

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of territorial agreement between Florida Power Corporation and Sumter Electric Cooperative, Inc.

DOCKET NO. 961533-EU
ORDER NO. PSC-97-0611-FOF-EU
ISSUED: MAY 28, 1997

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On December 26, 1996, Florida Power Corporation (FPC) and Sumter Electric Cooperative, Inc. (Sumter) filed a Joint Petition for Approval of Territorial Agreement (the Petition). To correctly reflect certain boundary lines between them, FPC and Sumter subsequently filed revisions to the maps originally provided as Index Pages 7 and 19 of Exhibit A to its Territorial Agreement (Agreement). A copy of the Agreement between FPC and Sumter, excluding referenced exhibits, is incorporated in this Order as Attachment A.

According to the Petition, the Agreement is intended to supersede the parties' prior territorial agreements which this Commission approved in Order No. 10675, issued March 30, 1982, in Docket No. 800589-EU, and Order No. 11742, issued March 22, 1983,

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FPCO-REGISTRATION/REPORTING

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in Docket No. 830022-EU. The purpose of the Agreement is to delineate each utility's respective retail territorial service areas and, thereby, avoid future uneconomic duplication of facilities by these utilities in Citrus, Lake, Marion, Levy, Hernando, Pasco, and Sumter Counties.

To accomplish this goal, the Agreement provides for a transfer of customers between the two utilities. Exhibit B to the Agreement identifies 32 FPC customer accounts (24 residential and eight commercial) which will be transferred to Sumter within 90 days of our approval of the Agreement. Exhibit C to the Agreement identifies customers to be transferred within five years of our approval of the Agreement, including an additional 56 FPC customer accounts (50 residential and six commercial) to be transferred to Sumter, and 29 Sumter customer accounts (27 residential and two commercial) to be transferred to FPC.

Section 2.2 of the Agreement explains that the customers listed in Exhibit B are to be transferred within 90 days of this Commission's approval of the Agreement due to operation concerns. Section 2.2 also provides that the customers listed in Exhibit C shall be transferred as soon as construction of distribution facilities, consistent with prudent utility practice, permits their economic transfer, but in no event later than five years after we grant approval. Until such time, FPC and Sumter may continue to serve their respective existing customers listed in Exhibit C to the Agreement. With respect to its existing customers listed in Exhibit B to the Agreement, FPC may continue to serve them until 90 days from our approval of the Agreement.

By letter, the parties notified the affected customers, identified in Exhibits B and C to the Agreement, that their service would be transferred pending this Commission's approval of the Agreement. The letters also informed the affected customers of the rate differential between FPC and Sumter for each customer's class of service. A response sheet and telephone numbers of company contacts were included with the letters.

Thirty-one customers (30 FPC customers and one Sumter customer) returned the response sheets to state opposition to their pending transfer. Most were concerned about the rate differential between the two utilities. We note that, since the time this Agreement was filed, the rate differential between FPC and Sumter has been significantly reduced. Other customers simply were pleased with their current providers and saw no reason to change.

FPC indicated that a small number of customers mentioned reliability concerns. There is no reasonable likelihood, however, that the Agreement will cause a decrease in reliability to the existing or future ratepayers of FPC or Sumter. We recognize these customers' concerns, but we believe that the Agreement is in the overall public interest of Florida's ratepayers.

To ensure that transferred customers suffer no hardship due to the different deposit requirements of each utility, Section 2.6 of the Agreement provides for the transferring utility to refund customer deposits to the transferring customers, with the exception of customers with unfavorable payment histories. According to Section 2.6, the receiving utility will then bill the transferred customers a deposit no greater than the deposit previously charged by the other utility. If FPC refunded a transferring customer's deposit prior to the Agreement, Sumter will not require that customer to pay a new deposit upon transfer. The capital credits associated with the customers transferring from Sumter to FPC will be returned on the normal return cycle as if the transferring customers had remained with the cooperative.

Although not addressed in the Agreement, both parties have agreed to transfer any existing customer listed in Exhibit C to the utility that will ultimately serve that customer, upon that customer's request or a change-in-use of the real property. Such a transfer must be made if it can be accomplished in accordance with sound engineering practices and location of facilities at the time of the request or change-in-use. If these conditions are met, the customer shall then cease to be considered an existing customer, and electric service at that location shall be provided as soon as practicably possible by the party in whose territorial area the real property is located according to the Agreement.

Although not addressed in the Agreement, both parties have agreed to file annual reports with this Commission concerning the status of the existing customers listed in Exhibits B and C. These reports shall be filed so that we may monitor customer transfers during the transition period. When all existing customers have been transferred according to the Agreement, no further annual reports shall be filed.

Section 2.3 of the Agreement contains a 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, such as economic constraints or good engineering practices, call for such service. In these instances, a party may submit to the other party a written request 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 parties shall notify the Commission of all interim service arrangements that last or are expected to last for a period greater than one year.

Section 2.4 of the Agreement outlines the parties' proposed method of compensation for transferred facilities and for lost revenues associated with transferred customers. Upon completion of the five year transfer period, all electric facilities used by each party to serve its retail customers shall be located wholly within its respective service area as defined in the Agreement.

Section 2.7 of the Agreement is framed to preserve Sumter's tax exempt status. Pursuant to Section 501 of the Internal Revenue Code of 1986, a cooperative cannot maintain its tax exempt status if it generates more than 15% of its revenues from the provision of electric service to non-members. In the event a Sumter customer does not elect to join the cooperative, and Sumter determines that providing service to the customer would jeopardize its tax status, Sumter has reserved the right to refuse service. In such a case, FPC would be required to continue serving that customer, although the customer would no longer be in its service area as a result of the Agreement. Though this may not occur, we are concerned that this type of situation would allow for permanent service variances without our supervision. Therefore, reporting guidelines similar to those ordered above for interim service arrangements shall be required. If Sumter and FPC find it necessary to exercise this provision, they shall jointly notify the Commission when that service lasts or is expected to last for more than one year.

In the event that the property transfers to FPC proposed in the Agreement are not approved by the United States Department of Agriculture, the Rural Utilities Service, and the Cooperative Financing Corporation, Sumter Electric Cooperative, Inc., shall notify this Commission.

Based on the foregoing, we approve the Territorial Agreement between Florida Power Corporation and Sumter Electric Cooperative, Inc., as discussed in this Order. We find that the Agreement is in the public interest and is consistent with this Commission's goal

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to eliminate all existing and potential uneconomic duplication of electrical facilities in the State of Florida.

The Agreement shall become effective on the date this Order becomes final. According to Section 6.1, the Agreement shall then remain in effect for a period of twenty years. This term will be automatically extended for a ten-year period unless either party gives notice of its intent to terminate at least one year before the date of termination.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power Corporation and Sumter Electric Cooperative, Inc.'s Joint Petition for Approval of Territorial Agreement is granted. The Territorial Agreement is in the public interest and is, therefore, approved as discussed in the body of this Order. It is further

ORDERED that Florida Power Corporation and Sumter Electric Cooperative, Inc., shall inform this Commission of all interim service arrangements and service arrangements made pursuant to Section 2.7 of the Territorial Agreement that last or are expected to last for a period greater than one year. It is further

ORDERED that Florida Power Corporation and Sumter Electric Cooperative, Inc., shall file with this Commission annual reports concerning the status of those customers affected by the Territorial Agreement, until all such customers have been transferred pursuant to the Territorial Agreement. It is further


ORDERED that Sumter Electric Cooperative, Inc., shall notify this Commission in the event that the property transfers to Florida Power Corporation proposed in the Territorial Agreement are not approved by the United States Department of Agriculture, the Rural Utilities Service, and the Cooperative Financing Corporation. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 28th day of May, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 18, 1997.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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ATTACHMENT A

Territorial Agreement
Between
Sumter Electric Cooperative, Inc.
and
Florida Power Corporation
Marion, Citrus, Sumter, Lake,
Hernando, Pasco and Levy Counties

AGREEMENT

Section 0.1: THIS AGREEMENT, made and entered into this 18th day of NOVEMBER, 1996 by and between SUMTER ELECTRIC COOPERATIVE INC. ("SECO") 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, SECO, by virtue of its Charter and legislative authority, is authorized and empowered to furnish electricity and power to its members, private individuals, corporations, and others, and pursuant to such authority, presently furnishes electricity and power to customers located in certain areas of Citrus, Lake, Marion, Levy, Hernando, Pasco and Sumter Counties, and elsewhere; 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 Citrus, Lake, Marion, Levy, Hernando, Pasco and Sumter Counties, Florida, and elsewhere; and

Section 0.4: WHEREAS, the respective areas of retail service of the Parties hereto are contiguous in many places with the result that duplication of service facilities may occur in the future unless such duplication is precluded by virtue of this 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 territories in Citrus, Lake, Marion, Levy, Hernando, Pasco and Sumter Counties, Florida; 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 the SECO Territorial Area, as defined in Section 1.2, and the FPC Territorial Area, as defined in Section 1.3. Those portions of Citrus, Lake, Marion, Levy, Hernando, Pasco and Sumter Counties 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: SECO Territorial Area. As used herein, the term "SECO Territorial Area" shall mean the area so labeled on Exhibit "A" in Citrus, Lake, Marion, Levy, Hernando, Pasco and Sumter Counties, 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 Citrus, Lake, Marion, Levy, Hernando, Pasco and Sumter Counties, 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 electric service from either SECO 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: Extra-Territorial Customers. As used herein, the term "Extra-Territorial Customers" shall mean those customers whose points of use are in the Territorial Area of one Party but which are receiving service from the other Party on the effective date of this Agreement. The

term "Extra-Territorial Customers" shall include the widow, widower, or divorced spouse of an Extra-Territorial Customer receiving retail service at the same location from the other Party on the effective date of this Agreement.

Section 1.10: 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 1.11: 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, SECO shall have the exclusive authority to furnish retail electric service to all New Customers within the SECO 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 of any municipality lying within the SECO Territorial Area or the FPC Territorial Area.

Section 2.2: Transition. In order to minimize inconvenience to Extra-Territorial Customers and as provided herein, SECO may continue to serve those Extra-Territorial Customers listed in Exhibits "B" and "C" even though the location at which they are using electric service shall be located in FPC Territorial Area and FPC may continue to serve those Extra-Territorial Customers listed in Exhibits "B" and "C" even though the location at which they are using electric service shall be located in SECO Territorial Area effective upon the approval of this Agreement by the Commission. Due to operation concerns, the Extra Territorial Customers listed on Exhibit "B", shall be transferred within ninety (90) days after approval of this Agreement by the Commission.

The Parties acknowledge that their respective distribution facilities will not economically support the immediate transfer of the Extra-Territorial Customers listed in Exhibit "C." Accordingly, those Extra-Territorial Customers shall be transferred as soon as construction of distribution facilities, consistent with prudent utility practice, permits their economic transfer but in no event later than five (5) years after approval of this agreement by the Commission.

Section 2.3: 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. The Parties shall notify the Commission of any such agreement for temporary service which is anticipated to last for more than one (1) year. 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 2.4: Compensation for Customer

a.) Transfer of Facilities: Upon the transfer of customers identified in Exhibit "B" and their associated Service Facilities, from the Transferring Party to the Receiving Party, 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. For the future transfer of customers identified on Exhibit "C" and their associated Service Facilities, 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 the reintegration of its remaining system to the extent such reintegration costs are reasonably required, following prudent utility practice.

b.) Lost Revenues: With respect to 80 lots/customers currently located in the SECO territory of the Spruce Creek and The Villages developments that are being served by FPC and will continue to be served by FPC pursuant to the change in Territorial Boundaries of this Agreement, FPC agrees to compensate SECO for the cost of lost revenues an amount equal to the product of FPC gross charge per kilowatt hour (which amount includes the customer charge) multiplied by the average annual kilowatt usage per consumer for all existing FPC consumers within these developments multiplied by the number of lots (80). Additionally, FPC shall compensate SECO an amount equal to the projected revenues for street lighting appropriate for the 80 lots for a 12 month period.

c.) Time of Payment: At the time of the transfer of a customer and/or their associated service facilities as outlined in Section 2.4 (a) & (b) above, the Receiving company shall pay the Transferring company in cash within thirty (30) days of the transfer, all amounts owed for payments for Service Facilities and Lost Revenues.

d.) Title and Easements: 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-ways, easements, road permits, or other rights to the Receiving Party.

Section 2.5: Time for Transfers. Notwithstanding any other provision of this agreement, the Parties hereto agree that all transfers of customers subject to this agreement shall be completed within five (5) years of the Effective Date hereof. The Parties shall therefore cooperate to effect all such transfers within this time period.

Section 2.6: 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.

Section 2.7 Preservation of Tax Exemption Status. Notwithstanding the provisions of Section 2.1-2.3 above, it is understood that the SECO must furnish its service mainly to its members in order to preserve its tax exempt status. Therefore, unless the proposed recipient of electric service will join SECO, SECO may decline to provide electric service, when in the judgment of SECO, the income produced thereby would cause non-member income to exceed the percentage of gross income which SECO may accept from non-members and maintain its tax exempt status. Neither Party shall serve any Customers in the other Party's Territorial Area beyond the period specified in Section 2.6 hereof.

ARTICLE III
BULK POWER SUPPLY

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

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: SECO Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of SECO to serve any new facility located in the FPC Territorial Area which facility is used in connection with SECO business as an electric utility; provided, however, that SECO 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 SECO 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 SECO in the SECO 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 2.4 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 2.4, and if SECO and FPC are unable to agree upon the selection of a

Consulting Engineer within ninety (90) days after receiving a written request by either Party for such selection either SECO or FPC may, after ten (10) days' written notice to the other Party of its intent to do so, petition the Circuit Court of Marion County, Florida, to determine the payment required in Section 2.4. 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: Prior Agreements. Upon its approval by the Commission, this Agreement shall be deemed to specifically supersede the Territorial Agreement entered into between the Parties on July 6, 1981, identified by the Florida Public Service Commission Docket no. 800589-EU, Order no. 10675, and issued March 30, 1982, defining the boundaries of their respective Territorial Areas within certain areas of Citrus, Lake, Marion, Levy, Hernando, Pasco and Sumter Counties, Florida. This Agreement shall not supersede the Territorial Agreement entered into between the Parties on February 15, 1993, identified by the Florida Public Service Commission Docket no. 930360-EU, Order no. 93-0998-FOE-EU, and issued July 9, 1993, defining the boundaries of their respective Territorial Areas within certain portions of Lake 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. This Agreement shall automatically be extended for a period of ten (10) years unless either Party gives notice of intent to terminate at least one (1) year prior to the date of termination herein.

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

be binding upon either of the Parties hereto unless the same shall be in writing, attached hereto, signed by both Parties, and approved by the 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 SECO if mailed by certified mail, postage prepaid, to: General Manager, Sumter Electric Cooperative, Inc., P. O. Box 301, Sumterville, Florida 33585. 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. 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:

SUMTER ELECTRIC COOPERATIVE INC.

By: Mill H. Conley
Secretary

William A. Sheppard
Chairman of the Board

By: _____

(SEAL)

ATTEST:

FLORIDA POWER CORPORATION

By: David F. West
Assistant Secretary

Janice B. Case
Janice B. Case, Vice President

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

By: _____
Legal Counsel to Sumter Electric Cooperative, Inc.

By: J. Randolph Harris
Corporate Counsel to Florida Power Corporation