

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint petition for) DOCKET NO. 940947-EU
approval of territorial) ORDER NO. PSC-94-1397-FOF-EU
agreement between TAMPA ELECTRIC) ISSUED: November 16, 1994
COMPANY and SUMTER ELECTRIC)
COOPERATIVE, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION

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

On September 6, 1994, Tampa Electric Company (TECO) and Sumter Electric Cooperative, Inc. (Sumter) filed a Joint Petition for Approval of a Territorial Agreement. The parties are not presently bound by a territorial agreement and are attempting to delineate their respective service areas in portions of Lake, Polk and Sumter counties. The agreement creates a line of separation between the two utilities along the Sumter-Polk county line and the Lake-Polk county line. A copy of the TECO and Sumter Territorial Agreement is attached to this Order.

The parties have confirmed that neither TECO nor Sumter will have any electric facilities providing retail service to customers located in the other utility's territory as defined by the agreement. In addition, no existing customers or electrical facilities will be subject to transfer upon approval of the agreement.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Section 2.2 of the agreement states that neither utility will attempt to serve or knowingly serve any customer whose end-use facilities are located within the territorial area of the other utility, except in the case of exceptional circumstances, economic constraints, or good engineering practices and upon written request. While the agreement states that the parties will submit each request for interim service to the Commission for approval prior to providing either temporary end use or small discrete area service, we hold that TECO and Sumter must only request formal Commission approval of interim service that lasts or is expected to last for more than one year.

The parties have also agreed, in Section 4.1, that they will file annual reports on or before March 31 to the Commission indicating the status of this agreement and any proposed modifications. Again we hold that annual reports are not necessary in this case. Annual reports are generally only needed when territorial agreements contemplate transfers of customer accounts and electrical facilities. This agreement does not propose any type of transfer.

Section 2.3 of the agreement is framed to preserve Sumter's tax exempt status. Section 501 of the Internal Revenue Code states that a cooperative cannot generate more than 15% of its revenues from the provision of electric service to non-members and still maintain its tax exempt status. In the event a Sumter customer does not elect to join the cooperative, and Sumter determines that by providing service to the customer it would jeopardize its tax status, Sumter has reserved the right to refuse service and granted the right to provide service to TECO. While it is unlikely that this situation will occur, we want to ensure that there will be no permanent service variances without Commission supervision. Therefore, if Sumter and TECO find it necessary to exercise this provision, they shall jointly seek approval from the Commission when that service provided under Section 2.3 lasts or is expected to last for more than one year.

The Territorial Agreement will remain in effect for a period of 25 years from the date of Commission approval. The agreement will also be automatically renewed for additional 15 year periods unless either party gives notice two years prior to the expiration of any fifteen year period. However, each such renewal requires prerequisite approval by the Commission.

We believe that the territorial agreement is in the public interest and that its adoption will further our desire to avoid unnecessary and uneconomic duplication of electric facilities.

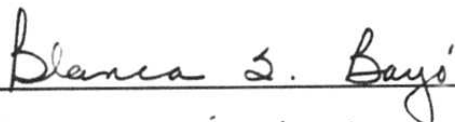
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It is, therefore,

ORDERED by the Florida Public Service Commission that the Joint Petition for Approval of Territorial Agreement between Tampa Electric Company and Sumter Electric Cooperative, Inc. is approved. It is further

ORDERED that this Order shall become final and this docket shall be closed unless an appropriate petition for formal proceedings 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 16th day of November, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MCB

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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 7, 1994.

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 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.

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ATTACHMENT

TERRITORIAL AGREEMENT
BETWEEN
SUMTER ELECTRIC COOPERATIVE, INC.
AND
TAMPA ELECTRIC COMPANY

AGREEMENT

Section 0.1 THIS AGREEMENT, made and entered into this 16th day of May, 1994, by and between SUMTER ELECTRIC COOPERATIVE, INC., a Florida Electric Cooperative (herein called "SECO"), and TAMPA ELECTRIC COMPANY, a private corporation, organized and existing under the laws of the State of Florida (herein called "TEC"). Collectively, SECO and TEC will herein be called the "Parties". Upon approval by the Florida Public Service Commission, this Agreement specifically shall supersede any prior Agreements between the parties defining the boundaries of their respective retail service territories.

WITNESSETH:

Section 0.2 WHEREAS, TEC, by virtue of its Charter, is authorized, empowered and by Florida law is obligated to furnish electricity and power to persons, firms and corporations within its service area and presently furnishes retail electric service to Customers in all of Hillsborough County and in areas of Pinellas, Pasco, and Polk Counties, and elsewhere in the State of Florida; and

Section 0.3 WHEREAS, SECO, by virtue of its Charter, is authorized and empowered and by Florida law is obligated to furnish electricity and power to persons, firms and corporations within its service area and presently furnishes electricity and power in several counties of Florida, including areas of Sumter

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and Lake Counties; and

Section 0.4 WHEREAS, the respective areas in which the parties provide retail service are contiguous where Lake and Sumter Counties join the Polk County line which will result in substantial duplication in the future of generation, transmission and distribution facilities and cause higher costs to the general body of ratepayers; and

Section 0.5 WHEREAS, the Florida Public Service Commission has previously recognized that any such duplication of said facilities results in needless and wasteful expenditures and may create hazardous situations, both being detrimental to the public interest; and

Section 0.6 WHEREAS, the parties hereto, in an effort to minimize costs to the general body of their ratepayers, desire to avoid and eliminate the circumstances giving rise to potential duplications and possible hazards and toward that end have established the Territorial Boundary Line to delineate their respective retail Territorial Service Areas, and

Section 0.7 WHEREAS, the Florida Public Service Commission is empowered by the Legislature of the State of Florida, pursuant to Section 366.04(2)(d), Florida Statutes, to approve and enforce territorial agreements and the Commission

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has recognized on numerous occasions the wisdom of retail territorial agreements between electric utilities and has held that retail territorial agreements, when properly presented to and appropriately supervised by the Commission, in proper circumstances, are advisable and, indeed, in the public interest;

Section 0.8 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 line which circumscribes areas on the map and legal description attached hereto as Composite Exhibit "A" and which differentiates and divides the TEC Territorial Area from the SECO Territorial Area in which TEC and SECO provide retail electric service to their respective Customers. None of the territory assigned to TEC shall be served by SECO and none of the territory assigned to SECO shall be served by TEC except as specifically provided herein.

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Section 1.2 TEC Territorial Area. As used herein, the term "TEC" Territorial Area shall mean the geographic area shown on Composite Exhibit "A" and designated "TEC" Territorial Area.

Section 1.3 SECO Territorial Area. As used herein, the term "SECO" Territorial Area shall mean the geographic area shown on Composite Exhibit "A" and designated "SECO" Territorial Area.

Section 1.4 Transmission Lines. As used herein, the term "Transmission Lines" shall mean all transmission lines of either Party having a rating of 69 kV or greater.

Section 1.5 Distribution Lines. As used herein, the term "Distribution Lines" shall mean all distribution lines of either Party having a rating up to, but not including, 69 kV.

Section 1.6 New Customers. As used herein, the term "New Customers" shall mean all retail electric consumers applying for service to either TEC or SECO after the effective date of this Agreement.

Section 1.7 Existing Customers. As used herein, the term "Existing Customers" shall mean all retail electric consumers receiving service on or before the effective date of this Agreement from either Party.

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ARTICLE II
AREA ALLOCATIONS AND NEW CUSTOMERS
Territorial Questions

Section 2.1 Allocations. The TEC Territorial Area, as herein defined, will be allocated to TEC as its retail service area for the period of time hereinafter specified; and the SECO Territorial Area, as herein defined, will be allocated to SECO as its retail service area for the same period and, except as otherwise specifically provided herein, neither Party shall sell electricity to any retail Customer where such electricity serves the retail Customer's end use facility and such facility is located within the other Party's service area.

Section 2.2 Service to New Customers. TEC and SECO agree that neither supplier will attempt to serve or knowingly serve any applicant whose end use facilities are located within the service territory of the other.

TEC and SECO recognize that in exceptional circumstances, economic constraints on either utility or good engineering practices may on occasion 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,

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the other utility may agree in writing to provide service to such Customer's temporary end use, small discrete service areas and future retail Customers. Such agreements shall be submitted to the Florida Public Service Commission in accordance with ARTICLE IV, Section 4.1 hereof.

In the event that a prospective applicant requests or applies for service from either supplier to be provided to end use facilities located in the territory reserved to the other supplier, then the supplier receiving such a request or application shall refer the prospective applicant or applicants to the other supplier, with citation to the Commission approved Territorial Agreement, and shall notify the other supplier of the request or application.

If the prospective applicant delivers a written application for service after being referred to the other utility, or continues to demand service under an application made prior to a referral to the other utility, the utility receiving the request shall immediately notify the other utility and both utilities shall notify the applicant of their intent to file a Joint Petition for Declaratory Statement requesting the Commission to enforce the Territorial Agreement as it relates to the facts presented. The utility receiving the applicant's request shall not provide electric service or attempt to provide

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electric service to the applicant unless the Commission authorizes the service in an Order binding both suppliers.

Section 2.3 Preservation of Tax Status. Notwithstanding the provisions of Section 2.2 above, it is understood that SECO must furnish its service mainly to its members in order to preserve its tax status. Therefore, unless the proposed recipient of electric service will join SECO, SECO may decline to provide electric service, when in the judgment of SECO, the income produced thereby would exceed the percentage of gross income which SECO may accept from non-members and maintain its tax status. If SECO refuses to serve a Customer pursuant to this section, TEC shall have the right, but not the obligation to provide electric service to any such Customer, if requested by the Customer or by SECO.

Section 2.4 Purchase of Facilities. In the event of temporary end use Customers, small discrete Customer service areas, or future retail Customers are served by the utility outside the service territory in which such Customers are located in accordance with Section 2.2 hereof, each Party shall sell (at original cost less accumulated book depreciation at the time of the transfer) the distribution facilities used to serve Customers at the time they are transferred in accordance with this Agreement.

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Section 2.5 Bulk Power Supply for Resale. Nothing herein shall be construed to prevent either Party from providing bulk power to supply to other electric utilities for resale purposes wheresoever such other electric utilities may be located. Further, no other provision of this Agreement shall be construed as applying to bulk power supply for resale.

ARTICLE III
OPERATION AND MAINTENANCE

Section 3.1 Facilities to Remain. Except as provided herein, all generating plants, transmission lines, substations, distribution lines and related facilities now or hereafter constructed and/or used by either Party in conjunction with their respective electric utility systems, and which are directly or indirectly used and are useful in service to customers in their respective service areas or in fulfilling the requirements of law shall be allowed to remain where situated and shall not be subject to removal or transfer hereunder; provided, however, that each Party shall operate and maintain said lines and facilities in such a manner as to minimize any interference with the operations of the other Party. Nothing contained herein shall be construed to apply to the Parties' facilities or locations thereof except as such facilities relate to providing retail service to the Parties' Customers in their respective service territories.

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ARTICLE IV
PREREQUISITE APPROVAL

Section 4.1 Florida Public Service Commission. The provisions of this Agreement are subject to the regulatory authority of the Florida Public Service Commission, and appropriate approval by that body of the provisions of this Agreement shall be a prerequisite to the validity and applicability hereof and neither Party shall be bound hereunder until that approval has been obtained. Any proposed modifications to this Agreement shall be submitted to the Florida Public Service Commission for approval. The parties shall file an annual report to the Florida Public Service Commission on or before March 31st of each year beginning March 31, 1995, and shall file such other information and reports as required by the Commission from time to time. Such report shall provide the status of this Agreement and any modifications proposed in this Agreement. In addition, the parties agree to jointly petition the Florida Public Service Commission to resolve any disputes concerning the provisions of this Agreement which the parties are unable to resolve.

Section 4.2 Liability in the Event of Disapproval. In the event approval pursuant to Section 4.1 is not obtained, neither Party will have any cause of action against the other

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arising under this document or on account of such non-attainment
of approval.

ARTICLE V
DURATION

Section 5.1 This Agreement shall continue and remain in effect for a period of twenty-five (25) years from the date of the Florida Public Service Commission's initial Order approving this Agreement, and shall be automatically renewed for additional fifteen (15) year periods unless either Party gives written notice to the other of its intent not to renew at least two (2) years prior to the expiration of any fifteen (15) year period. Each such renewal of this Agreement shall require prerequisite approval of the Florida Public Service Commission as required by ARTICLE IV hereof.

ARTICLE VI
CONSTRUCTION OF AGREEMENT

Section 6.1 Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to eliminate and avoid the needless and wasteful expenditures and potentially hazardous situations, which would otherwise result. The purpose of this Agreement, among other things, is to further this state's policy of supervising the planning, development, and maintenance of a coordinated electric

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power grid throughout Florida; to avoid uneconomic duplication of generation transmission and distribution facilities; and to encourage the installation and maintenance of facilities necessary to fulfil the utilities' obligation to serve.

ARTICLE VII
MISCELLANEOUS

Section 7.1 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 and hereto attached and signed by both parties hereto and approved by the Florida Public Service Commission in accordance with ARTICLE IV, Section 4.1 hereof.

Section 7.2 Successors and Assigns. Nothing in this 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 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.

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Section 7.3 Notices. Notices given hereunder shall be deemed to have been given to TEC if mailed by Certified Mail, postage prepaid, to: Vice President Customer Services/Marketing, Tampa Electric Company, P.O. Box 111, Tampa, FL 33601-0111; and to SECO if mailed by Certified Mail, postage prepaid, to: General Manager, Sumter Electric Cooperative, Inc., P.O. Box 301, Sumterville, Florida 33585-0301. 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 hereto have caused this Agreement to be executed in quadruplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

ATTEST:

By: [Signature]
W. L. "Bud" Hodges
As Its Secretary-Treasurer

SUMTER ELECTRIC COOPERATIVE, INC.

By: [Signature]
Elmer E. Webb
As Its President

(CORPORATE SEAL)

ATTEST:

By: [Signature]
Name: R. E. Kesse
As Its Secretary

TAMPA ELECTRIC COMPANY

By: [Signature]
Name: W.T. Snyder, Jr.
As Its Vice President-
Customer Services and Marketing

(CORPORATE SEAL)

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APPROVED AS TO FORM AND
LEGAL ~~TECO~~ LEGAL

APPROVED FOR
BY *[Signature]*
~~Legal Counsel to Tampa~~
Electric Company

BY *[Signature]*
Legal Counsel to Sumter
Electric Cooperative, Inc.

APPROVED: Order No. _____
Florida Public Service Commission
Date

LEGAL DESCRIPTION OF TERRITORIAL AGREEMENT
BETWEEN
SUMTER ELECTRIC COOPERATIVE, INC. AND TAMPA ELECTRIC COMPANY

Commence at the intersection of the West boundary of Section 18, Township 25 South, Range 23 East, and the centerline of the Withlacoochee River, said intersection being the common corner between Polk County, Florida, Sumter County, Florida, and Pasco County, Florida, for the POINT OF BEGINNING of the following described line; thence Easterly on the centerline of the Withlacoochee River to the East boundary of the aforementioned Township 25 South, Range 23 East, said line being the boundary between Polk County, Florida, and Sumter County, Florida; thence Northerly on said Easterly boundary of Township 25 South, Range 23 East, said Easterly boundary being a common boundary between Sumter County, Florida and Polk County, Florida, to the Northwest corner of Township 25 South, Range 24 East, said corner being the common corner between Sumter County, Florida, Polk County, Florida, and Lake County, Florida; thence proceed Easterly on the Northerly boundary of Township 25 South, Range 24 East, to the Northeast corner thereof, said Northeast corner, being also known as the Southwest corner of Section 31, Township 24 South, Range 25 East, Polk County, Florida; thence proceed on the Westerly boundary of said Section 31, Township 24 South, Range 25 East, to the Northwest corner of said Section 31; thence proceed on the Northerly boundary of said Section 31 and the Northerly boundary of Sections 32, 33, and 34, Township 24 South, Range 25 East, the same being the common boundary between Polk County, Florida, and Lake County, Florida, to the Northeast corner of said Section 34, Township 24 South, Range 25 East; thence proceed on the Easterly boundary of said Section 34 to the Southeast corner of said Section 34; thence Easterly on the Northerly boundary of Sections 2 and 1, Township 25 South, Range 25 East and the Northerly boundary of Section 6, Township 25 South, Range 26 East, the same being the common boundary between Polk County, Florida, and Lake County, Florida to the Northeast corner of said Section 6 and the POINT OF TERMINUS.

