

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to Resolve) DOCKET NO. 920214-EU
Territorial Dispute Between) ORDER NO. PSC-92-0920-PHO-EU
Talquin Electric Cooperative,) ISSUED: 09/02/92
Inc. and Town of Havana.)
_____)

Pursuant to Notice, a Prehearing Conference was held on August 31, 1992, in Tallahassee, Florida, before Commissioner Easley, as Prehearing Officer.

APPEARANCES:

JOHN H. HASWELL, Esquire, Chandler, Lang & Haswell, 211 N.E. 1st Street, Post Office Box 23879, Gainesville, Florida 32602
On behalf of Talquin Electric Cooperative, Inc.

WILLIAM J. PEEBLES, Esquire, Moore, Williams, Bryant, Peebles & Gautier, P.A., Post Office Box 1169, 306 East College Avenue, Tallahassee, Florida 32302
On behalf of Town of Havana.

MARY ANNE BIRCHFIELD, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff.

PRENTICE PRUITT, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0862
On behalf of the Commissioners.

PREHEARING ORDER

I. CASE BACKGROUND

On March 5, 1992, Talquin Electric Cooperative, Inc. (Talquin) filed a Petition to Resolve a Territorial Dispute with the Town of Havana (Havana). Havana filed its response on April 9, 1992. The focus of the dispute is the "Havana Middle School Site," the proposed location of a middle school to be constructed in Gadsden County.

DOCUMENT NUMBER-DATE

09985 SEP -2 1992

FPSO-RECORDS / REPORTING

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not

subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
William C. Laughlin	Talquin	1 - 18
Gary Stallons	Talquin	1 - 18
John Martin	Talquin	1, 2, 4, 7
Robert Bryant	Talquin	16
Cecil G. Trippe	Havana	1 - 18
<u>Rebuttal</u>		
William C. Laughlin	Talquin	1 - 18
Gary Stallons	Talquin	1 - 18
Steve Sparks	Talquin	16
Cecil G. Trippe	Havana	1 - 18

V. BASIC POSITIONS

TALQUIN ELECTRIC COOPERATIVE, INC. (TALQUIN): Talquin should be awarded the disputed area because:

1. Talquin maintains and has maintained distribution facilities on four sides of the disputed area historically, and on three sides currently.
2. Talquin can provide the required service to the site at less cost than the Town.
3. Duplication of Talquin's existing facilities has resulted from the Town's racing out past the disputed area.
4. Talquin is capable of providing adequate and reliable service to the site.
5. The Town's construction and upgrading of its facilities as shown on WEL-1 and WEL-2, and Mr. Trippe's exhibits, were done for the sole and or primary purpose of racing out past the site to stake a claim to the area and to prevent Talquin from being able to provide service to the area.
6. Any claim to historic service to the site by the Town was waived when the Town removed its facilities from CR 12A.

TOWN OF HAVANA (HAVANA): Havana has historically provided electric, water and natural gas utility service to the property in dispute. Havana would not be required to make any additions or extensions to its existing electric distribution system, except for on site improvements, to provide electric service to the disputed site. Havana, because of the proximity of its customer support facilities, is better able to provide adequate and reliable service to the site. The prospective customer has evidenced its preference that the Town of Havana provide electric service by the execution of a Utility Service Agreement between the Town of Havana and the School District of Gadsden County (Exhibit CGT-5).

STAFF: No position at this time.

VI. ISSUES AND POSITIONS

ISSUE 1: What is the geographical description of the disputed area?

TALQUIN: The area is generally level with no outstanding geographical features.

HAVANA: The disputed area is that area depicted on Exhibit CGT-6A as the new Havana Middle School site.

STAFF: No position at this time.

ISSUE 2: What is the nature of the disputed area, including population and the type of utilities seeking to serve it, and degree of urbanization of the area and its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services?

TALQUIN: The area is rural and unincorporated. There are less than 1,800 people in the closest town - the Town of Havana, and the disputed area lies east of Havana adjacent to CR 12A. There is no urbanization of the area, which is listed as silvicultural on the county land use maps. It is not proximate to any urban area except the small Town of Havana. At present, the foreseeable requirements for other utility services include water and waster water service which will be provided by Talquin, and natural gas service to be provided by the Town of Havana. The only planned customer in the area is the Havana Middle School. The area can expect limited

residential and agricultural growth and uses in the foreseeable future.

HAVANA: The disputed area is currently used for silviculture, however, the disputed area will be the site of the new Havana Middle School. The Town of Havana will be providing natural gas service to the school. Talquin Electric will provide water and sewer service. The disputed site is only sixty feet away from the corporate boundaries of the Town.

STAFF: No position at this time.

ISSUE 3: Are there other areas of potential conflict between Talquin Electric and the Town of Havana?

TALQUIN: Yes, if the Town is awarded the site. By building its new 3-phase line to and past (farther east) the proposed school site, the Town of Havana has created additional potential disputes, by placing its facilities in such a fashion as to claim service areas in an area historically served by Talquin and in which Talquin already has existing distribution facilities. In addition, the location of the new 3-phase line on CR 12A would enable the Town of Havana to offer service to potential new customers on the north side of CR 12A as well as on the south side of the school site.

HAVANA: The area immediately north of the disputed site, which is currently not provided electrical service by either utility, is an area of potential future conflict.

STAFF: No position at this time.

ISSUE 4: Which utility has historically served the area?

TALQUIN: Talquin has historically served the area including service to Mr. Leonard, the owner of the new Havana Middle School site. The subject property is part of the property owned by Mr. Leonard. Talquin has had lines on all four sides of the area, and while it was the wholesale provider to the Town of Havana, it removed a segment of line paralleling the Town limits to accommodate tobacco farming in the past. The Town has also served the area in the past with a single-phase line to Mr. Leonard's barns on the south side of CR 12A,

however, the Town abandoned the lines after years of disuse and lack of maintenance.

The Town's new 3-phase line and upgrades within the Town limits do not constitute historic service, nor service availability for purposes of this proceeding because the Town deliberately raced out to and past the disputed area in order to claim the area and prevent Talquin from serving it.

HAVANA: The Town of Havana has historically provided electric service to the specific site in dispute. The Town has also provided water and natural gas to the site.

STAFF: No position at this time.

ISSUE 5: What is the location, purpose, type, and capacity of each utility's facilities existing as of the filing of the petition by Talquin Electric Cooperative, Inc.? When were such facilities in the disputed area constructed?

TALQUIN: As of the filing of the Petition, Talquin had a single-phase line running west on CR 12A to a point within 711 feet of the disputed area. The line is #4 ACSR, 7.2kV, built in 1966, and would be upgraded to 3-phase to provide service to the site. The rephasing would run back to Talquin's existing 3-phase 1/0 ACSR 12.47kV electric line on Leslie Lewis Road, such rephasing would be approximately .44 miles. The purpose of Talquin's lines are to provide service to existing customers and to provide service availability to new customers as forecasted by Talquin's long range plans. Talquin also maintains single-phase service on CR 12, north of the area, which has been in place since at least 1960, and 3-phase service on Leslie Lewis Road south of the property which has been in place since at least 1960. The existing 3-phase portion of Talquin's lines that will be utilized to provide service to the proposed Havana Middle School has excess capacity to easily provide service to the Havana Middle School without modification.

As of the date of filing of the Petition, Havana had constructed its new 3-phase line along CR 12A, and upgraded a 2-phase line inside the Town limits to connect to the new 3-phase line. Talquin does not regard the upgrading and extension of the Town's lines as "existing as of the date the Petition was filed." Except for the

Town's upgrade and extension, the Town's existing facilities were wholly located within this Town limits in the area in question. The Town did have secondary service drops crossing its Town limits to serve a few customers adjacent to its limits on CR 153.

HAVANA: As of the date of the filing of the petition, Havana had available immediately adjacent to the disputed site adequate three-phase distribution facilities to provide service to the customer. Such facilities were constructed in December 1991.

STAFF: No position at this time.

ISSUE 6: What is the expected customer load and energy growth in the disputed area?

TALQUIN: The expected load is approximately 118kW and the energy growth is not expected to be significant in the near future.

HAVANA: No position at this time.

STAFF: No position at this time.

ISSUE 7: Does either company have any facilities for the provision of electricity within the disputed area?

TALQUIN: No. None on the site itself.

HAVANA: Havana has in place adequate facilities for the provision of electric service to the disputed site.

STAFF: No position at this time.

ISSUE 8: What additional facilities would each party have to build in order to provide service to the disputed area?

TALQUIN: To provide electrical service to the new school site, Talquin would convert its single-phase distribution line located 711 feet east of the site to 3-phase, and extend it westerly along CR 12A approximately 711 feet to reach the property. From there, in order to meet the development plan of the school, Talquin would extend its 3-phase line an additional 680 feet along CR 12A and at

that point would extend its 3-phase line southerly to an on-site point of delivery, a distance of 580 feet. Havana has already constructed its 3-phase line to and past the site. Talquin estimates that the on-site facilities that either utility will construct would be approximately the same.

HAVANA: The only additional facilities which Havana would have to build would be onsite distribution facilities necessary to provide service from the transition point to the point of delivery. Talquin would be required to rehabilitate and construct substantial distribution facilities in order to provide service.

STAFF: No position at this time.

ISSUE 9: How long would it take for each party to provide service to the disputed area?

TALQUIN: Time is not a factor in this particular instance since the school site has not even begun to be developed. However, Talquin estimates it would not take more than 30 days.

HAVANA: Havana could provide service to the disputed area almost immediately.

STAFF: No position at this time.

ISSUE 10: What is the ability of each utility to extend existing facilities to the area in question?

TALQUIN: Both utilities have the ability to extend service to the area if the term "ability" simply means the financial ability. A utility may claim the ability to provide service or to extend service either by its own in-house work crews or by hiring outside contractors. Talquin is capable of constructing the facilities with its own crews. The Town was required to contract out the construction and planning.

HAVANA: The Town of Havana would not be required to extend existing facilities.

STAFF: No position at this time.

ISSUE 11: Is each utility capable of providing adequate and reliable electric service to the disputed area?

TALQUIN: Talquin certainly is capable of providing adequate and reliable service. It is not as much a question of "capability" as it is a question of "cost" and service.

HAVANA: Havana is capable of providing adequate and reliable service to the disputed area. Talquin, because of the remoteness of its customer support facilities, could not provide service with the same level of reliability.

STAFF: No position at this time.

ISSUE 12: Has unnecessary and uneconomic duplication of electric facilities taken place in the vicinity of the disputed area or in other areas of potential dispute between the parties?

TALQUIN: Yes, by the Town of Havana. The Town's construction of its new 3-phase line on CR 12A and its upgrading of its facilities within the Town constitutes an unnecessary, wasteful and uneconomic duplication of electric facilities and capabilities already in place by Talquin Electric Cooperative, Inc.

HAVANA: No. The only uneconomic duplication which could occur would be if Talquin were to serve the new Havana Middle School.

STAFF: No position at this time.

ISSUE 13: What would be the cost to each utility to provide electric service to the disputed area?

TALQUIN: \$8,500 for Talquin, at least \$42,000 for the Town. These figures are based on the cost to reach the property. The entire cost of the Town's upgrading and new construction should be included in the Town's cost to provide service due to its "racing to serve the site."

HAVANA: The cost to Havana to provide electric service to the new Havana Middle School delivery point will be \$3,455.38 for overhead service or \$3,885.17 for underground service. Talquin estimates that its cost to provide service to the delivery point would be \$14,075.00 for overhead service

or \$15,314.00 for underground service.

STAFF: No position at this time.

ISSUE 14: What would be the cost to each utility if it were not permitted to serve the area in dispute?

TALQUIN: Short term, there would be no real cost. The Havana Middle School is still at its present location within the Town limits and is still operating there. The School Board has not even closed on the purchase of this proposed site. Any cost to the Town for upgrading and constructing its new facilities should not be included in this issue because of the Town's conduct in racing to serve. In the long term, there will be costs which are not readily identifiable, to Talquin because Talquin has planned for the growth in this area and would suffer stranded investment, particularly if the Town uses its new facilities to attempt to serve additional customers in Talquin's service area, as Mr. Trippe has indicated it would. There should be no short term or long term cost to Havana because it still provides service to the existing school site and there are no plans by the School Board to abandon the old site.

HAVANA: If Havana were not permitted to serve the area in dispute, it would lose approximately 1.2% of total annual electric system revenues.

STAFF: No position at this time.

ISSUE 15: What would be the effect on each utility's ratepayers if it were not permitted to serve the disputed area?

TALQUIN: In the short term, none. In the long term it may affect Talquin's rate payers due to the stranded investment. There may also be a cost to the rate payers of both utilities due to additional territorial disputes generated by the Town's constructed of its new facilities.

HAVANA: The ratepayers of Havana would suffer a detrimental effect.

STAFF: No position at this time.

ISSUE 16: If all other things are equal, what is the customer preference in the disputed area?

TALQUIN: All things are not equal, but if there were, there is no customer preference. The customer has clearly stated that it had no preference for either utility, although the Town of Havana attempted to force the School Board to prefer the Town with its "tie-in" policy.

HAVANA: The customer prefers that electric service be provided by the Town of Havana. This fact is evidenced by the Utility Service Agreement between the Town of Havana and the School District of Gadsden County.

STAFF: No position at this time.

ISSUE 17: Which party should be awarded the service area in dispute?

TALQUIN: Talquin Electric Cooperative, Inc.

HAVANA: The Town of Havana should be awarded the service area.

STAFF: No position at this time.

ISSUE 18: Should this docket be closed?

TALQUIN: No.

HAVANA: No position at this time.

STAFF: No position at this time.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Laughlin	Talquin	(WEL-1)	A general highway map of eastern Gadsden County showing the disputed site.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Laughlin	Talquin	(WEL-2)	A one line diagram showing the Town's facilities and Talquin's facilities in the area prior to December 1, 1992.
Laughlin	Talquin	(WEL-3)	A one line diagram showing the Town's line extensions and upgrades out past the disputed area after 12-1-92.
Laughlin	Talquin	(WEL-4)	Talquin's water and sewer facilities in the general area.
Laughlin	Talquin	(WEL-5)	Talquin's service centers in the area.
Laughlin	Talquin	(WEL-6)	Talquin's electrical facilities surrounding the Town of Havana.
Laughlin	Talquin	(WEL-7)	Talquin's contracts to provide water and waster water service to the new school site - the disputed area.
Laughlin	Talquin	(WEL-8)	The Town of Havana's description of areas served filed with the Florida Public Service Commission.
Stallons	Talquin	(GS-1)	A one line engineering diagram showing how Talquin would serve the site and substations available.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Stallons	Talquin	(GS-2)	Talquin's facilities surrounding the Town of Havana and the general area of eastern Gadsden County.
Stallons	Talquin	(GS-3)	County land use map showing use of property as silviculture (tree farming).
Stallons	Talquin	(GS-4)	Incorporated cities within 35 miles with populations in excess of 2,500 (does not include Town of Havana).
Stallons	Talquin	(GS-5)	A copy of the Town of Havana's system map showing no facilities going east on CR 12A.
Stallons	Talquin	(GS-6)	Talquin's worksheet maps showing planned load growth in the area.
Trippe	Havana	(CGT-1)	Correspondence from Superintendent Bryant to Town Manager Trippe dated January 3, 1991
Trippe	Havana	(CGT-2)	Correspondence from Town Manager Trippe to Superintendent Bryant Dated January 10, 1991
Trippe	Havana	(CGT-3)	Correspondence from Gadsden County Department of Planning and Zoning to Superintendent Bryant dated May 29, 1991

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Trippe	Havana	(CGT-4)	Memorandum from Town Manager Trippe regarding availability of Town's utilities dated May 30, 1991
Trippe	Havana	(CGT-5)	Utility Service Agreement between the Town of Havana and the School District of Gadsden County dated February 3, 1992
Trippe	Havana	(CGT-6A)	Map depicting Havana's service area - 1954 - 1986
Trippe	Havana	(CGT-6B)	Map depicting Havana's service area - 1986 - 1991
Trippe	Havana	(CGT-6C)	Map depicting Havana's service area - 1991 to present
Trippe	Havana	(CGT-7)	Depiction of distribution construction project
Trippe	Havana	(CGT-8)	R. D. Moody & Associates invoice
Trippe	Havana	(CGT-9)	Meter reading sheets and ledger cards - Leonard Property

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. POST-HEARING PROCEDURES

Rule 25-22.056(3)(a), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. You must include in that statement, a summary of each position of no more than 50 words, marked with an asterisk. In the absence of the summary statement, the prehearing position on that

issue will be used in the staff recommendation. The rule also provides that any issue or position not included in the post-hearing statement is considered waived. If a party's position has not changed since the prehearing order was issued, the post-hearing statement can simply restate the prehearing position.

All post-hearing memoranda, including findings of fact, conclusions of law, statement of issues and positions, and briefs, shall total no more than 50 pages, and shall be filed simultaneously. Arguments in briefs must be identified by issue number. Proposed findings of fact and conclusions of law are not required. However, if proposed findings of fact are submitted, each one must cite to the record, identifying transcript page and line. All proposed findings of fact which relate to a particular issue shall be grouped together and shall identify the issue number to which they relate. Each proposed finding of fact shall be separately and consecutively numbered. Any written statement which is not clearly designated as a proposed finding of fact shall be considered to be legal argument rather than a proposed finding of fact.

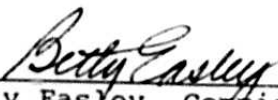
IX. PENDING MOTIONS

None.

It is therefore,

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 2nd day of September, 1992.



Betty Easley, Commissioner
and Prehearing Officer

(S E A L)

MAB:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.