

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition of Clay
Electric Cooperative, Inc. and
Gainesville Regional
Utilities/City of Gainesville
for approval of territorial
agreement in Alachua County.

DOCKET NO. 020203-EU
ORDER NO. PSC-02-0972-PAA-EU
ISSUED: July 17, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

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

BACKGROUND

On March 11, 2002, Clay Electric Cooperative, Inc., a not-for-
profit corporation (Clay), and the City of Gainesville, Florida, a
municipal corporation, d/b/a Gainesville Regional Utilities (GRU)
filed a Joint Petition for Approval of a Territorial Agreement
(Agreement) that they made and entered into on January 31, 2002.
This Agreement is attached to and made a part of this Order. The
joint petition was filed pursuant to Rules 25-6.0439 and 25-6.0440,
Florida Administrative Code. The parties entered into the
Agreement in an effort to more accurately define their respective

DOCUMENT NUMBER 020203-EU

07419 JUL 17 02

FPSC-COMMISSION CLERK

retail service territories, and establish the territorial boundary line described in the Agreement, subject to the approval of this Commission.

GRU is a municipal electric utility, organized and existing under the laws of the State of Florida, and is an electric utility as defined in Section 366.02(2), Florida Statutes. Clay is a rural electric cooperative, organized and existing under Chapter 425, Florida Statutes, and is also an electric utility as defined in Section 366.02(2), Florida Statutes.

The Agreement contemplates the transfer of over 1,100 customers. The parties indicate that approximately 1,100 Clay customers will be transferred to GRU, and that approximately 20 GRU customers will be transferred to Clay. Both utilities state that the transfer will occur within three years of our approval, with the transfer taking place all at once.

Upon inquiry by our staff expressing several concerns, the parties filed a Supplement to Joint Petition for Approval of Territorial Agreement (Supplement) on May 14, 2002. Also, both parties have responded to our staff's data requests.

The utilities wrote a letter to their customers advising them of the proposed agreement and transfers. Out of the approximately 20 customers being transferred from GRU to Clay, one notified GRU that they objected to the transfer. Out of approximately 1,100 customers proposed to be transferred from Clay to GRU, 14 objected to the transfer. Virtually all of these objections were related to the current higher rate of GRU, or the fact that GRU charges a 10% surcharge to customers in the unincorporated area. Also, one customer that will be affected by the proposed agreement (and proposed for transfer from Clay to GRU) has called our Consumer Affairs Division and filed an objection to approval of the Agreement.

We have jurisdiction pursuant to Sections 366.04(2)(c) and (d) and 366.04(5), Florida Statutes. That jurisdiction is exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages. See, Section 366.01, Florida Statutes, and Storey v. Mayo, 217 So. 2d 304 (Fla. 1968).

Moreover, we exercise our jurisdiction according to the standards set forth in Rule 25-6.0440, Florida Administrative Code. Rule 25-6.0440 states, in pertinent part:

(1) All territorial agreements between electric utilities shall be submitted to the Commission for approval. . . . Upon approval of the agreement, any modification, changes, or corrections to this agreement must be approved by this Commission.

(2) Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:

(a) the reasonableness of the purchase price of any facilities being transferred;

(b) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement; and

(c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

TERRITORIAL AGREEMENT

In their petition, the parties state that they entered into the Agreement after lengthy deliberation, and that the Agreement represents an effort by the parties to minimize the costs to the respective customers by avoiding unnecessary duplication of generation, transmission, and distribution facilities in the territorial areas covered by the Agreement. The parties further represent that approval of this Agreement will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of either utility, that it will promote our policy of encouraging territorial agreements, and that this Agreement is in the public interest.

The approximate 20 GRU customers to be transferred are in the southwest Gainesville area (Savannah Pointe, Williston Road - west of I-75 and south of Archer Road, west of 63rd Boulevard). The approximate 1,100 Clay customers to be transferred are also in the southwest Gainesville area (Archer Road area - west of I-75).

In reviewing the above Agreement, our staff expressed concerns with several provisions and specific sections, namely Sections 2.4, 3.2a, 3.3, 3.5, 4.4, 4.5, 5.2, 5.3, and 6.1, to which the parties satisfactorily responded as follows.

For Section 2.4, regarding interim service, our staff asked if the interim service provision was subject to the three-year customer transfer requirements of Section 3.3. The parties stated that 2.4 was subject to the three-year limitation of Section 3.3. Moreover, the parties clarified that there would be only one transfer and that the parties were agreeable to filing annual reports as to the status of interim services. With this clarification and the filing of annual reports, we find this section to be appropriate.

For Section 3.2a., our staff expressed concern with the last sentence in that section which begins as follows: "In the event either party elects to purchase a Customer or Service Facilities" Our staff did not believe that the phrase "purchase a customer" was appropriate. The parties agreed, and in the Supplement amended the sentence to read: "In the event either party elects to acquire a Customer or Service Facilities" Moreover, for Section 3.3, the parties agreed to change the word "acquisition" to the word "transfer" so that the last sentence will read: "Such action will result in the transfer of the customers and service facilities within the Transition Zones assigned to the initiating Party." We find these changes to be appropriate.

For Sections 3.3 and 3.5, our staff thought that annual reports were needed as to the status of completion of transfers and as to the status of GRU's removal of facilities along Williston Road and Archer Road. In the Supplement, the parties stated that they were agreeable to filing such annual reports. We find that annual reports should be filed as agreed to by the parties.

Our staff also expressed concern about Section 4.4, and asked under what conditions and facts was this section applicable, and what was it intended to address. That section provides as follows:

Facilities to Remain - All electric generating plants, transmission lines, substations, distribution lines and related Service Facilities now or hereafter constructed

and/or used by either party in conjunction with its respective electric utility systems, and which are directly or indirectly used or useful in serving Customers of either party shall be allowed to remain where situated and shall not be subject to removal hereunder; PROVIDED, HOWEVER, that each party shall operate and maintain said lines and facilities in such a manner as to minimize any interference with the operations of the other party.

The parties responded that it was critical to the Agreement that any facilities that they have constructed to serve customers that are not being transferred and which facilities, therefore, remain useful in serving customers shall remain in place and would not be subject to being removed. The fact that such facilities may be in the other party's territory would not constitute a violation of the Agreement. We find that this is reasonable and agree that this section is appropriate.

Our staff also expressed concern over Section 4.5. That Section provides as follows:

Facilities to be Served - Nothing herein shall be construed to prevent or in any way inhibit the right and authority of either Party to serve any of its facilities located in the other Party's Territorial Area, which facility is used in connection with that Party's business as an electric, water, wastewater, natural gas or telecommunication utility, where such service is feasible and does not in any way interfere with or hinder the other Party from serving other customers within their service area in a reliable and cost effective way.

Our staff was concerned that this might lead to uneconomic duplication of facilities. In their Supplement, the parties responded that this was designed to allow each utility to service its own facilities, provided that such service was feasible, and did not interfere or hinder the other party from serving other customers within their service territory in a reliable and cost effective way. Moreover, by letter dated June 14, 2002, the parties assured us that this section would not lead to uneconomic

duplication and that this provision would not be used as a means to avoid the policy against uneconomic duplication of facilities.

We note that in Order No. 25080, issued September 18, 1991, in Docket No. 910678-EU, which addressed a territorial agreement between Clay and the City of Newberry (Newberry), we specifically considered and approved very similar language to the language in Section 4.5. That Newberry territorial agreement provided as follows:

Nothing herein shall be construed to prevent or in any way inhibit the right and authority of the City or Clay to serve any of their own facilities wheresoever they may be located and for such purpose to construct all necessary lines and facilities; PROVIDED, HOWEVER, that such party shall construct, operate and maintain said lines and facilities in such manner as to minimize any interference with the operation of the other party's facilities.

We find that the current Agreement, as supplemented, provides at least the same level of safeguards as was approved in the Newberry territorial agreement, and that it is appropriate.

Our staff also expressed concern with the need for Section 5.2, relating to franchises. This Section provides as follows:

Franchises - Either party may provide electric services to retail Customers, under a Franchise Agreement, within the boundaries of any municipality.

The parties state in the Supplement that "this Section is important to both parties with respect to franchise agreements that either party may have or may be granted by other municipalities in Alachua County." Hence, if the City of Newberry granted either GRU or Clay a franchise, this would not constitute a violation of the Agreement. We do not believe that this provision would lead to uneconomic duplication of facilities, and, therefore, this section is approved.

For Section 5.3, our staff expressed concern about the need for this section and whether the term "retail deregulation" should be defined. Section 5.3 provides as follows:

Retail Deregulation - Nothing herein shall be construed as an intention to prevent or in any way inhibit the right and authority of either Party to fully participate in retail deregulation should the State of Florida pass such legislation. The Parties recognize that this Agreement may require amendment in order to fully accommodate the provisions of such legislation.

The parties responded that this Section was needed to allow parties to address fundamental changes that might be adopted by the Florida Legislature with respect to retail deregulation, that the term need not be defined or discussed further, and that the provision was merely an acknowledgment that the parties may come back before the Commission for a modification of this Agreement. Although we do not see the need for this provision, we do not believe that there is any harm in allowing the provision to remain. It merely states the obvious, that, in the event of statutory changes, the territorial agreement may have to be modified.

Section 6.1 refers to a deadline of August 1, 2002, for approval of the Agreement by the Commission. In the Supplement, the parties agreed to eliminate the sentence that reads: "If formal approval is not received on or before August 1, 2002, each of the parties hereto may be released from the effect thereof and any and all obligations hereunder unless agreed by the parties."

Finally, our staff had questions about customer deposits and capital credits. The parties responded that both utilities will handle customer deposits in the same fashion as all other customers of each utility. Hence, when a customer leaves the utility system the customer's deposit will be refunded in accordance with that utility's policies. The customers being transferred to a utility will be subject to that utility's deposit requirements. If they had not been required to post a deposit for one of the utilities, it is likely that they will not be required to post one to the utility to which they are being transferred. Regarding Clay's capital credits, those are the property of the customer and will remain the property of the customer notwithstanding the transfer.

We find that the requirements of Rule 25-6.0440, Florida Administrative Code, have been satisfied. Subsection (2) of the rule lists the standards of approval that may be considered in approving territorial agreements. We find that the agreement meets these standards. The reliability of electric service does not appear to be decreased because of the agreement, and potential uneconomic duplication of facilities appears to be eliminated or minimized.

Rule 25-6.0440(2), Florida Administrative Code, states that we may consider factors other than the enumerated factors in approving territorial agreements. One such factor is customer rates. The utilities submitted a residential bill comparison between GRU and Clay which shows that GRU's charge would be \$8.51 per 1,000 kwh higher.

At least one customer has complained about the difference in rates between the two utilities. However, in Storey v. Mayo, 217 So. 2d 304, at 307 (Fla. 1968), the Florida Supreme Court stated: "An individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself."

Based on the above, and to prevent uneconomic duplication of service, we find that the territorial agreement should be approved. The parties have complied with the provisions of Rules 25-6.0439 and 25-6.0440, Florida Administrative Code. We have considered the factors enumerated in the rule as well as customer rates. We believe that an agreement is necessary to prevent uneconomic duplication and that this agreement, taken as a whole, is in the public interest. As agreed to by the parties, the parties shall file annual reports as to the status of interim services, as to the status of the completion of transfers, and as to the status of GRU's removal of facilities along Williston Road and Archer Road. The territorial agreement between Clay and GRU shall become effective on the date of the Consummating Order finalizing the Proposed Agency Action Order approving the Agreement.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that for the reasons and by the terms set forth in the body of this Order, the

ORDER NO. PSC-02-0972-PAA-EU

DOCKET NO. 020203-EU

PAGE 9

Territorial Agreement made and entered into on January 31, 2002, as supplemented and modified by the Supplemental Agreement dated May 21, 2002, and entered into by Clay Electric Cooperative, Inc., and the City of Gainesville, d/b/a Gainesville Regional Utilities, is hereby approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that the Agreement is attached to and by reference is incorporated within this Order. It is further

ORDERED that Clay Electric Cooperative, Inc., and the City of Gainesville, d/b/a Gainesville Regional Utilities, shall file annual reports as to the status of interim services, as to the status of the completion of transfers, and as to the status of Gainesville Regional Utilities' removal of facilities along Williston Road and Archer Road. It is further

ORDERED that if no substantially affected person files a protest within 21 days of the issuance of the Proposed Agency Action Order, this docket shall be closed upon issuance of a Consummating Order.

ORDER NO. PSC-02-0972-PAA-EU
DOCKET NO. 020203-EU
PAGE 10

By ORDER of the Florida Public Service Commission this 17th
day of July, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

RRJ

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 that is available under Section 120.57, 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 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. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding,

ORDER NO. PSC-02-0972-PAA-EU

DOCKET NO. 020203-EU

PAGE 11

in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 7, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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

AGREEMENT

THIS AGREEMENT, made and entered into this 31st day of January, 2002, by and between the CITY OF GAINESVILLE, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida d.b.a. Gainesville Regional Utilities (herein called "GRU") and CLAY ELECTRIC COOPERATIVE, INC., an electric cooperative existing under the laws of the State of Florida (herein called "CLAY"), collectively called the Parties;

WITNESSETH

WHEREAS, GRU and CLAY are both authorized and empowered to provide retail electric service to persons, firms and corporations, public and private, within the State of Florida, and pursuant to such authority presently furnish electricity and power to Customers both inside and outside of the corporate limits of THE CITY OF GAINESVILLE; and

WHEREAS, the Florida Public Service Commission (FPSC) has previously recognized that any duplication of said facilities by the parties results in needless and wasteful expenditures, may create hazardous situations, and fails to provide the most economical and cost effective service to the utility consumer, these being detrimental to the public interest; and

WHEREAS, the FPSC is empowered by Section 366.04, Florida Statutes, to approve territorial agreements and resolve territorial disputes; and

WHEREAS, the Parties hereto desire to avoid duplications and possible hazards, and to that end desire to operate within delineated retail service areas; and

WHEREAS, in order to delineate said retail service areas, the Parties have agreed upon territorial boundary lines in portions of Alachua County, to define and delineate the retail service areas between the parties in Alachua County; as described herein; and

WHEREAS, the Parties agree that the terms and conditions set forth in this Agreement are in the interest of both Parties and in the public interest in avoiding the unnecessary and uneconomic duplication of electric facilities; and

WHEREAS, the Parties have agreed to recommend this Agreement in its entirety to the FPSC;

NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and to serve the public interest, and in consideration of the mutual covenants and

agreements herein contained, which shall be construed as being interdependent, the parties do hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Clay Territorial Area – the geographic area shown on the map labeled Exhibit “A” lying outside the areas bounded by the line identified as the “Clay/GRU Electric Service Boundary”, together with all adjacent areas that do not comprise territorial areas of other electric suppliers not party to this Agreement. Exhibit “A” is attached hereto and by reference made a part hereof.

Section 1.2 GRU Territorial Area – the geographic area shown on the map labeled Exhibit “A” lying within the areas bounded by the line identified as the “Clay/GRU Electric Service Boundary”, labeled “Gainesville Regional Utilities”, and not otherwise included in the territorial areas of other electric suppliers not party to this Agreement.

Section 1.3 Territorial Area of Other Utilities – The Clay/GRU Electric Service Boundary line provided for herein intersects the respective service territories of the City of Alachua and Florida Power Corporation at points “X” and “Y” on Exhibit “A” and therefore does not close.

Section 1.4 Clay Transition Zones – those geographic areas within the Clay Territorial Area that are delineated graphically and labeled as such on Exhibit “A”. The GRU Customers and associated Service Facilities within these areas are to be transferred to Clay pursuant to the terms and conditions of this Agreement.

Section 1.5 GRU Transition Zones – those geographic areas within the GRU Territorial Area that are delineated graphically and labeled as such on Exhibit “A”. The Clay Customers and associated Service Facilities within these areas are to be transferred to GRU pursuant to the terms and conditions of this Agreement.

Section 1.6 Distribution Lines – all electric lines of either Party having a rating up to but not including 69 kV.

Section 1.7 Transmission Lines – all electric lines of either Party having a rating of 69 kV or above.

Section 1.8 Customers – Customer or Consumer of either Party.

Section 1.9 Service Facilities – shall include but not be limited to: substations, poles, wires, cables, lighting equipment, meters, transformers, capacitors, switchgear, monitoring and control devices, together with related equipment, facilities and property rights, used solely or useful solely in furnishing electricity to Customers.

Section 1.10 Replacement Cost – the cost of labor, material and overhead needed to construct like facilities at the time of transfer.

Section 1.11 Joint Use – the sharing of transmission and/or distribution facilities in areas where extension of facilities separately by the parties would create duplication of facilities and increased costs to Customers.

Section 1.12 Consulting Engineer – a person or firm registered in the State of Florida as a professional engineer with expertise in the area of electrical distribution systems and with no interests that would impede impartial consideration of disagreements between GRU or CLAY on technical matters.

ARTICLE II AREA ALLOCATIONS AND NEW CUSTOMERS

Section 2.1 Allocations – The Clay Territorial Area, as herein defined, is hereby allocated to CLAY as its retail service area for the term of this Agreement; and the GRU Territorial Area, as herein defined, is hereby allocated to the GRU as its retail service area for the term of this Agreement. Except as otherwise specifically provided herein, neither party shall deliver retail electric service across the Clay/GRU Electric Service Boundary Line or within the territorial area of the other.

Section 2.2 New Customers – Each party shall have the right and the responsibility to provide retail electric service to all Customers within its respective Territorial Area. Neither party shall hereafter serve or offer to serve any existing or new Customer located in the territorial area of the other Party except as provided below.

Section 2.3 Transition Zone Service – Each Party shall have the right and responsibility to provide retail electric service to all new Customers within the Transition Zones assigned to that Party. However, should it be impractical or unreasonable for that Party to provide such service, service shall be provided by the other Party until such time that the Transition Zones are transferred in total to the entitled Party.

Section 2.4 Interim Service – When either Party entitled to serve a new Customer determines that such new Customer would be best served on an

interim basis by the other Party, such Party may, at its discretion, request the other Party to provide such service. The request shall be made in writing and the other Party shall, within ten (10) days, submit a written reply indicating its decision to accept or decline the request. If the request to supply Interim Service is accepted, the Party providing Interim Service shall serve the new Customer in the same manner as if it were providing service on a permanent basis. At such time as the requesting party is prepared to serve such Customer, it shall so notify the Party serving that Customer. The Customer and associated Service Facilities shall then be transferred to the requesting party under the terms and conditions of this Agreement.

ARTICLE III
TRANSFER OF CUSTOMERS
AND FACILITIES

Section 3.1 Transfer – When requested by GRU and within the time frame provided in Section 3.3 below, CLAY shall transfer to GRU all Customers served by it in the GRU Transitional Zones together with the associated Service Facilities. When requested by CLAY, and within such time frame, GRU shall transfer to CLAY all Customers served by it in the Clay Transitional Zones together with their associated Service Facilities. All such transfers shall be made in conformance with sound and economical engineering and operating practices.

Section 3.2 Consideration – All Customers subject to transfer hereunder, together with the Service Facilities related thereto, shall be transferred in the following manner and for the following consideration:

- a. GRU shall pay CLAY in cash the amount established in this section, whereupon CLAY shall transfer the Customer and the associated Service Facilities to GRU. CLAY shall pay GRU in cash the amount established in this section, whereupon GRU shall transfer the Customer and the associated Service Facilities to CLAY. In the event either party elects to purchase a Customer or Service Facilities under any provision of this Agreement, such party shall purchase all the Service Facilities related to such Customer, and not just a part thereof, unless otherwise agreed in writing.
- b. The amount to be paid in consideration of lost revenue for the transfer of a Customer shall be the product of (1) the Adjusted Cost per Kilowatt Hour multiplied by (2) the Kilowatt Hours used for electric service 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 transferor's prevailing monthly customer service charge multiplied by twelve (12).

The Adjusted Cost per Kilowatt-Hour is calculated using the following formula:

$$X = \frac{Rg + Rc}{2}$$

Where,

X = Adjusted Cost per Kilowatt Hour

Rg = The average cost per Kilowatt Hour pursuant to GRU's residential rate effective January 1 of the year of transfer request and based upon the use of 1000 Kilowatt-hours per month excluding taxes, sales tax, public utility taxes, surcharges, gross receipts tax, and franchise fees.

Rc = The average cost per Kilowatt-Hour pursuant to CLAY's residential rate effective January 1 of the year of transfer request and based upon the use of 1000 Kilowatt-Hours per month excluding taxes, sales tax, public utility taxes, surcharges, gross receipts tax, and franchise fees.

- c. The amount to be paid for lost electric sales revenue from lighting equipment to be transferred shall be an amount equal to the product of the said Adjusted Cost per Kilowatt-Hour multiplied by the average annual kilowatt-hour usage of street light fixtures or security light fixtures of the size and capacity of those being transferred. Energy requirements for rental light fixtures shall be based on standard engineering information provided by the parties for the specific size and type of fixture being evaluated.
- d. The amount to be paid for the transfer of Service Facilities (in addition to the amount in Sections 3.2 (b) and 3.2 (c) above for Customer transfer) shall be the sum of: (1) the replacement cost of the Facilities less straight line depreciation on a thirty (30) year life basis, (2) the cost of reintegrating the distribution system of the transferring party (including the cost of constructing facilities necessary to reintegrate the transferring party's system both inside and outside the disconnected area(s) or location(s)), and (3) other direct damage, if any, suffered by the transferring party in such amounts as agreed upon by the parties.

Section 3.3 Timing of Transfers – No transfers of customers shall be made prior to formal approval of this Agreement by the Florida Public Service Commission. All transfers shall be completed within three (3) years of the effective date of this Agreement. All customers subject to transfer by a Party shall be transferred at one time. Such action will result in the acquisition of the customers and service facilities within the Transition Zones assigned to the initiating Party.

Section 3.4 Procedures on Transfer – Following the formal approval of this Agreement by the Florida Public Service Commission, as described in Section 6.1 below, the procedure to initiate a transfer shall be as follows:

- a. Each party will provide the other Party written notification of its intent to initiate the transfer of customers and associated facilities to which it is entitled. Such notification may include a request for specific information intended to facilitate the planning, design, construction, operations, and financial transactions required to complete the transfer of customers in an efficient manner with minimum customer disruption. The transferring Party will then have ninety (90) calendar days to provide a current customer list and energy consumption history, facility maps, field inventory of service facilities, identify specific requirements for distribution system integration, and an estimate of costs and payments pursuant to Section 3.2.
- b. At the end of the ninety (90) day period, the initiating Party shall have one hundred and twenty (120) calendar days to review, verify, and “true up” the information, develop plans for transfer and distribution system integration, provide an opportunity for the other Party to review and approve these plans, construct facilities as needed, finalize and provide payments pursuant to Section 3.2, and coordinate customer transfers. The actual transfer of customers and associated service facilities will normally be at the end of the 120 day count unless otherwise agreed by the Parties. However, should a dispute arise invoking the provisions of Section 7, the 120 day count may be suspended by the initiating Party in writing. The 120 day count shall be resumed by the initiating Party upon resolution of the dispute.
- c. Each party shall have access to the other party’s files and records for any information necessary to plan for and to determine the amount to be paid for the transfer of Customers and Service Facilities as provided herein.
- d. In each transfer, the transferring party will make, execute, and deliver to the acquiring party a conveyance, deed or other instrument of transfer as is reasonably acceptable to the acquiring Party in order to convey to the other all right, title, and interest of the transferring party in any facilities, rights-of-way, easements, road permits, or other rights.

Section 3.5 – Notwithstanding any other provisions of this Agreement, GRU shall remove its distribution line along Williston Road west of State Road 24C and shall remove its distribution line along Archer Road west of SW 91 Street within three (3) years of the effective date of this Agreement.

ARTICLE IV
OPERATION AND MAINTENANCE

Section 4.1 Retention and Customers – Each of the Parties hereto shall retain and continue to serve its respective Customers until any transfer thereof is complete as herein provided.

Section 4.2 Operation and Maintenance – Each Party shall continue to operate and maintain its respective Service Facilities in good operating condition, and in accordance with standard operating practices, until the same are transferred as herein provided.

Section 4.3 Joint Use – The Parties recognize that it may be necessary, under certain circumstances and in order to carry out this Agreement, to make arrangements for the Joint Use of Service Facilities, in which event such arrangements shall be made by separate instruments incorporating standard engineering practices and providing proper clearances with respect thereto.

Section 4.4 Facilities to Remain – All electric generating plants, transmission lines, substations, distribution lines and related Service Facilities now or hereafter constructed and/or used by either party in conjunction with its respective electric utility systems, and which are directly or indirectly used or useful in serving Customers of either party shall be allowed to remain where situated and shall not be subject to removal hereunder; PROVIDED, HOWEVER, that each party shall operate and maintain said lines and facilities in such a manner as to minimize any interference with the operations of the other party.

Section 4.5 Facilities to be Served – Nothing herein shall be construed to prevent or in any way inhibit the right and authority of either Party to serve any of its facilities located in the other Party's Territorial Area, which facility is used in connection with that Party's business as an electric, water, wastewater, natural gas or telecommunications utility, where such service is feasible and does not in any way interfere with or hinder the other Party from serving other customers within their service area in a reliable and cost effective way.

ARTICLE V
POWER SUPPLY FOR RESALE, FRANCHISES,
and RETAIL DEREGULATION

Section 5.1 Power Supply for Resale – Nothing herein shall be construed to prevent or in any way inhibit the right and authority of either Party to provide wholesale power for resale purposes.

Section 5.2 Franchises – Either party may provide electric service to retail Customers, under a Franchise Agreement, within the boundaries of any municipality.

Section 5.3 Retail Deregulation – Nothing herein shall be construed as an intention to prevent or in any way inhibit the right and authority of either Party to fully participate in retail deregulation should the State of Florida pass such legislation. The Parties recognize that this Agreement may require amendment in order to fully accommodate the provisions of such legislation.

ARTICLE VI
PREREQUISITE APPROVALS

Section 6.1 Florida Public Service Commission – The provisions of this Agreement are subject to the regulatory authority of the Florida Public Service Commission, and appropriate approval by that body of the provisions of this Agreement shall be a prerequisite to the validity hereof. GRU and CLAY agree to promptly submit this Agreement to the FPSC and to request its interim and formal approval thereof. This Agreement shall be binding upon both parties when formal approval is received. If formal approval is not received on or before August 1, 2002, each of the parties hereto may be released from the effect thereof and any and all obligations hereunder unless agreed by the Parties.

ARTICLE VII
RESOLUTION OF DISPUTES

Section 7.1 Resolution by a Consulting Engineer – If the parties are unable to agree on the calculation of any payment for facilities pursuant to Section 3.2, or are unable to agree as to any technical requirement of the contract, including any provision requiring conformance to sound and economical engineering and operating practices, the parties shall make every reasonable effort to agree upon and appoint a Consulting Engineer to resolve the dispute.

Section 7.2 Compensation of the Consulting Engineer – 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. The fees shall be determined and shall be paid by the parties, each party paying 50% of the cost of such services.

Section 7.3 Resolution by the Circuit Court – If pursuant to Section 7.1 the Parties are unable to agree on the calculation of any payment for facilities , or are unable to agree as to any technical requirement of the contract, including any provision requiring conformance to sound and economical engineering and operating practices, CLAY or GRU may, after ten (10) days' written notice to the other party of its intent to do so, petition the Circuit Court of Alachua County, Florida, to determine by declaratory judgement or otherwise, the rights of the parties under this Agreement. 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 own legal representation, costs of depositions of parties or witnesses and expert fees. Court costs shall be assessed equally against the parties, without regard to the concept of the "prevailing party".

ARTICLE VIII TERM OF AGREEMENT

Section 8.1 – The term of this Agreement shall commence on the effective date of this Agreement and shall continue in effect for a period of fifteen (15) years. The effective date of this agreement shall be the date of the FPSC's order granting final approval of this Agreement. Thereafter this Agreement shall be automatically extended for succeeding periods of one (1) year each. The Agreement may be cancelled by either party upon written notice provided to the other party at least six (6) months before the beginning of any extension period.

ARTICLE IX MISCELLANEOUS

Section 9.1 Negotiations – Regardless of the terms or conditions which may have been discussed during the negotiations leading up to the execution of this Agreement, the only conditions agreed upon are those set forth herein, and no alterations, modification, enlargement or supplement to this Agreement shall be binding upon either of the parties hereto unless the same shall be in writing and hereto attached and signed by both parties. Furthermore, this Agreement shall supercede any and all territorial agreements previously entered into by the Parties.

Section 9.2 - 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 9.3 Third Parties, 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 rights, remedy or claim under or by reason of this Agreement or any provisions 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 9.4 Notices – Notices given hereunder shall be deemed to have given to GRU if sent by U.S. Mail postage prepaid, by courier, or by hand deliver to:

General Manager
Gainesville Regional Utilities
P.O. Box 147117
Gainesville, Florida 32614-7117

and to CLAY if sent by U.S. Mail postage prepaid, by courier, or by hand delivery to:

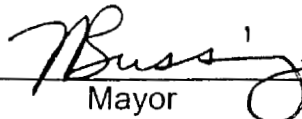
General Manager
Clay Electric Cooperative, Inc.
P.O. Box 308
Keystone Heights, Florida 32656

Such address to which such notice shall be mailed may at any time be changed by designating such new address and giving notice thereof in writing in the manner as herein provided.

ARTICLE X


Section 10.1 IN WITNESS WHEREOF, this Agreement has been caused to be executed in duplicate by GRU in its name by its Mayor, duly authorized by the City Commission on the 28 day of Jan, 2002, and its corporate seal hereto affixed and attested by the Clerk of the Commission, and by CLAY in its name by its President, and its corporate seal hereto affixed and attested by its Secretary, on the day and year first above written; and one of said duplicate copies has been delivered to each of the parties hereto.

CITY OF GAINESVILLE

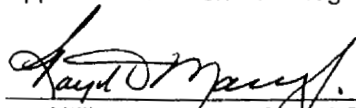
BY: 
Mayor

DATE: 1/31/02

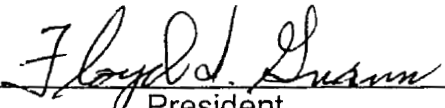
ATTEST:


Clerk of the Commission

Approved as to form and legality


Utilities Attorney, City of Gainesville

CLAY ELECTRIC COOPERATIVE INC.

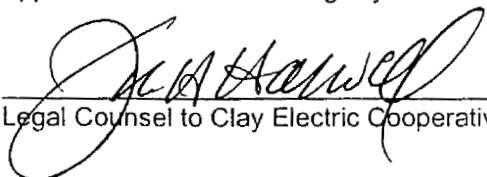
BY: 
President

DATE: January 24, 2002

ATTEST:


Secretary

Approved as to form and legality


Legal Counsel to Clay Electric Cooperative, Inc.