

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (904) 681-6788
TELECOPIER (904) 681-6515

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

July 10, 1995

VIA HAND DELIVERY

ORIGINAL
FILE COPY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 110
Tallahassee, Florida 32399-0850

RE: Docket No. **950307-EU**

Dear Ms. Bayo:

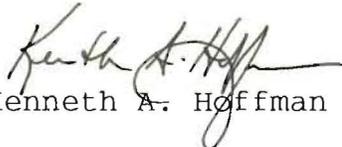
Enclosed for filing in this docket on behalf of Jacksonville Electric Authority are an original and fifteen copies of the pre-filed direct testimony and exhibits of the following persons:

- 06521-95** 1. Sheldon R. Ferdman, 24 pages of testimony and Exhibits SRF-1 through SRF-4;
- 06522-95** 2. Mike Brost, 21 pages of testimony and Exhibits MB-1 through MB-6;
- 06523-95** 3. P.G. Para, 4 pages of testimony.

Please acknowledge receipt and filing of these documents by date stamping the enclosed copy of this letter and returning to the undersigned.

Thank you for your assistance with this filing.

Sincerely,


Kenneth A. Hoffman

KAH/sp
cc: Bruce Page, Esq.

RECEIVED & FILED


FPSC-BUREAU OF RECORDS

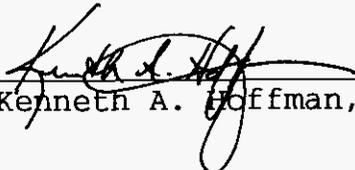
ACK
AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EPP Bozo
LEG 1
LIV orig 4 3
ORC _____
RCH _____
SEC 1
WAS _____
OTH _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing testimony and exhibits was furnished by hand delivery on this 10th day of July, 1995 to the following:

Mark Logan, Esq.
Bryant, Miller & Olive, P.A.
201 South Monroe Street
Suite 500
Tallahassee, Florida 32301

Beth Culpepper, Esq.
Florida Public Service Commission
Division of Legal Services
2540 Shumard Boulevard
Tallahassee, FL 32399-0850



Kenneth A. Hoffman, Esquire

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ORIGINAL
FILE COPY

PREFILED DIRECT TESTIMONY
OF
SHELDON R. FERDMAN
ON BEHALF OF
JACKSONVILLE ELECTRIC AUTHORITY
DOCKET NO. 950307-EU

DOCUMENT NUMBER-DATE
06521 JUL 10 82
FPSC-RECORDS/REPORTING

1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is Sheldon R. Ferdman. My business address
3 is 21 West Church Street, Jacksonville, Florida
4 32202.

5 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?

6 A. I am employed by the Jacksonville Electric
7 Authority ("JEA"). I currently serve in the
8 position of Director of Utility System Contracts.

9 Q. PLEASE PROVIDE YOUR EDUCATIONAL BACKGROUND.

10 A. I am a 1970 graduate of the University of Florida
11 with a Bachelor of Science degree in electrical
12 engineering. In 1984, I received a Masters in
13 Business Administration degree from the University
14 of North Florida. I am also a registered
15 Professional Engineer in the State of Florida.

16 Q. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND,
17 POSITIONS AND DUTIES WITH THE JEA.

18 A. I began my career with the JEA in 1970, serving for
19 approximately ten years in various capacities in
20 the design, system protection, and supervision of
21 JEA's Distribution System. Subsequently, for the
22 period April 1, 1980 through October 1, 1989 (9 1/2
23 years), I served as JEA's Director of System
24 Engineering having responsibility for all
25 engineering activities associated with JEA's

1 Transmission, Substation and Distribution systems
2 and improvements. Following my tenure as Director
3 of System Engineering, on October 1, 1989, I was
4 promoted to my current position of Director of
5 Utility System Contracts. As Director of System
6 Utility Contracts, I am responsible for development
7 of JEA's contractual arrangements related to
8 interchange service, power purchases, transmission
9 service, franchise agreements and territorial
10 agreements. All such agreements ultimately must be
11 submitted to and approved by the JEA Board of
12 Directors. In addition, I am responsible for the
13 purchase of real property, joint venture contracts
14 and customer contracts.

15 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA**
16 **PUBLIC SERVICE COMMISSION ("FPSC")?**

17 A. Yes, I testified before the FPSC on behalf of the
18 Florida Municipal Electric Association in Docket
19 No. 890833-EU in the FPSC's investigation into the
20 cost effectiveness of undergrounding electric
21 utility lines. I also have testified before the
22 FPSC on behalf of JEA in Docket No. 911141-EU which
23 involved a territorial dispute between JEA and
24 Okefenokee Rural Electric Membership Corporation
25 and in Docket No. 910816-EQ concerning Nassau Power

1 Corporation's petition for a need determination
2 from the FPSC for a cogeneration plant on Amelia
3 Island, Florida.

4 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS DOCKET?**

5 A. I am testifying on behalf of the JEA.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A. The purpose of my testimony can be divided into
8 four parts.

9 1) First, I will generally describe the JEA,
10 the areas where it provides service, and existing
11 territorial agreements concerning the provision of
12 service.

13 2) Second, I will explain the history of
14 territorial agreements between JEA and Florida
15 Power & Light Company ("FPL").

16 3) Third, I will explain the current
17 territorial agreement between JEA and FPL and the
18 parties' course of conduct under the current
19 agreement.

20 4) Fourth, I will provide JEA's positions on
21 certain preliminary issues outlined by the
22 Commission Staff concerning this dispute.

23 **Q. PLEASE DESCRIBE THE JEA.**

24 A. The JEA is the eighth largest municipally owned
25 electric utility in the United States. JEA's

1 predecessor, the City of Jacksonville Department of
2 Electric Utilities, first began meeting the needs
3 of the citizens of Jacksonville in 1895 lighting
4 the streets of downtown Jacksonville. By Special
5 Act of the Legislature, effective October 1, 1968,
6 the City of Jacksonville and Duval County were
7 consolidated and the Jacksonville Electric
8 Authority was created. Today, the JEA serves in
9 excess of 300,000 retail customers in Duval, Clay
10 and St. Johns Counties and two wholesale customers
11 in Duval and Nassau Counties.

12 **Q. PLEASE EXPLAIN THE HISTORY OF JEA'S TERRITORIAL**
13 **AGREEMENTS WITH FPL?**

14 **A.** The earliest known written territorial agreement
15 between JEA and FPL was actually between the City
16 of Jacksonville and FPL in an agreement dated March
17 19, 1963 (the "1963 Agreement") and approved by the
18 FPSC on April 28, 1965. A copy of the 1963
19 Agreement (which includes a territorial boundary
20 map) and Florida Public Utilities Commission Order
21 No. 3799 approving the territorial boundary line in
22 the 1963 Agreement are attached to my testimony as
23 Composite Exhibit _____ (SRF-1).

24 **Q. PLEASE DISCUSS THE PERTINENT POINTS CONCERNING THE**
25 **1963 AGREEMENT AS THEY RELATE TO THIS PROCEEDING?**

1 A. I believe there are three important points to be
2 made concerning the 1963 Agreement. First, the
3 1963 Agreement established a territorial boundary
4 line between JEA and FPL which remains the same
5 today under the 1979 Agreement which I will discuss
6 later in my testimony. Secondly, with respect to
7 St. Johns County, a good portion of the territorial
8 line in St. Johns County runs along the center line
9 of County Road 210. I have personally observed the
10 birthmarks on some of FPL's poles situated on the
11 north side of County Road 210 (JEA's territory) and
12 can confirm that FPL owned and operated electric
13 distribution facilities on the north side of County
14 Road 210 prior to the time when FPL agreed that the
15 north side of County Road 210 should be allocated
16 to JEA in the 1963 Agreement. Third, the general
17 area along County Road 210 and adjacent to the
18 territorial line established in the 1963 Agreement
19 was sparsely populated at that time, rural in
20 nature, with electric service being provided to
21 approximately 400 customers over an 18 square mile
22 area.

23 **Q. IS THE 1963 AGREEMENT THE CURRENT AGREEMENT BETWEEN**
24 **JEA AND FPL?**

1 A. No, the current territorial agreement between JEA
2 and FPL was executed on April 13, 1979 (the "1979
3 Agreement") and approved by the FPSC on May 9,
4 1980. A copy of the 1979 Agreement (which includes
5 a territorial boundary map) and FPSC Order No. 9363
6 approving the 1979 Agreement are attached to my
7 testimony as Composite Exhibit _____ (SRF-2).

8 **Q. IS THERE ANY DIFFERENCE BETWEEN THE 1963 AGREEMENT**
9 **AND 1979 AGREEMENT WITH RESPECT TO EACH UTILITY'S**
10 **SERVICE TERRITORY?**

11 A. No, the 1979 Agreement reaffirmed the territorial
12 boundary line in the 1963 Agreement. The actual
13 territory to be served by JEA and FPL in the 1963
14 Agreement and the 1979 Agreement is identical.

15 **Q. ARE THERE ANY OTHER MAPS THAT SPECIFY THE**
16 **TERRITORIAL BOUNDARY LINE MORE CLEARLY?**

17 A. Yes. I have attached as Composite Exhibit _____
18 (SRF-3) three full size Florida Department of
19 Transportation maps provided to me in October 28,
20 1981 by Mr. J. K. Daniels, FPL's Manager of Inter-
21 Utility Affairs at that time. The originals of
22 these maps contain the territorial line as
23 confirmed by Mr. Daniels of FPL with FPL territory
24 behind the blue line and JEA territory behind the
25 red line. These colors have been duplicated along

1 the same territorial lines on the copies of the
2 three maps filed in this case. As stated in Mr.
3 Daniel's letter to me, the maps were provided
4 following a meeting between Mr. Daniels and myself
5 as to FPL's understanding of the JEA-FPL
6 territorial boundary in the 1979 Agreement. Mr.
7 Daniels also indicated in the October 28th letter
8 that these maps would be provided to the FPSC, I
9 believe in response to a request made by the FPSC.
10 For further ease of reference, I also have attached
11 as Exhibit _____ (SRF-4) a colored map prepared by
12 the JEA on June 27, 1995 which shows: (1) the
13 JEA/FPL boundary line in St. Johns County; (2)
14 the general location of FPL's facilities in areas
15 along and adjacent to that line; (3) the general
16 location of JEA's facilities in areas along and
17 adjacent to the line; and (4) the general location
18 and number of customers served by FPL in JEA's
19 territory.

20 **Q. PLEASE ELABORATE ON WHAT YOU BELIEVE TO BE THE**
21 **IMPORTANT POINTS CONCERNING THE 1979 AGREEMENT AS**
22 **THEY RELATE TO THIS PROCEEDING?**

23 **A.** First and foremost, the purpose of the 1979
24 Agreement was to reaffirm the territorial boundary
25 line adopted in the 1963 Agreement and to reaffirm

1 that this particular territorial line had proven to
2 be and would continue to be beneficial to the two
3 utilities and their respective customers by
4 eliminating undesirable duplication of facilities
5 (Sections 0.2 and 0.3).

6 Secondly, between the time of execution and
7 regulatory approval of the 1963 Agreement and the
8 time of execution and FPSC approval of the 1979
9 Agreement, minimal growth had occurred along and in
10 areas contiguous to County Road 210 in St. Johns
11 County.

12 Third, documents and maps provided to me by
13 FPL confirm that FPL constructed and installed
14 additional electric distribution facilities in
15 JEA's territory following the execution and
16 approval of the 1963 Agreement in order to provide
17 service to a relatively few and geographically
18 scattered number of customers situated in JEA's
19 territory. FPL agreed to the (same) territorial
20 line in St. Johns County despite the increased
21 presence of FPL's facilities and the limited amount
22 of JEA facilities in what was reaffirmed as JEA's
23 territory.

24 Fourth, Article III of the 1979 Agreement
25 governs the specific rights and obligations of JEA

1 and FPL pertaining to service territory.
2 Specifically, Section 3.1 states that the area
3 located within the boundary line on the map
4 attached to the 1979 Agreement (see Composite
5 Exhibit ___ (SRF-2)) is reserved to the AUTHORITY
6 (JEA). Section 3.2 goes on to state that FPL "will
7 not serve or offer to serve new customers" outside
8 the territory reserved for JEA, and similarly,
9 Section 3.3 states that JEA "will not serve or
10 offer to serve new customers" outside the territory
11 reserved for JEA. Finally, Section 3.4 allows
12 either utility, upon determination of good
13 engineering practice or economic constraints, the
14 option of requesting the other utility to serve
15 customers not in the other utility's territory.

16 **Q. DOES JEA VIEW THIS OPTION UNDER SECTION 3.4 AS AN**
17 **"INTERIM" OR "TEMPORARY" SERVICE ARRANGEMENT OR**
18 **AGREEMENT?**

19 **A.** Yes. Although Section 3.4 is not labeled as an
20 "interim service" or "temporary service" provision,
21 JEA views the provision as an "interim service"
22 or "temporary service" provision and I believe that
23 the conduct of both FPL and JEA in implementing
24 Section 3.4 of the 1979 Agreement has been
25 consistent with JEA's interpretation. It is

1 important to note that while the substantive
2 components of interim service have remained
3 constant over the 15 to 20 years, the specificity
4 associated with contractual interim service
5 provisions has increased over that same period of
6 time.

7 **Q. CAN YOU GIVE AN EXAMPLE?**

8 A. Yes, the example most familiar to me involves a
9 comparison between Section 3.4 of the 1979
10 Agreement and Section 2.3 of the existing
11 territorial agreement between JEA and Clay Electric
12 Cooperative approved by the FPSC by Order No. PSC-
13 92-1208-FOF-EU issued October 26, 1992.
14 Section 3.4 of the 1979 Agreement between JEA and
15 FPL states:

16 The parties recognize that in
17 specific instances, good engineering
18 practices or economic constraints
19 may indicate that individual retail
20 customers not be served by the other
21 party in whose territory they are
22 located. In such instances, either
23 COMPANY (FPL) or AUTHORITY (JEA) may
24 request the other party to provide
25 service, however the parties agree

1 that it is not nor should it be
2 construed to be their intent to
3 cause any violation or any breach of
4 any contract or covenant that either
5 party may currently have with any
6 third party or parties. Such
7 departures from the constraints of
8 this Agreement shall be subject to
9 the mutual concurrence of the
10 parties on a specific case basis.

11 Section 2.3 of the JEA-Clay Electric Cooperative
12 agreement provides:

13 Section 2.3 Interim Service - Where a
14 Party, entitled to serve a New Customer
15 pursuant to Section 2.2 above, believes
16 that the extension of its facilities to
17 such New Customer would be more
18 appropriate or compatible with its
19 operational requirements and plans at a
20 future time, the Party may, in its
21 discretion, request the other Party to
22 provide service to the New Customer on an
23 interim basis. Such request shall be
24 made in writing and the other Party shall
25 promptly notify the requesting Party if

1 it will accept or decline the
2 request. If such request is
3 accepted, the Party providing
4 interim service shall be deemed to
5 do so only on behalf of the
6 requesting Party, who shall remain
7 entitled to serve the New Customer
8 to the same extent as if it had
9 provided service in the first
10 instance. At such time as the
11 requesting Party elects to begin
12 providing service directly to the
13 New Customer, after reasonable
14 written notice to the other Party,
15 such other Party shall cease
16 providing interim service and,
17 thereafter, service shall be
18 furnished to the New Customer in
19 accordance with Section 2.1 and 2.2
20 above.

21 Although the JEA-Clay provision is certainly
22 more detailed than the JEA-FPL provision in the
23 1979 Agreement, both provisions contain each of the
24 following four characteristics essential to an
25 interim/temporary service provision:

1 First, under both provisions, the obligation
2 to provide service remains with the requesting
3 utility both before and after the interim/temporary
4 service request is made and accepted.

5 Second, under both provisions, the utility to
6 whom a request for interim/temporary service is
7 made is free to accept or reject the request. In
8 other words, as stated above, the obligation to
9 serve lies with the requesting utility whether or
10 not interim/temporary service is provided in the
11 requesting utility's territory by the other
12 utility.

13 Third, both provisions recognize that
14 interim/temporary service by the other utility in
15 the requesting utility's territory is appropriate
16 where good engineering practices, operational
17 requirements or current economic constraints make
18 it preferable for the requesting utility to request
19 interim/temporary service from the other utility.

20 Fourth, under both provisions, a request by
21 the requesting utility to the other utility to
22 provide interim/temporary service does not result
23 in a change in the territorial boundary between the
24 two utilities nor in the requesting utility's
25 obligation to serve new customers thereafter.

1 Q. ARE YOU AWARE OF MORE RECENT FPSC DECISIONS WHICH
2 REFLECT A FURTHER REFINEMENT BY THE FPSC OF INTERIM
3 SERVICE PROVISIONS?

4 A. Yes, on May 16, 1995, in a case involving the JEA,
5 FPL and Okefenokee Rural Electric Membership
6 Corporation, the FPSC approved a territorial
7 settlement agreement which included the following
8 Temporary Service Provision.

9 Section 1.8 Temporary Service - The
10 parties recognize that in exceptional
11 circumstances, economic constraints or
12 good engineering practices may indicate
13 that a customer's end use facilities
14 either cannot or should not be
15 immediately served by the party in whose
16 territorial area they are located. In
17 such situations, upon written request by
18 the party in whose territorial area the
19 end use facilities are located, to the
20 other party, the other party may agree in
21 writing to temporarily provide service to
22 such customer. If such temporary service
23 lasts, or is expected to last for more
24 than one year, the parties will seek

1 formal approval of the service from
2 t h e
3 Commission.

4 The FPSC also decided to modify Section 3.4 of
5 the 1979 Agreement on a prospective basis
6 consistent with the above Temporary Service
7 Provision thereby requiring JEA and FPL to notify
8 the Commission and seek approval of all future
9 instances where service provided pursuant to
10 Section 3.4 lasts or is expected to last for more
11 than one year.

12 **Q. HAVE JEA AND FPL CONSISTENTLY TREATED SERVICE**
13 **PURSUANT TO SECTION 3.4 OF THE 1979 AGREEMENT AS**
14 **INTERIM OR TEMPORARY SERVICE?**

15 **A.** Absolutely. The Commission should bear in mind
16 that the 1979 Agreement created two classes of
17 customers served or subject to being served by FPL
18 in JEA's territory. The first category of
19 customers were customers taking service from FPL in
20 JEA's territory prior to April 13, 1979, the date
21 of the 1979 Agreement (see Section 3.2). These so-
22 called "grandfathered" customers and service
23 locations remained with FPL after the 1979
24 Agreement was approved by the FPSC and FPL
25 maintained the right and obligation to serve these

1 customers. The second category of customers are
2 JEA customers provided interim/temporary service by
3 FPL at the request of JEA pursuant to Section 3.4.
4 There are currently approximately 220 such
5 customers provided service by FPL in JEA's
6 territory. I know of no instance where FPL has
7 taken the position that FPL service to a non-
8 grandfathered customer or service location in JEA's
9 territory constituted "permanent service" by FPL.
10 It has always been understood that Section 3.4
11 service by FPL to non-grandfathered customers in
12 JEA's territory was interim or temporary service.
13 However, as Mr. Brost indicates in his testimony,
14 recent disputes with FPL over service issues in St.
15 Johns County necessitated JEA to reinstitute
16 documentation of all such temporary service
17 requests by use of a letter the contents of which
18 were determined by JEA and FPL to be mutually
19 acceptable.

20 **Q. WHAT IS THE GEOGRAPHICAL DESCRIPTION OF THE**
21 **DISPUTED AREA?**

22 **A.** This question highlights the uniqueness of this
23 dispute. To my knowledge, territorial disputes
24 resolved by this Commission typically involve a
25 situation where two utilities wish to provide

1 service to a specific location, area or customer.
2 As a consequence, the Commission traditionally has
3 been faced with instances where one or both
4 utilities have engaged in a "race to serve" a
5 customer, location or geographic area. Based on my
6 understanding of prior Commission orders, the
7 Commission takes a dim view on such conduct by a
8 utility.

9 This dispute is different. Neither party is
10 embroiled in a race to serve any specific customer.
11 This case is, in essence, a request by JEA for
12 enforcement of the 1979 Agreement which currently
13 governs the service rights and obligations of JEA.
14 In other words, pursuant to the 1979 Agreement, JEA
15 believes that it has the right and obligation to
16 provide service to the FPL customers who were
17 temporarily released to FPL after the 1979
18 Agreement was approved by the FPSC and the right to
19 serve new customers and install facilities for
20 purposes of service reliability in its Commission
21 approved territory without having to cross FPL
22 lines and engage in unsafe, uneconomic duplication
23 of facilities. That being the case, it is
24 difficult to pinpoint "the geographical description
25 of the area in dispute." However, I can say that

1 based on the relief JEA has requested in its
2 Petition, the dispute centers on those portions of
3 JEA's FPSC approved territory where FPL has built
4 distribution lines and currently provides service
5 to approximately 400 customers within an 18 square
6 mile area. These portions of JEA's territory are
7 depicted on the map attached to my testimony as
8 Exhibit ____ (SRF-4).

9 **Q. WHAT IS THE NATURE OF THE DISPUTED AREA?**

10 A. Again, using my definition of the disputed area
11 discussed above, the disputed area is rural in
12 nature comprised of primarily single family and
13 mobile home residences with growth of approximately
14 300 customers over the last 30 years, a growth rate
15 of about 10 customers per year. Access to the area
16 by means of County Road 210 is critical to JEA's
17 ability to cost effectively serve this territory.
18 County Road 210 provides the only public right-of-
19 way for miles through the disputed area and
20 therefore, it is essential that JEA retain the
21 right to construct facilities along it. Further,
22 since the area is so sparsely developed, i.e., 22
23 customers per square mile compared with 360 per
24 square mile for JEA system wide, continued
25 compliance with and enforcement of the FPSC

1 approved boundary is important in order to avoid
2 uneconomic use of private right-of-way or unsafe
3 line crossings.

4 **Q. WHICH UTILITY HAS HISTORICALLY SERVED IN THE**
5 **VICINITY OF THE DISPUTED AREA?**

6 A. Both FPL and JEA have historically served in the
7 disputed area since 1963, although FPL has served
8 the majority of the customers in the area.
9 Information provided to me by FPL indicates that
10 FPL provided service in the disputed area prior to
11 1963, while JEA's service in the western portion
12 predates 1963 and service to the central portion
13 began in August of 1976. During the period 1963 to
14 the present, JEA and FPL have worked together to
15 provide cost effective service to our respective
16 customers through good engineering practices and by
17 avoiding unnecessary duplication. With the growth
18 and increased demand for reliable electric service
19 north of the disputed area, it is both timely and
20 good engineering practice for JEA to build the
21 planned lines along County Road 210 to effect
22 adequate and reliable electric service to its
23 customers and to begin serving all of its customers
24 along the southern boundary of JEA's territory.

1 Q. HAS UNNECESSARY AND UNECONOMIC DUPLICATION OF
2 ELECTRIC FACILITIES TAKEN PLACE IN THE VICINITY OF
3 THE DISPUTED AREA OR IN OTHER AREAS OF POTENTIAL
4 DISPUTE BETWEEN THE PARTIES?

5 A. This issue again raises what I believe to be the
6 very unique nature of this case. The answer is
7 that no such unnecessary and uneconomic duplication
8 of electric facilities has taken place. As I
9 previously have stated, JEA and FPL worked together
10 using the same territorial line in St. Johns County
11 for approximately 30 years (from 1963 to 1993) to
12 ensure that unnecessary and uneconomic duplication
13 of facilities was avoided consistent with Section
14 3.4 of the 1979 Agreement. As explained by Mr.
15 Brost in his direct testimony, it was only within
16 the last year that JEA began to encounter
17 disagreements with FPL over JEA's right to
18 construct facilities necessary to provide service
19 to new customers and provide reliability in the
20 form of redundancy to both existing and new
21 customers in JEA's territory under the 1979
22 Agreement. The end result of the disagreements
23 between JEA and FPL was that FPL sought to use the
24 presence of its pre-1979 facilities and post-1979
25 interim/temporary service facilities to force JEA

1 to engage in unnecessary and uneconomic duplication
2 of FPL's facilities in order for JEA to exercise
3 its right and obligation to provide permanent
4 service and service redundancy and reliability in
5 its own territory. This is the very type of
6 behavior proscribed by Chapter 366, Florida
7 Statutes, and which the 1979 Agreement was intended
8 to prevent. JEA refused to engage in such actions
9 and chose, instead, to file the Petition which
10 initiated this case.

11 **Q. WHAT WOULD BE THE COST TO JEA IF IT WERE NOT**
12 **PERMITTED TO SERVE THE AREA IN DISPUTE?**

13 **A.** It is difficult to quantify the specific costs to
14 JEA's ratepayers if JEA is blocked from access to
15 County Road 210. Purchases of private rights-of-
16 way necessary to provide the same degree of
17 reliability JEA typically plans for and provides to
18 its customers could cost millions of dollars. In
19 addition, the inability to serve new JEA customers
20 along County Road 210 reduces JEA's opportunities
21 to cost effectively utilize its investments in
22 substation and transmission facilities built to
23 support service to the disputed area.

1 Q. WHAT WOULD BE THE EFFECT ON EACH UTILITY'S
2 RATEPAYERS IF IT IS NOT AWARDED THE
3 DISPUTED AREA.

4 A. As stated in my answer to the previous questions,
5 the effects on JEA's ratepayers are higher costs
6 and delays in providing improvements to service
7 reliability due to the need to purchase private
8 rights-of-way.

9 Q. DO YOU HAVE ANY CONCLUDING REMARKS?

10 A. Yes. The JEA is asking the FPSC to require FPL to
11 comply with the existing 1979 Agreement. The
12 territorial boundary line in St. Johns County
13 established by JEA and FPL and approved by the FPSC
14 has worked well for over 30 years. No material
15 changes in circumstances have occurred since
16 approval of the 1979 Agreement which would justify
17 a different territorial line between the two
18 utilities in St. Johns County. No less important,
19 the FPSC should not permit FPL to use its long-
20 standing silence and acquiescence in JEA's requests
21 for interim/temporary service over a period of
22 approximately 15 years as an affirmative tool to
23 permanently modify the existing territorial line.
24 Such a decision would effectively penalize JEA for
25 its consistent compliance with the "good

1 engineering practices" provision of the 1979
2 Agreement and would, as previously discussed, have
3 an unanticipated adverse impact on JEA's
4 ratepayers. Such should not be the result of
5 consistent compliance with a Commission approved
6 territorial agreement.

7 **Q. WHAT ACTION SHOULD THE FPSC TAKE IN THIS DOCKET?**

8 **A.** JEA believes that the facts in this case support
9 the conclusion that the best interests of the
10 ratepayers of both utilities would be served by an
11 order:

12 (1) Requiring FPL to relocate its existing
13 electric facilities situated in JEA's service
14 territory (north of County Road 210) to FPL's
15 service territory (south of County Road 210) with
16 the reasonable costs of relocation borne by JEA;

17 (2) Requiring FPL to transfer to JEA those
18 FPL customers temporarily released by JEA without
19 compensation to FPL;

20 (3) Requiring FPL to continue to serve
21 existing customers that FPL was serving prior to
22 the 1979 Agreement, but require FPL to provide such
23 service through JEA facilities; and

24 (4) Requiring FPL to negotiate an agreement
25 with JEA addressing compensation to JEA for the use

1 of its facilities and the release of the service
2 location to JEA upon termination of service by the
3 customer taking service from the pre-1979 Agreement
4 service location.

5 Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

6 A. Yes, it does.

7

8

AGREEMENT made this 19th day of March, 1963, by

and between the City of Jacksonville, Florida, a Florida municipal corporation, hereinafter called "City," party of the first part, and Florida Power & Light Company, a Florida corporation, hereinafter called "Company," party of the second part,

W I T N E S S E T H:

WHEREAS, the City and the Company entered into an agreement dated January 20, 1959, for the interchange of electric energy and

WHEREAS, the City and Company desire to increase the capacity for the interchange of such energy,

NOW, THEREFORE, in consideration of mutual promises herein contained, the parties represent and agree as follows:

ARTICLE I. CONSTRUCTION AND MODIFICATION OF FACILITIES

- A. The City shall supply at its cost and expense and thereafter own terminal equipment at Robinwood Acres Substation including an interconnecting auto-transformer. The auto-transformer shall be designed for and have a capacity of (1) 200,000 kva when the interconnection is operated at 230,000 volts, and (2) 100,000 kva when the interconnection is operated at 115,000 volts. The auto-transformer will be furnished and installed with load tap changing equipment.

FOR A CITY SOLICITOR
[Handwritten signature]
CITY SOLICITOR

- B. The City shall purchase and install at its cost and expense and thereafter own additions to its frequency and tie line control equipment. The said additions, together with equipment now installed, will serve to control the net interchange of power between the City and Company over the existing and new interconnections.
- C. The City shall purchase and install at its cost and expense and thereafter own metering equipment that will record the kilowatt and reactive power flow over the interconnection line at Robinwood Acres Substation. The new metering equipment, plus that now installed shall record net interchange over the two interconnections between the Company and the City. Details of the installation shall be determined by mutual agreement.
- D. The City shall construct at its cost and expense and thereafter own a 600 MCM copper equivalent 230 kv line from Robinwood Acres to the territorial boundary.
- E. The Company shall construct at its cost and expense and thereafter own a 600 MCM copper equivalent 230 kv line from the territorial boundary to the terminal facilities at the Palatka Generating Station.

- F. The Company shall purchase and install at its cost and expense and thereafter own terminal equipment at the Palatka Generating Station.
- G. The location where the 230 kv line crosses the territorial boundary shall be determined by mutual agreement.
- H. The construction work described above shall be scheduled for completion on or before July 15, 1964. Initial operation shall be at 115,000 volts. The schedule for future conversion to 230,000 volt operation shall be subject to mutual agreement.
- I. The City will make available to the Company space for telemetering and associated equipment as may be desirable or necessary for proper operation of the interconnections.
- J. In order to strengthen the interconnections, the City will construct and place in operation two 138 kv lines between its proposed new generating station and Robinwood Acres Substation. It will also construct and place in operation one 138 kv line between its proposed new generating station and Lane Avenue Substation. All three lines will have a conductor size equivalent to 600 MCM copper, minimum. The plant and new lines are scheduled for service during the latter part of 1965.

- K. The City shall incorporate in its planning provision for future extension of the 230,000 volt interconnection from Robinwood Acres Substation to its proposed new generating station. Present expenditures will be limited to the acquisition of right-of-way for the line. Actual construction of the line is contemplated (but cannot be guaranteed until funds are available therefor) when capacity of the new generating station is increased to a capability that will justify the greater transmission capacity. (After January 1967.)
- L. The City shall incorporate in its planning provision for a 230,000 volt line out of its new generating station to connect to that part of the Florida Power & Light Company system west of the City. Present expenditures will be limited to the acquisition of right-of-way paralleling the original lines serving the new generating station. Actual construction of the line will be subject to future agreement. (After January 1967.)
- M. Studies will be made by the Company and City regarding the possibilities and attractiveness of increasing the capacity of the present interconnection at Lane Avenue Substation up to the thermal limit of the overhead line. Actual changes will be the subject of future agreement.

N. The Company, at its option, shall supply at its cost and expense and thereafter own, operate and maintain such facilities as are necessary to connect the Company's system to the City's Fernandina 69 kv line, at a location to be determined by mutual agreement in the area where the City's line crosses the territorial boundary at the Nassau River. The location, ownership and control of the necessary metering, telemetering, protective relaying, frequency and tie line control equipment shall be determined by mutual agreement. If this interconnection is constructed, this agreement and its provisions shall be applicable thereto and power to be supplied over this interconnection shall be subject to the provisions of Article IV of this agreement and metering and billing with respect to this interconnection shall be subject to the provisions of Article III of this agreement.

ARTICLE II. OWNERSHIP OF FACILITIES

Upon completion of the construction, reconstruction and relocation work outlined in the preceding article, the ownership of facilities will be as follows:

A. Existing Interconnection to Starke

1. The City will own all facilities east of the east line of Section 27, Township 2 South, Range 24 East, except

the telemetering equipment and associated carrier transmitter set, wave trap and coupling capacitor used for telemetering at Lane Avenue Substation.

2. The Company will own all facilities west of the east line of Section 27, Township 2 South, Range 24 East, and will also own the telemetering and its associated equipment at Lane Avenue Substation as outlined in Paragraph A1, above.

B. Interconnection from Robinwood Acres to Palatka

1. The City will own all facilities north of the territorial boundary, except such facilities as may be installed by the Company at Robinwood Acres for telemetering.
2. The Company will own all facilities south of the territorial boundary, and will also own any telemetering facilities installed by the Company at Robinwood Acres Substation.

ARTICLE III. METERING AND BILLING

Power delivered by either party to the other shall be metered at interconnection voltage at the City's Lane Avenue and Robinwood Acres Substations. The metered quantities shall be totaled to obtain net interchange for the period. The detailed design of the metering equipment and accessories shall be approved by the City and Company.

The City shall read the meters at such intervals of time as shall be mutually agreed upon and the Company shall have the right of access to said substation at any reasonable time for the purpose of reading the said meters for check purposes. The testing of all interconnection meters shall be done by the City at regular stated intervals and the Company shall have the right of witnessing and verifying the accuracy of such tests.

Meters shall be read at midnight on the last day of each month, and the recording kw demand and reactive kva demand records shall be assembled for billing purposes. Immediately thereafter the City shall advise the Company in writing as to the said readings and records. Invoices for electricity transferred over said interconnection during the month ending with the said reading shall be presented to the parties receiving said electricity on or before the tenth day of the following month. Said invoices shall be paid within ten (10) days after presentation.

ARTICLE IV. POWER TO BE SUPPLIED

Notwithstanding that the interconnections herein provided for are being made primarily for the purpose of transferring emergency power from one party to the other, the parties

recognize that either party may for reasons of its own, desire to furnish and transmit power to the other party even though no emergency or breakdown has occurred on the other party's system. The power flow between the parties therefore shall be divided into three classes as follows:

A. Emergency or Temporary Power

In the event of failure of equipment on the system of either party or due to temporary loads either party shall desire power from the other party, said other party shall furnish the same within the limitations of its existing facilities, if the furnishing of such power shall not jeopardize the service and reliability of its own loads. The party requiring such power shall notify the other party of its requirements, stating the amount of power required, and the period during which such power will be needed. The party receiving such request for power shall determine if such power can be made available without jeopardizing the service of its own system and, if such power can be made available, shall advise the party making such request that the said power will be made available during the period specified in the request.

Such power flow between the parties shall be considered emergency or temporary power, and shall be paid for on the following basis:

1. Daily Capacity Charge: For each calendar day during which the said power is used, there shall be paid to the party furnishing such power a daily capacity charge of five cents (\$0.05) per kilowatt of the greatest average demand for any even clock hour period of said day, which unit of measurement is hereby designated as a kilowatt day. For the purpose of determining the said charge, however, the average demand for any even clock hour period shall be taken and considered to be the average draft of power in that period, measured in kilowatts, provided, however, that any demand caused by inadvertent interchange shall not be considered in determining the said average demand.

Whenever the power factor during the hour of greatest average demand is less than 80% lagging, the greatest average demand shall be determined by multiplying the average kilovolt amperes during such demand period by 0.8.

2. Energy Charge: For energy associated with emergency or temporary power, the party receiving such power shall pay at the rate of five and one-quarter mills (\$0.00525) per kilowatt hour.

The foregoing energy charge is based on a fuel cost of two dollars (\$2.00) per barrel of forty-two (42) gallons of fuel oil (having an average heat value of approximately 150,000 Btu per gallon) delivered at the Jacksonville and Palatka plants of the parties respectively. When natural gas is used for fuel, 6,600 cubic feet of gas as measured and billed at the power plants shall be considered the equivalent of one barrel of fuel oil. In the event that either party shall pay more or less for such delivered fuel than the aforesaid base price, then an adjustment shall be made in the said energy charge of a quarter mill (\$0.00025) per kilowatt hour for each full ten cent (\$0.10) increase or decrease from the said price of fuel oil, said adjustment being added to the cost per kilowatt hour in the case of an increase and subtracted from the cost per kilowatt hour in the event of a decrease in said delivered fuel cost from the said base price. The average cost of the fuel for the next preceding month of

the party furnishing such power shall be used in determining the amount of the above adjustment for billing purposes.

B. Inadvertent Interchange Power

During periods when no arrangements are in effect for the supply of emergency or temporary power or economy flow power by one party or the other, all power flowing shall be considered inadvertent interchange power. Such inadvertent interchange power resulting from operation of the two systems electrically interconnected shall, insofar as practicable, be kept in balance from hour to hour, and any unbalanced at the end of billing period shall be carried forward for balancing during the next billing period.

C. Economy Flow of Power

In the event that the parties hereto shall determine that savings may be effected by interchange power between the respective systems during periods when no emergency exists or when no requirements exist for the interchange of temporary power, the parties may mutually agree upon an interchange of economy power, such economy power being hereby defined as power available to one system from the other within the

capacities of the operating equipment or within the capacities of equipment which necessarily must be operated for the use of the party supplying the power. Such interchange of economy power shall be furnished on the following basis:

The party having the lower incremental cost per kilowatt hour shall transmit power to the party having the higher incremental cost per kilowatt hour at such hours and at such times and in such quantities as shall be mutually agreed upon, and such supplying party shall receive for the power so furnished its incremental cost per kilowatt hour, plus one-half (1/2) the difference between its incremental cost and incremental cost of the other party. The parties shall during the existence of said economy flow communicate daily with each other, each party advising the other party daily of the incremental cost per kilowatt hour of the station or stations supplying such economy flow power. Incremental cost per kilowatt hour is hereby defined as that additional cost which shall be required to produce the additional defined amount of kilowatt hours, divided by the additional defined kilowatt hours required.

It is understood that neither party hereto is under any fixed or definite obligation hereunder to supply such

economy power to the other party. The party desiring such economy power at any time and from time to time during the continuance of this agreement shall in each instance specifically request such power from the other party, and such other party may grant or refuse any such specific request. If granted, such power shall be transferred in the amounts, at the times and during the hours agreed upon by the parties in each instance. The supply of such economy power at any time or from time to time shall not obligate either party to supply such power at a later date when a request therefor shall be made; provided, however, that payment for such power, if and when supplied, shall be on the terms and conditions herein contained.

REVISION OF CHARGES

In case either party hereto shall become dissatisfied with the charges hereinbefore specified for power, whether emergency power, temporary power or economy flow power, said charges shall be subject to reconsideration after written notice by the dissatisfied party to the other party. If the parties shall be unable to agree on a mutually satisfactory revision, then the matter shall be referred to an arbitrator or a board

of arbitration, as hereinafter in this agreement provided, for decision. No revision of the said charges shall, however, be effective until six months from the date of the aforesaid written notice.

ARTICLE V. TERRITORIAL BOUNDARY

For the purposes of this agreement, the parties hereto agree that the boundary line between their respective territories shall be established as a line approximately midway between the extremes of their local distribution lines as of the date of this agreement, as more particularly described and shown on the map attached hereto and made a part hereof.

ARTICLE VI. LIABILITY FOR ACCIDENTS

Each party hereto shall be liable for, and shall hold the other party hereto harmless of and from, all loss or damage by reason of any bodily injury, accident, death or damage to property caused by or occurring on that part of the interconnected facilities separately owned and/or operated by such party, provided, however, that each party shall be liable for, and shall hold the other party harmless of and from, all such loss or damage for injuries or death suffered or sustained by employees

of such party, regardless of the place where such injuries or death shall have occurred, or the cause thereof.

ARTICLE VII. MAINTENANCE AND OPERATION OF FACILITIES

The Company shall maintain and operate that part of the interconnected facilities separately owned by it, and the City shall maintain and operate that part of the interconnected facilities separately owned by the City. The cost of painting, repairing, maintaining and replacing jointly owned facilities, if any, shall be borne in equal parts by the parties hereto.

ARTICLE VIII. ARBITRATION

In case any dispute or disagreement shall arise hereunder which the parties hereto shall be unable to resolve between themselves, the matter in dispute shall be referred to an arbitrator to be selected by the parties and his decisions shall be final and binding upon the parties. In case the parties shall fail to agree upon a single arbitrator, then the matter shall be referred to a board of arbitrators consisting of three members, one to be selected by each of the parties hereto and the third member to be selected by the two members appointed by the parties. If the said two members shall be unable to agree upon the selection of the third member of the board within a period of

seven (7) days, then the third member of the board of arbitration shall be selected by the Senior Judge of the District Court of the United States for the Southern District of Florida. The decision of a majority of such board of arbitration shall be final and binding upon the parties. The expense of such arbitration, whether by a single arbitrator or by the said board of arbitrators, shall be borne by the parties in the proportions determined by the arbitrator or the board of arbitrators.

ARTICLE IX. DURATION OF AGREEMENT

This agreement shall be effective as of the date first above written and shall remain in effect until one year's written notice shall be received by either party from the other of termination. Equipment installed under this agreement and jointly owned by the parties hereto, if any, shall, upon the termination of the interconnections and of this agreement, be sold or otherwise disposed of as the parties shall determine, and the proceeds derived from such sale or disposition shall be divided equally between the parties.

ARTICLE X. TERMINATION OF JANUARY 20, 1959, AGREEMENT

The Agreement dated January 20, 1959, between the parties is hereby canceled and terminated as of the date of this agreement.

ARTICLE XI. ASSIGNMENT

This agreement shall be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed by their duly authorized officers, and their respective corporate seals, duly attested, to be hereunto affixed on the day and year first above written.

CITY OF JACKSONVILLE, FLORIDA, a
Municipal Corporation, acting by
and through its City Commission

Attest:

J. M. Ingram
Secretary (21-3-19)

By

Hayden D. Quinn
Chairman

In the Presence of:

Carrie B. Coker
Beneath J. Johns
As to City

FLORIDA POWER & LIGHT COMPANY

Attest:

A. J. Raylock
Secretary

By

John H. [Signature]
President

In the Presence of:

Sarah M. Bilton
Betty J. Steele
As to Company

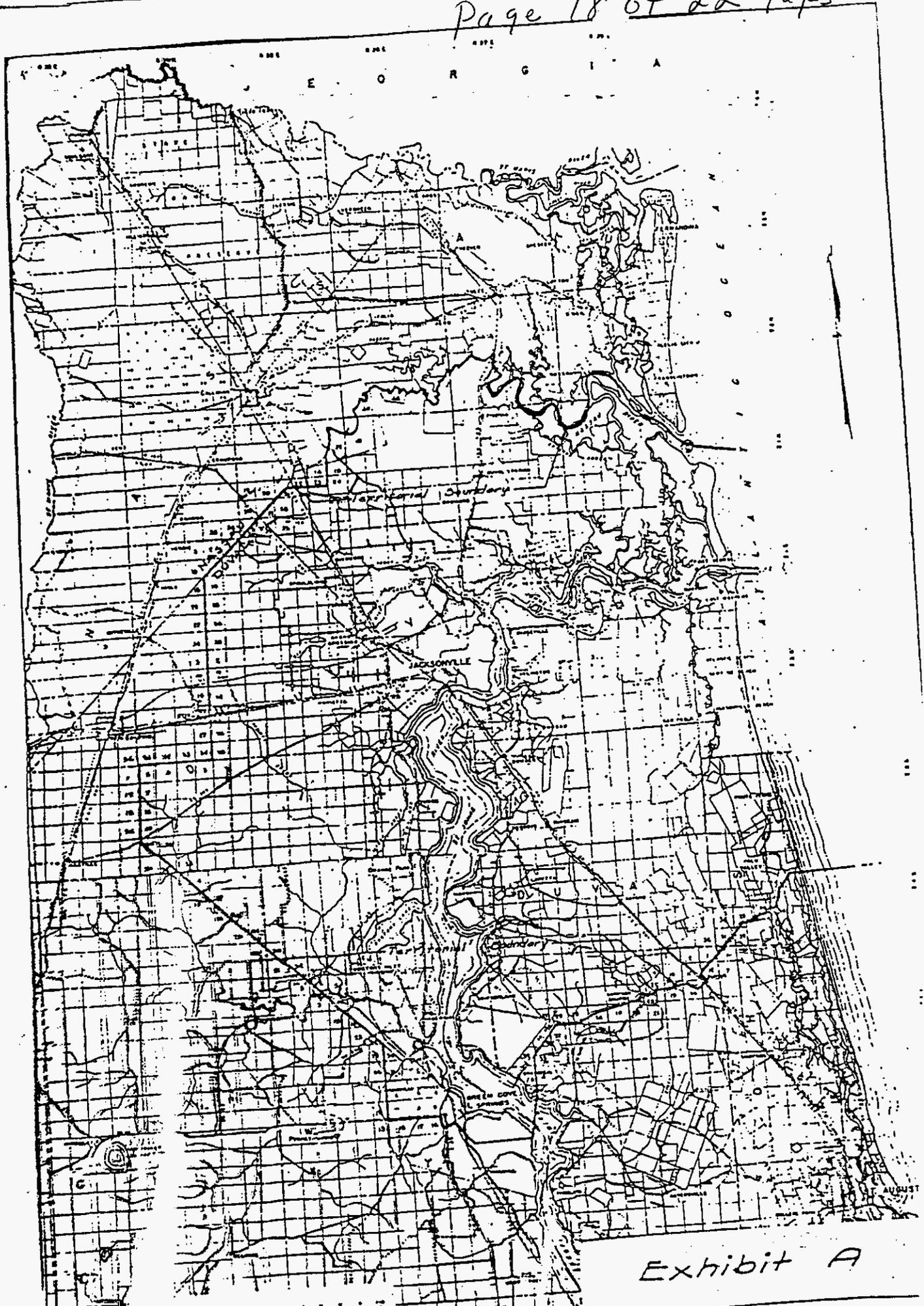


Exhibit A

BEFORE THE FLORIDA PUBLIC UTILITIES COMMISSION

In re: Application of Florida Power Corporation for approval of territorial agreement with City of Ocala.	DOCKET NO. 7051-EU
Proposed territorial agreement between Florida Power and Light Company and Florida Power Corporation.	DOCKET NO. 7420-EU
Territorial agreement between Florida Power and Light Company and City of Jacksonville.	DOCKET NO. 7421-EU
Territorial agreement between Florida Power and Light Company and Clay Electric Coop., Inc.	DOCKET NO. 7422-EU
Territorial agreement between Florida Power and Light Company and Glades Electric Coop., Inc.	DOCKET NO. 7423-EU
Territorial agreement between Florida Power and Light Company and Lee County Electric Coop., Inc.	DOCKET NO. 7424-EU
Application of Florida Power and Light Company for approval of territorial agreement with Suwannee Valley Electric Cooperative, Inc.	DOCKET NO. 7425-EU
	ORDER NO. 3795

William Edwin L. Mason, Commissioner Jerry W. Carter and Commissioner William T. Mayo each participated in the disposition of this matter.

The Florida Public Utilities Commission, pursuant to due notice, held a public hearing in each of the above dockets as follows:

- 7051-EU - Meeting Room, Commercial Bank and Trust Co., Ocala, Florida, commencing at 9:00 A.M., on Tuesday, December 17, 1963.
- 7420-EU - Commission Hearing Room, Tallahassee, Florida, commencing at 10:00 A.M., on Monday, June 8, 1964.
- 7421-EU - Hearing Room, State Office Building, 215 Market Street, Jacksonville, Florida, commencing at 9:30 A.M., on Thursday, November 12, 1964.
- 7422-EU - Hearing Room, State Office Building, 215 Market Street, Jacksonville, Florida, commencing at 1:30 P.M., on Tuesday, June 9, 1964.
- 7423-EU - County Commissioners' Meeting Room, Lee County Courthouse, Ft. Myers, Florida, commencing at 10:00 A.M., on Thursday, May 14, 1964.
- 7424-EU - County Commissioners' Meeting Room, Lee County Courthouse, Ft. Myers, Florida, commencing at 11:00 A.M., on Thursday, May 14, 1964.
- 7425-EU - Commission Hearing Room, Tallahassee, Florida, commencing at 11:30 A.M., on Monday, June 8, 1964.

Order No. 3799
Dockets Nos. 7051-EU, 7420-EU,
7421-EU, 7422-EU, 7423-EU, 7424-EU,
and 7425-EU.
Sheet 2

APPEARANCES: MORRIS E. STURGIS, JR., 221 East Silver Springs Boulevard, Ocala, Florida, for the City of Ocala, in Docket No. 7051-EU.

WILLIAM C. STEEL, 14th Floor, First National Bank Building, Miami, Florida, for the Applicant, Florida Power and Light Company, in Dockets Nos. 7420-EU, 7421-EU, 7422-EU, and 7425-EU.

HARRY A. EVERTS, 101 - 5th Street, South, St. Petersburg, Florida, for the Applicant, Florida Power Corporation, in Dockets Nos. 7420-EU and 7061-EU.

J. DILLON KENNEDY, 1407 City Hall, Jacksonville, Florida, in Docket No. 7421-EU.

WILLIAM M. MADISON, 1103 City Hall, Jacksonville, Florida, in Docket No. 7421-EU.

HENRY L. CRAY, JR., 211 N. E. 1st Street, Gainesville, Florida, for Clay Electric Cooperative, Inc., Keystone Heights, Florida, in Docket No. 7422-EU.

R. D. HILL, Division Manager of the Eastern Division, for the Florida Power and Light Company, Miami 1, Florida, in Docket No. 7423-EU.

W. B. IRBY, JR., Manager, for Glades Electric Cooperative, Inc., Moorehaven, Florida, in Docket No. 7423-EU.

J. G. SPENCER, JR., Vice-President and Western Division Manager, for Florida Power and Light Company, in Docket No. 7424-EU.

HOMER T. WELCH, JR., General Manager, for Lee County Electric Cooperative, Inc., Fort Myers, Florida, in Docket No. 7424-EU.

WILLIAM HAROLD SLAUGHTER, Live Oak, Florida, for the City of Live Oak, in Docket No. 7425-EU.

LEWIS W. PETERWAY, General Counsel, for the Commission staff and the public generally, in Docket No. 7421-EU.

JAMES L. GRAHAM, Assistant General Counsel, for the Commission staff and the public generally, in Docket No. 7061-EU.

D. KENNETH GASTLIN, Assistant Counsel, for the Commission staff and the public generally, in Dockets Nos. 7420-EU, 7421-EU, 7422-EU, 7423-EU, 7424-EU, and 7425-EU.

There were no protestants.

Order No. 3799
Dockets Nos. 7061-EU, 7420-EU,
7421-EU, 7422-EU, 7423-EU, 7424-EU,
and 7425-EU.
Sheet 3

The entire record herein, including the exhibits and testimony adduced at the public hearings, have all been examined by the Full Commission. After due consideration, the Commission now enters its order in this cause.

ORDER

BY THE COMMISSION:

The Commission has jurisdiction over the Florida Power Corporation and Florida Power and Light Company. Although they also offer electrical service, the municipalities and cooperatives involved in these dockets are exempted from Commission jurisdiction by Section 366.11, Florida Statutes. However, in each of the seven dockets with which we are concerned in this order, the applicant is a utility under the jurisdiction of this Commission. That is, for example, in Docket No. 7421-EU, although there is before the Commission an agreement between Florida Power and Light Company and the City of Jacksonville, the applicant in the case is Florida Power and Light Company, which is, as mentioned, regulated by the Commission.

In these seven dockets the utilities (both exempt and non-exempt) have entered into agreements where there has been or is about to be a conflict as to the boundaries of the territory that they seek to serve. The Commission, in considering these applications, which are in effect allocations of service areas, is concerned with the fact that Section 366.03, Florida Statutes, states that the electric utilities under the jurisdiction of the Commission "shall furnish to each person applying therefor reasonably sufficient, adequate and efficient service upon terms as required by the commission. . . ." In view of this language, the effect of what the regulated utilities are asking the Commission is to oblige them to agree not to serve within certain areas when requested to do so by a person applying for electrical service, if that area is already served by another utility.

Admittedly, there is no statute which says that the Commission should divide the state into service areas as is done in the regulation of telephone, water and sewer utilities. However, it is the public policy of this state that cooperatives and municipalities are entitled which may engage in the sale of electricity through the specific authorization of the Legislature of the State of Florida. The cooperatives engage in such activity not only because of authorization from the state, but also as the result of laws passed by the Congress of the United States. The inescapable conclusion is that it must be the public policy that cooperatives and municipalities are qualified to sell electricity in the geographical territories in which they operate.

Since this is the public policy, the Commission, even in view of Section 366.03, Florida Statutes, should not undertake to direct a utility under its jurisdiction (such as Florida Power Corporation or Florida Power and Light Company) to render service in a territory already served or about to be served by a cooperative or a municipality. It is even wiser that the Commission and the utilities involved anticipate these conflicts as to areas of service and make effective some reasonable territorial agreement.

The advantages of having a territorial agreement are manyfold. If there is no agreement, there will be duplications of service as a result of unrestrained competition, which in turn has several undesirable

Docket No. 7425
Exhibits Nos. 7061-EU, 7420-EU,
7421-EU, 7422-EU, 7423-EU, 7424-EU,
and 7425-EU.
Sheet 4

Results. Unrestrained competition leads to attempted preemption of areas by the premature erection of more lines than are needed for immediate service, which lessens the immediate return of the investment and, in effect, must be subsidized by other customers of the utility. It means application of facilities in the same public ways which results in neither utility being able to get a full return on its investment, to the detriment of other customers who, in effect, also subsidize such uneconomical operations. It requires more employees to be constantly in the competitive areas and consumes more time and energy in efforts to "out-bid" the competing utility. It makes for unsatisfactory customer relations in that the customer, being between competing utilities, is drawn involuntarily into the competitive squabbles and must suffer the resulting service inefficiencies. It prevents the full development of the customer potential in the competitive area since knowledge that a full return is unobtainable tends to divert the activities necessary for such development to more profitable areas, all to the detriment of the customer, and accordingly, not in the public interest.

It is the intent of the Commission to approve only the geographical division of the territories involved in these agreements, and not to approve the agreements in any other regard. The exhibits indicating these divisions in each of the dockets are as follows:

- (1) 7061-EU - Applicant's Exhibit No. 1 and that portion of Exhibit No. 3, entitled Exhibit II, North Boundary Line A and North Boundary Line B.
- (2) 7420-EU - Exhibit No. 1.
- (3) 7421-EU - Exhibit No. 1. (JEA)
- (4) 7422-EU - Exhibit No. 3.
- (5) 7423-EU - Exhibits Nos. 1-6.
- (6) 7424-EU - Exhibit A, attached to the Amended Application.

The Commission is unable to approve the territorial agreement in Docket No. 7425-EU because the agreement is vague and indefinite. Therefore, in consideration thereof, it is

ORDERED by the Florida Public Utilities Commission that the application in Dockets Nos. 7061-EU, 7420-EU, 7421-EU, 7422-EU, 7423-EU, and 7424-EU, seeking approval of territorial agreements, be and the same be hereby approved. It is further

ORDERED that the application for approval of the territorial agreement in Docket No. 7425-EU be and the same is hereby denied. It is further

ORDERED that neither Florida Power Corporation nor Florida Power and Light Company shall deviate from these territorial agreements without prior authority from the Commission.

By Order of Chairman Edwin L. Mason, Commissioner Jerry W. Carter and Commissioner William T. Mayo, as and constituting the Florida Public Utilities Commission, this 28th day of April, 1965.

Phillip C. Stanley
EXECUTIVE SECRETARY

(S E A L)

Commissioner Mayo dissents in that he would not approve the territorial agreements.

TERRITORIAL BOUNDARY AGREEMENT

BETWEEN

FLORIDA POWER & LIGHT COMPANY
AND
JACKSONVILLE ELECTRIC AUTHORITY

Composite Et. (SRF-2)
Page 1 of 9 pages

Section 0.1 THIS AGREEMENT, made and entered into this 13th day of April, 1979, by and between FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida, herein referred to as the "COMPANY", party of the first part, and JACKSONVILLE ELECTRIC AUTHORITY, a body politic and corporate of the State of Florida, herein referred to as the "AUTHORITY", party of the second part;

W I T N E S S E T H

Section 0.2 WHEREAS, the parties hereto deem it desirable that the existing territorial boundaries approved by the Florida Public Service Commission be reaffirmed; and

Section 0.3 WHEREAS, the parties hereto deem it desirable to reaffirm that the existence of said territorial boundaries have been and will continue to be beneficial in the elimination of undesirable duplication of facilities thereby providing economical benefits to the customers of each party, and

Section 0.4 WHEREAS, each party desires to more clearly describe the intent of the parties with respect to the administration of the existing Agreement, and

Section 0.5 - WHEREAS, the execution of this Agreement by the parties hereto is not conditioned upon the acceptance of or agreement to any other contractual arrangements pending or contemplated by or between the parties.

Section 0.6 NOW, THEREFORE, in consideration of the foregoing pre-
mises and of the mutual benefits to be obtained from the covenants
herein set forth, the parties hereto do hereby agree as follows:

ARTICLE I

TERM OF AGREEMENT

Section 1.1 - TERM: After this AGREEMENT becomes effective pursuant
to the activities defined in Section 4.4 hereof, it shall continue
in effect until termination or modification shall be mutually agreed,
or until termination or modification shall be mandated by entities
with appropriate jurisdiction. However, after fifteen (15) years
from the date above first written, but not before, either of the parties
hereto shall have the right to initiate unilateral action before any
entity with appropriate jurisdiction, seeking modification or can-
cellation of this AGREEMENT.

Section 1.2 The provisions of this AGREEMENT shall supersede any
territorial boundary-related provisions of existing or prior contracts
and/or agreements between the COMPANY and AUTHORITY.

ARTICLE II

BACKGROUND

Section 2.1 The parties stipulate that they have observed a terri-
torial boundary which was described in a contract for interchange
service between the Company and the City of Jacksonville, (the
predecessor to the AUTHORITY), dated March 19, 1963. Said description
was as follows:

"ARTICLE V. TERRITORIAL BOUNDARY

For the purposes of this Agreement the parties hereto
agree that the boundary line between their respective territories

shall be established as a line approximately midway between the extremes of their local distribution lines as of the date of this Agreement, as more particularly described and shown on the map attached hereto and made a part hereof."

Section 2.2 Pursuant to the agreements and understandings of said Article V, the COMPANY petitioned the then Florida Public Utilities Commission for approval and recognition of a territorial boundary more particularly described upon a map labelled Exhibit A to the Agreement. (A copy of said map is appended hereto as Exhibit A and made a part hereof.) The petition of COMPANY was approved by the Commission by Order Number 3799 entered in Docket 7421-EU on April 28, 1965.

Section 2.3 On October 31, 1973, the parties hereto entered into a contract for interchange service. Included within said contract was a reference to and re-affirmation of the boundary described in Section 2.2. The exact wording was:

"Section 1.3 Nothing in this contract shall be construed to negate or displace Article V, Territorial Boundary in the inter-connection agreement of March 19, 1963, between the City of Jacksonville and Florida Power & Light Company, which geographical division was approved by the Florida Public Service Commission (then called the Florida Public Utilities Commission) in Docket Number 7421-EU. The parties expressly ratify that agreement and, in consideration of mutual execution of this Contract agree to be bound by that earlier geographical division which is on file in the office of the Florida Public Service Commission and incorporated herein by reference."

ESSENCE OF AGREEMENT

Section 3.1 The area inside the boundary line shown on the map attached hereto and labelled Exhibit A is reserved to the AUTHORITY (as relates to COMPANY), with respect to retail customers. (For the purpose of this AGREEMENT, the term "retail" shall connote all those existing or potential customers other than an entity purchasing or desiring to purchase electricity under published and/or filed tariffs, rate schedules or contracts which empower such entity to resell said electricity to the ultimate consumer thereof).

Section 3.2 The COMPANY agrees it will not serve nor offer to serve new customers of electric service at retail within the territory reserved to the AUTHORITY, provided however, that the COMPANY may continue to provide retail electric service to service locations which are within the territory reserved to the AUTHORITY as of the date of this AGREEMENT.

Section 3.3 AUTHORITY agrees it will not serve nor offer to serve new customers of electric service at retail without the territory reserved to AUTHORITY provided however, that the AUTHORITY may continue to provide retail electric service to service locations which are without the territory reserved to AUTHORITY as of the date of this AGREEMENT.

Section 3.4 The parties recognize that in specific instances, good engineering practices or economic constraints may indicate that individual retail customers not be served by the party in whose territory they are located. In such instances, either COMPANY or AUTHORITY may request the other party to provide service, however the parties agree that it is not nor should it be construed to be their intent

to cause any violation or any breach of any contract or covenant that either party may currently have with any third party or parties. Such departures from the constraints of this Agreement shall be subject to the mutual concurrence of the parties on a specific case basis.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 4.1 The failure of either party to enforce any provision of this AGREEMENT in any instance shall not be construed as a waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

Section 4.2 Neither party shall assign, transfer or sublet any privilege granted to it hereunder without the prior consent in writing of the other party, but otherwise this AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 4.3 This AGREEMENT shall be governed by the laws of the State of Florida.

Section 4.4 The parties recognize that under the laws of the State of Florida, the Florida Public Service Commission has jurisdiction to approve retail territorial agreements and agree to cooperate in petitioning that Commission for its required approval and authorization to implement the terms and conditions of this TERRITORIAL BOUNDARY AGREEMENT. Until the issuance of an Order approving this AGREEMENT and requiring the parties to comply with its terms and conditions, the parties will continue to observe the boundary approved as indicated in Section 2.2 hereof.

Section 4.5 This AGREEMENT shall be effective on the date it is approved by the Florida Public Service Commission in accordance with Section 4.4 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

ATTEST:

FLORIDA POWER & LIGHT COMPANY

BY *[Signature]*
Secretary

BY *[Signature]*
Vice President

ATTEST:

JACKSONVILLE ELECTRIC AUTHORITY

BY *[Signature]*
Administrative Assistant

BY *[Signature]*
Managing Director

FORM APPROVED

[Signature]
For Authority
Assistant Counsel

Composite Ex. - (SRF-2)
Page 7 of 9 Pages

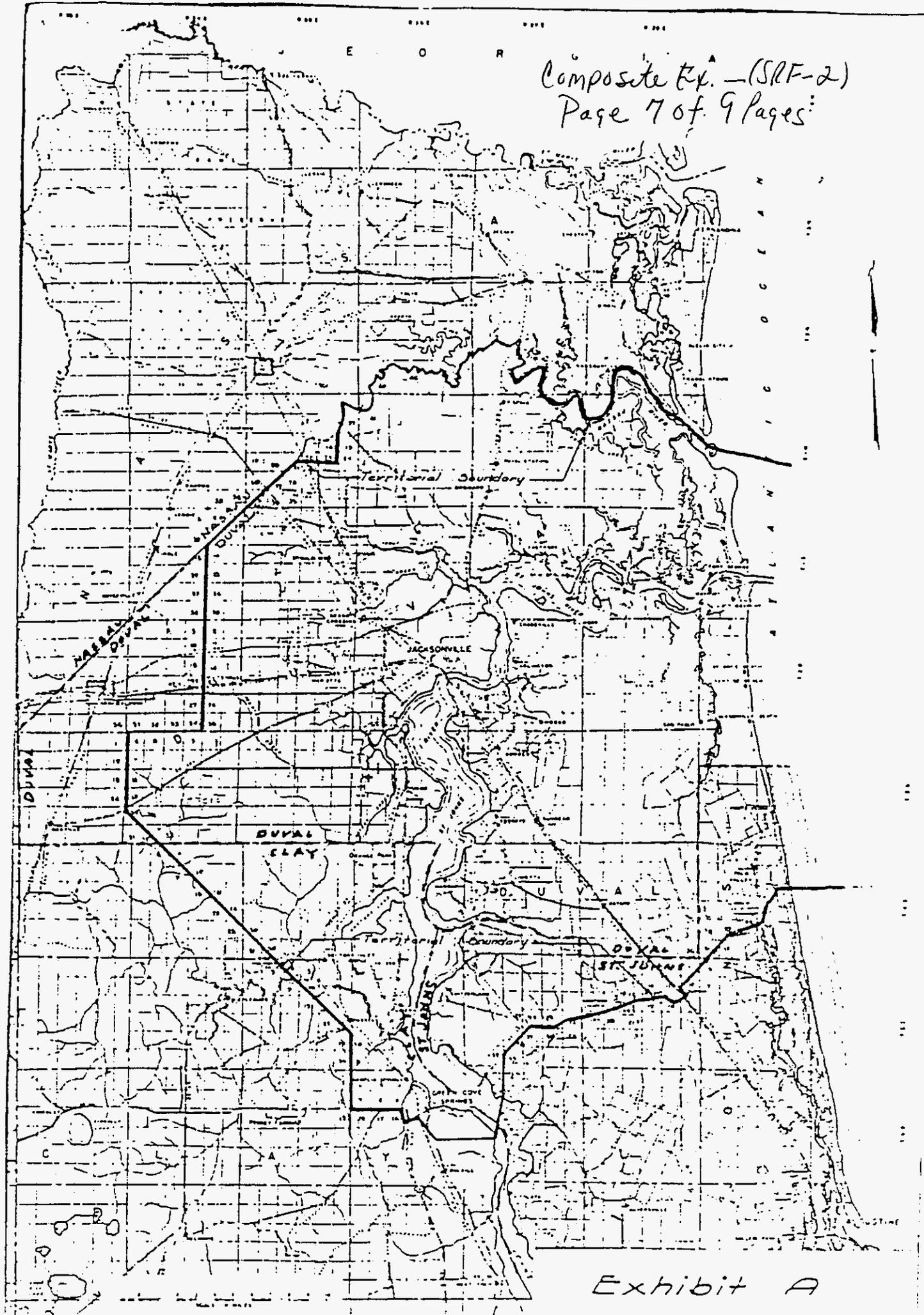


Exhibit A

J.K. Dinkel

EXHIBIT E
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Composite Ex (SRF-2)

Page 8 of 9 Pages

7
FPL

RECEIVED

MAY 14 1980

Inter Utility
Affairs

In re: Petition of Jacksonville Electric Authority for approval of a territorial agreement between JEA and Florida Power and Light Company.) DOCKET NO. 790886-EU
) ORDER NO. 9363
) ISSUED: 5-9-80

The following Commissioners participated in the disposition of this matter:

WILLIAM T. MAYO
JOSEPH P. CRESSE
GERALD L. GUNTER
JOHN R. MARKS, III

Pursuant to notice, the Florida Public Service Commission, by its duly designated Hearing Examiner, Harry L. Lamb, Jr., held a public hearing on the above matter in Jacksonville, Florida, on January 23, 1980.

APPEARANCES: Thomas R. Welch, 1300 City Hall, Jacksonville, Florida, 32202, for the petitioner, City of Jacksonville.

William D. Moore, 708 Barnett Bank Bldg., Tallahassee, FL 32301, for Florida Power and Light Company, petitioner.

Stephen Stratford, 2508 Gulf Life Tower, Jacksonville, FL 32207, for the City of Jacksonville Beach, intervenor.

RECEIVED

DISTRIBUTION
ENGINEERING DIVISION

MAY 19 1980

SYSTEM ENGINEERING DEPT.
JACKSONVILLE ELECTRIC AUTHORITY

ORDER APPROVING AGREEMENT

BY THE COMMISSION:

By petition dated October 16, 1979, the Jacksonville Electric Authority (JEA) seeks approval of a territorial agreement between JEA and Florida Power & Light Company (FPL). Pursuant to the provisions of Section 366.04(2)(d), Florida Statutes, this Commission has jurisdiction to approve territorial agreements between municipal electric authorities and other electric utilities regulated by the Commission.

At the hearing on the petition, the attorney for the City of Jacksonville Beach and the consulting engineer for the City of Green Cove Springs appeared to express their interest in the scope of the territorial agreement and to ascertain what impact, if any, this agreement would have on their respective municipalities. Due to the nature of the interests expressed by these representatives, the Jacksonville Beach attorney was permitted to intervene and the Green Cove Springs engineer was permitted to participate in the proceedings.

The JEA is a municipal electric utility serving the major portion of the City of Jacksonville (Duval County), Florida. In addition, it provides service to customers in portions of the unincorporated areas of St. Johns and Clay Counties as well as the Town of Orange Park, Florida. JEA also provides wholesale power to the electric systems in the Cities of Green Cove Springs, Fernandina Beach and Jacksonville Beach.

At the hearing, Mr. C. J. Schultz, Director of Procedure and Analysis for JEA, testified concerning the evolutionary history of the subject territorial agreement. Since 1963, the JEA predecessor and FPL have been parties to agreements covering territorial boundaries between their respective utilities. The 1963 agreement was approved by this Commission (Docket No. 7421-EU, Order No. 3799, April 28, 1965). The agreement involved in the instant proceeding (Territorial Boundary Agreement between FPL and JEA, dated April 13, 1979) reaffirms the prior understandings

of the parties and seeks to "more clearly describe the intent of the parties with respect to the administration of the existing agreement."

Mr. J. K. Daniel, Coordinator of Inter-Utility Affairs, Florida Power & Light Company, adopted and confirmed the testimony presented by the JEA official.

At the request of the intervenor, Jacksonville Beach, the Examiner took official notice of this Commission's decision in Docket No. 74814-EU, Order No. 7911. However, based on the evidence presented at the hearing, we find that the agreement which is the subject of this docket does not alter or change any of the conditions set forth by the Commission in Order No. 7911, nor do the terms of this agreement alter the existing rights of any utility.

Accordingly, we conclude that the petitioner has demonstrated by competent and substantial evidence that this agreement is desirable is consistent with the public interest, and conforms to the provisions of Chapter 366, Florida Statutes. This agreement will not result in the alteration of any existing boundaries or service authority of any other electric utility in the subject territory. It is, therefore,

ORDERED by the Florida Public Service Commission that the petition of Jacksonville Electric Authority be granted and that the Territorial Boundary Agreement between Jacksonville Electric Authority and Florida Power & Light Company, dated April 13, 1979, be and the same is hereby approved.

By Order of the Florida Public Service Commission, this 9th day of May 1980.

(S E A L)

JAM



Steve Tribble
COMMISSION CLERK

7
FPL
Territorial
Boundary



Composite tk. - (SLF-3)
Page 1 of 4

October 28, 1981

RECEIVED

NOV 2 1981
Director
System Engineering
Jacksonville Electric Authority

Mr. Sheldon Ferdman, Director
System Engineering
Jacksonville Electric Authority
P. O. Box 53015
Jacksonville, FL 32201

Dear Shel:

Enclosed are marked county maps of Clay, Duval and St. Johns Counties which have been marked to show the territorial boundary between Jacksonville Electric Authority and Florida Power & Light Company, per our agreement.

As we discussed in our meeting on October 8, 1981, we are sending you the maps prior to submission to the Public Service Commission. Within the next two weeks we expect to send the PSC marked county maps depicting all of our territorial boundaries with other utilities.

Please advise if you have any comments on the way we have shown the boundary.

Very truly yours,

J. K. Daniel, Manager
Inter-Utility Affairs

JKD/GKW/ga
enclosures

cc: B. R. Smith - PL
H. W. Rowlett - SA

STATE OF FLORIDA



OFFICE OF COMMISSION CLERK
ANN COLE
COMMISSION CLERK

Public Service Commission

Docket No. : 950307-EU

Docket Title: Petition to resolve a territorial dispute with Florida Power & Light Company in St. Johns, County, by Jacksonville Electric Authority

DN 06521-95: COMPOSITE EXHIBIT (SRF-3) PAGE 2 OF 4; GENERAL HIGHWAY MAP OF CLAY COUNTY FLORIDA

[CLK NOTE: MAP PORTION OF TESTIMONY EXHIBIT CAN BE FOUND IN MAPS MICROFILM.]

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0850

An Affirmative Action / Equal Opportunity Employer

PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us

STATE OF FLORIDA



OFFICE OF COMMISSION CLERK
ANN COLE
COMMISSION CLERK

Public Service Commission

Docket No. : 950307-EU

Docket Title: Petition to resolve a territorial dispute with Florida Power & Light Company in St. Johns, County, by Jacksonville Electric Authority

DN 06521-95: COMPOSITE EXHIBIT (SRF-3) PAGE 3 OF 4; GENERAL HIGHWAY MAP OF DUVAL COUNTY FLORIDA

[CLK NOTE: MAP PORTION OF TESTIMONY EXHIBIT CAN BE FOUND IN MAPS MICROFILM.]

STATE OF FLORIDA



OFFICE OF COMMISSION CLERK
ANN COLE
COMMISSION CLERK

Public Service Commission

Docket No. : 950307-EU

Docket Title: Petition to resolve a territorial dispute with Florida Power & Light Company in St. Johns, County, by Jacksonville Electric Authority

DN 06521-95: COMPOSITE EXHIBIT (SRF-3) PAGE 4 OF 4; GENERAL HIGHWAY MAP OF ST. JOHNS COUNTY FLORIDA

[CLK NOTE: MAP PORTION OF TESTIMONY EXHIBIT CAN BE FOUND IN MAPS MICROFILM.]

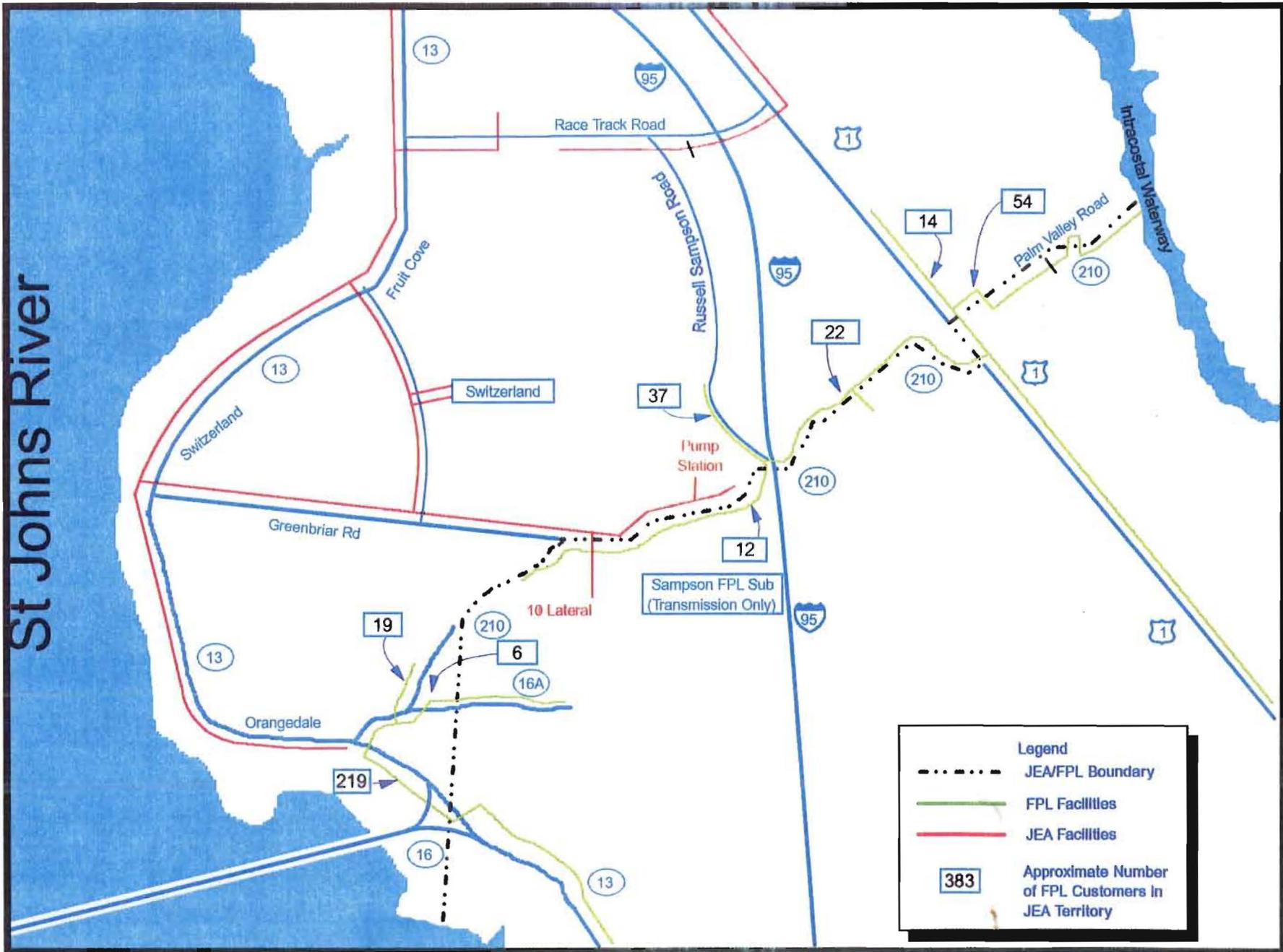


Exhibit (SRF-4)
 Page 1 of 1