

2

LAW OFFICES
CHANDLER, GRAY, LANG, HASWELL & ENWALL, P. A.
POST OFFICE BOX 23879
GAINESVILLE, FLORIDA 32602

**ORIGINAL
FILE COPY**

WILLIAM H. CHANDLER
HENRY L. GRAY, JR.
JAMES F. LANG
JOHN H. HASWELL
PETER C. K. ENWALL
KATHERINE M. WALTON
C. WHARTON COLE

TELEPHONE: 904/376-5226
TELECOPIER: 904/372-8858
211 N.E. FIRST STREET

April 24, 1990

VIA FEDERAL EXPRESS

The Honorable Steven C. Tribble
Clerk of the Commission
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32301

Re: Territorial Dispute Between Clay Electric Cooperative, Inc.,
and Florida Power Corporation, in Alachua County
~~Case No. 9000064-EU~~

Dear Mr. Tribble:

I am enclosing herewith the original Direct Prefiled Testimony of
the following on Behalf of Clay Electric Cooperative which I will
appreciate your filing in this matter.

William C. Phillips 355-90
Russell P. Lea 3552-90
Paul H. Waters 3553-90
Steve L. Law-3554-90
Joseph T. Clayton, Jr.
E. T. Martin

The 15 copies of each person's testimony are being sent under
separate cover by Federal Express.

Very truly yours,

John H. Haswell
John H. Haswell

RECEIVED & FILED

TB
FPSC-BUREAU OF RECORDS

JHH/gz
Enclosures

cc: William C. Phillips, General Manager
Clay Electric Cooperative, Inc.

Federal Express Package 1 of 4

DOCUMENT NUMBER-DATE

03551 APR 25 1990

FPSC-RECORDS/REPORTING

- ACK
- AFA
- APP
- CAF
- CMU
- CTR *orig*
- EAG
- LEG *1*
- LIN *6*
- OPC
- RCH
- SEC
- WAS
- OTH

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILE COPY

**IN RE: TERRITORIAL DISPUTE BETWEEN
CLAY ELECTRIC COOPERATIVE, INC.
AND FLORIDA POWER CORPORATION
IN ALACHUA COUNTY.**

DOCKET NO. 900064-EU

**DIRECT PREFILED TESTIMONY OF WILLIAM C. PHILLIPS
ON BEHALF OF CLAY ELECTRIC COOPERATIVE, INC.**

**DOCUMENT NUMBER-DATE
03551 APR 25 1990
FPSC-RECORDS/REPORTING**

- 1 Q. Please state your name and business address.
- 2 A. William C. Phillips, P. O. Box 308, Keystone Heights, Florida
- 3 32656.
- 4 Q. On whose behalf are you submitting direct pre-filed
- 5 testimony?
- 6 A. I am testifying on behalf of Clay Electric Cooperative, Inc.
- 7 in my capacity as general manager.
- 8 Q. How long have you been employed by Clay?
- 9 A. Approximately 25 years. I began employment with Clay in 1965
- 10 as a draftsman trainee. I spent approximately one year in
- 11 that capacity and in 1966 I became district engineer for the
- 12 Orange Park West district office. I supervised a staff
- 13 including a field engineer, an engineering technician, and a
- 14 new services clerk. I served as district engineer until
- 15 December of 1975 when I was promoted to district manager of
- 16 the Palatka district. As district manager I was responsible
- 17 for management functions including planning, organizing,
- 18 staffing, directing and controlling a district of over 10,000
- 19 members. In June of 1986 I was promoted to director of
- 20 district operations, responsible for all six of Clay's
- 21 district offices. My responsibilities included annual
- 22 planning, budget and work plans as well as long range
- 23 planning.
- 24 Q. When did you become general manager and what are your duties?
- 25 A. I became general manager in January of 1989 upon the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

retirement of T. B. Millican. As general manager I am responsible for carrying out the policies set by the Board of Directors and for the daily operation of the cooperative. Included in those responsibilities are monitoring the day-to-day operations, system planning, and all the usual managerial duties associated with the office of general manager.

Q. What educational experience has qualified you for your current position as general manager?

A. Twenty-five years of on the job experience is the most important aspect of my education, together with two years of junior college study at Miami Dade Junior College, St. Johns River Junior College, and Florida Junior College in Jacksonville. In addition, I have attended seminars sponsored by the National Rural Electric Cooperative Association (NRECA) in professional management and advanced professional management. I have also attended seminars on engineering and management and have completed all of the engineering studies required by Clay.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to discuss generally the system and operation of Clay Electric Cooperative, Inc. in its historic service area, including Alachua County and in particular the area just north of Archer which is the subject of this territorial dispute. I will discuss the overall basis for Clay's petition asking the Florida Public Service

1 Commission to resolve this territorial dispute with Florida
2 Power Corporation.

3 Q. What is Clay's service area?

4 A. Clay serves Alachua, Bradford, Baker, Clay, Columbia, Duval,
5 Lake, Levy, Marion, Putnam, Union, and Volusia counties. At
6 our annual meeting on March 22, 1990, we presented an award
7 commemorating our 100,000th customer. We have over 106,000
8 services in place and over 9,000 miles of energized lines.
9 In our service area our customer density is approximately
10 10.6 members per mile. Clay Electric was incorporated in
11 1937, and its power supplier is Seminole Electric
12 Cooperative, Inc. Clay serves 15,269 customers in Alachua
13 County.

14 Q. In what district is the disputed area?

15 A. The area in dispute lies within Clay's Gainesville district
16 and the service provided to this district is from our
17 Gainesville district office at 8616 NW 39th Avenue,
18 Gainesville, Florida. Paul Waters is the Gainesville
19 district manager. He and Steve Law, the district engineer
20 for the Gainesville district office will also discuss the
21 factual background to this dispute in more detail.

22 Q. Where is the area in dispute?

23 A. It lies in the southwestern part of Alachua County just north
24 of the Town of Archer. Exhibit _____ (WCP-1) shows the
25 southwestern corner of Alachua County bordered on the north

1 by State Road 26, the east by I-75 and State Road 121, and on
2 the west and south by the Levy County boundary line. The
3 property is more clearly defined in Exhibit _____(WPC-2),
4 which is a composite exhibit of three pages. The first page
5 is a portion of a U.S. Geological Survey map showing the Town
6 of Archer and the area surrounding it. The area in dispute
7 is identified as indicated on the map. The second page is a
8 section map showing the 12 sections in the immediate
9 vicinity. As you can see, the property lies mostly in
10 section 5 of township 11 south, range 18 east in Alachua
11 County and is bordered on the west by State Road 45, also
12 known as U. S. Highway 41. The property is bordered on the
13 east by State Road 241 and on the north by County Road SW22.
14 The third page of Exhibit _____(WPC-2) shows the disputed
15 area in larger detail and also indicating the ownership of
16 the parcels prior to the purchase by the Patton Corporation.
17 This property was owned by the Marchant family until 1989.

18 Q. Except for the service currently provided by FPC to the
19 developer's sales office on the disputed site, who provides
20 electric service to the property surrounding all sides of the
21 subject area?

22 A. Clay Electric. And I should point out that Clay also has a
23 franchise with the Town of Archer to serve within the city
24 limits of Archer.

25 Q. How long has Clay served this area?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. Since the 1940's. Our records indicate that we have had services on the property itself since April 25, 1947. Exhibit _____ (WPC-3) shows the Clay Electric distribution system in the nine square miles surrounding the subject property. This exhibit also shows the FPC express feeder coming from FPC's Archer substation to the east, running west to County Road 241 and then heading south on County Road 241 past the property into the Town of Archer.

Q. What else does Exhibit _____ (WPC-3) show?

A. Exhibit _____ (WPC-3) shows Clay's existing distribution facilities bordering all sides of the property. We not only surround the property but we also have lines on the geographic area itself. Within the triangle formed by State Road 241 and U.S. 41 there is an outparcel just north of the developer's office adjacent to the developer's lot number 23. That is an existing Clay customer. In addition, Clay serves customers from the intersection of 241 and U.S. 41 north along U.S. Highway 41.

Q. I notice there is a gap in providing service on U.S. 41 in the northwest corner of section 5 up to the intersection of County Road SW22. Does FPC have any service locations in that area?

A. No. As you can see, Clay also has distribution facilities bordering the entire length of County Road SW22 which is the northern boundary of the developer's property, and completely

1 bordering 241 on the east side of the property extending
2 southward from the southern end of the property including the
3 Doe Run subdivision. The exhibit also shows our facilities
4 farther to the east and the north. Mr. Russell Lea will go
5 into more detail regarding our distribution facilities in the
6 surrounding area. Exhibit _____(WPC-4) shows the Marchant
7 Meadows subdivision with our distribution facilities
8 bordering U.S. 41 and 241, omitting facilities not directly
9 on the site. As you can see from the diagram, our first
10 service was established on the site in 1947 to serve a
11 sawmill. That service is no longer active, however the pole
12 is still there. That exhibit also shows our existing service
13 area to the homeowner whose property lies adjacent to Lot 23.
14 We have had seven formerly active services on the property
15 itself, and we currently continue to serve the Marchant
16 family directly to the south, in the small triangle just
17 north of the fork of U.S. 41 and 241.

18 Q. Why were the former accounts retired?

19 A. The developer asked us to remove those accounts once the
20 property was sold to the developer and the houses that had
21 been on the property were removed to make way for the
22 development.

23 Q. How did FPC serve the sales office?

24 A. Mr. Lea, Mr. Law and Mr. Waters will discuss that in greater
25 detail, but from the information furnished to me, FPC tapped

1 off its express feeder on 241 and crossed the developer's Lot
2 26 and 24 to reach the developer's sales office which is on
3 the western side of the property adjacent to U. S. Highway 41
4 on Lot 24 of the development. As FPC admitted in its answers
5 to our interrogatories, it constructed 1,100 feet of line,
6 set five poles and a transformer. FPC says its cost was
7 \$4,736.00.

8 Q. Where would service from Clay have originated to serve the
9 sales office?

10 A. From U.S. 41. As you can see from Exhibit _____ (WPC-4), we
11 had a prior service to the old saw mill and the pole for that
12 saw mill still is standing not more than about 100 feet north
13 of the sales office. We would serve the sales office in the
14 same fashion by constructing facilities across 41 to our
15 facilities on the west side of U.S 41. Essentially we would
16 be putting in one pole and a transformer at a cost of
17 approximately \$1,300.00.

18 Q. How many customers does Clay have in the area shown on
19 Exhibit _____ (WPC-3), the nine square mile map?

20 A. Approximately 241 customers.

21 Q. How many FPC customers?

22 A. I am not personally aware of any FPC customers in the
23 disputed area, although they have indicated in their answers
24 to interrogatories that they have 2 customers in Section 7, 1
25 customer in Section 8, and 19 customers in Section 9.

1 Q. Did Clay expect to serve this subdivision initially?
2 A. Yes.
3 Q. What led you to that assumption?
4 A. Our company was contacted by the developer at our Gainesville
5 District office and as Mr. Waters and Mr. Law will testify,
6 the developer first assumed that this was Clay's service area
7 and Clay was asked to provide to the developer's surveyors
8 locations and a layout of the planned service by Clay.
9 Q. What happened that led to the construction of the
10 distribution facilities by FPC?
11 A. Mr. Waters and Mr. Law will better answer those questions,
12 but it is my understanding that the developer asked Mr. Law
13 of our Gainesville district office if Clay would agree to
14 move a pole that was on State Road 241 that apparently
15 interfered with a common driveway shown on their development
16 plans. As Mr. Law indicated, FPC advised the developer that
17 it would charge the developer for moving the pole unless the
18 developer took service from FPC, in which event FPC would not
19 charge for moving the pole or clearing the right-of-way for
20 service to the project.
21 Q. Are you aware of any criticism by the developer of Clay's
22 handling of this matter or of Clay's planned service to the
23 subject property.
24 A. No, in fact, the developer has stated that he initially
25 thought he was only dealing with Clay Electric. But from

1 strictly a business standpoint, on FPC's representation that
2 it would not charge for moving the pole if the developer took
3 power from FPC, the developer went with FPC. The developer
4 has indicated to us that it really made no difference to him
5 which power supplier furnished service.

6 Q. Can Clay adequately and reliably provide service to the site?

7 A. Yes. As I have indicated earlier, we have distribution
8 facilities surrounding the property. The feeder line for
9 those distribution facilities is our Archer Road feeder line
10 coming from our Archer substation. That line comes down
11 State Road 24, crosses over to U.S. 41 and runs north up both
12 U.S. Highway 41 and State Road 241.

13 Q. Has the developer furnished you with any development plans
14 showing the projected growth in the subdivision.

15 A. No and I don't believe he furnished those to FPC either.

16 Q. Now as you've stated it would cost Clay Electric \$1,300.00 to
17 serve the developer's sales office?

18 A. Yes.

19 Q. If Clay were to provide service to the developer's new
20 subdivision, what would that cost approximate?

21 A. As Mr. Law has indicated in his testimony, it would be
22 approximately \$51,500.

23 Q. What is the nature of the area in dispute in terms of
24 development?

25 A. Well, it is definitely rural. There are no water lines or

1 sewer lines in the area, and I am advised that the people who
2 will purchase the lots in this rural subdivision will have to
3 put in septic tanks and wells.

4 Q. What kind of customer support services are available to serve
5 this site?

6 A. The site is in our Gainesville district, so primary service
7 and maintenance is provided from our Gainesville district
8 office near I-75 and 39th Avenue. We have 4 service men and
9 11 construction personnel in Gainesville on call 24-hours a
10 day and backup crews also on 24-hour call.

11 Q. Where is the nearest FPC customer support center?

12 A. I believe FPC would send a crew out of its Trenton office
13 about 25 miles away. Pending further discovery, I don't know
14 how many crews FPC has available to serve the area of what
15 their schedule is.

16 Q. Can you give us a summary of your reasons why you believe
17 Clay should be allowed to provide permanent service to this
18 site?

19 A. Clearly this rural development is within Clay's historic
20 service area as the exhibits I have provided show. Our
21 facilities are and have been in the area adjacent to and on
22 the property since no later than 1947. We provide service
23 and continue to provide service to the family that owned the
24 entire tract. We can provide adequate and reliable service
25 and have done so and continue to do so in all areas

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

surrounding the property including subdivisions to the south and in rural areas along 241, along County Road SW22 and along U.S. Highway 41. Our service to this site is logical and is an economically feasible extension of our existing system in an area made up almost exclusively of our own member owners. Regarding the sales office itself, all Clay had to do to serve the sales office was drop a line across U.S. 41 to a pole and a transformer. FPC has had to construct over 1,100 feet of line just to reach the sales office. From a planning prospective, it is vital that our territorial integrity be maintained. Allowing FPC to intrude into our service area will have a substantial negative impact on our utility in terms of our ability to plan for the present and future development of the area. In short, in terms of planning and development of our system, it is uneconomic for FPC to duplicate our facilities to provide service to this area. The same would be true if we were to attempt an intrusion into FPC's territory. It will make it very difficult for us to plan for this area in terms of future growth and development if FPC moves into this area and then potentially moves across U.S. Highway 41 into areas now served by Clay but which are essentially rural and which are low density in development. It doesn't make sense for either utility to start running lines and attempting to serve areas that have been historically served by the other utility.

1 Long term it could adversely affect our ability to provide
2 reliable service to our members and prevent us from planning
3 for normal growth of our system. Allowing such intrusions
4 will also negatively affect our ability to provide assurances
5 to lenders in efforts to raise needed capital as well as the
6 ability of our power supplier, Seminole, to raise capital.

7 Q. Are there any other reasons why you believe FPC should not be
8 allowed to enter into this historic service area of Clay?

9 A. Yes there is and it is a troubling, if not frustrating
10 situation. According to our business records, and as Mr. E.
11 T. Martin refers in his deposition, FPC made assurances to
12 Clay in 1970 that it would not serve any customers off the
13 line that it is now using to serve the developer's sales
14 office. The letters I refer to from our business records are
15 identified as Exhibit _____(WPC-5) and Exhibit _____(WPC-6)
16 to my testimony. Exhibit _____(WPC-5) is a letter from E.
17 T. Martin to E. E. Dearmin of Florida Power Corporation, and
18 Exhibit _____(WPC-6) is a letter dated December 29, 1970
19 from Mr. Dearmin to Mr. Martin. As you can see in Mr.
20 Dearmin's letter, Mr. Dearmin assures Clay Electric that FPC
21 will not serve customers from its proposed new feeder
22 extending westward along County Road SW-20A, from FPC's
23 Archer substation to the intersection of SR241 and southward
24 along SR241. In short, FPC had no facilities along SR241
25 until 1970 when it requested permission from Alachua County

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to construct the line. Incidentally, the line is entirely on county road right-of-way.

Q. Does your company regard those two letters, Exhibit _____ (WPC-5) and Exhibit _____ (WPC-6), as constituting a territorial agreement or division of territory?

A. No, although one would expect that common sense and economics would dictate that utilities lying adjacent to each other would attempt to rationally plan their systems to avoid uneconomic duplication of the others facilities and to agree not to attempt to invade each others service area. While these letters do not constitute territorial agreement between the two companies, they are clearly a representation about their use of an express feeder line. FPC represented to Clay that it would not serve any customers off the line. Because of that, our company obviously did not object to the location of the line and its presence in our existing territory. And FPC lived up to that representation for nearly 20 years.

Q. In your view has FPC lived up to its assurances to Clay that it would not attempt to serve any customers from that feeder line?

A. No. Plain and simply, FPC represented to our company that it was constructing an express feeder from its Archer substation into the Town of Archer. They needed that express feeder for backup and reliability purposes, we had no problem with it.

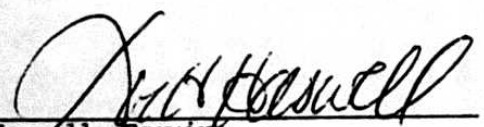
1
2
3
4
5
6
7
8
9
10

We still have no problem with it. However, if FPC is going to attempt to start serving customers in area that has historically been served by Clay Electric, then we have no choice but to pursue all avenues necessary to protect our territorial integrity.

Q. Does this conclude your testimony?

A. Yes, but I do wish to reserve the right to make additional comments depending on additional information developed after we complete the discovery process.

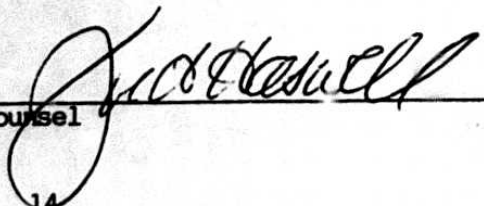
TO BE SWORN TO AT THE HEARING.



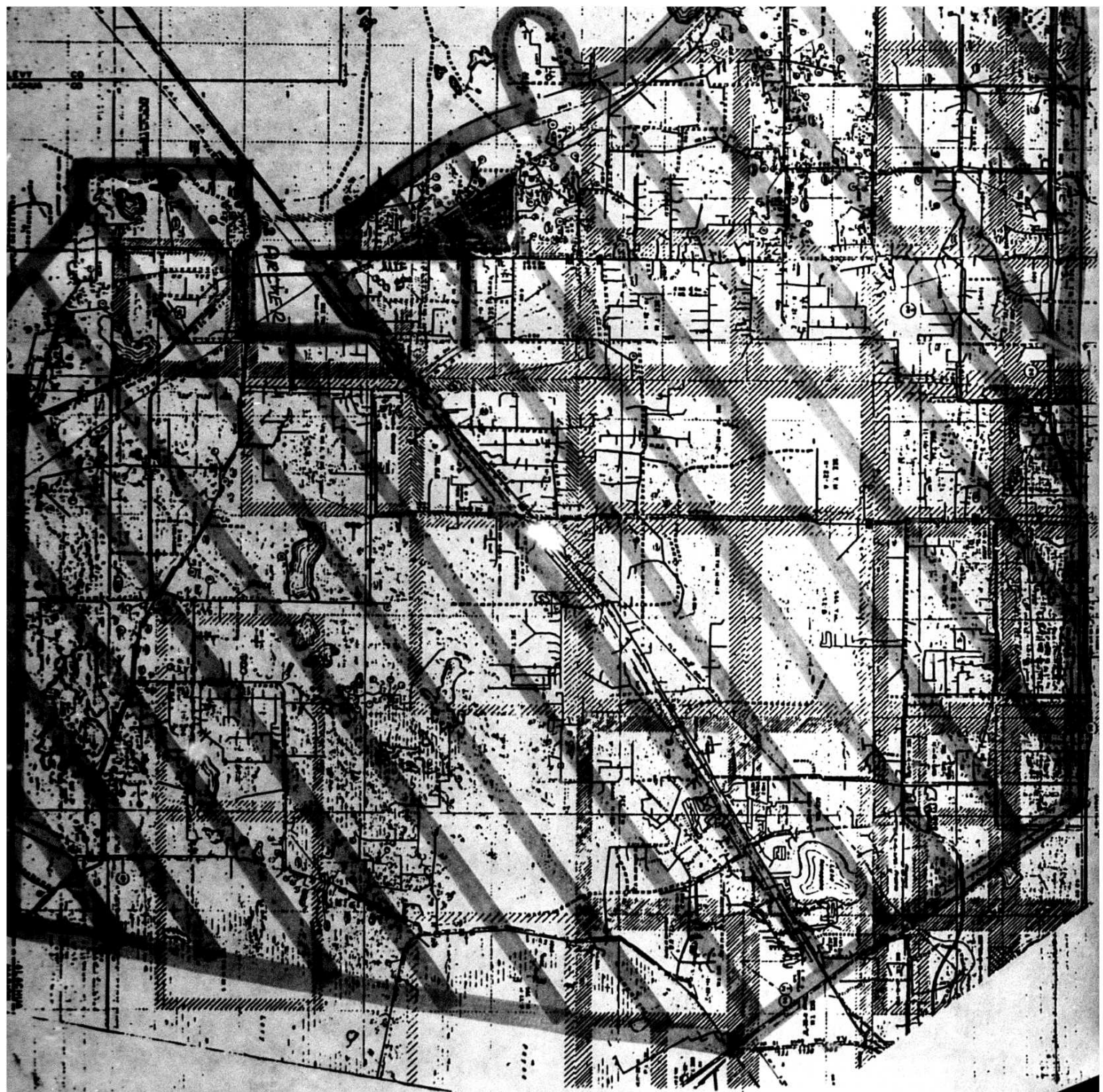
John H. Haswell, Esquire
CHANDLER, GRAY, LANG,
HASWELL & ENWALL, P.A.
211 N. E. 1st Street
P. O. Box 23879
Gainesville, FL 32602
(904) 376-5226
Florida Bar No. 162536

CERTIFICATE OF SERVICE

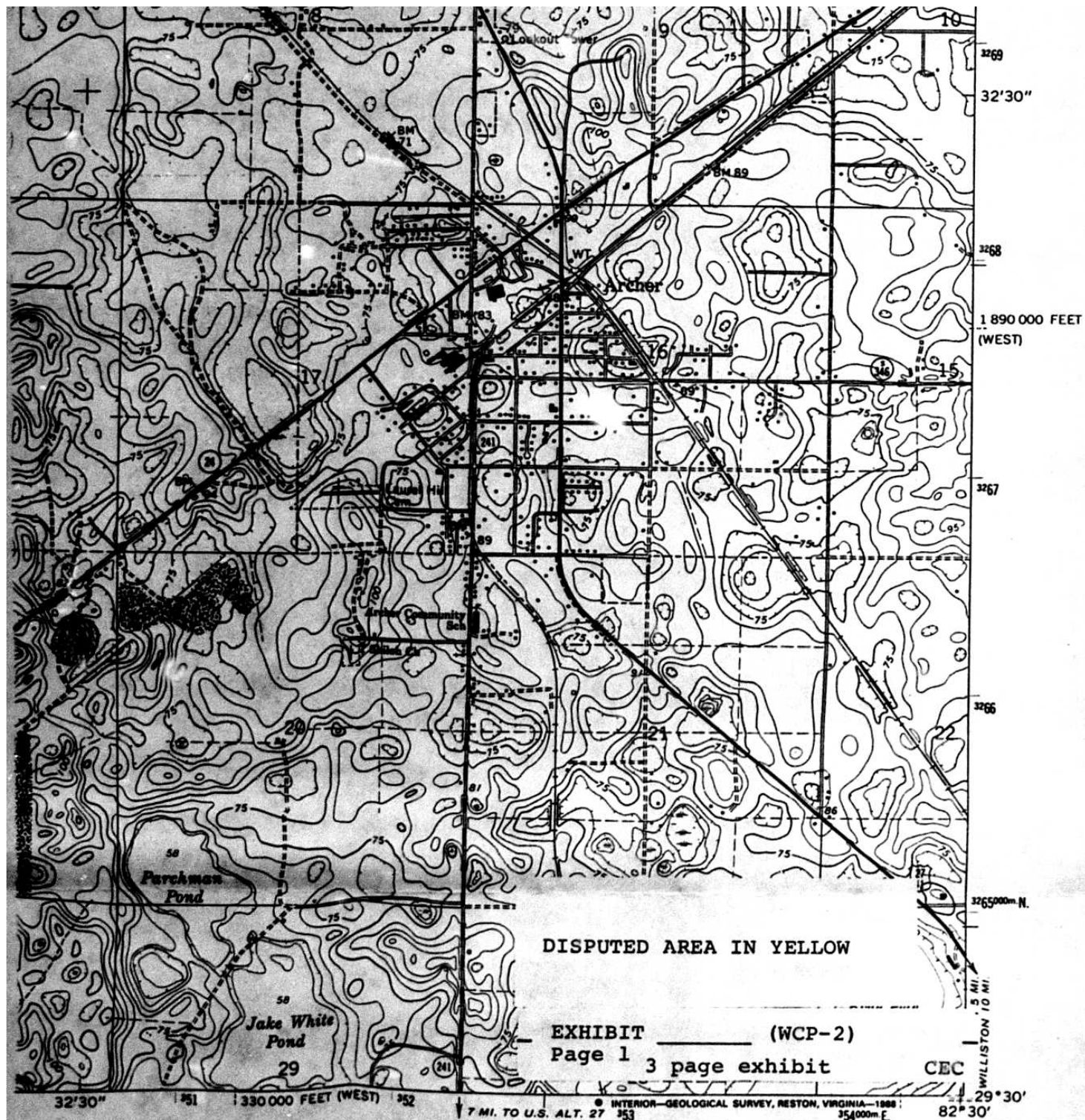
I HEREBY CERTIFY that a true and correct copy of the foregoing Direct Pre-Filed Testimony of William C. Phillips has been furnished to PAMELA I. SMITH, ESQUIRE, Staff Attorney, Florida Power Corporation, P. O. Box 14042, St. Petersburg, FL 33734; and MICHAEL A. PALECKI, ESQUIRE, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, FL 32301 by U.S. Mail this 24 day of April, 1990.



Of Counsel

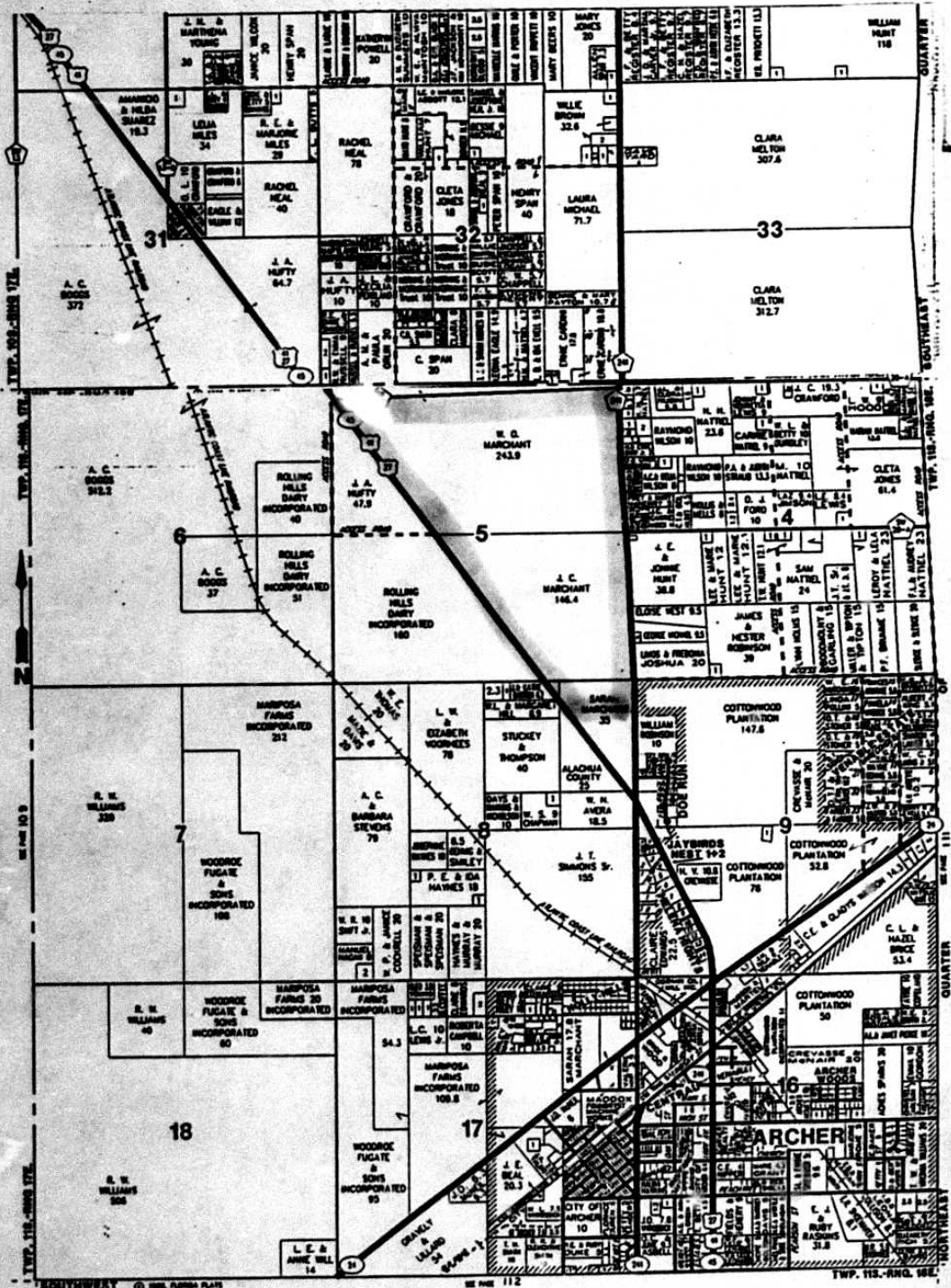


FPSC Dechet No. _____ -EJ
Exhibit (NCP - 1)



ROAD CLASSIFICATION

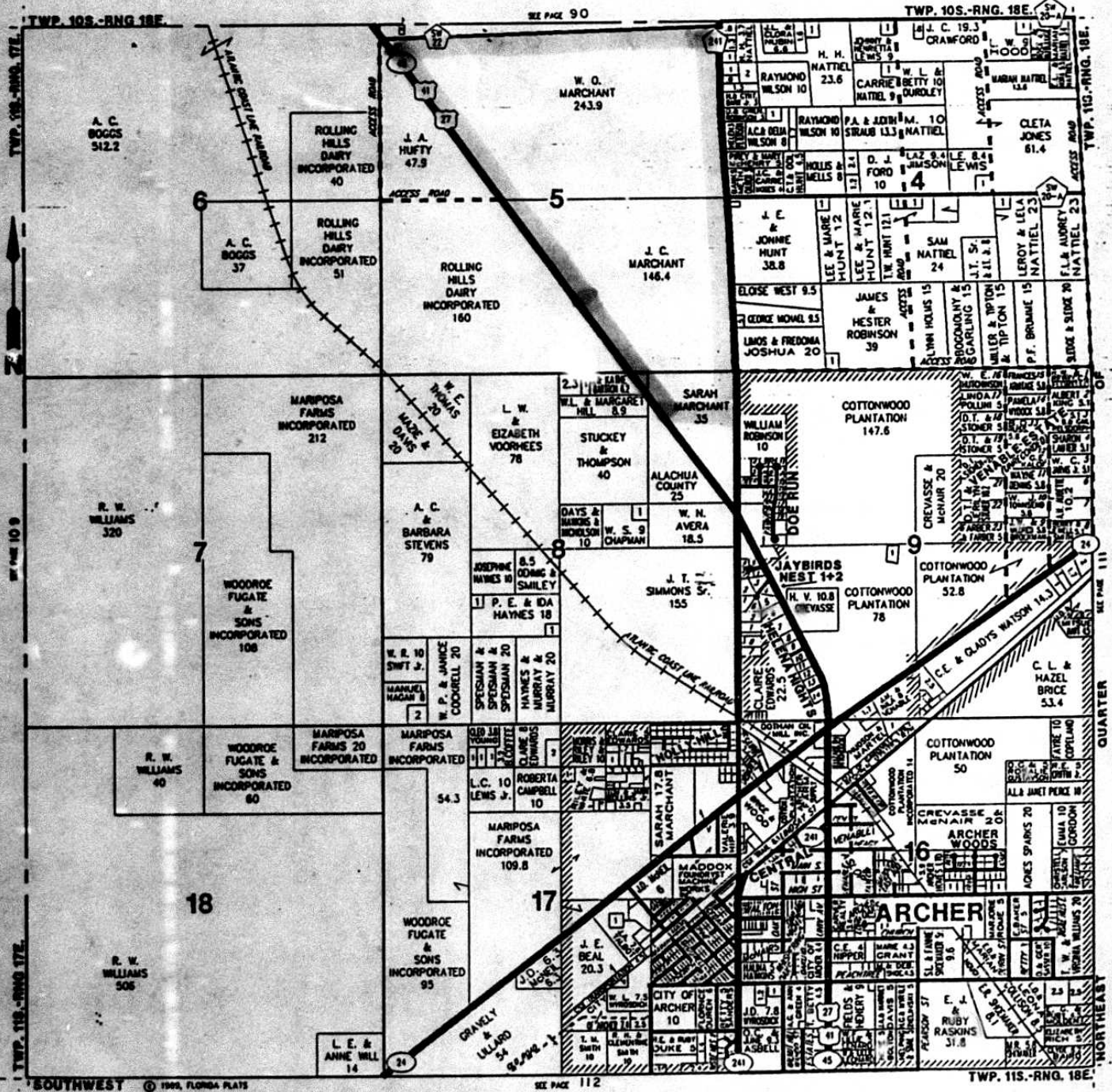
Primary highway, all weather, hard surface	Light-duty road, all weather, improved surface
Secondary highway, all weather, hard surface	Unimproved road, fair or dry weather



DISPUTED AREA IN YELLOW

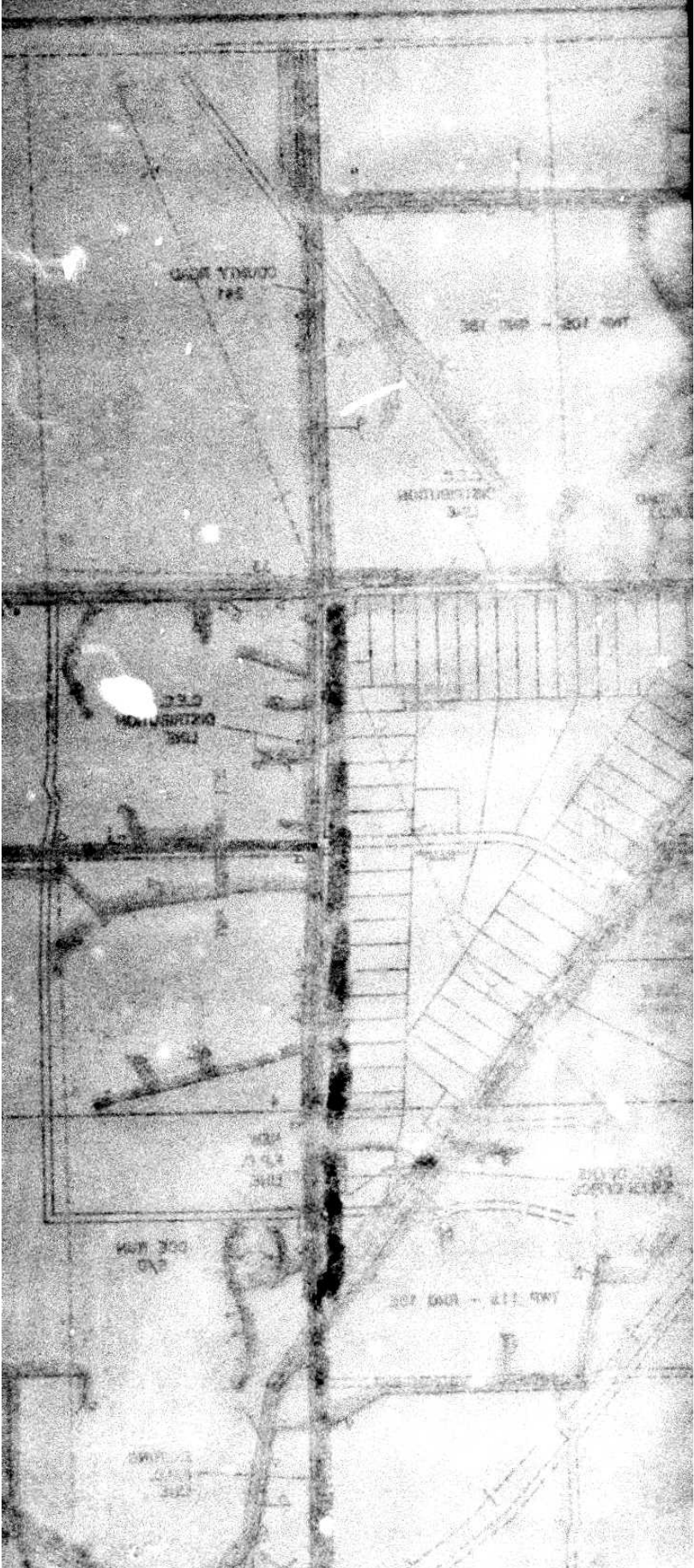
TWP. 11S.-RNG. 18E.

NORTHWEST QUARTER
ALACHUA CO., FLORIDA



DISPUTED AREA IN YELLOW

EXHIBIT _____ (WCP_2), PAGE 3



FFBC Dechet No. _____ -EU
Sheet WCP - 3

ROAD

33

C.E.C.
DISTRIBUTION
LINE

F.P.C. EXPRESS
FEEDER

NEW
F.P.C.
LINE

DOE RUN
S/D

DISTING
F.P.C.
LINE

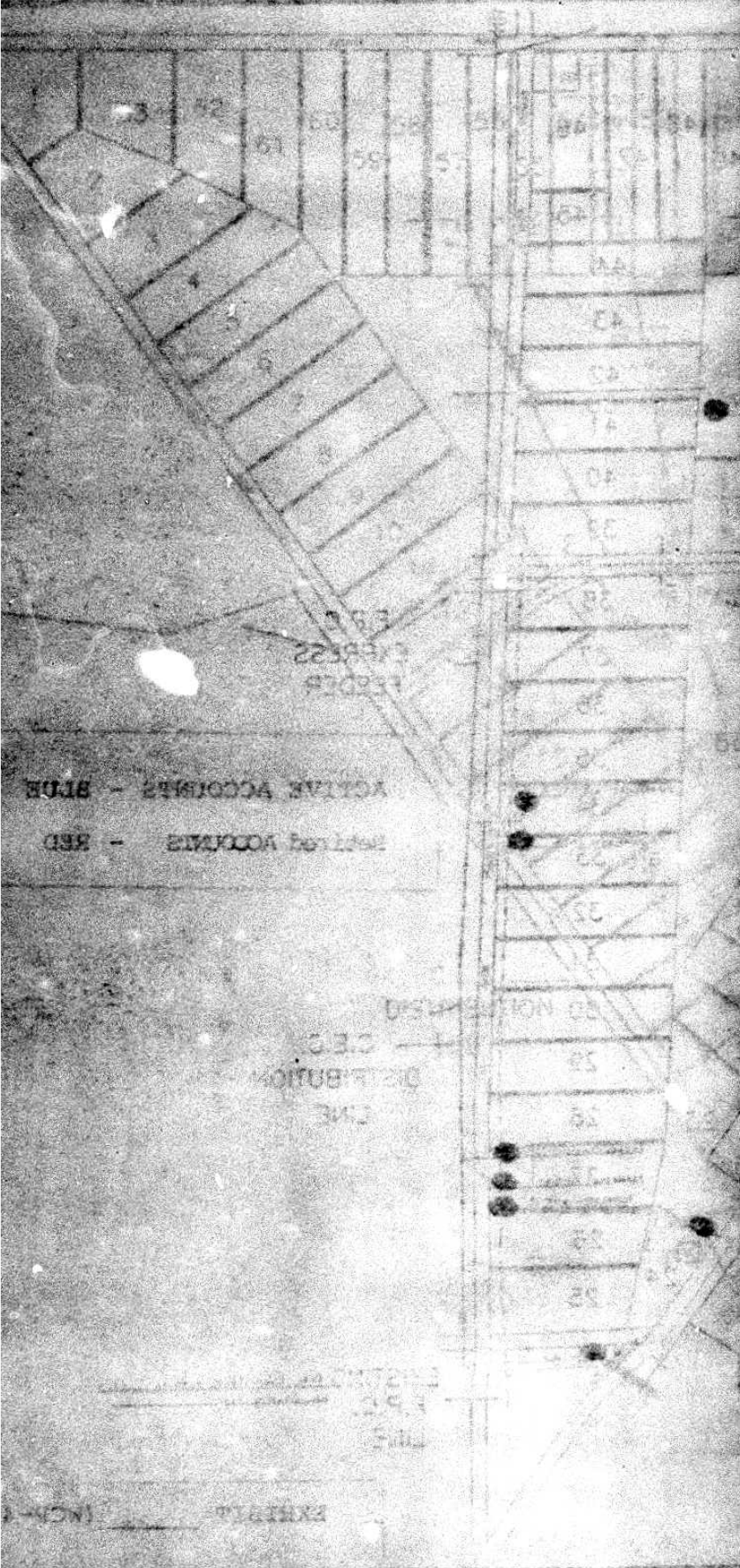
RWD 182

SPL 24

TRIBUT

(WCP-3)





FPC Decklet No. _____

DATE WCP . 4

MANUAL WAGO
CITY ELECTRIC CONTROL

F.P.C.
EXPRESS
FEEDER

ACTIVE ACCOUNTS - BLUE
Retired ACCOUNTS - RED

C.E.C.
DISTRIBUTION
LINE

EXISTING F.P.C. Line and
F.P.C. Line
LINE

EXHIBIT (WCP-4)



December 28, 1970

Mr. E. E. Dearmin
Division Manager
Florida Power Corp.
P. O. Box 1450
Ocala, Florida 32670

Dear Gene:

A copy of D. M. Thornton's letter arrived in our office. It stated that you had applied to Alachua County Engineering Department for permission to construct overhead three phase primary distribution line along Alachua County Road SW-20A and SR 241 near Archer, Florida.

This is the line which parallels our lines and goes directly through an area we have served for many, many years.

We have no objection to your company constructing this line as a tie line or for two way feed to the community of Archer. However, as we previously agreed, we would appreciate your letter stating that you will respect our service area and not serve any consumers from this line.

Sincerely,

E. T. Martin
General Manager

ETM:jw

E E
12-30-70

EXHIBIT _____ (WCP-5)

FLORIDA POWER CORPORATION

DIVISION OFFICE

P. O. BOX 1450

OCALA, FLORIDA

December 29, 1970

DEC 30 1970

Mr. E. T. Martin
General Manager
Clay Electric Co-Operative, Inc.
Keystone Heights, Florida

Dear Marty:

Your letter of December 28 is absolutely correct in stating that we agreed not to serve customers from our proposed new feeder extending westward along Alachua County Road SW-20A from our Archer substation to the intersection of SR-241 and southward along SR-241. To further clarify our original statement this same condition would apply southward from SR-241 along Alachua County Road 17 to the point of our existing territorial agreement.

Following receipt of your letter I looked into the "mechanics" of our applications and find that actually four letters were written pertaining to the County Road permits, State Road permits, U.S. 41 crossing, etc.; copies of each being furnished to Gene Williams. They were routine form letters prepared by our Engineering Department. However, the letter you requested should have accompanied copies of these letters to your Gainesville office so that there would have been no misunderstanding. Unfortunately, Mr. Thornton was on vacation when the letters were mailed and I was on vacation this past week. I am sure you know there was no intent on my part to evade or modify my agreement with you.

Hope you had a real nice Christmas.

Sincerely,



Gene Williams
Manager

KED/hb