

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint application for ) DOCKET NO. 930092-EU  
approval of territorial ) ORDER NO. PSC-93-0705-FOF-EU  
agreement between Florida Power ) ISSUED: 5/10/93  
& Light Company and Lee County )  
Electric Cooperative, Inc. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
THOMAS M. BEARD  
SUSAN F. CLARK  
JULIA L. JOHNSON

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On January 21, 1993, Lee County Electric Cooperative, Inc. (LCEC) and Florida Power and Light Company (FPL) filed a joint application for approval of a territorial agreement. This new territorial agreement amends an existing territorial agreement, which we approved by Orders Nos. 3799 and 20817.<sup>1</sup> The new agreement modifies the territorial boundary between FPL and LCEC's retail service areas in Lee, Hendry, Charlotte, and Collier counties.

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<sup>1</sup> We approved the original territorial agreement by Order No. 3799, issued April 28, 1965, in Docket No. 7424-EU - Territorial agreement between Florida Power and Light Company and Lee County Electric Cooperative, Inc. An amendment to this original agreement was approved by us by Order No. 20817, issued February 28, 1989, in Docket No. 850129-EU - Petition of Lee County Electric Cooperative, Inc. to resolve a territorial dispute with Florida Power and Light Company. The agreement for which the parties are presently seeking our approval specifically incorporates by reference the amendment approved in Order No. 20817.

DOCUMENT NUMBER-DATE

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PSC-RECORDS/REPORTING

The parties state that changes have occurred to the territorial boundary previously approved by us. In several instances, either by mutual agreement or inadvertence, both LCEC and FPL have crossed over the territorial boundary and served in the other's service territory. The parties' new territorial agreement recognizes the boundary changes that have occurred and thus simplifies the provision of service to new customers who live close to the boundary line.

Rule 25-6.0440, Florida Administrative Code, provides that "[a]ll territorial agreements between electric utilities shall be submitted to the Commission for approval." When a territorial boundary is changed, the territorial agreement that established the boundary is also changed, and that change must be approved by us before it takes effect, and not after. We recognize that in certain limited circumstances system efficiencies may dictate that one utility should provide interim service to a customer in the other utility's service territory. For instance, when a customer builds along a territorial boundary, the utility with the closest lines may not be the utility in whose service area the customer built. Interim service may be necessary to provide service to such a customer quickly and efficiently. Interim service, however, must be temporary in nature. It must end at a time certain. As we stated in Order No. PSC-92-0415-FOF-EU,<sup>2</sup> "[o]ur concern is that 'interim service' will actually be provided indefinitely by one utility in the other utility's service territory on a virtually permanent basis outside of our purview, in violation of the intent of the Commission in approving the territorial agreement."

Section 3 of the amendment approved by us in Order No. 20817 recognizes that interim service may occasionally be necessary, and sets out the procedure the parties are to follow if such a need arises. This procedure includes notifying the Commission of all instances in which interim service is furnished. We find that if interim service is provided the utilities shall notify us and state how the boundary has temporarily changed. The notification should also include the date interim service was first connected and when it will end. The reports may be sent in letter format to the Bureau Chief of Fuel Procurement and Electric Safety in the

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<sup>2</sup> This order was issued May 27, 1992, in Docket No. 920135-EU - Review of interim service arrangement between Peace River Electric Cooperative, Inc. and Tampa Electric Company pursuant to their territorial agreement approved in Order No. 17585.

Division of Electric and Gas. The Commission staff will review these temporary service notifications, and if a problem arises, they shall bring it to our attention for resolution. These reports will enable the Commission to keep track of all instances of interim service to ensure that the service provided is truly interim in nature. The parties are reminded, however, that the Commission must approve all permanent territorial boundary changes before they occur. In the future, if either LCEC or FPL wishes to make a permanent boundary change, they must seek prior approval from the Commission.

The new territorial agreement provides that it shall go into effect only after approval has been obtained. By our approval, each utility will no longer be serving in the other's service territory. The adoption of the agreement will not result in the transfer of any customers or facilities. The new agreement will remain in effect until modified by us, on the petition of either utility, or on our own motion.

We believe that the new territorial agreement is in the public interest and that its adoption will further our policy of avoiding unnecessary and uneconomic duplication of facilities. Accordingly, we approve the new territorial agreement, with the condition that the parties shall inform the Commission of every instance in which interim service is provided to customers outside each utility's service territory. In addition, our approval is conditioned upon the parties seeking prior approval of any permanent change to their territorial boundary.

It is, therefore,

ORDERED by the Florida Public Service Commission that the territorial agreement submitted by Florida Power and Light Company and Lee County Electric Cooperative, Inc. is hereby approved. It is further

ORDERED the Florida Power and Light Company and Lee County Electric Cooperative, Inc. shall seek prior approval from the Florida Public Service Commission before making any permanent changes to their territorial boundary. It is further

ORDERED that Florida Power and Light Company and Lee County Electric Cooperative, Inc. shall notify the Florida Public Service Commission of any instances in which interim service is provided. It is further

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ORDERED that this Order shall become final and this docket shall be 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 10th day of May, 1993.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )  
MAH: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 June 1, 1993.

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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.

TERRITORIAL AGREEMENT  
BETWEEN  
FLORIDA POWER & LIGHT COMPANY  
AND  
LEE COUNTY ELECTRIC COOPERATIVE, INC.

Section 0.1 This is a Territorial Agreement made and entered into by and between LEE COUNTY ELECTRIC COOPERATIVE, INC., an electric cooperative organized and existing under the laws of the State of Florida (herein called the "COOPERATIVE"), and FLORIDA POWER & LIGHT COMPANY, a private corporation organized and existing under the laws of the State of Florida (herein called the "COMPANY"), for the express purpose of seeking an Order of the Florida Public Service Commission (Commission) adopting the following recommended Territorial Agreement;

Section 0.2 WHEREAS, the COOPERATIVE, by virtue of Florida Statutes, Chapter 425, and the Charter issued to it thereunder, is authorized and empowered to furnish electricity and power to its members, private individuals, corporations and others, as defined by the laws of Florida, and pursuant to such authority, presently furnishes electricity and power to members and customers in areas of Lee, Hendry, Charlotte, and Collier Counties, Florida; and

Section 0.3 WHEREAS, the COMPANY, by virtue of its Charter and the laws of Florida, is authorized and empowered to furnish electricity and power to persons, firms and corporations throughout the State of Florida and pursuant to such authority presently furnishes

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electricity and power to customers in areas of Lee, Hendry, Charlotte, and Collier Counties, Florida, and elsewhere; and

Section 0.4 WHEREAS, the COMPANY and the COOPERATIVE have a territorial boundary within Lee, Hendry, Charlotte, and Collier Counties along with terms and conditions relative thereto, established pursuant to Commission Order No. 3799, and later amended by Commission Order No. 20817; and

Section 0.5 WHEREAS, changes have occurred since Commission Order No. 3799 was entered and the COMPANY and the COOPERATIVE desire to amend the territorial boundary established by the Commission's previous orders to account for these changes, in order to further the Commission's policy of avoiding the uneconomic duplication of utility facilities and hazardous situations; and

Section 0.6 WHEREAS, the Commission is empowered by Section 366.04, Florida Statutes, to approve territorial agreements; and

Section 0.7 WHEREAS, the COMPANY and the COOPERATIVE through the below delineated Territorial Agreement seek, through Commission approval, to establish an amended Territorial boundary, and terms and conditions relative thereto;

Section 0.8 NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, the parties hereto, subject to the approval of the Commission, and subject to the terms and conditions herein set forth, do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Territorial Boundary Lines - As used herein, the term "Territorial Boundary Lines" shall mean boundary lines which delineate areas on the county maps attached hereto as Exhibit "A" and which differentiate and divide the Cooperative Territorial Area from the Company Territorial Area.

Section 1.2 Cooperative Territorial Area - As used herein, the term "Cooperative Territorial Area" shall mean the geographic area shown on Exhibit "A" labelled "Lee County Electric Co-Op."

Section 1.3 Company Territorial Area - As used herein, the term "Company Territorial Area" shall mean the geographic area shown on Exhibit "A" labelled "Florida Power & Light Company."



Section 1.4 End Use Facilities - As used herein, the term "End Use Facilities" shall mean a geographic location where the electric energy used by a customer is ultimately consumed.

ARTICLE II

AREA ALLOCATIONS

Section 2.1 Allocations - The Cooperative Territorial Area, as herein defined, is hereby allocated to the COOPERATIVE as its retail service area, and the Company Territorial Area, as herein defined, is hereby allocated to the COMPANY as its retail service area. The parties shall each have the right to provide retail electric service to all customers within their respective territorial area. Neither party shall hereafter serve or offer to serve a customer whose End Use Facilities are located in the territorial area of the other party except as provided in Section 2.2 below.

Section 2.2 Commission Order No. 20817 - The terms and conditions of the settlement in Docket No. 850129-EU, In Re: Petition of Lee County Electric Cooperative, Inc. to resolve a territorial dispute with Florida Power & Light Company, adopted by the Commission in Order No. 20817 as an amendment of the territorial agreement between the COMPANY and the COOPERATIVE are hereby incorporated by reference and are intended to remain in full force and effect.

Section 2.3 Bulk Power Supply for Resale - No provision of this Agreement shall be construed as applying to bulk power supply for resale, or to facilities dedicated to such bulk power supply.

### ARTICLE III

#### PREREQUISITE APPROVAL

Section 3.1 Regulatory Approval - The provisions of this Agreement are subject to the regulatory authority of the Commission whose approval shall be a prerequisite to the validity and applicability hereof. Neither party shall be bound hereunder until such approval has been obtained.

### ARTICLE IV

#### DURATION

Section 4.1 Duration - This Agreement shall continue and remain in effect until the Commission, by order, modifies or withdraws its approval of this Agreement after proper notice and hearing. Modification or withdrawal of the Commission's order of approval of this Agreement shall be based upon a finding that modification or withdrawal is necessary in the public interest because of changed conditions or other circumstances not present at the time this Agreement was approved by the Commission.

ARTICLE V

CONSTRUCTION OF AGREEMENT

Section 5.1 Intent and Interpretation - It is hereby declared to be the purpose and intent of this Agreement, in accordance with which all provisions of this Agreement shall be interpreted and constructed, to eliminate and avoid needless and wasteful expenditures, duplication of facilities and potentially hazardous situations, which would otherwise result from unrestrained competition, between the parties operating in overlapping service areas.

ARTICLE VI

MISCELLANEOUS

Section 6.1 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, signed by both parties, and approved by the Commission.

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Section 6.2 Prior Boundaries and Terms - The adoption of this Agreement by the Commission amends all previous territorial boundaries and terms and conditions relative thereto, established by the Commission for the COMPANY and the COOPERATIVE.

IN WITNESS WHEREOF, this Agreement has been caused to be executed in triplicate by the COOPERATIVE in its name by its Director and by the COMPANY in its name by its Vice President; and one of said triplicate copies has been delivered to each of the parties hereto.

LEE COUNTY ELECTRIC COOPERATIVE, INC.

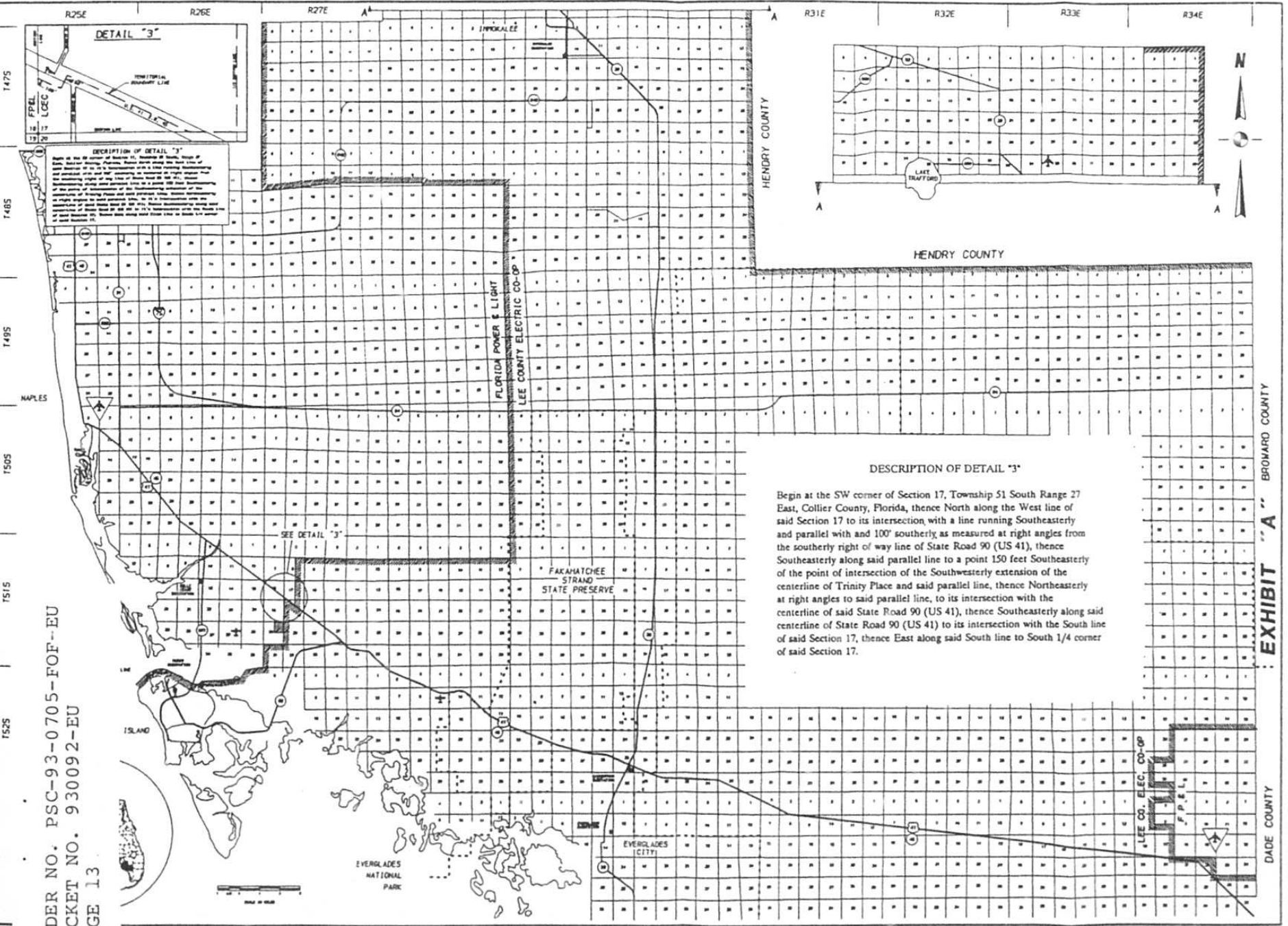
By: Scott Sidney  
Scott Sidney, Director

Date: \_\_\_\_\_

FLORIDA POWER & LIGHT COMPANY

By: W. W. Hamilton  
W. W. Hamilton, Vice President

Date: \_\_\_\_\_



**DETAIL "3"**

TERMINAL BOUNDARY LINE

F.P.E.L.  
 8-17-1968

**DESCRIPTION OF DETAIL "3"**

Begin at the SW corner of Section 17, Township 51 South Range 27 East, Collier County, Florida, thence North along the West line of said Section 17 to its intersection with a line running Southeastery and parallel with and 100' southerly as measured at right angles from the southerly right of way line of State Road 90 (US 41), thence Southeastery along said parallel line to a point 150 feet Southeastery of the point of intersection of the Southwesterly extension of the centerline of Trinity Place and said parallel line, thence Northeastery at right angles to said parallel line, to its intersection with the centerline of said State Road 90 (US 41), thence Southeastery along said centerline of State Road 90 (US 41) to its intersection with the South line of said Section 17, thence East along said South line to South 1/4 corner of said Section 17.

**DESCRIPTION OF DETAIL "3"**

Begin at the SW corner of Section 17, Township 51 South Range 27 East, Collier County, Florida, thence North along the West line of said Section 17 to its intersection with a line running Southeastery and parallel with and 100' southerly as measured at right angles from the southerly right of way line of State Road 90 (US 41), thence Southeastery along said parallel line to a point 150 feet Southeastery of the point of intersection of the Southwesterly extension of the centerline of Trinity Place and said parallel line, thence Northeastery at right angles to said parallel line, to its intersection with the centerline of said State Road 90 (US 41), thence Southeastery along said centerline of State Road 90 (US 41) to its intersection with the South line of said Section 17, thence East along said South line to South 1/4 corner of said Section 17.

EXHIBIT "A" BROWARD COUNTY  
 DADE COUNTY

R21E

R22E

R23E

R24E

R25E

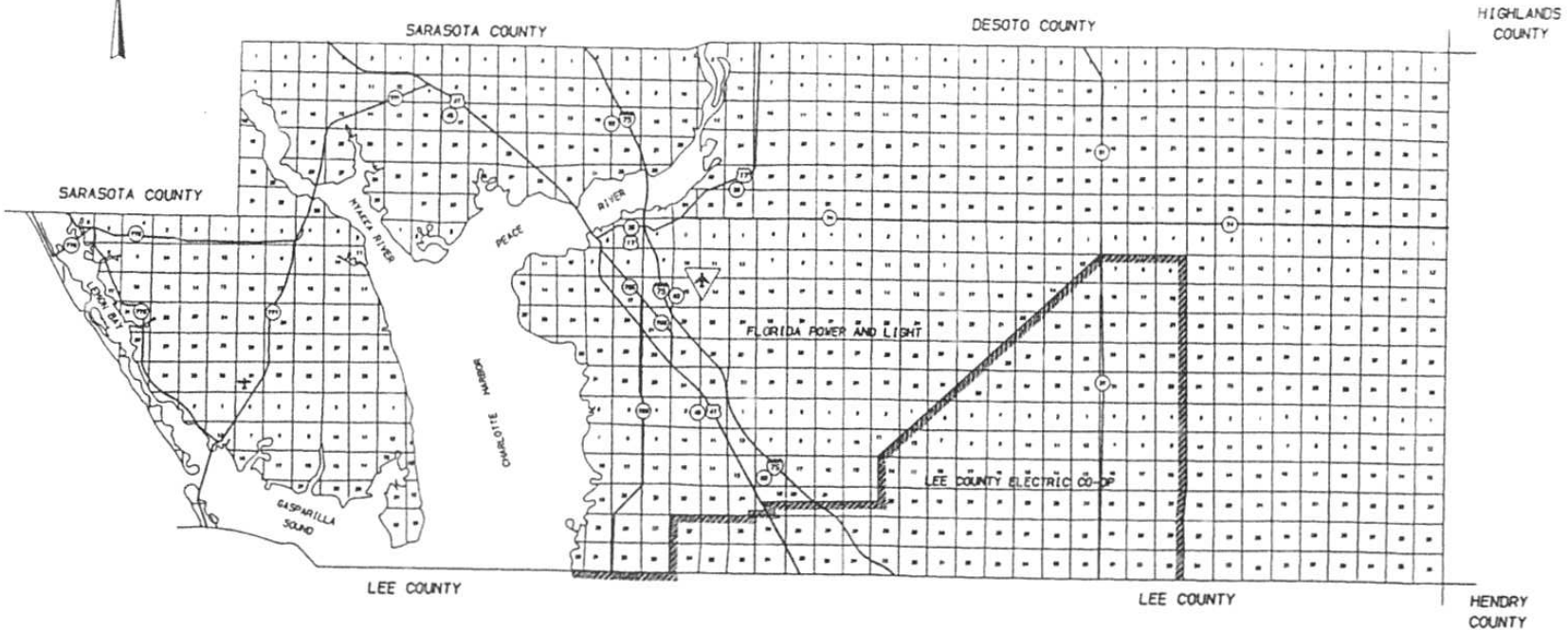
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R27E

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- U.S. HIGHWAY
- INTERSTATE HIGHWAY
- STATE HIGHWAY
- MUNICIPAL AIRPORT
- LANDING STRIP
- TERRITORIAL BOUNDARY LINE



EXHIBIT "A"

STATE OF FLORIDA  
PUBLIC SERVICE COMMISSION  
DATE: 11/11/93  
BY: [Signature]  
P.S. No. 930092-EU



