

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition for Approval)
of Territorial Agreement.) DOCKET NO:
Florida Power Corporation, a)
regulated utility, and Reedy Creek)
Improvement District,)
a special district under the laws)
of the State of Florida)
Submitted for Filing:

JOINT PETITION FOR
APPROVAL OF AMENDMENT TO TERRITORIAL AGREEMENT

Florida Power Corporation ("FPC") and Reedy Creek Improvement District ("RCID") jointly petition the Commission for approval of an amendment to a territorial agreement dated January 7, 1994 ("the Amendment"), entered into by and between FPC and RCID, and in support thereof, say:

1. FPC and RCID are Commission-regulated electric utilities. FPC's principal place of business is located in St. Petersburg, Florida and RCID's principal place of business is located in Lake Buena Vista, Florida.

2. All notices and pleadings in this matter should be served upon the following:

FOR FLORIDA POWER CORPORATION

Joseph H. Richardson
General Counsel
Florida Power Corporation
Post Office Box 14042
St. Petersburg, Florida 33733

Charles F. Reischmann
Corporate Counsel
Florida Power Corporation
Post Office Box 14042
St. Petersburg, Florida 33733

DOCUMENT NUMBER-DATE

00603 JAN 19 94

FPSC-RECORDS/REPORTING

FOR REEDY CREEK IMPROVEMENT DISTRICT

Thomas Moses
Administrator
Reedy Creek Improvement District
Post Office Box 10170
Lake Buena Vista, Florida
32830-0170

Lee G. Schmudde
Counsel for Reedy Creek
Improvement District
Post Office Box 10170
Lake Buena Vista, Florida
32830-0170

3. On January 7, 1993, FPC and RCID entered into an Amendment in an effort to more accurately define the parties' respective service areas which are contiguous in many places. Such Amendment provides expressly that it is contingent upon the subsequent approval of the Florida Public Service Commission and deannexation of the affected areas by RCID. The parties have previously entered into territorial agreements in an effort to minimize costs to their respective customers by avoiding unnecessary duplication of generation, transmission, and distribution facilities. The dates on which the parties entered into these territorial agreements, the dates on which the Commission previously approved the territorial agreements and the Docket Numbers and Order Numbers associated with this agreement are listed below:

<u>Name of Utility</u> <u>Agreement</u>	<u>Date of</u> <u>Agreement</u>	<u>Order</u> <u>Docket #</u>	<u>Approval</u> <u>Number</u>	<u>Date</u> <u>Date</u>	<u>Date</u> <u>Expires</u>
Reedy Creek Improvement District	9/10/87	870963-EU	18225	9/30/87	9/30/2017

4. The Amendment addressed in this petition likewise represents the continued effort by the parties to minimize costs to their respective customers by avoiding unnecessary duplications of generation, transmission and distribution facilities. Toward that

end, the parties have established the territorial boundary line described in the Amendment to delineate their respective retail territorial areas, subject to the approval of the Commission.

5. The Commission is authorized by Section 366.04(2)(d), Fla. Stat., to approve and enforce territorial agreements by and between electric utilities. The Commission has promulgated Fla. Admin. Code Rule 25-6.0440 to implement this authority. The Commission has often recognized the wisdom of such agreements, and has held that such agreements, when properly presented to the Commission, are advisable in proper circumstances, and, indeed, in the public interest.

6. Certain areas presently contained within the boundaries of the Reedy Creek Improvement District will soon be deannexed by RCID. FPC and RCID have discussed the provision of service to these areas and have reached tentative agreement, again subject to the approval of this Commission, as to which of the two utilities would be the most appropriate to serve the areas in question. Attached hereto as Exhibit No. 1 is a copy of the Amendment dated January 7, 1994, which embodies the tentative agreement reached between the parties.

Effect on Existing Customers

7. Attached to the Amendment as Composite Exhibit A are maps defining the territorial boundaries which the parties seek to have the Commission approve in this proceeding. No existing customers will be affected by this amendment to the territorial boundaries of FPC and RCID.


Effect on Service


9. There is no reasonable likelihood that the Amendment will cause a decrease in the reliability of electric service to the existing or future ratepayers of FPC or RCID. The parties believe the provisions of the tentative Amendment will help avoid future uneconomic duplications of facilities and prevent disputes and uncertainties.

10. Both parties believe that Commission approval of the Amendment would be consistent with the criteria set forth in Section 366.04 of Fla. Stat., and would complement the objectives of assuring an adequate and reliable source of energy in Florida and avoiding uneconomic duplications of generation, transmission and distribution facilities.

WHEREFORE, FPC and RCID urge that the Commission enter its order approving the Amendment attached hereto as Exhibit No. 1.

DATED this 18th day of January, 1994.


Charles F. Reischmann
Corporate Counsel
Florida Power Corporation
Post Office Box 14042
St. Petersburg, FL 33733


Lee G. Schmudde
Counsel for Reedy Creek
Improvement District
Post Office Box 10170
Lake Buena Vista, FL 32830-0170

AMENDMENT TO AGREEMENT

Section 0.1 THIS AMENDED AGREEMENT is made and entered into this 18th day of January, ¹⁹⁹⁴~~1993~~ by and between the REEDY CREEK IMPROVEMENT DISTRICT, a special district organized and existing under the laws of the State of Florida (the "DISTRICT"), and FLORIDA POWER CORPORATION, (the "COMPANY") a corporation organized and existing under the laws of the State of Florida:

W I T N E S S E T H:

Section 0.2 WHEREAS, the DISTRICT by virtue of legislative authority, is authorized and empowered to furnish electricity and power to individuals, corporations, and others, and pursuant to such authority, presently furnishes electricity and power to customers located in certain areas of Orange County, Florida and Osceola County, Florida; and

Section 0.3 WHEREAS, the COMPANY, 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 Orange County, 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 Amended 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 Orange County; 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 0.8 WHEREAS, in order to accomplish these goals, DISTRICT and COMPANY have previously entered into a territorial agreement dated September 10, 1987 and approved by the Florida Public Service Commission on September 30, 1987 in Order No. 18225, and;

Section 0.9 WHEREAS, changing circumstances warrant certain modifications to the service areas defined in the previous Agreement between the Parties and the Parties believe that an amendment to the prior Agreement defining these new areas and

otherwise adopting the terms of the prior Agreement would be desirable; and

Section 0.10 WHEREAS, the Parties have agreed to execute this Amended Agreement on this date but have further agreed to seek Commission approval only after the area which is the subject of this Amendment has been deannexed by the DISTRICT in accordance with the rules and procedures of the DISTRICT and all other applicable laws; and

Section 0.11 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 map attached hereto as Exhibit A designating the boundary between the DISTRICT Territorial Area, as defined in Section 1.2 and the COMPANY Territorial Area, as defined in Section 1.3.

Section 1.2 DISTRICT Territorial Area. As used herein, the term "DISTRICT Territorial Area" shall mean the area so labeled on Exhibit A.

Section 1.3 COMPANY Territorial Area. As used herein, the term "COMPANY Territorial Area" shall mean the area so labeled on Exhibit A.

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 Amended 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 Amended Agreement at a point of use in the territorial area of either party which has not previously been served by either utility.

Section 1.8 Existing Customer. As used herein, the term "Existing Customer" shall mean any person receiving retail electric service from either DISTRICT or COMPANY at the location for which the service is existent on the effective date of this Amended Agreement. The term "Existing Customer" shall include the widow, widower, or divorced spouse of an Existing Customer who received retail electric service at the same location as of the effective date of this Amended Agreement. No Existing Customers will be

affected by the change in Territorial Boundary Lines affected by this Amended Agreement.

ARTICLE II

RETAIL ELECTRIC SERVICE

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

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 Amended Agreement as approved by the Commission, and shall notify the other party of such request or application.

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 Amended Agreement shall be construed as applying to a bulk power supply for resale purposes as defined in the Final Judgment (attached as Exhibit C).

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.

ARTICLE V

PREREQUISITE APPROVAL

Section 5.1 Commission Approval. The provisions and the Parties' performance of this Amended Agreement are subject to the regulatory authority of the Commission, and appropriate approval by that body of the provisions of this Amended Agreement shall be an absolute condition precedent to the validity, enforceability and applicability hereof. In addition to the preconditions set forth in Article VI below, this Amended 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 Amended Agreement shall be deemed to be the effective date of this Amended Agreement. Any proposed modification to this Amended 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 Amended Agreement or the Parties' performance of this Amended Agreement.

Section 5.2 Liability in the Event of Disapproval. In the event approval pursuant to Section 5.1 is not obtained, neither party shall have any claim against the other arising under this Amended Agreement and the terms of the prior Agreement shall remain in full force and effect without Amendment.

ARTICLE VI

DURATION

Section 6.1 This Amended Agreement shall only become effective upon final deannexation of Area "B" (as shown on Exhibit B) from the DISTRICT as required by its Charter and applicable general law. If the Amended Agreement becomes effective following deannexation, the prior Agreement as amended herein shall continue and remain in effect for the same period as designated in the prior Agreement between the Parties dated September 10, 1987. Nothing in this Amended Agreement shall be construed to require the DISTRICT to act to deannex Area "B" (as shown on Exhibit B) as such governmental action is reserved in the sole discretion of the DISTRICT Board of Supervisors. If such deannexation is not lawfully completed on or before January 1, 1995, this Amendment to Agreement shall be deemed canceled and of no legal effect. Therefore, the Agreement dated September 10, 1987, shall remain in full force and effect without Amendment and for the duration contained therein.

ARTICLE VII

CONSTRUCTION OF AMENDED AGREEMENT

Section 7.1 Other Electric Utilities. Nothing in this Amended 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 Amended 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 Amended Agreement, the only ones agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Amended 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 8.1 Successors and Assigns. Nothing in this Amended 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 Amended 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 the DISTRICT if mailed by certified mail, postage prepaid, to Thomas M. Moses, Administrator, P.O. Box 10,170, Lake Buena Vista, Florida 32830-0170, and to the COMPANY if mailed by certified mail, postage prepaid, to: President, Florida Power Corporation, P.O. 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 Amended 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:

REEDY CREEK IMPROVEMENT DISTRICT
Thomas Blum
President of the Board of Supervisors

BY [Signature]
Secretary
(SEAL)

ATTEST:

FLORIDA POWER CORPORATION
[Signature]
Executive Vice President

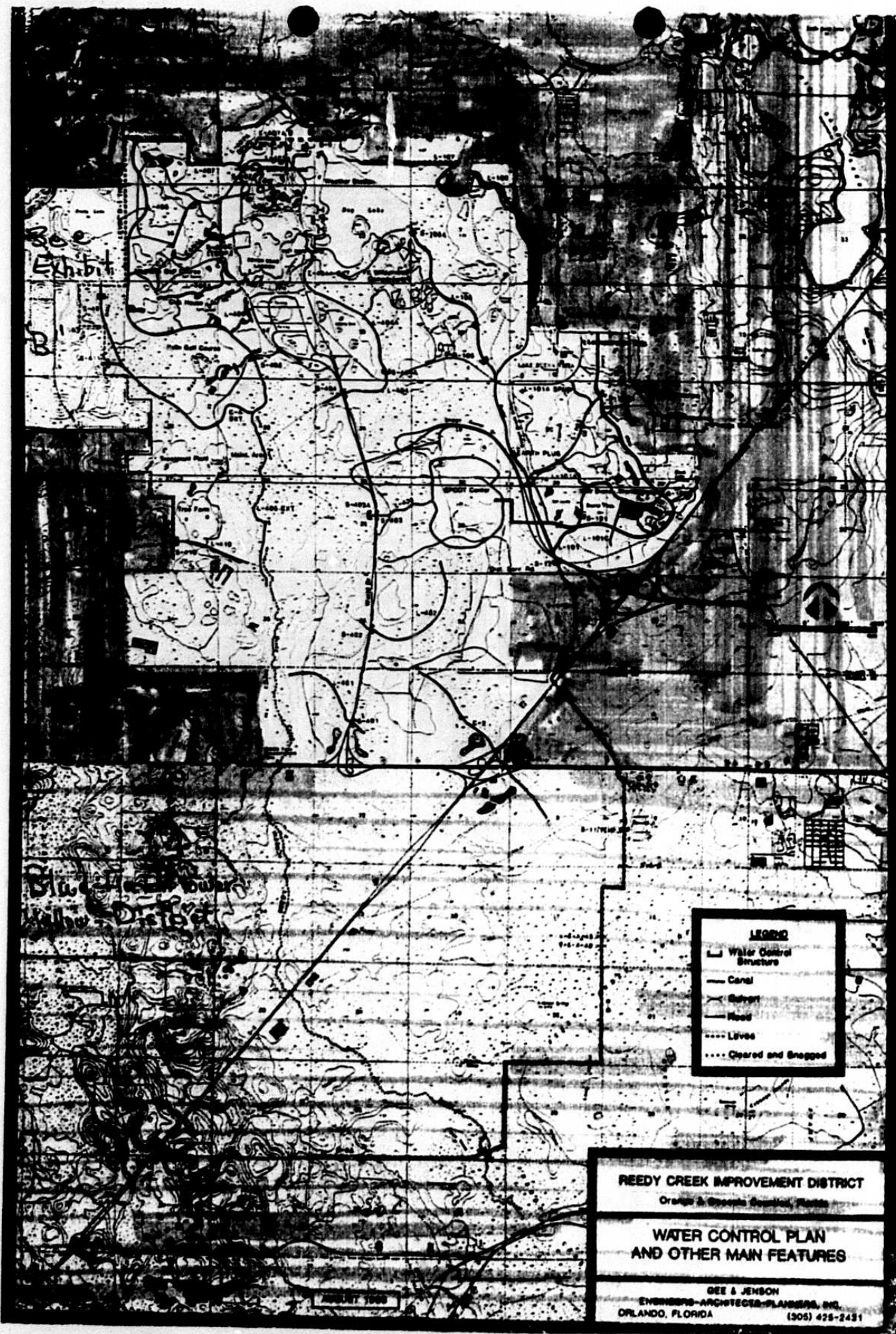
BY [Signature]
Assistant Secretary
(SEAL)

APPROVED AS TO FORM:

By: [Signature]
Legal Counsel to COMPANY

EXHIBIT A

COMPOSITE MAPS



LEGEND

- Water Control Structure
- Canal
- Culvert
- Road
- Levee
- Cleared and Graded

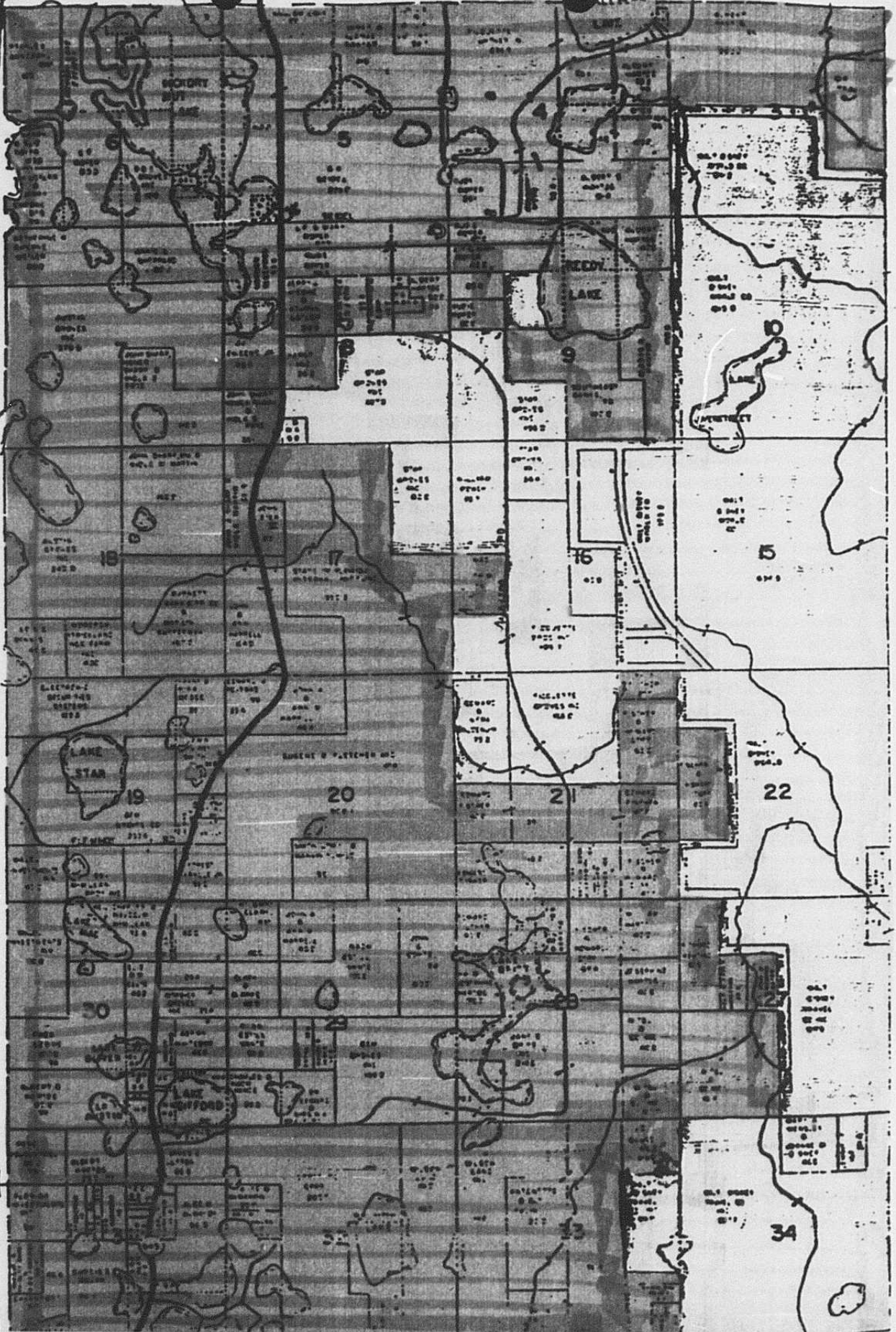
REEDY CREEK IMPROVEMENT DISTRICT
 Orange & Brevard Counties, Florida

**WATER CONTROL PLAN
 AND OTHER MAIN FEATURES**

GEE & JENSON
 ENGINEERS-ARCHITECTS-PLANNERS, INC.
 ORLANDO, FLORIDA (305) 428-2431

AUGUST, 1969

LAKE CO.



w-District
 e-Florida
 Power

LAKE

EXHIBIT B

AREA TO BE DEANNEXED

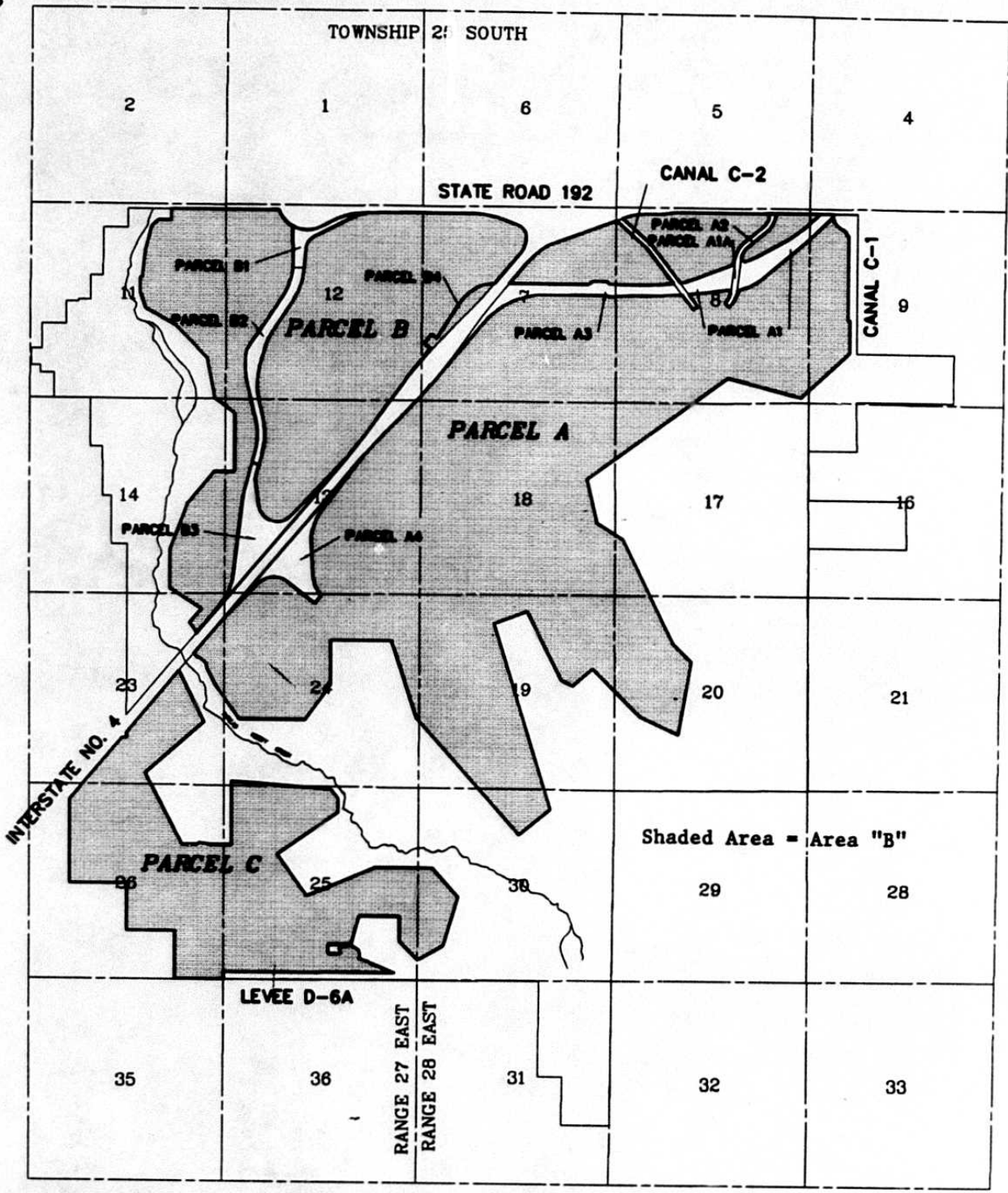


EXHIBIT B
THIS IS NOT A SURVEY



Walt Disney World Co.
Facility Services
 Architecture and Facilities Engineering
ARC001160 LS2004 00 0003004
 P.O. Box 152000 Lake Buena Vista Florida 32816-1500 (407) 820-2271
 2425 Vista Boulevard, Lake Buena Vista, Florida

PROJECT AREA	O. M. D.	DATE:	11/09/93
UNIT NAME	CELEBRATION	SCALE	1" = 4000'
SHEET TITLE	LEGAL DESCRIPTION	DRAWN BY:	JLG
COMMENTS	OVERALL PARCEL MAP	FILENAME:	00JG9233

EXHIBIT C

FINAL JUDGMENT

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 1 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 remeter 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.