

MEMORANDUM

March 30, 1998

RECEIVED

MAR 30 1998

2:10
FFSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CRUZ-BUSTILLO) *RUE*

RE: DOCKET NO. 971543-EU - JOINT PETITION FOR APPROVAL OF
TERRITORIAL AGREEMENT BETWEEN FLORIDA POWER CORPORATION
AND CITY OF OCALA.

98-0143-FPE-EU

Attached is an NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING TERRITORIAL AGREEMENT BETWEEN FLORIDA POWER CORPORATION
AND THE CITY OF OCALA, with attachments, to be issued in the above
referenced docket. (Number of pages in order - 16)

JCB/anr

Attachment

cc: Division of Electric and Gas (J. Breman)

I: 971543.ord

sent to mail room 3/31/98

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of territorial agreement between Florida Power Corporation and City of Ocala.

DOCKET NO. 971543-EU
ORDER NO. PSC-98-0443-FOF-EU
ISSUED: March 30, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING TERRITORIAL AGREEMENT
BETWEEN FLORIDA POWER CORPORATION AND THE CITY OF OCALA

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 November 24, 1997, Florida Power Corporation (FPC) and the City of Ocala (Ocala) filed a Joint Petition for Approval of a Territorial Agreement with the Florida Public Service Commission. A copy of the territorial agreement between FPC and Ocala is attached as Attachment A. The purpose of this territorial agreement is to delineate each utility's respective service area in Marion County and to simultaneously eliminate the potential uneconomic duplication of facilities by these two utilities in this county. Each utility confirmed that within 90 days after Commission approval of this territorial agreement, all electric facilities used to serve its retail customers will be located wholly within its respective service area. The 90-day interval will provide for an orderly transfer of the one affected customer. The customer was notified of the proposed transfer and has no objections.

DOCUMENT NUMBER DATE

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FPSC RECORDS/REPORTING

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Section 2.2 of the FPC and Ocala territorial agreement contains the provision for interim service to new customers. 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, except when exceptional circumstances, economic constraints, or good engineering practices call for such service. In such an event, a party may submit a written request to the other party to temporarily provide service to the new customer. The utilities have agreed to seek Commission approval for interim service arrangements that last or are expected to last for a period greater than one year.

We find that the territorial agreement between Florida Power Corporation and the City of Ocala should be approved. It is consistent with the Commission's goal to eliminate all existing and potential uneconomic duplication of electrical facilities in the State of Florida and is in the public interest.

The territorial agreement between FPC and Ocala will become effective on the date of the Commission order approving it. According to Section 6.1, of the agreement, it shall then remain in effect for a period of ten years.

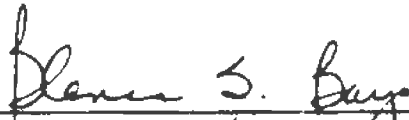
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint petition for approval of territorial agreement between Florida Power Corporation and City of Ocala is approved. It is further

ORDERED that any person whose substantial interests are affected by the proposed agency action shall have 2 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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By ORDER of the Florida Public Service Commission this 30th
day of March, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

JCB

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.

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 April 20, 1998.

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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.

AGREEMENT

Section 0.1: THIS AGREEMENT, made and entered into this 5th day of August, 1997, by and between the CITY OF OCALA, a municipal corporation 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, the City of Ocala, through the Ocala Electric Utility (OEU) 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 Marion County, Florida; 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 Marion County, Florida, and elsewhere; and

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

Section 0.8: NOW, THEREFORE, in fulfillment of the purpose 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 OEU Territorial Area, as defined in Section 1.2, and the FPC Territorial Area, as defined in Section 1.3. Those portions of Marion 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: OEU Territorial Area. As used herein, the term "OEU Territorial Area" shall mean the area so labeled on Exhibit "A" in Marion 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 Marion County, Florida.

Section 1.4: Point of Use. The point of use and not the point of connection 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 OEU 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(J), Florida Statutes.

ARTICLE II RETAIL ELECTRIC SERVICE

Section 2.1: In General. Except as otherwise specifically provided herein, OEU shall have the exclusive authority to furnish retail electric service to all New Customers within the OEU 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 OEU 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 point of use is 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 point of 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 point of use facilities are located, to the other party, the other party has the right, but not the obligation, to agree in writing to temporarily provide service to such customer's point of 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 whose point of use is 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 election to this Agreement as approved by the Commission, and shall notify the other party of such request or application.

Section 2.3: Transfer of Facilities. Upon the transfer of any customer or customer's purchase to this Agreement, the receiving party may purchase all of the service facilities of the transferring party related to the transferred customer or customer's for an amount as determined in Section 2.5(c).

Section 2.4: Transition. Due to operational concerns, the Extra-Territorial Customers listed on Exhibit "B," shall be transferred within 90 days after approval of this Agreement by the Commission.

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 customer shall be compensated for the cost of facilities (as set forth in subsection (c) below) the receiving party purchases and the cost of lost revenues (as set forth in subsections (d) and (e) below) for the customer's loss.

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 purchased are to be paid, the receiving party shall compensate the transferring party an amount based upon the true 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 twelve (12) month period in which the account was served at the service location or a twelve (12) 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 twelve (12) month period, the amount to be paid for the transfer of such customer shall be the transferring party's prevailing monthly customer charge multiplied by twelve (12).

e) **In addition to compensation due, the amount to be paid for street and security lights transferred shall be an amount equal to the total billings for such security lights for either the immediately preceding twelve (12) month period in which the account was served at the service location or a twelve (12) 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 twelve (12) month period, the amount to**

be paid for the transfer of such customer shall be the transferring party's prevailing monthly customer charge multiplied by twelve (12) months.

f) 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 Transfer. Notwithstanding any other provision of this Agreement, the parties hereto agree that all transfers of customers subject to this agreement including New and Existing Customers shall be completed within 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 1.1: Bulk Power for Resale. Nothing herein shall be construed to prevent either party from providing a bulk power supply for resale purposes, 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.

ARTICLE IV OPERATION AND MAINTENANCE

Section 4.1: Facilities to Remain. No generating plant, transmission line, sub station, 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: OEU Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of OEU to serve any OEU or City of Ocala facility located in the FPC Territorial Area; provided, that OEU shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of 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 OEU Territorial Area; provided, that FPC shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of OEU in the OEU 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 requirements 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, or if OEU 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 OEU 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 2.5. 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 final order, if any, granting 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 Marion County, Florida.

ARTICLE VI DURATION

Section 6.1: ~~Term.~~ This Agreement shall continue and remain in effect for a period of ten (10) years from the date of the Commission's final 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 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 OEU if mailed by certified mail, postage prepaid, to: Director Electric Utility, City of Ocala, P. O. Box 1270, Ocala, Florida 34478, 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:

THE CITY OF OCALA

BY *Myra J. [Signature]*
City Clerk

Michael A. [Signature]
President of City Council

(SEAL)

ATTEST:

FLORIDA POWER CORPORATION

BY _____
_____, Assistant Secretary

Janice B. Case
Janice B. Case, Senior Vice President

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

By: *[Signature]*
Legal Counsel of The City Of Ocala

By: *J. Donald Hines*
Senior Counsel to Florida Power Corporation

ACCEPTED BY CITY COUNCIL

August 5, 1997
DATE

OFFICE OF THE CITY CLERK *Daw*