

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

August 1, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (ERSTLING) *ye*  
DIVISION OF ELECTRIC & GAS (TEW, BOHRMANN) *to TB* *He for ME* *RT*  
*Rob*

RE: DOCKET NO. 960542-EU - JOINT PETITION FOR APPROVAL OF  
TERRITORIAL AGREEMENT BETWEEN FLORIDA POWER CORPORATION  
AND THE CITY OF ALACHUA

AGENDA: 08/13/96 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\960542EU.RCM

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the Joint Petition for Approval of a Territorial Agreement between Florida Power Corporation and the City of Alachua in Alachua County?

RECOMMENDATION: Yes, the Territorial Agreement between Florida Power Corporation and the City of Alachua is in the public interest and should be approved. The utilities have agreed to inform the Commission and seek approval of all interim service that lasts or is expected to last for a period greater than one year.

STAFF ANALYSIS: On April 29, 1996, Florida Power Corporation (FPC) and the City of Alachua (Alachua) filed a Joint Petition for Approval of a Territorial Agreement. A copy of the territorial agreement between FPC and Alachua is attached (Attachment A). The parties have not previously entered into a territorial agreement with each other relative to Alachua County. The purpose of FPC and Alachua's territorial agreement is to delineate each utility's respective service area and simultaneously avoid future uneconomic duplication of facilities by these utilities in Alachua County.

In order to accomplish this goal, FPC and Alachua's territorial agreement provides for a transfer of customers between

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the two utilities. Exhibit B to the agreement identifies six customer accounts (four residential and two commercial) of FPC which will be transferred to Alachua. Section 2.6 of the agreement provides that all transfers shall be completed within 90 days of the effective date of the agreement. Until such time, FPC may continue to serve its respective existing customers listed on Exhibit B to the agreement.

FPC provided a copy of the form letter sent to its existing customers identified on Exhibit B who will be affected by this agreement. The letter informed the customers of their impending transfer upon Commission approval of FPC and Alachua's territorial agreement. It also included a rate schedule which compares the residential and commercial monthly cost of electricity for the two utilities based on various kilowatt hour usages. One customer has notified FPC to state his opposition to the transfer. He is concerned about rate differential and the loss of load management credits. Through informal data requests, staff learned that this customer is located adjacent to the proposed boundary line on County Road 241. Both utilities agreed that the area in which the customer resides is wholly served by Alachua and that if he were to remain an FPC customer, it would create an enclave in the territorial boundary. Although staff recognizes the customer's concerns, we still believe the proposed territorial agreement to be in the overall public interest.

To ensure that transferred customers suffer no hardship due to the different deposit requirements of each party, Section 2.7 provides for FPC to refund customer deposits to the transferring customers, with the exception of customers with unfavorable payment histories. Alachua will then bill the transferred customers a deposit no greater than the deposit previously charged by FPC. If FPC has refunded a transferring customer's deposit prior to this territorial agreement, Alachua will not require that customer to pay a new deposit upon transfer.

Section 2.2 of the territorial agreement contains the provision for interim service. Here the parties agree that neither of them will knowingly serve or attempt to serve any new customer whose end-use facilities are located within the territorial area of the other party, unless exceptional circumstances, economic constraints, or good engineering practices call for such service. In such instances, a party may submit a written request to the other party to temporarily provide service to the customer. The party providing temporary service shall not be required to pay the other party for any loss of revenue associated with the provision of such service. The utilities agree to seek Commission approval

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for all interim service arrangements that last or are expected to last for a period greater than one year.

Sections 2.4 and 2.5 of the agreement outline the method of compensation for transferred facilities and for lost revenues associated with the transferred customers. Each utility confirmed that upon completion of the 90 day transfer period, all electric facilities used to serve its retail customers will be located wholly within its respective service area as defined in the territorial agreement.

If approved by the Commission, the territorial agreement between FPC and Alachua will become effective on the date the Commission's Proposed Agency Action Order is issued. According to Section 6.1, it shall then remain in effect for a period of twenty years.

Staff recommends that the territorial agreement between Florida Power Corporation and the City of Alachua be approved because it is in the public interest and is consistent with the Commission's goal to eliminate all existing and potential uneconomic duplication of electrical facilities in the State of Florida.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, this docket should be closed if no timely protests are filed within 21 days of the issuance of this Order.

**STAFF ANALYSIS:** Pursuant to Rule 25-22.029(4), Florida Administrative Code, any person whose substantial interests are affected by the proposed agency action shall have 21 days after the issuance of the Order to file a protest. If no timely protest is filed, the docket should be closed.

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ATTACHMENT A

**Territorial Agreement  
Between  
City of Alachua  
and  
Florida Power Corporation  
Alachua County**

AGREEMENT

Section 0.1. THIS AGREEMENT, made and entered into this 12<sup>th</sup> day of MARCH, 1997 by and between the City of Alachua ("ALACHUA") and FLORIDA POWER CORPORATION, ("FPC"), each of which are corporations organized and existing under the laws of the State of Florida and electric utilities as defined in, and whose retail service territories are subject to regulation pursuant to Chapter 366, Florida Statutes and which corporations are herein collectively called the "Parties",

WITNESSETH:

Section 0.2. WHEREAS, ALACHUA, by virtue of its legislative authority, is authorized and empowered to furnish electricity and power to private individuals, corporations, and others within its corporate limits, and pursuant to such authority, presently furnishes electricity and power to customers located in certain areas of Alachua County; and

Section 0.3. WHEREAS, FPC, by virtue of its Charter, is authorized and empowered to furnish electricity and power to persons, firms and corporations throughout the State of Florida and presently furnishes electricity and power to customers in certain areas of Alachua County, Florida, and

Section 0.4. WHEREAS, the respective areas of retail service of the parties hereto are contiguous in many places with the result that duplication of service facilities may occur in the future unless such duplication is precluded by virtue of this Agreement, and

Section 0.5. WHEREAS, the Florida Public Service Commission (the "Commission") has previously recognized that any duplication of said service facilities results in needless and wasteful expenditures and creates hazardous situations, both being detrimental to the public interest, and

Section 0.6. WHEREAS, the parties hereto desire to avoid and eliminate the circumstances giving rise to the aforesaid potential hazards and duplications and toward that end have established the Territorial Boundary Line to delineate their respective retail territory in Alachua County, and

Section 0.7. WHEREAS, the Commission is empowered by the legislature of the State of Florida, pursuant to F.S. 366.04(2)(d), to approve territorial agreements and the Commission has recognized on numerous occasions the wisdom of retail territorial agreements between electric utilities and has adhered to the general opinion that retail territorial agreements, when properly presented to the Commission, in the proper circumstances, are advisable and indeed in the public interest, and

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 lines so labeled on the maps attached hereto as Exhibit "A" designating the boundary between ALACHUA Territorial Area, as defined in Section 1.2, and the FPC Territorial Area, as defined in Section 1.3. Those portions of Alachua County which are subject to the terms of this Agreement are identified as the areas marked in the maps included in Exhibit "A."

Section 1.2. ALACHUA Territorial Area. As used herein, the term "ALACHUA Territorial Area" shall mean the area so labeled on Exhibit "A" in Alachua County, Florida.

Section 1.3. FPC Territorial Area. As used herein, the term "FPC Territorial Area" shall mean the area so labeled on Exhibit "A" in Alachua County, Florida.

Section 1.4. Point of Use. The point of use and not the point of connect or metering shall be determinative as to who shall be the provider of electric service under this Agreement

Section 1.5. Transmission Lines. As used herein, the term "Transmission Lines" shall mean all electric lines of either party having a rating of 69 kV or greater

Section 1.6. Distribution Lines. As used herein, the term "Distribution Lines" shall mean all electric lines of either party having a rating up to but not including 69 kV

Section 1.7. New Customers. As used herein, the term "New Customers" shall mean those customers applying for electric service during the term of this Agreement at a point of use in the Territorial Area of either party which has not previously been served by either utility

Section 1.8. Existing Customer. As used herein, the term "Existing Customer" shall mean any person receiving retail electric service from either ALACHUA or FPC at the location for which the service is existent on the effective date of this Agreement. The term Existing Customer shall include the widow, widower, or divorced spouse of an Existing Customer who received retail electric service at the same location as of the effective date of this Agreement

Section 1.9. Consulting Engineer. As used herein, the term "Consulting Engineer" will mean a person or firm registered in the State of Florida as a professional engineer

Section 1.10. Person. As used herein, the term "Person" shall have the same inclusive meaning given to it in Section 1 01(3), Florida Statutes

## ARTICLE II RETAIL ELECTRIC SERVICE

Section 2.1. In General. Except as otherwise specifically provided herein, ALACHUA shall have the exclusive authority to furnish retail electric service to all New Customers within the



ALACHUA Territorial Area and FPC shall have the exclusive authority to furnish retail electric service to all New Customers in the FPC Territorial Area. The Territorial Boundary Line shall not be affected by any change that may occur in the corporate limits lying within the ALACHUA Territorial Area or the FPC Territorial Area.

Section 2.2. Service to New Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any New Customer whose end-use facilities are located within the Territorial Area of the other party, except as specifically provided in this Section 2 of the Agreement. The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a customer's end-use facilities either cannot or should not be immediately served by the party in whose Territorial Area they are located. In such instances, upon written request by the party in whose Territorial Area the end-use facilities are located, to the other party, the other party may agree in writing to temporarily provide service to such customer's end-use facilities. Any such agreement for temporary service which is anticipated to last for more than one year shall be submitted to the Commission for approval in accordance with Article V, Section 5.1 hereof. Provided, however, the party providing temporary service hereunder shall not be required to pay the other party for any loss of revenue associated with the provision of such temporary service.

In the event that a New Customer or prospective New Customer requests or applies for service from either party to be provided to end-use facilities located in the Territorial Area of the other party, the party receiving such a request or application shall refer the New Customer or prospective New Customer to the other party with citation to this Agreement as approved by the Commission, and shall notify the other party of such request or application.

Section 2.3. Transition. In order to minimize any inconvenience to their customers, each party may continue to serve their respective Existing Customers listed in Exhibit "B" as provided in this Section of this Agreement, even though the location at which they are using electric service shall be located in the Territorial Area of the other party effective upon approval of this Agreement by the Commission. Each of such Existing Customers and the party by which they are presently served are listed on Exhibit "B" attached hereto and made a part hereof. These Existing

Customers shall be transferred to the proper party as provided herein within the time requirements set forth in Section 2.6 of this Agreement.

Section 2.4. Transfer of Facilities. Upon the transfer of any customer or customers pursuant to this Agreement, the receiving party may purchase all the service facilities of the transferring party related to the transferred customer or customers for the replacement cost (new) of such facilities, less depreciation calculated on a thirty year (30) straight line basis.

Section 2.5. Compensation For Transfer of Customers.

a) With respect to customers currently located in the territory of a party which are being served by that party but which will be transferred to the other party pursuant to the change in Territorial Boundaries of this Agreement, the party losing the customers shall be compensated for the cost of facilities (as set forth in subsection (c) below) and the cost of lost revenues (as set forth in subsection (d) below) for the customers lost.

b) Time of Payment. At the time of the transfer of a customer and their associated service facilities, the receiving party shall pay to the transferring party in cash within thirty (30) days of the transfer, all amounts established in this section.

c) Cost of Facilities. If the cost of facilities elected by the receiving party to be purchased are to be paid, the receiving party shall compensate the transferring party an amount based upon the then replacement cost (new) less depreciation calculated on a thirty (30) year straight line basis from the date of the installation of the service facilities and the cost to the transferring party for reintegration of its remaining system to the extent such reintegration costs are reasonably required, following prudent utility practice.

d) Lost Revenues. If the cost of lost revenues is to be paid, the receiving party shall pay to the transferring party for each service transferred an amount equal to the product of the transferring party's gross charge per kilowatt hour (which amount includes the customer charge) for service to such locations at the time of transfer multiplied by the total kilowatt hours used at such location for either the immediately preceding eighteen (18) month period in which the account was served at the service location or an eighteen (18) month period annualized in the event of a lesser time period. In the case of a customer who was not billed for any part of the immediately preceding eighteen (18) month period,

the amount to be paid for the transfer of such customer shall be the transferor's average monthly charges multiplied by eighteen (18)

e) With each transfer, the transferring party will make, execute, and deliver to the receiving party a conveyance, deed or other instrument of transfer as is appropriate in order to convey all rights, titles and interests of the transferring party in any facilities, rights-of-way, easements, road permits, or other rights to the receiving party

Section 2.6 Time for Transfers. Notwithstanding any other provision of this agreement, the parties hereto agree that all transfers of customers included in hereto attached Exhibit "B" and subject to this agreement including New and Existing Customers, shall be completed within ninety (90) days of the Effective Date hereof. The parties shall therefore cooperate to effect all such transfers within this time period

Section 2.7 Customer Deposits. The parties intend that transferred customers suffer no hardship due to different deposit requirements required by each party. When possible, the transferring party will refund the deposit of a customer to the customer. The receiving party will then bill the customer a deposit no greater than the deposit previously charged by the other party. When the existing deposit is less than normally required by the receiving party, the receiving party will accept the amount of customer's previous deposit as adequate. Provided, however, nothing herein shall require either party to deviate from its deposit policy for customers with unfavorable payment histories

### ARTICLE III

#### BULK POWER SUPPLY

Section 3.1 Bulk Power for Resale. Nothing herein shall be construed to prevent either party from providing a bulk power supply for resale purposes as defined in the Final Judgment dated August 19, 1971 in United States of America v. Florida Power Corporation and Tampa Electric Company, United States District Court for the Middle District of Florida, Case No. 68-297-Civ-T ("the Final Judgment"), regardless of where the purchase for resale may be located. Further, no other section or

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

**ARTICLE IV**  
**OPERATION AND MAINTENANCE**

Section 4.1 Facilities to Remain. No generating plant, transmission line, substation, distribution line or related equipment shall be subject to transfer or removal hereunder, provided, however, that each party shall operate and maintain its lines and facilities in such a manner as to minimize any interference with the operations of the other party

Section 4.2 New Fc lines to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of ALACHUA to serve any ALACHUA facility located in the FPC Territorial Area which facility is used in connection with ALACHUA business as an electric utility, provided, however, that ALACHUA shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of the FPC in the FPC Territorial Area

Section 4.3 FPC Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of FPC to serve any FPC facility located in the ALACHUA Territorial Area which facility is used in connection with FPC's business as an electric utility, provided, however, that FPC shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of ALACHUA in the ALACHUA Territorial Area

Section 4.4 Resolution of Facilities Issues. If the parties are unable to agree on the calculation of any payment for facilities pursuant to Section 2.5 of this Agreement, or are unable to agree as to any technical requirement of this Agreement, including any provision requiring conformance to sound and economical engineering and operating practices, the parties shall agree upon and appoint a Consulting Engineer to resolve the dispute. The parties shall share equally the costs of the Consulting Engineer's fees and expenses for services rendered in connection with this Agreement. The compensation to be paid to the Consulting Engineer for services rendered in connection with this Agreement shall be such

fees and expenses as are usually applicable to services of a similar nature. If the Parties are unable to agree on the calculation of any payment for facilities pursuant to Section 2.5, and if ALACHUA and FPC are unable to agree upon the selection of a Consulting Engineer within 90 days after receiving a written request by either party for such selection either ALACHUA or FPC may, after ten (10) days written notice to the other party of its intent to do so, petition the Circuit Court of Alachua County, Florida, to determine the payment required in Section 2.5. In the event one or both parties shall petition such Circuit Court for resolution of a dispute as provided in this section, each party shall pay the costs of its legal representation, expert fees and costs of depositions of parties or witnesses. Court costs shall be assessed equally against the parties.

**ARTICLE V**  
**PREREQUISITE APPROVAL**

Section 5.1 Commission Approval. The provisions and the parties' performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by that body of the provisions of this Agreement shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until that approval has been obtained, and the date of the Commission's order, if any, granting initial Commission approval of this Agreement shall be deemed to be the effective date of this Agreement. Any proposed modification to this Agreement shall be submitted to the Commission for approval. In addition, the parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the parties' performance of this Agreement.

Section 5.2 Liability in the Event of Disapproval. In the event approval pursuant to Section 5.1 is not obtained, neither party will have any claim against the other arising under this Agreement.

Section 5.3 Supersedes Prior Agreements. Upon its approval by the Commission, this Agreement shall be deemed to specifically supersede all prior agreements between the parties defining the boundaries of their respective Territorial Areas within certain areas of Alachua County, Florida.

**ARTICLE VI**

**DURATION**

Section 6.1 Term. This Agreement shall continue and remain in effect for a period of twenty (20) years from the date of the Commission's initial Order approving this Agreement

**ARTICLE VII**

**CONSTRUCTION OF AGREEMENT**

Section 7.1. Other Electric Utilities. Nothing in this Agreement is intended to define, establish or affect in any manner the rights of either party hereto relative to any other electric utility not a party to this Agreement with respect to the furnishing of retail electric service including, but not limited to, the service territory of either party hereto relative to the service territory of any other electric utility not a party to this Agreement

Section 7.2. 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 further this State's policy of actively regulating and supervising the service territories of electric utilities, supervising the planning, development, and maintenance of a coordinated electric power grid throughout Florida, avoiding uneconomic duplication of generation, transmission and distribution facilities, and encouraging the installation and maintenance of facilities necessary to fulfill the Parties' respective obligations to serve

**ARTICLE VIII**

**MISCELLANEOUS**

Section 8.1. Negotiations. Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Agreement, the only ones agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be

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ATTACHMENT A

binding upon either of the parties hereto unless the same shall be in writing, attached hereto, signed by both parties, and approved by the Commission

Section 8.2. 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

Section 8.3. Notices. Notices given hereunder shall be deemed to have been given to ALACHUA if mailed by certified mail, postage prepaid, to Mayor, City of Alachua, Post Office Box 9, Alachua, Florida 32615-0009 and to FPC if mailed by certified mail, postage prepaid, to General Counsel, Florida Power Corporation, P. O. Box 14042, St. Petersburg, Florida 33733. Such address to which such notice shall be mailed may be, at any time, changed by designating such new address and giving notice thereof in writing in the manner as herein provided

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written

ATTEST

BY 

THE CITY OF ALACHUA

  
Mayor

(SEAL)

A YIP ELECTRONIC SIGNATURE

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ATTACHMENT A

ATTEST

FLORIDA POWER CORPORATION

BY *Ronald E. White*  
Assistant Secretary

*Wayne C. Forehand*  
Wayne C. Forehand, Vice President

(SEAL)

APPROVED AS TO FORM AND LEGALITY

By *Neil A. Hughes*  
Legal Counsel to The City of Alachua

By *J. Bradford Hines*  
Corporate Counsel to Florida Power Corporation

A 1987 model form approved by the Florida Bar

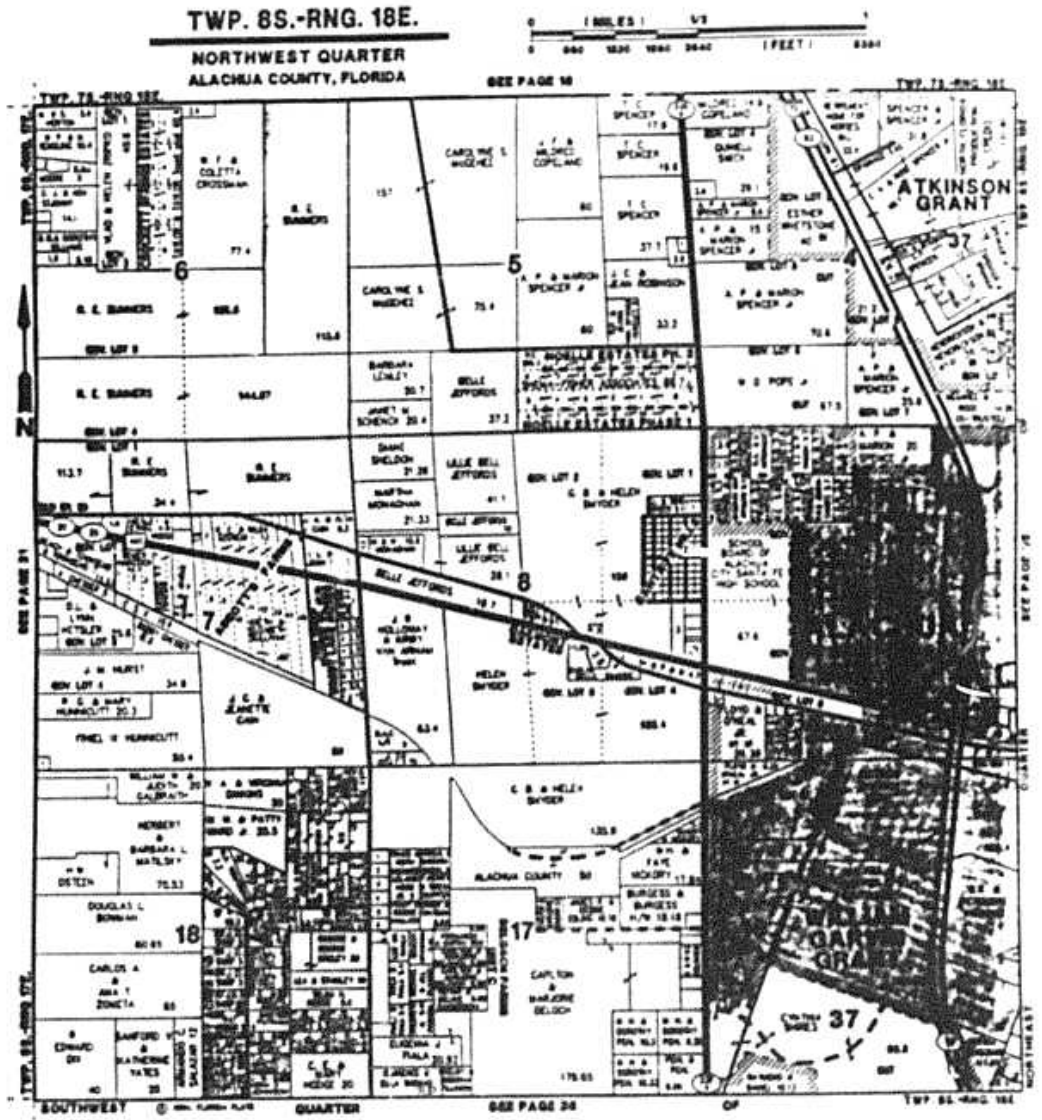


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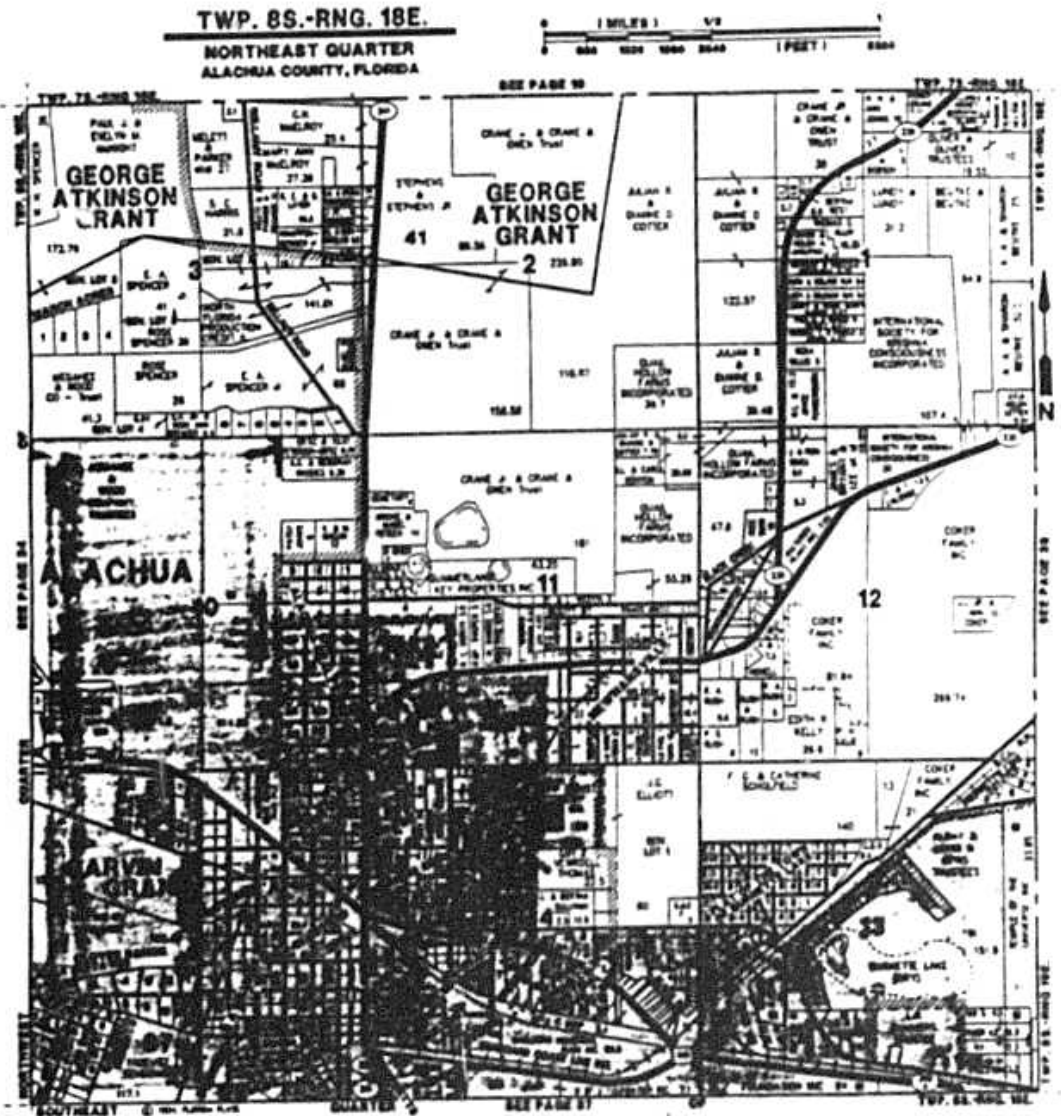
ATTACHMENT A

**EXHIBIT A**

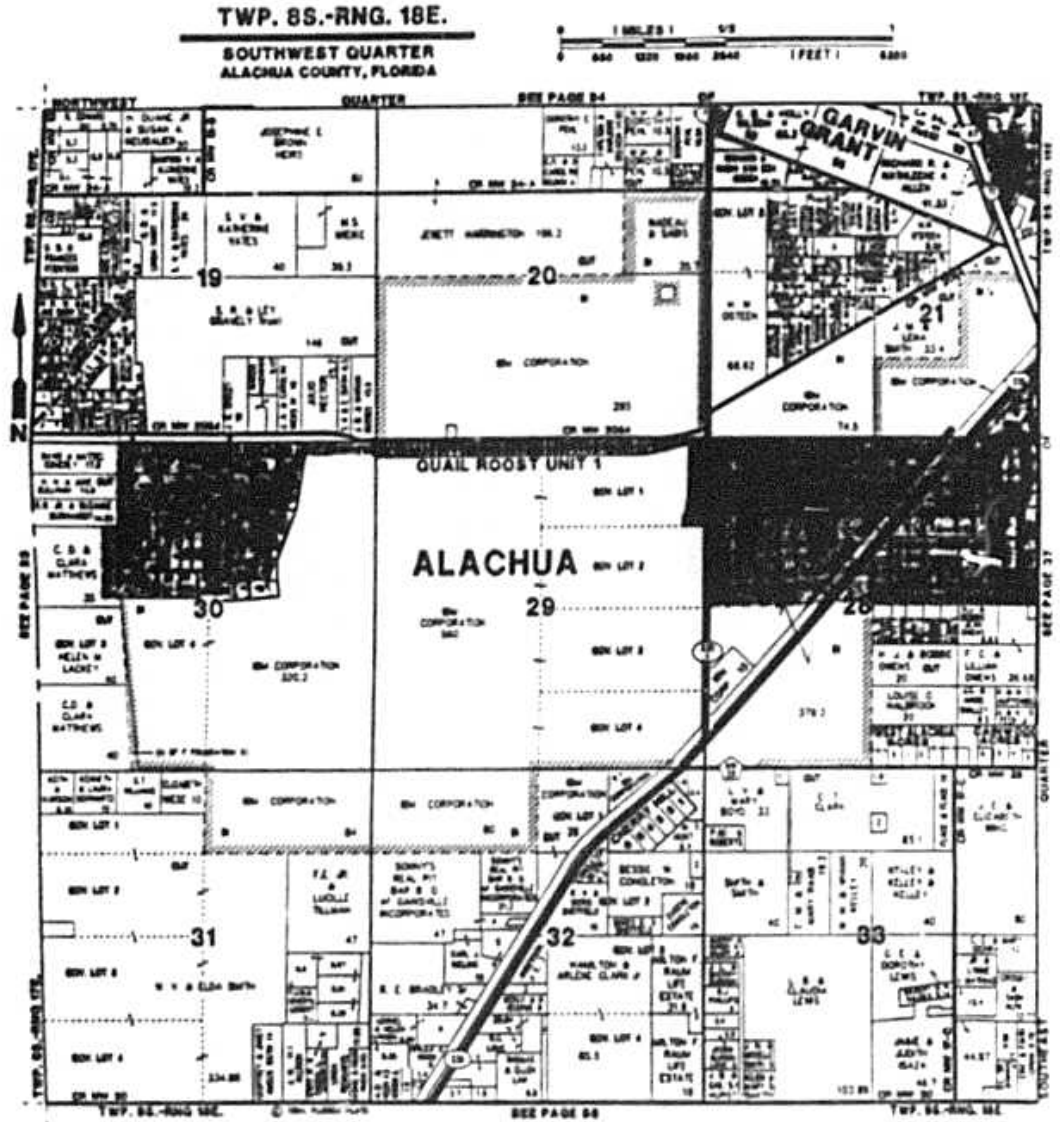




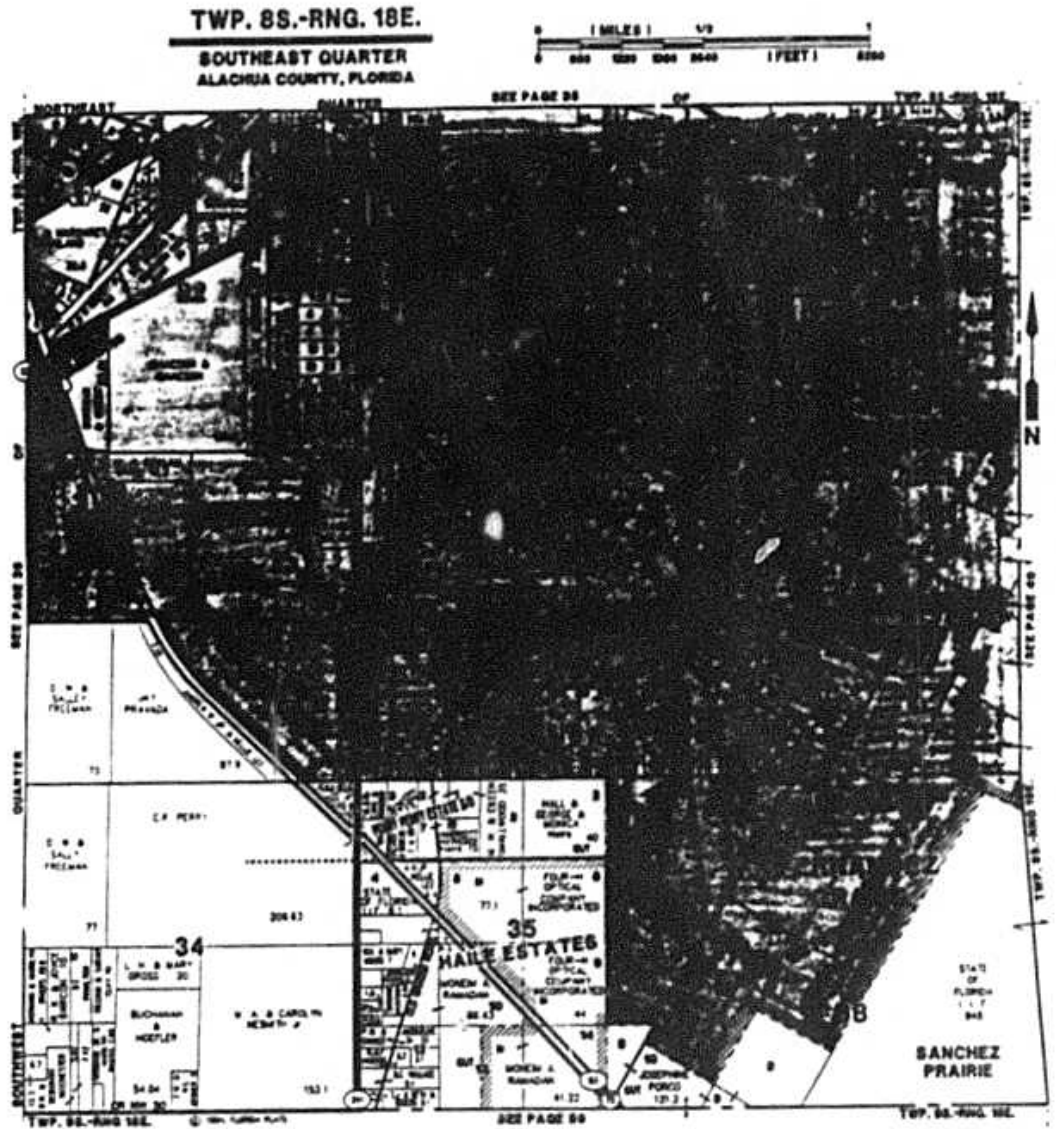
- FPC TERRITORY
- CITY OF ALACHUA TERRITORY
- NOT PART OF THIS AGREEMENT



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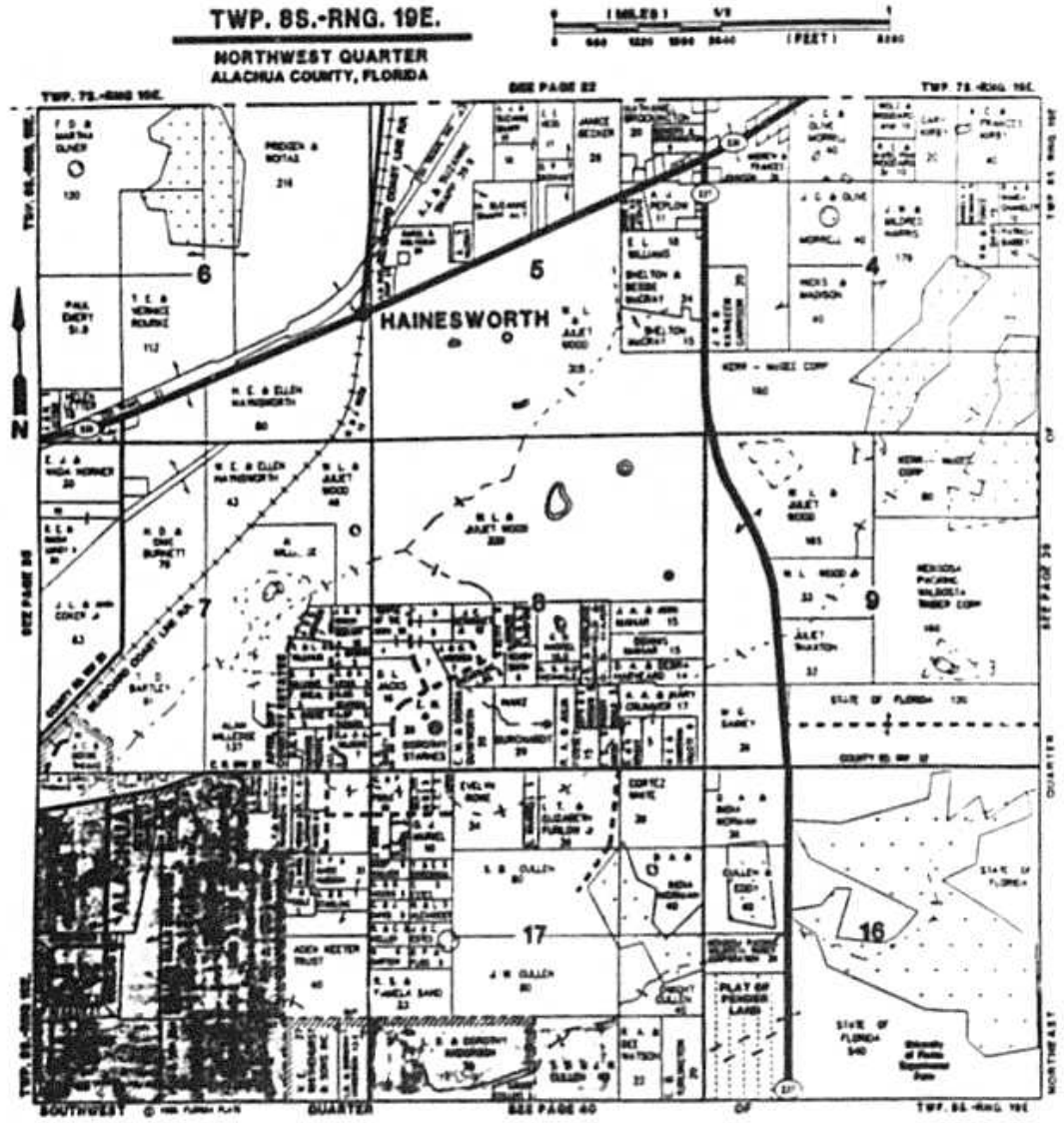


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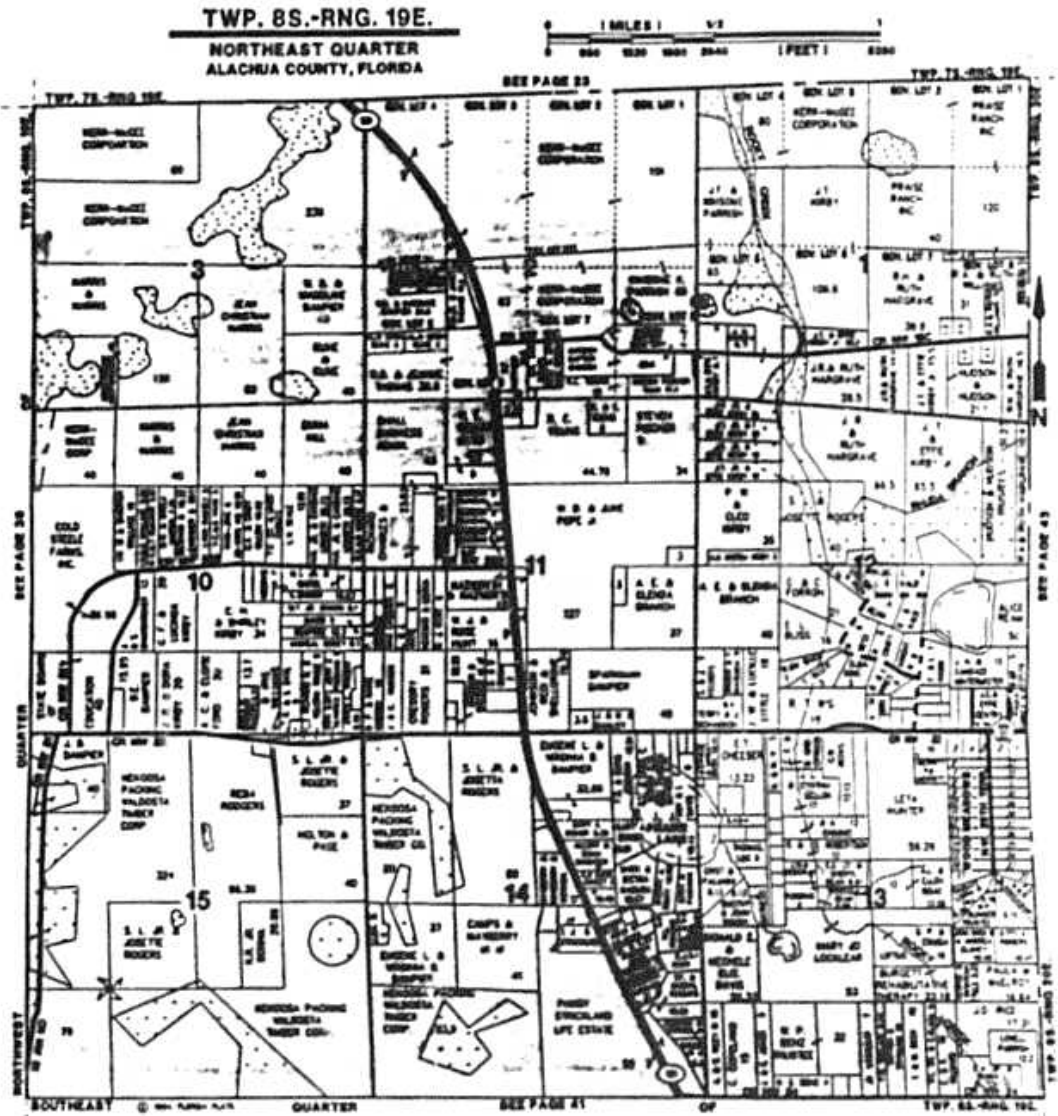


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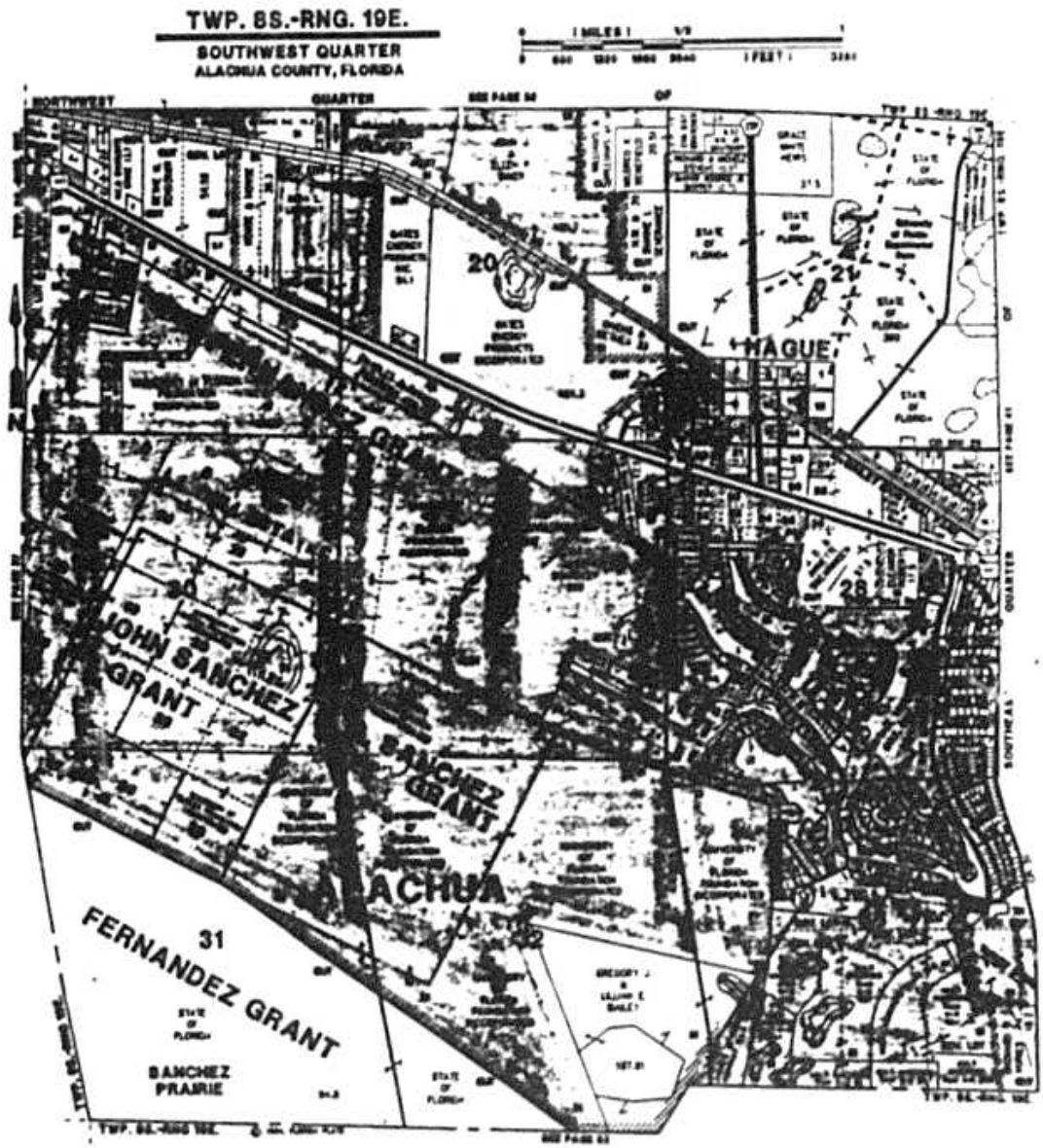


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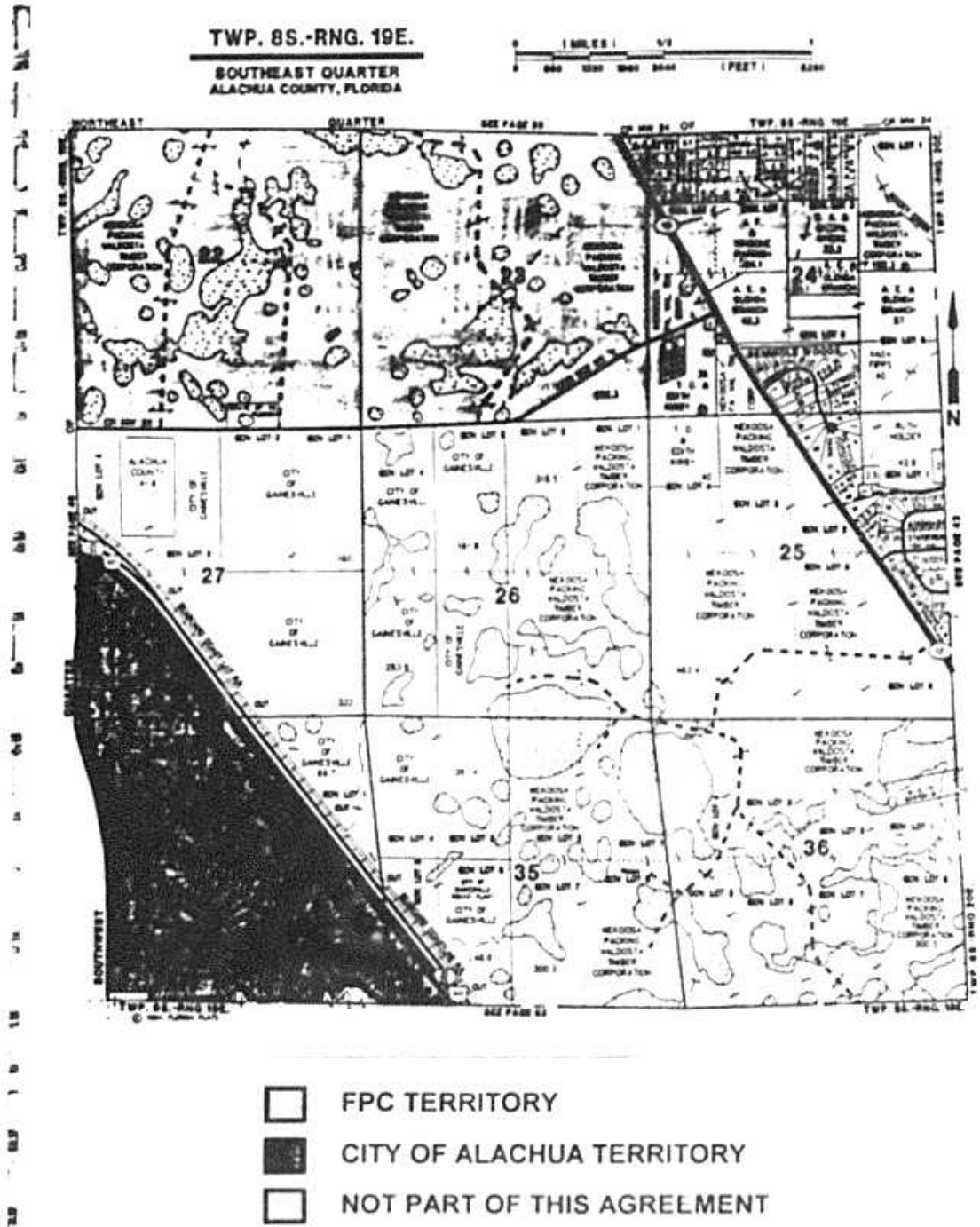


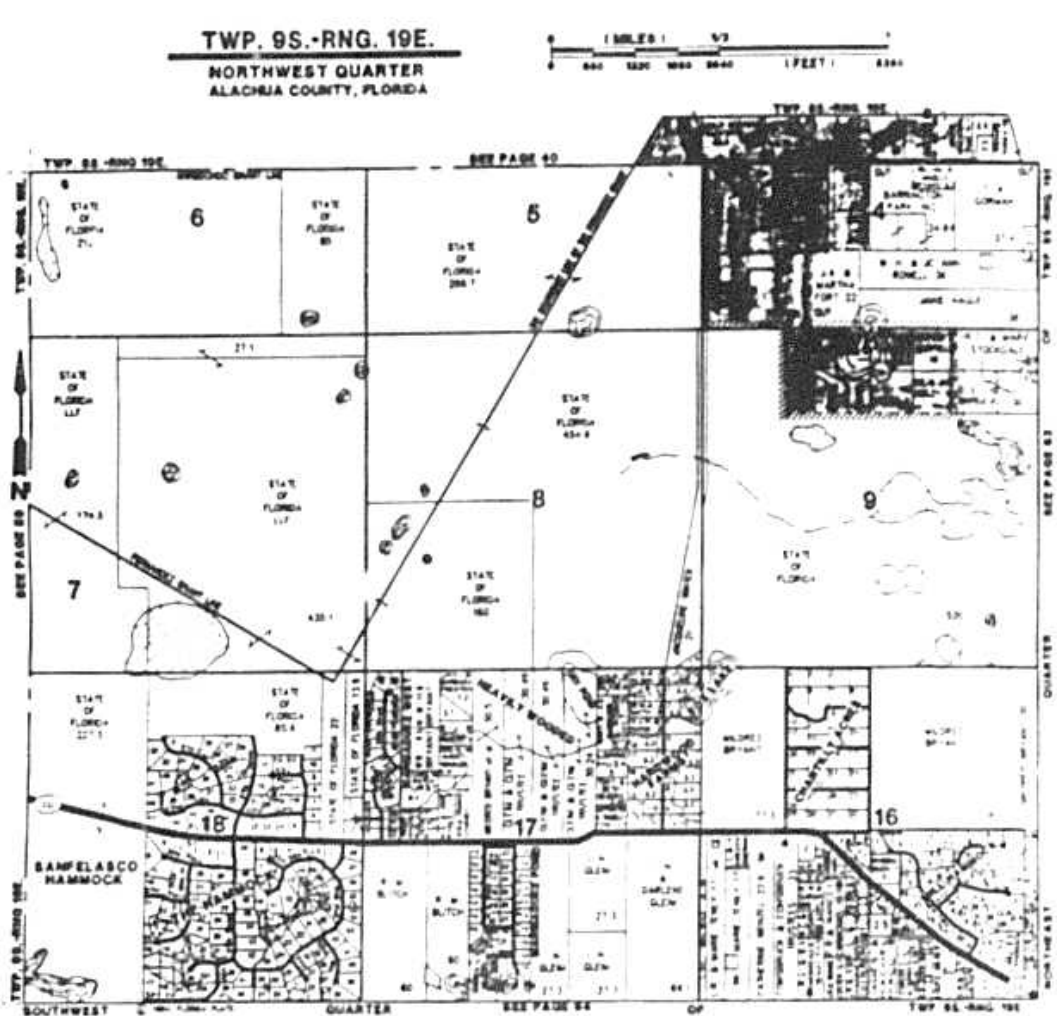
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ATTACHMENT A

## EXHIBIT B

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ATTACHMENT A

## EXHIBIT "B"

### FPC CUSTOMERS TO CITY OF ALACHUA

LINE #	METER NUMBER	CUSTOMER NAME	SERVICE ADDRESS	REVENUE CLASS
1	3015085	J E MCCALL	1/4 MI S 441 FLD DRT RD	RESIDENTIAL
2	5378871	J L JOSHUA	SR 241 ACR FRM SUB HSE	RESIDENTIAL
3	1177685	J SCHOLTENS	BND HSE ON HILL BAPT	COMMERCIAL
4	6623890	J SCHOLTENS	SS 441 BRKHS ON HILL	RESIDENTIAL
5	494367	J L SAMMONS	SS 441 BEH BRKON HILL	RESIDENTIAL
6	3109027	BEVERLY H - S.P.T.I.V.C	NW CR 241 1SW ALA PMP	COMMERCIAL

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ATTACHMENT A

## EXHIBIT C

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

FLORIDA POWER CORPORATION AND  
TAMPA ELECTRIC COMPANY,

Defendants.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint hereto on July 8, 1988, and its amended complaint on January 10, 1989, defendants having appeared by their counsel, and the parties hereto, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law hereto and without this Final Judgment constituting evidence or an admission by either party hereto with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law hereto, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against defendants under Section 1 of the Act of Congress of July 2, 1890, as amended, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," (15 U.S.C., Sec. 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Defendant(s)" means Florida Power Corporation

400E

or Tampa Electric Company and each of them.

(B) "Person" means any individual, partnership, firm, association, private corporation, state or municipal corporation or subdivision thereof, electric cooperative corporation or other business or legal entity engaged or proposed to be engaged in the generation and transmission of electric power at wholesale for resale and/or the distribution of electric power at retail; provided, however, that "person" shall not include owners, lessors, operators or managers of rental property, such as, trailer parks, apartment houses, shopping centers or office buildings, who meter and charge for electric power distributed to their tenants.

(C) "Bulk power supply for resale" means any, some or all arrangements for supply of electric power in bulk to any person for resale, including but not limited to, the taking of utility responsibility for supply of firm power in bulk to fill the full requirements of any person engaged or to be engaged in the distribution of electric power at retail, and/or interconnection with any person for the sale or exchange of emergency power, economy energy, deficiency power, and such other forms of bulk power sales or exchanges for resale made for the purpose or with the effect of achieving an overall reduction in the cost of providing electric power supply.

III

The provisions of this Final Judgment applicable to the defendants shall also apply to each of their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Each defendant is enjoined and restrained from, directly or indirectly, entering into, adhering to, continuing, maintaining, renewing, enforcing or claiming any rights under



any contract, agreement, understanding, joint plan or joint program with the other defendant or any other person to limit, allocate, restrict, divide or assign, or to impose or attempt to impose any limitations or restrictions respecting the persons to whom, or the areas or territories in which, either defendant or any other person may hereafter sell electric bulk power supply for resale.

(B) Nothing herein shall be construed as enjoining or restraining defendants from engaging jointly in lawful attempts to petition any federal or state governmental body (other than "persons" as defined herein) respecting any aspect of either defendant's business, including without limitation, sale of electric bulk power supply for resale.

V

(A) Within ninety (90) days from the date of entry of this Final Judgment, defendants shall take all necessary action to cancel each provision of every contract between the defendants and between or among each of the defendants and other persons, which is contrary to or inconsistent with any provision of this Final Judgment.

(B) Within ninety (90) days from the date of entry of this Final Judgment, defendant shall send to each person presently engaged in the generation and transmission and sale of electric bulk power supply for resale or in the distribution of electric power at retail in the State of Florida a copy of this Final Judgment, and shall, at the same time, advise each such other person affected by the provision of paragraph VI(A) that it is free to sell electric bulk power supply for resale to such persons and in such areas as it may freely choose.

(C) Within one hundred twenty (120) days from the date of entry of this Final Judgment, defendant shall file with this Court, and serve upon the plaintiff, an affidavit

as to the fact and extent of compliance with subsections (a) and (b) of this Section 4

VI

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the antitrust Division given to defendant at its principal office, be permitted, subject to any legally recognized privileges:

(A) Access during the office hours of defendant to all contracts, agreements, correspondence, memoranda, and other business records and documents in the possession or control of defendant relating to any of the matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview the officers and employees of defendant, who may have counsel present, regarding any such matters; and

(C) Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports relating to any of the matters contained in this Final Judgment as may be requested.

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

DOCKET NO. 960542-EU  
DATE: August 1, 1996

ATTACHMENT A

VII

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated: August 19, 1971.

  
GERALD R. HILL  
UNITED STATES DISTRICT JUDGE

Copies:

Wallace E. Brand, Esquire  
Department of Justice

Carlton, Fields, Ward, Emmanuel, Smith & Cutler, Esquires

Holland & Knight, Esquires