which crosses the service area boundary between Florida Power and Tampa Electric, and electric service is being provided to a new point of service within Florida Power's service area for the specific purpose of serving Agrico mining facilities located and operated within Florida Power's service area. Also, unlike Lee County Cooperative, in this case the electric load has itself moved from one service area to another and is expected to continue to be located there on a long-term basis. The allegations of numbered paragraph 23 of the Complaint are denied except to the extent affirmatively admitted above.

26. Florida Power admits the allegations of numbered paragraph 24 of the Complaint. Florida Power alleges that the Court's opinion contains additional discussion, not quoted by Tampa Electric, as to the reasons for its decision.

27. Florida Power denies the allegation in the heading between numbered paragraphs 24 and 25 of the Complaint which suggests that its compliance with Agrico's request for service within Hardee County is inconsistent with Florida law.

28. Florida Power admits the first sentence of numbered paragraph 25 of the Complaint. Florida Power denies that Agrico is seeking to leave Tampa Electric's system for that of Florida Power simply in order to shop for cheaper rates. Florida Power is without knowledge of the remaining allegations of numbered paragraph 25 of the Complaint and it therefore denies the same except to the extent affirmatively admitted above.

29. Florida Power admits the allegations of numbered paragraph 26 of the Complaint, except that it denies the second sentence of that numbered paragraph.

30. Florida Power admits the allegations of numbered paragraph 27 of the Complaint. Florida Power alleges that Florida Power has historically provided service in the area of Agrico's Ft. Green mining facilities which are located in Hardee County; in particular, Florida Power has for over ten years provided service to CF Industries' Hardee County Phosphate Complex.

31. Florida Power denies that it is providing or that it intends to provide, electric service to Agrico's Ft. Green plant. Florida Power denies that it is violating a Commission approved territorial agreement between Tampa Electric and Florida Power by providing service to Agrico's substation and draglines located within Hardee County and Florida Power denies that this service to Agrico's mining facilities within Hardee County should be prohibited by this Commission. Florida Power admits that the Supreme Court made the quoted statement in the Lee County Cooperative case but denies that it has any applicability to the

completely dissimilar situation presented in this case. Florida Power further denies that it is relying upon Agrico's construction of the transmission line as a basis for providing service to Agrico in Hardee County. Florida Power denies the allegations of numbered paragraph 28 of the Complaint except to the extent affirmatively admitted above.

32. Florida Power admits the first three sentences of numbered paragraph 29 of the Complaint. Florida Power alleges that a substantial portion of Agrico's Ft. Green mining facilities are now located within Florida Power's service area in Hardee County and that Florida Power is obligated by Florida law and by the 1960 Territorial Agreement, approved by order of the Florida Public Service Commission, to provide electric service to those mining facilities which are located and operated in Hardee County. Florida Power denies the remaining allegations of numbered paragraph 29 of the Complaint. Florida Power denies that Tampa Electric is entitled to an order resolving in its favor what it describes as a territorial dispute with Florida Power. Florida Power denies that Tampa Electric is entitled to any of the relief requested in the last two sentences of numbered paragraph 29 of the Complaint or in its prayer for relief.

33. Florida Power affirmatively alleges that it is not aware of any provision of the statutes or case law of Florida, any regulation or policy of the Florida Public Service Commission, or any provision of the Territorial Agreement between TECO and FPC that is or would be violated as a result of FPC providing electric

service to the bona fide business operations of Agrico in Hardee County, and Florida Power further alleges that to the best of its knowledge and belief, it has no legal right, power or authority to prevent Agrico from transporting electricity legally obtained from FPC in Hardee County over Agrico's own facilities constructed on its own contiguously owned land to a point of consumption at its facilities in Polk County.

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and

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By: Sylvia H. Walbolt  
Sylvia H. Walbolt  
Fla. Bar No. 033604

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. Mail to the following this 1st day of ~~June~~ May, 1989.

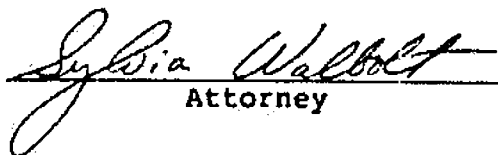
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