

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**ORIGINAL
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 E. T. MARTIN
ON BEHALF OF CLAY ELECTRIC COOPERATIVE, INC.

DOCUMENT NUMBER-DATE
03556 APR 25 1990
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**IN RE: Territorial Dispute Between
Clay Electric Cooperative, Inc.,
and Florida Power Corporation, In
Alachua County.**

Docket No. 900064-EU

D E P O S I T I O N

Pursuant to due notice, the deposition of
E.T. MARTIN, was taken by the Petitioner before Donna
L. Alexander, court porter and Notary Public, State
at Large, at 211 Northeast 1st Street, Gainesville,
Florida commencing at 2:30 p.m. on Tuesday, April 17,
1990.

APPEARANCES:

**JOHN H. HASWELL, ESQUIRE, P.O. Box 23879, Gainesville,
Florida 32602, Counsel for the Petitioner.**

**PAMELA I. SMITH, ESQUIRE, P.O. Box 14042,
St. Petersburg, Florida 32301, Counsel for the
Respondent.**

Also Present: Jim L. Troke, Florida Power Corporation

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I N D E X

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WITNESS:	DIRECT	CROSS
E.T. MARTIN	3	9

E X H I B I T S

Petitioner's Exhibit 1 (December 28, 1970 letter)	5
Petitioner's Exhibit 2 (December 29, 1970 letter)	5

S T I P U L A T I O N S

It is stipulated and agreed by and between counsel for the respective parties as follows:

1. All objections, except as to form of the question, be reserved until hearing on the same or until trial.
2. The reading and signing of the deposition by the witness be waived; the witness also waived.

1 Thereupon, E.T. MARTIN, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. HASWELL:

5 Q. Could you state your name and address,
6 please, sir?

7 A. E.T. Martin, Box 43, Keystone Heights.

8 Q. And what is your current occupation?

9 A. Retired.

10 Q. And what was your former occupation?

11 A. General manager, Clay Electric Co-op.

12 Q. And during what period of time were you
13 the general manager?

14 A. From 1963 through 1983.

15 Q. So obviously you were the general manager
16 in 1970?

17 A. That's correct.

18 Q. Are you familiar with a gentleman known as
19 E.E. Dearmin?

20 A. Gene Dearmin, very, very much.

21 Q. Who did he work for?

22 A. Florida Power Corporation.

23 Q. Do you remember what his position was?

24 A. I think he was district manager. I don't
25 know. He was the man that we talked to in Ocala

1 during that period.

2 Q. Okay. Now prior to this deposition I
3 discussed with you the nature of this case involving
4 Clay Electric and Florida Power Corporation; is that
5 correct?

6 A. Yes.

7 Q. And I advised you about an area that's in
8 dispute in Archer or near Archer?

9 A. (Witness nods head.)

10 Q. Is that a yes?

11 A. Yes. I'm shaking my head. She can't hear
12 that, can she?

13 Q. I'd like to show you a letter dated
14 December 28th.

15 MR. HASWELL: Can we go off the record
16 just a minute?

17 (Thereupon, a discussion was held off the
18 record.)

19 BY MR. HASWELL:

20 Q. Mr. Martin, I'd like to show you a letter
21 dated December 28, 1970, which purports to be from you
22 to Mr. Dearmin, and ask if you recall sending that
23 letter to Mr. Dearmin.

24 A. Yes, I do.

25 MR. HASWELL: I'd like to have that marked

1 as Petitioner's Exhibit 1.

2 (Thereupon, the aforementioned exhibit was
3 so marked.)

4 BY MR. HASWELL:

5 Q. And then I'd like to show you a letter
6 dated December 29, 1970, which is addressed to you and
7 signed by Mr. E.E. Dearmin, and ask if you recall
8 receiving that letter from Mr. Dearmin.

9 A. Yes.

10 MR. HASWELL: I'd like to have that
11 identified as Petitioner's Exhibit Number 2.

12 (Thereupon, the aforementioned exhibit was
13 so marked.)

14 BY MR. HASWELL:

15 Q. At the time that the letter was written
16 that you wrote to Mr. Dearmin, was it your opinion
17 that the service area in question was Clay's service
18 area?

19 MS. SMITH: Object to the question,
20 leading.

21 Q. You can answer it.

22 A. Yes.

23 Q. Okay. At that time, did Clay have service
24 or serve customers in the general area?

25 A. That's right. This general area, yes.

1 They served in this area where this line was.

2 Q. Now when we talk about the area, we
3 haven't identified that area, yet. This is an area
4 just north of Archer kind of in the fork of 241 and US
5 41; is that correct?

6 A. Correct.

7 Q. Why was it important to you -- or to Clay
8 Electric, excuse me, to have an understanding about
9 what Florida Power was going to do with that expressed
10 feeder they were building as identified in Mr.
11 Dearmin's letter?

12 A. As I remember back, that area we had
13 served for years, and we had talked with Gene Dearmin
14 about serving this area. They wanted to cross in our
15 area and go in and serve -- be a substation and run a
16 line in.

17 At that time we were both trying not to
18 serve in each other's areas where they had lines and
19 we had lines because of the problems of operating and
20 safety. We knew that if we started serving in their
21 area, they'd serve in where we were serving; that the
22 whole lines would be all intermingled, and you just
23 can't run a utility like that because of the cost to
24 the consumer and safety factor and these things.

25 So, we generally agreed that we would

1 serve the area he's talking about, and then the other
2 areas Florida Power Corporation served we wouldn't go
3 into. We tried to stay out of these areas because it
4 was economical doing that.

5 Q. One of the factors that you considered
6 then was economic?

7 A. It's economical because of the planned
8 investment, and planned investment relates to cost of
9 power to your members.

10 Q. So these were planning considerations?

11 A. Planning considerations, safety
12 considerations. It's just good business.

13 Q. And you felt an understanding like this
14 was important to avoid duplicating facilities?

15 A. Yes. Back in those years, you have to
16 realize that maybe we didn't have a lot of -- the
17 public service commission supervising us so that we
18 had to go by gentleman agreements and agree to run our
19 business so it was best for the people we served, and
20 that's what we did.

21 Q. All right, sir. Are you familiar -- I
22 don't know whether we've identified the line in
23 question, but do you recall this particular line
24 that's -- as I discussed with you earlier, there's a
25 line involved on 241 coming from the Archer substation

1 of Florida Power's?

2 A. Yes, I remember from maps. I didn't go
3 out and look at the line. It was brought to my
4 attention on maps, and this is what we looked at.

5 Q. Okay. So the feeder line we're talking
6 about or the line of the distribution facilities of
7 FPC we're talking about now are referred to in that
8 letter as a line from the Archer substation towards
9 241?

10 A. Now, shown in the letter, I don't remember
11 the details of that letter.

12 Q. All right. The letter, which I believe
13 we've identified as Exhibit 1, refers to an overhead
14 three-phase primary distribution line along County
15 Road 28 and SR 241 near Archer, Florida.

16 MS. SMITH: What's the date of that
17 letter, please?

18 MR. HASWELL: The December 28th letter.

19 MS. SMITH: Okay.

20 BY MR. HASWELL:

21 Q. So the line they were talking about is --
22 well, let me ask you this. Did they say what they
23 were going to do with that line?

24 A. Eventually just to take power into that
25 substation and just run through the area and not serve

1 anything off of it. That's what we understood.

2 Q. That substation would have been the FPC
3 Archer substation?

4 A. Yes.

5 Q. And FPC serves the town of Archer?

6 A. That's correct.

7 MR. HASWELL: I have no other questions.

8 MS. SMITH: I have a few questions.

9 CROSS-EXAMINATION

10 BY MS. SMITH:

11 Q. Mr. Martin, my name is Pam Smith. I'm
12 representing Florida Power in this matter.

13 The two letters that have been referred to
14 today as Exhibits 1 and 2 make reference to objections
15 that may have been raised by Clay Co-op upon the
16 application of Florida Power for a permit to put this
17 line in the right-of-way. What objections was Clay
18 Co-op prepared to make?

19 A. As I remember correctly, because we were
20 serving the area and we agreed that Florida Power
21 would not serve that area, we felt it was our area to
22 serve and we brought it to their attention that
23 there's -- I think that's the reason.

24 Q. Any other objections?

25 A. No, not that I know of.

1 Q. Okay. Mr. Martin, at the time that you
2 retired in 1983, were you operating under the
3 assumption that these two letters were still valid and
4 in force as between Florida Power and Clay?

5 A. Yes.

6 Q. Had you been notified by anyone that those
7 letters had been withdrawn?

8 A. No.

9 Q. Have you discussed your testimony today
10 with anyone, Mr. Martin?

11 A. I reviewed the letters with John to bring
12 me up-to-date. After all, it's been a lot of years.
13 I have been gone six years retired, and I had to
14 review what was happening.

15 Q. And when did this review take place?

16 A. Just a few minutes ago.

17 Q. Have you discussed it with anyone else?

18 A. No.

19 Q. Have you discussed this litigation with
20 anyone at Clay?

21 A. I didn't know anything about the
22 litigation. No. The answer is no.

23 MS. SMITH: Okay. I don't have anything
24 further.

25 (Thereupon, the witness was explained his

1 right to read and sign the deposition; whereupon, the
2 witness waived that right, and the deposition was
3 concluded at 2:40 p.m.)

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C E R T I F I C A T E

1
2 STATE OF FLORIDA
3 COUNTY OF ALACHUA

4 I, Donna Katsaounis Alexander, Court

5 Reporter and Notary Public, do hereby certify that the
6 witness, E.T. MARTIN, was first duly sworn by me to
7 testify the whole truth; that the foregoing deposition
8 given by said witness was reported in stenograph and
9 tape recorder by me, reduced to typewriting under my
10 direct supervision, and the foregoing pages, numbered
11 1 through 11, inclusive, constitute a true and
12 accurate transcription of said proceedings.

13 I further certify that I am neither
14 attorney or counsel for any of the parties, nor a
15 relative or employee of any attorney or counsel
16 connected herewith, nor am I financially interested in
17 the event of this cause.

18 I further certify that the original of
19 this deposition was delivered to Mr. Haswell and was
20 true and correct at the time of delivery.

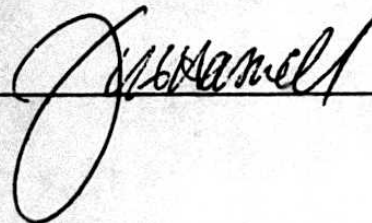
21 Witness my hand and seal at Gainesville,
22 Florida this 17th day of April, 1990.

23 Donna Katsaounis Alexander
24 DONNA KATSAOUNIS ALEXANDER
25 COURT REPORTER AND NOTARY PUBLIC
STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES: 6/26/90

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Direct Pre-Filed Testimony of E. T. Martin 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

A handwritten signature in cursive script, appearing to read "J. J. Hamel", is written over a horizontal line. The signature is fluid and somewhat stylized.

December 23, 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

ETM
12-31-70

FPSC Docket No. _____ -EU

Exhibit (ETM - 1)

EXHIBIT

1 4/17/90
dt

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 SW-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,



E. T. Martin
General Manager

KED/hb

FPSC Docket No. _____ -EU
Exhibit (ETM - 2) 2 4/17/90
DA

EXHIBIT