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November 24, 1997

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
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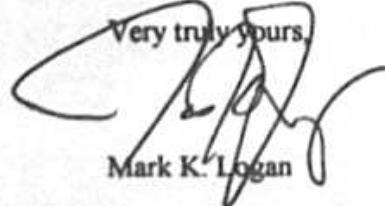
Re: Petition of Florida Power & Light Company to Resolve a Territorial
Dispute with Clay Electric Cooperative in Baker County; Docket No.
970512-EU

Dear Ms. Bayo:

Enclosed for filing is the original and fifteen (15) copies of Florida Power & Light
Company's Post-Hearing Brief in the above-referenced docket along with a diskette in
WordPerfect 6.0 format.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this
letter and returning the same to this writer. Copies have been served on all parties of record.

Thank you for your assistance in this matter.

Very truly yours,

Mark K. Logan

- ACK _____
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- CTR _____
- EAG** _____
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- WAS _____
- OTH _____

cc: all parties of record

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In Re: Petition of Florida Power & Light Company to Resolve a Territorial Dispute with Clay Electric Cooperative in Baker County)
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Docket No. 970512-EU

Filed: November 24, 1997

POST HEARING BRIEF
FLORIDA POWER & LIGHT COMPANY

Florida Power & Light Company ("FP&L"), pursuant to Rule 25-22.038(3), Fla. Admin. Code, and Order No. PSC-97-1310-PHO-EU (October 22, 1997) submits this post-hearing brief and states:

Summary

The Commission's express authority to resolve territorial disputes between an investor-owned utility such as FP&L and a rural electric cooperative such as Clay Electric Cooperative ("Clay") is set forth in Section 366.04(2)(e), Florida Statutes (1995) and Rule 25-6.0441, Fla. Admin. Code. This well-settled dispute resolution authority is inextricably linked to the mandate given the Commission to exercise "jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission and distribution facilities. Section 366.04(5), Florida Statutes (1995); Lee County Electric Cooperative v. Marks, 501 So. 2d 585, 587 (Fla. 1987). Thus the Commission has been charged with the duty to avoid the economic waste and resulting inefficiency of two utilities "racing to serve" a particular customer or territory. Gulf

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Power Company v. Public Service Commission, 480 So. 2d. 97 (Fla. 1985); Gulf Coast Electric Cooperative v. Florida Public Service Commission, 462 So. 2d 1092 (Fla. 1985).

Resolving a territorial dispute consistent with these judicial and legislative mandates is a relatively straight-forward process pursuant to Rule 25-6.0441, Fla. Admin. Code. The rule sets forth three principal factors for the Commission to examine in each dispute. First, the Commission must essentially examine the capability of each utility to provide reliable electric service with its existing or additional facilities. Rule 25-6.0441(2)(a), Fla. Admin. Code. Second the Commission must look to the nature of the area in question, including the present and future need for utility services. Rule 25-6.0441(2)(b), Fla. Admin. Code. Finally, the Commission must determine the cost of each competing utility to provide the necessary distribution, substation and transmission facilities to the disputed area. Rule 25-6.0441(2)(c), Fla. Admin. Code.

The geographic facts concerning the instant dispute between FP&L and Clay are not complex. Indeed, the location and nature of these facilities are not in dispute as the parties have stipulated to Issue Number 7. FP&L's dual-fed Wiremill substation is located approximately 1/4 mile from the River City Plastics facility which is located in an industrial park where FP&L already serves another customer. Clay's closest substation, with only one feeder, is approximately 3.75 miles away from this service point. As neither utility currently provides actual service to the River City Plastics facility both utilities would have to use additional facilities to provide electric service.¹

¹ Clay has provided construction service to the River City facility. The provision of this service was the subject of Order No. PSC-97-1235-PCO-EI. That order specifically noted that the provision of such service could not be a factor in predetermining the issues addressed at hearing and that Clay would have to remove such service if the Commission awards service to FP&L. Order No. PSC-97-1235-PCO-EI, at page 3.

As there is no issue as to the distances involved in bringing service to the disputed area, it is abundantly clear that the Commission's consideration of necessary additional facilities should be resolved in FP&L's favor. FP&L only needs to run a three-phase line from one of its feeders at the Wiremill substation to the point of service, approximately 2945 feet. Clay must in turn add cooling fans to its substation transformer and step-up transformer, rebuild .6 miles of single phase line along Rhoden Road, and add new three-phase line for approximately .85 miles.

Rule 25-6.0441(2)(a) also contemplates the consideration of reliability. Again, consideration of this factor should be resolved in FP&L's behalf. Ignoring momentary interruptions, and including transmission outages for FP&L, there has been only a total of approximately 1 hour and 39 minutes of outage time that would have impacted the disputed area over the past five years. Clay, on the other hand, has experienced 8 hours and 13 minutes of outages impacting the disputed area over the last three years; a factor of over 5 times the amount experienced by FP&L. Accordingly, considering both the facilities necessary to serve the disputed area and the reliability of each utility in delivering that service, the Commission should find that application of Rule 25-6.0441(2)(a) to the instant facts can only support a finding that FP&L is in a better position to provide service to the disputed area.

An examination of the area in question also supports resolution of the factors enunciated in Rule 25-6.0441(2)(b), Fla. Admin. Code in FP&L's favor. The area in question is essentially an industrial park where FP&L already provides service². It is reasonably foreseeable that since there are two other lots in the industrial park available, that more industrial activity will eventually

² FP&L provides service to Florida Wire & Cable which is located immediately adjacent to the undeveloped portions of the park itself. Essentially the entire area functions as the industrial park.

be situated in the area. As FP&L already provides service to another industrial customer located in the area (Florida Wire & Cable), FP&L is best suited to serve the remainder of this industrial park, including the River City Plastics facility.

Given the disparity of distances from each competing utility's substation to the point-of-service it is not surprising that the costs associated with Clay's additional facilities necessary to bring basic three-phase service to this delivery point are significantly higher than FP&L's. FP&L's cost of bringing basic three-phase service the area is approximately \$20,550. Clay's cost would be at least \$98,000. Certainly a cost differential of close to \$80,000 is a significant amount in the application of Rule 25-6.0441(2)(c), Fla. Admin. Code. That is over 5 times the amount found to be "relatively small" in Gulf Coast Electric Cooperative v. Clark, 674 So. 2d 120, 123 (Fla. 1996). As such the Commission should find, upon reviewing the evidence adduced at hearing, that FP&L is able to provide service to the disputed area at the least cost.³

As all three primary factors set forth in the Commission's territorial dispute consideration rule mitigate towards FP&L, the Commission can and should award service to FP&L on that basis alone. There is simply no reason to consider the secondary factor of customer preference set forth in Rule 25-6.0441(2)(d), Fla. Admin. Code as that factor is only at issue if the other principal factors are substantially equal. Since they are not, customer preference simply should not play a role in the outcome of this dispute.

³ As discussed below in greater detail, the disparity in costs between FP&L's service and that of Clay's is only exacerbated when comparing FP&L's dual-feed throwover option vs. Clay's backup generation option or when comparing those same two options adjusted to provide for anticipated growth in the disputed area.

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The Commission's treatment of customer preference, in its rules and decisions, is steeped in the 1968 Supreme Court case of Story v. Mayo, 217 So. 2d 304, 307-8 (Fla. 1968); cert denied, 395 U.S. 909, 89 S. Ct. 1751, 23 L.Ed.2d 222 (1969), where the Court stated, "[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself." Thus, the Commission may only give consideration to customer preference in the event the other, preeminent dispute considerations factors are substantially equal. In this dispute Clay has attempted to turn Story v. Mayo on its ear and let customer preference drive the Commission's decision making process. Clay would interject a standard where the Commission must determine the "nature and character" of the service requested by the customer, despite the total absence of any such criteria in the statute or rule. Moreover, it would appear Clay would have the Commission ignore its own rules with respect to the proximity of each utility to the disputed area and the ability of each utility to serve the disputed area in favor of a unilateral determination by a customer as to which utility offers a package of real or perceived services that is more attractive. Such a result is directly at odds with Story and should not be countenanced by the Commission.

The irony of Clay's position is that the record shows that the customer never really requested a quality or nature of service that requires the expenditure of well over a million dollars for backup generation. It is uncontroverted that what the customer requested was service that would minimize the occurrence of momentary and repeated momentary interruptions; defined by the customer as those between 12-18 cycles. Generators were never requested. They were offered by Clay, even though the record again reflects that backup generation is at best a grossly

inefficient, expensive and clumsy mechanism with little predicted success in addressing the customer's stated concerns.

FP&L, contrasted to Clay's proposed services, has offered service which does in fact efficiently address the customer's concerns over momentary and repeated momentary interruptions. FP&L's proposal, using a state-of-the-art throwover switch would only cost an additional \$78,547 on top on the provision of standard three-phase service. Even if Clay's comparable offer did actually address the real needs of the customer it would do so at a cost of over \$1.2 million; over 12 times the cost of FP&L's proposal. A similar disparity exists when the future foreseeable service needs for the area are factored in. Clay's costs, including additional substation upgrades would increase by at least another \$50,000. Thus, Clay would expend a minimum of \$1.2 million dollars versus just over \$200,000 for FP&L. Even ignoring the fact that Clay's generator package does not adequately address the customer's stated concerns, the cost of the proposed service simply does not justify such an expenditure.

FP&L's location to the disputed area is not by happenstance. The customer considered this as a factor in choosing the site for his new facility. The proximity of the location to FP&L's Wiremill substation is such that the costs associated with bringing reliable electric service to the disputed area are simply much less than that of Clay's. This fact should not be altered by a customer's determination which apparently was based upon erroneous information both as to the ability of the proposal to meet his stated needs and the costs of the electric service provided.

A balanced application of the principal factors enumerated in Rule 25-6.0441(2), Fla. Admin. Code suggests that FP&L is the utility best situated to serve the disputed area in question. Such a determination would be consistent with the Commission's duty to avoid uneconomic

duplication of facilities and that of Story which does not allow for a customer to drive the territorial dispute process.

Issues and Positions

Issue No. 1:

What is the geographic description of the disputed area?

FP&L: **The area is an industrial park in Baker County and immediately to the east of Wiremill substation. The area includes River City Plastics, which is located within the industrial park next to FP&L's industrial customer, Florida Wire and Cable, and approximately 1/4 mile east of the Wiremill substation.**

Based upon the positions taken by FP&L and Clay in the prehearing order, it appears that the two utilities are in basic agreement as to the geographic description of the disputed area. That area is essentially the industrial park located in central Baker county, south of US Highway 90 (SR 8), north of Interstate 10(SR 8) and immediately to the east of FP&L's Wiremill substation. (Hood, Tr. 16) FP&L already serves one industrial facility located within this area; Florida Wire & Cable. (Hood, Tr. 17)

Staff has taken the position that the geographic description of the disputed area is restricted to the River City Plastics plant site in Baker County, Florida. Order No. PSC-97-1310-PHO-EU at page 8 ("Prehearing Order"). This is an overly restrictive view that only invites future disputes within the industrial park itself. FP&L witness Hood testified that upon the completion of the River City Plastics Facility and work on the road leading to that facility and the industrial park, Baker County's Chamber of Commerce plans to actively market and advertise the two remaining industrial parcels. (Hood, Tr. 55) Mr. Hood also testified the entire industrial park should be considered part of the dispute as whoever ultimately is awarded service will have to

cross right by the other two parcels to get to River City Plastics. (Hood, Tr. 50) Accordingly given the close proximity of these parcels to River City Plastics, their similar constitution (industrial), and future development potential, it makes sense to consider this entire area as part of the dispute.

Rule 25-6.0441(2)(b), Fla. Admin. Code supports the Commission's treatment of the entire industrial part as part of this dispute. That rule requires consideration of the reasonably foreseeable future requirements of the area for utility services. Here, given the marketing plans of the Baker County Chamber of Commerce, it is reasonably foreseeable that additional industrial facilities will locate at the park. If the Commission limits its determination to the single River City Plastics facility then future disputes are inevitable. This is especially true if the Commission decides to award the River City Plastics site to Clay as FP&L already is serving a customer in this region. (Hood, Tr. 17) Accordingly, FP&L suggests that the appropriate geographic region at issue in this dispute is entire industrial park area including the River City Plastics facility.

Issue No. 2:

What is the nature of the disputed area, including population, the type of utilities seeking to serve it, degree of urbanization of the area, the area's proximity to other urban areas, and the area's present and reasonably foreseeable future requirements for other utilities?

All parties (stipulated issue):

Baker County is primarily an agricultural and conservation area, having the Okefenokee national Wildlife Refuge, the Nature Conservancy and Osceola National Forest comprising over half its land area. The 1997 projected population of Baker County is 20,787 with the incorporated areas of Macclenny and Glen St. Mary populations being 4,201 and 467 respectively. The next largest area would be the area of Sanderson with some 1200-1500 in population.

Much of the surrounding area is designated as conservation, wild life refuge or refuge management areas and national forests. There are no unique or outstanding or distinguishing geographic features. The area is rural. No one resides in the area that is in dispute.

FP&L, an investor-owned utility, has primarily served the central corridor of Baker County, including Sanderson, Glen St. Mary and Macclenny. The Sanderson community, which includes the area surrounding FP&L's Wiremill substation is approximately 5 miles from the city of Glen St. Mary and approximately 7 miles from the city of Macclenny.

FP&L serves approximately 330 accounts in Sanderson, 300 accounts in Glen St. Mary, 2600 accounts in Macclenny and 3000 accounts in the surrounding rural area.

Clay serves approximately 1,900 customers in Baker County and some along Rhoden Road just east of the disputed area. There are no other utility services seeking to serve the site.

Issue No. 3:

Which utility has historically served the disputed area?

FP&L: **FP&L has served the area in and around the dispute area for eight decades. FP&L has provided service to the Sanderson area since 1938 and the Macclenny area since 1926. FP&L has provided service to the disputed area since 1976. **

FP&L has a long history of service throughout Baker County. As Mr. Hood testified, since FP&L was incorporated in 1926 and began keeping records, it has served in Baker County. (Hood, Tr. 18) Currently the company serves over 6300 accounts in Baker County, the most number of customers served by any utility in the region. Id. While Clay also has served customers in Baker County for a number of years, the total number of customers is significantly less than FP&L. (Dyal, Tr. 249) Moreover, unlike FP&L, Clay has never served any customer

within or immediately adjacent to the disputed area. FP&L, in serving Florida Wire & Cable since 1976 has indeed provided and continues to provide such service. (Hood, Tr. 19)

Staff, in adopting a position that only the River City Plastics facility is at issue in this dispute, assert that no utility currently provides service to the disputed area. Prehearing Order at P. 9. This position ignores FP&L's uncontroverted testimony regarding its service to Florida Wire & Cable and the similarities not only as to geographic location but, more importantly as to the type of service (commercial/industrial). (Hood, Tr. 19-20) Florida Wire & Cable is part and parcel of the industrial area contemplated by Baker County. As FP&L has been the only utility to serve an industrial customer in this immediate area, the Commission should recognize that FP&L is the only utility to actually serve the disputed area.

Issue No. 4:

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

FP&L: **Historical data indicate the expected load and energy growth in the disputed area to be 1.2% or 8.6 mva through the year 2001. Factoring in River City Plastics increases those numbers to 24.7% or 10.6 mva through the year 2001. Additional growth (two other industrial sites) is also contemplated.**

FP&L does not disagree with the general conclusion of staff with respect to the anticipated increased customer load of 1955 kw (13.6 mva annually). Prehearing Order at p. 10. However FP&L notes that it is reasonably foreseeable to anticipate additional loading due to the other two industrial park parcels eventually becoming operational. As FP&L witness Hood testified in response to a question from staff counsel Jaye, it would not be reasonable to assume no growth would occur in the industrial park over the next five years. (Hood, Tr. 78) Mr. Hood

further testified that the actual load would be dependent upon the type of industrial facility to occupy the two remaining sites; that load could be as large as River City Plastics or a smaller industrial customer. (Hood, Tr. 79) But the load would increase with upon those two sites becoming operational. Id.

Issue No. 5:

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 utilities?

FP&L: **Not as to FP&L as it is serving all operational facilities within this area. Allowing Clay to serve the disputed area will result in such duplication as Clay will have to install facilities within the immediate area of FP&L's existing Wiremill substation and associated distribution lines and add substation capacity.**

As previously discussed, the geographic nature of this dispute is not at issue. FP&L's Wiremill substation is located within 2950 feet from the River City Plastics facility. Stipulated Issue Number 7. Clay's closest substation is located 3.75 miles from the facility. Id. The fact that FP&L currently serves the only industrial customer in the disputed area is also not challenged. As FP&L witness Hood testified, the substation was constructed with plans to serve additional customers in the undeveloped areas around the substation. (Hood, Tr. 20) The substation also has adequate capacity (44 mva) to serve this region. (Hood, Tr. 44) Clay on the other hand must construct a six-phase improvement and line extension program just to bring its facilities within this same area.⁴ (Dyal, Tr. 176-178; 183-184)

⁴ This is only to provide standard three-phase service to the River City Plastics facility and does not include the additional cost for back up generation proposed by Clay.

Given FP&L's historic service to area immediately around its Wiremill substation, which includes the industrial park and area in dispute, two conclusions are readily evident. First, as FP&L has and currently serves in the immediate area of dispute or the industrial park, service to the remainder of the park cannot constitute uneconomic duplication as no other utility is serving this area. Second, Clay's proposed extension into this area clearly constitutes duplication of FP&L's existing facilities.

Clay will likely attempt to contort the facts in this case to those reviewed by the Supreme Court in Gulf Coast Electric Cooperative v. Clark, 674 So. 2d 120 (Fla. 1996) where the court found no uneconomic duplication due to, among other things, the existence of a Gulf Coast Cooperative single phase line that had been in existence in the disputed area. *Id.* at 122. Here, Clay is likely to claim that by virtue of its single phase line located to the east of the disputed area that its service to the industrial park would not constitute uneconomic duplication. However that case is fundamentally distinguishable from the instant facts on two grounds. First, unlike this dispute, the record in Gulf Coast reflected the cooperative's status as the historic provider in the area due to its service to a "substantial number" of customers in the area. *Id.* at 122-23. In this dispute, however, the record only supports the opposite conclusion; namely that FP&L is the historic provider of service to the disputed area by virtue of its service to Florida Wire & Cable, other customers in the area and the proximity of its substation to the disputed area. Moreover, and as discussed in more detail in Issue No. 9, the cost associated with Clay's six-phase line extension program (\$98,000) is not "relatively small" as the upgrade considered in Gulf Coast (\$14,583). Accordingly, the Gulf Coast decision provides no assistance in justifying the actions of

Clay in attempting to extend its line to serve River City Plastics. As such, the actions of Clay must be considered uneconomic duplication of services.

FP&L also notes that Clay claimed in its prehearing position on this issue that FP&L's construction of the Wiremill substation in 1976 somehow constituted uneconomic duplication of services. Yet Clay offered no testimony that established it has ever served or sought to serve the industrial park area. Moreover, there was no evidence adduced at hearing that Clay ever objected to the construction or operation of the Wiremill substation in 1976. (Dyal, Tr. 215-216) Thus, there is simply no evidentiary record which would support a finding that FP&L's construction of the Wiremill substation somehow constituted uneconomic duplication of services.

Issue No. 6:

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

FP&L: **While both utilities are capable of providing electric service to the area in dispute, given the immediate proximity and nature of FP&L's Wiremill substation, FP&L's service to the area will be predictably more reliable than that proposed to be provided by Clay.**

While both utilities are certainly capable of extending electric service to the disputed area and providing service, FP&L suggests that the Commission's inquiry should not stop at such a nominal point. Instead, the Commission should determine which utility is more capable of providing service to the disputed area. Rule 25-6.0441(2), Fla. Admin. Code contemplates the consideration of each utility's capability in light of the other's ability. In other words, simply finding that both utilities could render service to the area is not enough of an inquiry. The degree

of service quality certainly should be a factor of consideration in the evaluation of this component of the Commission's mandate.

Here, such a review lead to only one conclusion; namely that FP&L is more capable of providing service to the disputed area than Clay. The reasons for this are self-evident from a review of the record. First, the location of FP&L's existing facilities. FP&L witness Hood and Clay witness Dyal both agreed that the closer a utility's transmission and distribution facilities are to a customer's delivery point for electric service, the less likely that customer will experience service related problems. (Hood, Tr. 88-89; Dyal, Tr. **) It is simply a function of distance and the amount of line exposed. (Hood, Tr. 88-89). Thus on that basis alone, FP&L's capability of providing reliable electric service is superior to that of Clay's.

FP&L also has demonstrated better capability and reliability historically in the immediate area serviced by the two utilities respective substations. FP&L has only experienced, including transmission interruptions, a total of approximately 1 hour and 39 minutes of outage time over the last five years. (Hood, Tr. 83, 89; Exhibits # 3, 4) Meanwhile, Clay has experienced 8 hours and 13 minutes of outages in the last three years. (Dyal, Tr. 191-192) Additionally, Clay has experienced some 23 momentary interruptions over this same period of time. Id. As Clay witness Dyal testified, "We're (Clay) not satisfied with reliability for existing customers". (Dyal, Tr. 189) Certainly if Clay is not satisfied with its own reliability history, the Commission should not ignore that factor in determining which utility is more capable of providing reliable electric service to the disputed area.

FP&L also notes that there is a real question as to whether, under the circumstances which Clay has offered service and claimed a right to serve this territory, the Commission can find that

Clay is capable of providing service to the area. Clay witness Barrow testified, that the utility has never filed a tariff or other supporting documentation with respect to its "load management" generator program. (Barrow, Tr. 137-140) This despite that the program or rate has been in existence for several years. (Philips 118-199) Rule 25-9.052(2), Fla. Admin. Code requires rural electric cooperatives to file with the Commission any changes to a cooperative's rate structure 30 days prior to the final adoption of that structure by the cooperative.⁵ The purpose of the rule is to allow the Commission to determine whether such rate structure or changes thereto are fair just and reasonable. Rule 25-9.052(4), Fla. Admin. Code. Here, Clay has essentially deprived the Commission of its ability to investigate and determine whether its load management with generator rate is fair, just and reasonable. Given the evidenced adduced at hearing with respect to the total lack of any discernable foundation for the determination of an applicable generator credit within Clay's customer class, there should be real concern about allowing Clay to continue to employ a rate structure system that has never been submitted for the Commission's review.⁶ FP&L suggest that under such circumstances, and until such time as Clay complies with the clear requirements of Rule 25-9.052, Fla. Admin. Code, the Commission should not find that Clay is capable of extending service to the disputed area using a non-compliant rate structure.

Issue No. 7: What is the location, purpose, type, and capacity of each utility's facilities existing as of the filing of the petition to resolve the territorial dispute?

⁵ "Rate structure" refers to the classification system used in justifying different rates and, more specifically, to the rate relationship between various customer classes, as well as the rate relationship between members of a customer class. Rule 25-9.051(7), Fla. Admin. Code.

⁶ Clearly, the subset of customers using Clay's load management with generator rate is a customer class as defined by Rule 25-9.052(8), Fla. Admin. Code. See, testimony of Clay witness Barrow, (Tr. 155-162).

All parties (stipulated issue):

FP&L's existing facilities in Baker County include a transmission line, the Baldwin-Columbia 115kv line; two distribution substations, Macclenny Substation and Wiremill Substation and a distribution system which serves customers in Baker County. The Baldwin-Columbia 115kv line connects Baldwin Substation, in Duval County, to Columbia Substation, in Columbia County. Wiremill and Macclenny Substations are fed from transmission line taps from this transmission line. There are coop facilities that are also fed off the Baldwin-Columbia 115kv line, namely, Macedonia Sub near Macclenny (Okefenoke Rural Electric Cooperative), Tustenegee in Lake City (Clay Electric Cooperative) and Sanderson Substation in Baker County (Clay Electric Cooperative). FP&L's Wiremill Substation is located at the intersection of Rhoden Road and Wiremill Road, approximately 1/4 mile from the disputed area, in Sanderson, Florida. Wiremill Substation provides service to the community of Sanderson and surrounding areas and to an FP&L industrial customer, Florida Wire and Cable, adjacent to the industrial area in dispute. Wiremill Substation was constructed in 1976 and presently has a capacity rating of 44 mva.

Issue No. 8:

What additional facilities would each party have to construct in order to provide service to the disputed area?

FP&L: **Three substation regulators and associated bus work. A three-phase service 1000 mcm underground feeder as River City Plastics primary service and a three-phase service 3/0 aluminum overhead feeder as a backup to the underground feed. FP&L would also install an automatic throwover switch.**

The additional facilities necessary of FP&L to construct in order to provide service to the dispute area, and more specifically, River City Plastics, can be divided into three distinct components: basic three-phase primary service; additional primary service to accommodate the unique operational needs of the River City Plastics facility; and total service to include capacity to serve foreseeable future industrial customers in the disputed area.

Basic Primary Service

FP&L witness Hood testified that FP&L could extend basic primary three-phase service to the River City Plastics site. This would be an overhead feeder on wood poles from the Wiremill substation extending some 2825 feet to the point-of-service for River City Plastics. (Hood, Tr. 22).

Additional Primary Service

Due to the unique operational needs of the River City Plastics facility, FP&L witness Hood testified that the utility could provide a second feed from the Wiremill substation to the River City Plastics facility. (Hood, Tr. 24) This second feed would be underground and would serve as the primary feeder to the plastic pipe manufacturing facility. Id. The two feeders would be linked together by a state-of-the-art throwover switch. (Hood, Tr. 253; Brill, Tr. 289-90) This throwover switch will sense any interruption in service of greater duration than 8.5 cycles (plus or minus 1 cycle). Id. In such event, the switch will automatically switch electric service from the primary feed to the backup feed. (Brill, Tr. 291) Thus, and as discussed in more detail in Issue No. 13, this switch minimizes the impact of momentary interruptions or repeated momentary interruptions on the River City Plastics manufacturing process.

Service With Capacity for Additional Growth in the Disputed Area

In addition to the primary service discussed above, FP&L believes that it is prudent to anticipate the reasonably foreseeable future demand of the disputed area. Accordingly, FP&L would install a larger underground cable which would serve as the primary feed to River City Plastics and would add a new feeder position consisting of three single-phase voltage regulators

and associated bus work. (Hood, Tr. 24) This would ensure that the entire industrial park could be served reliably and efficiently.

Clay's Additional Facilities

Clay witness Dyal testified that in order for Clay to extend its facilities to the River City Plastics site, it would have to embark upon a six-phase construction project. (Dyal, Tr. 176-178) This includes, rebuilding single-phase line along Rhoden Road, extending new three-phase line along Rhoden Road and up to the facility itself, and installing cooling fans to the transformer located in Clay's substation. (Dyal, Tr. 177, 208) Due to reliability concerns associated with serving such a large load as that of River City Plastics, Clay would also have to install a recloser just above Rhoden Road. (Dyal, Tr. 187)

As Clay witness Dyal testified, a single source of service is unacceptable to meet the particular needs of the River City Plastics manufacturing facility. Unlike FP&L, however, Clay does not have the capability to extend a second feeder to the facility as backup to the primary feed. Instead, Clay must resort to the provision of two backup generators, which, as discussed in Issue No. 13 do not actually address River City Plastic's stated goals of avoiding the impact of momentary and repeated momentary interruptions.

The impact of the River City Plastics load on Clay's Sanderson substation is essentially that the substation's capacity will be overloaded. Mr. Hood testified that the River City Plastics load would cause Clay's step-up transformer to operate at 106% of its current capacity. (Hood, Tr. 255) Obviously under such a situation Clay would have to install additional facilities in order to be able to reliably serve any additional load beyond that of River City Plastics. Thus, Mr Dyal testified on cross examination that they would have to place an additional step-up transformer in

parallel with the current step-up transformer. (Dyal, Tr. 209) This is the only way Clay could accommodate any future growth post-service to River City Plastics.

Issue No. 9: What would be the cost to each utility to provide service to the disputed area?

FP&L: **FP&L's costs for basic primary service: \$20,550; for additional primary service (with backup and throwover): \$99,097; and for total cost, including future growth: \$205,431. Clay's comparable costs are: at least \$98,000, at least \$1,198,000, and at least \$1,250,000, respectively.**

FP&L's costs for the three levels of service discussed in Issue No. 8 are all supported by the evidence adduced at hearing. As FP&L witness Hood noted, the cost estimates were generated using a FERC-approved MECA II accounting system. (Hood, Tr. **). Additionally, the actual cost estimates and associated documentation have been provided (Hood, Exhibit **). The cost for basic three-phase primary service to the River City Plastics facility is \$20, 550. (Hood, Tr. 93). Delivering the service necessary for River City Plastics to minimize the impact of momentary interruptions will cost an additional \$78,547. This includes the cost of a second underground feed and throwover switch. (Hood, Tr. 36) Finally, in order to anticipate the reasonably anticipated growth likely to occur in the disputed area, FP&L would expend another \$106,334 for an additional feeder position, substation regulators and a larger underground cable. Id.

Clay's costs for basic primary three-phase service are at least \$98,000. (Dyal, Tr. 186) But note that the cost of a recloser, estimated at approximately \$10,000 was not included in this estimate. (Dyal, Tr. 189) This despite the fact that there was a direct impact on reliability to the remainder of Clay's customers fed from the distribution line leading to River City Plastics as a

result of that facility being brought on line. Id. Accordingly, the \$98,000 figure should probably be adjusted to include the cost of the actual recloser unit.

Clay cannot provide an alternate source of electric service via its existing substation. Thus, Clay has had to resort to providing backup generation units to River City in an attempt to minimize River City's exposure to momentary interruptions of service. Clay estimates that these generators, installed and configured as backup units, will cost approximately \$1,100,000. (Nov. e 269-70) However, as these generators have not been purchased or installed on site, Clay's costs are estimates. As FP&L witness Noble testified, a more reasonable figure based upon FP&L Services' history of purchasing and installing similarly configured generation units would be \$1,511,169. (Noble, Tr. 270) Even subtracting the profit figure estimated by Mr. Noble as \$137,379, that still leaves the estimate of the true cost of purchasing and installing two power module generators at \$1,373,790, some \$273,790 thousand dollars above Clay's estimate. (Noble, Tr. 270, 279-80) At a minimum, the Commission should adjust Clay's estimate to include a more realistic assessment of the associated equipment and installation costs. (Noble, Tr. 269)⁷

Clay's figures should also be adjusted upwards in its estimate of the future needs associated with service to the disputed area. As already noted, in order to accommodate any future growth in the disputed area, Clay will have to remove its step-up transformer and replace it with a regular transformer. (Dyal, Tr. 210). However Clay's cost estimate of the costs associated with this work, only included labor, not the cost of the transformer itself. Id. Accordingly, on top

⁷ Note also that there should be included a cost of engineering studies necessary to ensure that Clay's proposed use of back-up generation facilities at the River City Plastics site does not interfere or otherwise cause damage to FP&L's transmission facilities or personnel when those units are operated in parallel to power supplied by FP&L. See (Dyal, Tr. 205-06; Exhibit 10)

of the approximately \$50,000 in improvements noted, and additional amount should be assigned for a transformer itself, depreciated or otherwise.

Issue No. 10:

How long would it take for each utility to provide service to the disputed area?

FP&L: **This service could be provided within four (4) weeks.**

If FP&L is awarded service to the disputed area it can provide the necessary service within four weeks. (Hood, Tr. 33-34). Of course, under such circumstances, FP&L will work with Clay to coordinate removal and transfer of the interim service to the River City Plastics facility.

Issue No. 11:

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

FP&L: **FP&L would lose revenues from customers; experience increased costs for alternate routes around the disputed area; longer time to recover investment; and increased costs of private rights-of-way or easements. Clays' would likely benefit from not having the utility expend the funds to serve River City**

FP&L would clearly lose revenues from other industrial park customers in the disputed area if it were not allowed to serve. As FP&L witness Hood testified, there was a natural expectation when the Wiremill substation was built back in 1976 that it would be used to serve the area immediately surrounding the substation as no other utility was providing service. (Hood, Tr. 31) Therefore to remove that ability to serve would deny FP&L the revenues reasonably expected to flow from its investment in the region and the disputed area.

FP&L would also have to find alternate routes to provide service to current and future customers to the northeast and south of Wiremill substation. These alternate routes will be more

costly and inefficient. Id. Finally, FP&L would experience increased costs of having to use private-rights-of-way instead of the public right-of-way along Rhoden Road. Id.

Clay on the other hand would save the over \$1,200,000 dollars associated with its purchase and installation of distribution facilities and back-up generators for the River City Plastics facility. Additionally it would save the maintenance and fuel costs associated with operation of the generators. Finally it would avoid future uneconomic duplication of FP&L's existing facilities in the disputed area.

Issue No. 12:

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

FP&L: **The impact on FP&L's ratepayers would be the inability to seek maximum utilization of FP&L's existing facilities which helps keep rates low. Clay's members, if FP&L was permitted to serve, not have to subsidize the cost of Clay's proposed service to River City.**

The impact on FP&L customer if it is not permitted to serve is essentially the inability to maximize the use of existing facilities readily available to accommodate the load anticipated by River City Plastics and other growth in the disputed area. (Hood, Tr. 17-18) The Commission should simply not put a utility in the position of, having prudently expended funds to provide for foreseeable growth in an area, to then not be able to fully utilize those assets.*

Part of the motivation for Clay's determination to offer backup generation to River City Plastics is that that it is the only way Clay could construct a scenario to offer the customer.

* Clay's arguments with respect to any overcapacity at the Wiremill substation are simply without merit. As FP&L witness hood testified, FP&L's decisions with respect to additional capacity at the Wiremill substation were, themselves partly predicated upon the maximum use of existing equipment within FP&L's operational territory. (Hood, Tr. 47)

Although a secondary feed from its substation would probably have been less expensive than backup generation, Clay does not appear to have a switch which could meet River City's defined threshold of 12-18 cycles. Thus generators were Clay's only alternative. The real inequity suffered by Clay's members under such a scenario is that only a select few of them, based upon undefined and unstated qualifying factors, can avail themselves of the generator option. (Barrow, Tr. 163) As Mr. Barrow testified, residential customers would not be able to receive a Clay purchased or leased generator even if they wanted o.e. (Barrow, Tr. 164). Now presumably, Clay could recover the costs of a residential generator program just like it would do so with the River City proposed service plan. Yet, those residential customers are treated differently. That discriminatory treatment extends to large commercial customers with respect to determination of the generator credit that might be available in some shape of form. There is no formula for determining how that credit is arrived at by Clay. (Barrow, Tr. 137) No one can be sure of the extent of the treatment of Clay's customers because, with respect to the LGSD with Generators rate, there is no way to discern what is required to qualify for the rate or how a generator credit is arrived at. Id. Until such time as Clay makes those determinations, such that Clay's members can determine what is available on a fair and equitable basis, the Commission should not support further extension of use of this particular program by allowing Clay to use it as a basis for extension of its territory.

Issue No. 13:

If all other factors are equal, what is the customer preference in the disputed area?

FP&L ****As all factors are not equal, customer preference should not be considered. Even if it is, the basis for the customer's decision suggests that that decision should be disregarded in determining the outcome of this proceeding.****

Rule, 25-6.0441(2), Fla. Admin. Code establishes a clear hierarchy of factors for the Commission's consideration in resolving territorial disputes. Subparagraphs (2)(a)-(c) of the rule contain three preeminent factors. They include: the capability of each utility to deliver reliable electric service; the nature and foreseeable future requirements of the disputed area; and the cost of each utility to deliver service to the disputed area. In the instant dispute, as discussed previously in detail, each of those three factors should be decided in favor of FP&L. FP&L simply has the better and more reliable ability to bring quality electric service to this customer. The location and nature of this area are such that, again, FP&L is best situated to meet the current and reasonably foreseeable needs of the area. Finally, FP&L's cost, whether basic three-phase, dual feed-throwover, or dual-feed throwover with planning for foreseeable growth services are compared to Clay's similar offerings, the cost differential are real and substantial. Given the record in this docket with respect these factors, there is simply no need for the Commission to even reach the point of actually considering, as a component of determining this territorial dispute, whether or not the customer River City Plastics, who is only one customer within the disputed area, has a preference between either FP&L or Clay. Accordingly, consistent with Rule 25-6.0441(2)(a)-(c), Fla. Admin. Code, the Commission should award the disputed territory to FP&L, without consideration of the secondary customer preference factor set forth in subsection (2)(d) of the rule.

Assuming, arguendo, that the primary factors in Rule 25-25-6.0441(2) are substantially equal so that customer preference does become a factor for the Commission's consideration, it is

important to note that the Commission only need consider, but is not bound by, the customer's preference as to a particular electric service provider. In other words, the customer's stated preference should not in any way be dispositive of the outcome of a dispute with further inquiry as to the basis of that decision. Here, such an inquiry leads to the inescapable conclusion that the customer's preference for Clay in this docket should be disregarded.

Clay essentially asserts that it has simply offered River City Plastics the unique type of service that River City requested. (Philips, Tr. 104-106) However, it is abundantly clear the record shows that what River City sought was simply what most other industrial customers seek from their electric service provider; namely low cost reliable service. (Barrow, Tr. 136) River City Plastic's representative, Stafford McCartney, stated: "Keep in mind that we had two basic issues for our operation. The first is the cost to us for the electric service and the second on is a high level of reliability of service and ways in which we can protect our manufacturing process from all of the outages and glitches that we have experienced at out plant in Duval County". (McCartney, Tr. 333) River City did not come to Clay with a request for backup generators (Barrow, Tr. 135). But, with respect to reliability, River City did come to Clay with a specific definition of its reliability threshold. As Mr. Dyal testified, "An outage to River City Plastics is any interruption of electricity of over 12-18 cycles. (Dyal, Tr. 179) Clay, in turn, offered, as a perceived "solution" to these reliability concerns (at a cost of well over \$1.1 million dollars) what amounts to two free backup generators that River City plastics can do with as it pleases except for those limited times when Clay is called into a load management scenario. As the record reflects, however, Clay's perceived solution really doesn't do anything to address the actual request made of it by River City Plastics.

River City Plastics planned to use the backup generators principally to isolate itself from Clay's system in times of inclement weather due to the occurrence of momentary interruptions associated with lightning. (Barrow, Tr. 142-43) However, as FP&L witness Brill testified, this is an incredibly inefficient and expensive method of minimizing the effect of such momentary interruptions of service. (Brill, Tr. 291-292) There would be some 70-80 days a year where lightning activity would necessitate operation of the back up generators for an indeterminate period of time. Using as an example a storm event that had passed through Tallahassee the afternoon and evening prior to the hearing in this docket, Mr. Brill stated: "Just taking last night for an example in Tallahassee, you would have to probably be on your generators from 3 or 4 in the afternoon to about 8 o'clock last night. And in many of the [places] I was last night there were no interruptions during that time, so there would have been seven, eight hours, or five, six hours you'd have had to run the generator. And the likelihood is maybe there would have been [a momentary interruption] and maybe there wouldn't have been during that time." (Brill, Tr. 299) Furthermore, there may be weather events outside of the immediate vicinity of the plant that could still have an impact upon the electric service Clay would provide River City. (Brill, Tr. 290) Such event could not be anticipated. Similarly, there are other non-weather related events which River City would be unable to anticipate prior to their occurrence. Id. Given the purchase cost of the backup generators as well as attendant operation and maintenance costs associated with the high level of use during anticipated inclement weather, Clay's proposed system simply doesn't address River City's needs or is a justifiable expenditure given the cost-effective alternative offered by FP&L. (Brill, Tr. 295-296)

Clay witness Dyal also pointed out the inherent deficiency associated with its backup generation proposal. Using Clay's own historical outage information, Mr. Dyal confirmed that for each and every outage associated with Clay's substation, including 23 momentary outages, River City Plastics, with back up generators in place, would still experience an outage that would affect production. (Dyal, Tr. 192-93). Given the inability of this proposed system to accurately and efficiently minimize River City's stated objective of minimizing momentary interruptions (defined as anything more than 12-18 cycles), it is evident that the customer's stated preference really has no basis as far as meriting consideration by this Commission in resolving this dispute.

It was also disclosed at hearing that the rate and billing information provided River City with respect to FP&L's sample bill was in error such that the customer was led to believe there was a large (approximately \$21, 475 a month) differential in the bills in favor of Clay. (Barrow, T. 156) In fact, the differential turns in favor of FP&L when comparing Clay's LGSD w/ LM rate to the corrected FP&L GSLD2 rate. Again, under such circumstances the Commission should assign little if any weight to the customer's preference.

It is also important to note the very real and viable, cost-efficient alternative, River City has via service from FP&L. FP&L's dual feed throwover switch (at a cost of only \$40,000 vs. \$1 million for generators) responds in approximately 8.5 cycles, sensing a momentary interruption and switching from the primary to secondary feed. (Brill, Tr. 289) The switch does not depend on having to rely on weather predictions. It functions whether the momentary is related to a storm, a fallen tree, a squirrel, or any other of the host of potential causes. The switch also effectively handles repeated interruptions due to multiple hits on the same feed. (Brill, Tr. 311) In fact, Mr Dyal was able to confirm, that if the FP&L throwover switch worked as stated in its

specifications, using River City's stated outage threshold of 12-18 cycles, then the switch would for each and every outage including momentary outages experienced at the Clay substation, eliminate a production shut down at the River City Plastics facility.(Dyal, Tr. 194-198)⁹ Given FP&L's clearly superior and cost-effective alternative to that proposed by Clay, coupled with the lack of any factual basis for the customer's determination with respect to choosing a utility, the Commission should not consider the customer's preference as having any measurable impact in the outcome of this dispute. Moreover, given FP&L's sensible, cost-effective alternative for providing reliable, efficient service to the disputed area, the Commission should award that territory to FP&L.

Issue No. 14:

Are the utilities bound by a territorial agreement?

All parties (stipulated issue)

****No territorial agreement governs service in the disputed area.****

Issue No. 15:

Which utility should be awarded the service area in dispute?

FP&L: **FP&L should be awarded the service area in dispute. Furthermore, Clay should be required to remove those facilities built to provide three phase service to River City Plastics and the disputed area.**

⁹ As Mr. Dyal noted when discussing the switch, "If this works, it's a great switch" (Dyal, Tr. 245). FP&L witness Hood testified unequivocally "...that switch will work" (Hood, Tr. 262) Mr. Hood then explained why the switch will work in response to Commissioner Garcia's question: "I can tell you that Florida Power and Light would not put in its engineering standards that this will be the only switch that we will purchase, that has come out of our engineering department, unless we absolutely knew that that switch would perform at the level it's supposed to. We helped develop that switch based on a need for a faster throwover...We have not had a history of doing that (buying switches that do not work), and we would not do that here." (Hood, Tr. 264)

By virtue of its historic service, physical location of its facilities, history of providing reliable service to the disputed area, and its innovative and cost effective proposal to serve the River City Plastics facility, the Commission should award service of the disputed area to FP&L. The Commission should also require Clay to remove any and all facilities extending to the River City Plastics site in coordination with the provision of service by FP&L to the area.

Respectfully submitted,

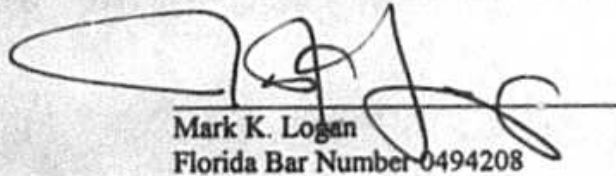


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by U.S. Mail or hand delivery this 27th day of November, 1997, to the following parties of record as listed below.



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