

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to resolve territorial)	DOCKET NO. 900284-EU
dispute in Clay County between Clay)	ORDER NO. 23653
Electric Cooperative, Inc., and)	ISSUED: 10-23-90
Florida Power & Light Company.)	
)	

Pursuant to Notice a Prehearing Conference was held on September 19, 1990 before Commissioner Betty Easley, Prehearing Officer.

APPEARANCES:

JOHN H. HASWELL, Esquire, Chandler, Gray, Lanz, Haswell & EnWall, Post Office Box 23879, Gainesville, Florida 32602
On behalf of Clay Electric Cooperative, Inc.

J. CHRISTIAN MEFFERT, Esquire, Bryant, Miller and Olive, P.A. 201 South Monroe Street, Suite 500, Tallahassee, Florida 32301
On behalf of Florida Power & Light Company.

K. CRANDAL McDOUGALL, Esquire, Post Office Box 029110, Miami, Florida 33102-9100
On behalf of Florida Power & Light Company.

JOHN W. McWHIRTER, Esquire, Lawson, McWhirter, Grandoff & Reeves, Post Office Box 3350, Tampa, Florida 33601-3350
On behalf of E.I. du Pont de Nemours & Company, Inc.

EDWARD A. TELLECHEA, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863
On behalf of Commission Staff.

PREHEARING ORDER

Background

This docket was initiated by Clay Electric Cooperative, Inc., (Clay) when it filed a Petition to Resolve Territorial Dispute on April 12, 1990. Clay is a rural electric cooperative organized and existing under Chapter 425, Florida Statutes, and is presently furnishing electric service to customers in Alachua, Bradford, Baker, Clay, Columbia, Duval, Lake, Levy, Marion, Putnam, Union,

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and Volusia County. It seeks to provide electric services for a mine site in Clay county that is owned and operated by E. I. du Pont de Nemours & Company (du Pont).

Florida Power and Light Company (FPL) presently provides electric service to other du Pont mines in the area and consequently also intends to furnish the du Pont mine site with electric services. In another docket FPL filed a Petition for Declaratory Statement on March 6, 1990 which asked the Florida Public Service Commission (the Commission) to issue a declaratory statement with respect to FPL's obligation to furnish du Pont electric service. The Petition was dismissed pursuant to Order No. 22917 upon filing of the complaint in this proceeding.

The du Pont mine site is located in an area known as the "Four Corners", which is the intersection of Baker, Duval, Clay, and Bradford counties. No electric service is presently provided to the geographic area in question but both FPL and Clay have distribution facilities around and about the mine site.

The Commission has jurisdiction over both Clay and FPL for the planning, development, and maintenance of a coordinated electric power grid to avoid uneconomic duplication of distribution, transmission, and generation facilities as provided in Florida Statutes Section 366.04(5). Furthermore, the Commission has jurisdiction pursuant to Section 366.04(2)(e) to resolve territorial disputes between rural electric cooperative and investor owned utilities. Thus, pursuant to the abovementioned statutory provisions, the Commission has the authority to resolve this territorial dispute in order to avoid duplication of distribution and transmission facilities in the geographical area in question.

Use of Prefiled Testimony

All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and exhibits, unless there is a sustainable objection. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand.

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Use of Depositions and Interrogatories

If any party seeks to introduce an interrogatory or a deposition or a portion thereof, the request will be subject to proper objections and the appropriate evidentiary rules will govern. The parties will be free to utilize any exhibits requested at the time of the depositions subject to the same conditions.

Order of Witnesses

The witness schedule is set forth below in order of appearance by the witness's name, subject matter, and the issues which will be covered by his or her testimony.

<u>Witness</u>	<u>Subject Matter</u>	<u>Issue</u>
1. William C. Phillips (Clay)	Background, Existing facilities in the area, additional facilities needed to service du Pont, the cost of those services, Clay's historic service area, and demography of the area.	1, 2, 3 5, 6, 8, 9, 10, 12, 13, 14
2. Russell P. Lea (Clay)	Existing facilities in the area, additional facilities needed to service du Pont, adequacy and reliability of Clay's services, Clay's historic service area, and background on Clay's electric system.	1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14
3. Richard P. Riebsam (Clay)	Additional facilities needed to service du Pont and the cost of providing the services.	7, 9, 13

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| 4. L. T. Atkinson
(FPL) | Describe FPL and its service area, describe the area in dispute, FPL's facilities currently in the area in question, the additional facilities needed to service du Pont, the cost of the proposed service, reliability of FPL's current service to du Pont, FPL's capability to provide service to du Pont, and nature of the disputed area, differences between FPL and Clay's proposed service. | 1, 2, 3
4, 5, 6
7, 8, 9
10, 11, 12
13, 14 |
| 5. Paul Johnston
(du Pont) | Identify the needs of du Pont, observations on the relative abilities of the two utilities in contention to provide service, and state du Pont's preference as to who will provide services. | 1, 2,
3, 5,
6, 7,
8, 9,
10, 12,
13, 14 |

EXHIBIT LIST

<u>Exhibit No.</u>	<u>Witness</u>	<u>Description</u>
<u>(WCP-1)</u>	Phillips (Clay)	Exhibit A, Diagram of the geographic area and distribution facilities.
<u>(RPL-1)</u>	Lea (Clay)	Maps showing Clay's distribution facilities in a n d around the area in dispute.

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<u>Exhibit No.</u>	<u>Witness</u>	<u>Description</u>
<u>(RPL-2)</u>	Lea (Clay)	Exhibit demonstrating Clay's ability to serve industrial customers.
<u>(FPL- Doc.1)</u>	Atkinson (FPL)	Map of the area in dispute and the distribution facilities in the area.
<u>(du Pont)</u>	Johnston (du Pont)	Map of the territory to be served.

PARTIES' STATEMENT OF BASIC POSITION

STAFF: The mine site is in neither Clay's nor FPL's historical service area. FPL and Clay are capable and willing to provide transmission level voltage to be delivered to a dedicated substation on the mine property. They both can provide adequate and reliable service to the mine site and there are no substantial differences on the issues of duplication or cost of extension to service. Staff believes that in light of this substantial equality, the dispute should turn on customer preference.

CLAY ELECTRIC COOPERATIVE, INC. (CLAY): Clay Electric Cooperative, Inc. is entitled to serve the site in dispute because Clay maintains and has maintained distribution facilities in and around the disputed area for over 30 years; Clay is capable of providing adequate and reliable service to this rural area; and Clay can provide service to the site either by transmission service from its power supplier, Seminole Electric Cooperative, Inc., or from Clay's Maxville substation 2-1/2 miles from the site.

FLORIDA POWER AND LIGHT COMPANY (FPL): FPL contends that on the typical issues upon which most territorial disputes revolve, the parties are substantially equal. Therefore, the issue to be determined is customer preference. There is, however, one issue

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which FPL claims there is no equality. FPL claims that du Pont presently receives interruptable service at its other two mine sites located nearby the area in dispute, and du Pont is requesting the same type of service for its Maxville mine site. It further contends that this type of service is not available from Clay. Given that there are no issues of duplication or costs of extensions to service, this dispute should be resolved on the issue of customer preference, the needs of the customer, and the availability of the service requested, i.e. du Pont should be allowed to receive interruptable service.

E. I. Du PONT de NEMOURS & COMPANY (du PONT): Du Pont has analyzed the capabilities of both Clay and FPL. Du Pont prefers to receive interruptable electric service from FPL because it places du Pont in competitive equality with its primary competitor. Clay offers firm service, but the rates are higher and the integrated nature of the du Pont mines prohibit any advantage to be received from firm service. Based upon its discussion with the two utilities, du Pont has concluded that FPL has a better capability to provide the service requested, has a greater backup equipment inventory and more in-depth engineering personnel to cope with the service needed by du Pont.

STATEMENT OF ISSUES AND POSITIONS

1. ISSUE : What is the nature of the disputed area?

POSITIONS

STAFF: The disputed area is rural.

CLAY: The area in question is a rural, wooded upland bordered on the west by a swampy area and on the east by U.S. Highway 301. There are no rivers or lakes in the disputed area and it seems likely that the area will remain rural for at least the next five years.

FPL: The area is an undeveloped and unpopulated 7,500 acre forest which will become a titanium mine with one customer for the next 18 years. The area's intended use is industrial. The area is not urban but it is not rural in the sense that it

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is a farm setting with farms and families. The disputed area will not have a population in the near future.

du PONT: The area in question is rural and sparsely inhabited. The area to be served is 10 square miles of vacant land which will be mined.

- 2. ISSUE: What is the proximity of the area to any urban areas?

POSITIONS

STAFF: The disputed area is not in close proximity to any urban area.

CLAY: The disputed area is not in the proximity of any urban area and it is not reasonably foreseeable that there will be any requirements in the near future for other utility services besides electric service.

FPL: The area in dispute is not near any urban area.

du PONT: The mine site is 15 miles north of Starke, Florida (pop. 5, 306), 9 miles north of Lawtey, Florida (pop. 692), and 14 miles south of Baldwin, Florida (pop. 1.526). The site is also immediately east of the New River Swamp and 13 miles northwest of Middleberg, Florida.

- 3. ISSUE: Is the area in question part of Clay's historical service area?

POSITIONS

STAFF: No. Neither Clay or FPC have provided service to du Pont at this location.

CLAY: Yes.

FPL: Clay, by its initial pleading and prefiled testimony has repeatedly alleged that FPL service would be an intrusion into Clay's historical service area. Traditionally, the Commission has considered the issue of historical service areas as

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significant only in that it assists in determining the uneconomic duplication of facilities. However, in this situation there will be no such duplication. The disputed area, a forest, lacks any service. Hence, the issue of historical service areas has no bearing on the ultimate determination.

The fact that Clay has utility customers and facilities nearby does not automatically annex the disputed area into Clay's historical service area especially when the facilities are useless with respect to providing the service requested by du Pont. From a historical perspective, FPL also has numerous customers nearby including two other du Pont mines. Consequently, FPL believes that the area in dispute is in no one's historical service area.

du PONT: No.

4. ISSUE: Does FPL have a statutory duty to provide electric service to the area in question?

POSITIONS

STAFF: Yes. FPL has a statutory duty to provide electric service as described in Commission rules 25-6.095 and 25-6.440 and Florida Statutes 366.05.

CLAY: FPL has no statutory duty or authority to provide electric service to a customer who is not located in FPL's service area. FPL will have no duty or authority to provide electric service to the disputed area until and unless the Commission resolves this territorial dispute in favor of FPL.

FPL: Pursuant to Section 366.03, Florida Statutes, public utilities have a statutory duty to "furnish to each person applying therefore...service upon terms as required by the Commission." The terms of the Commission are embodied in its rules, orders, and the tariffs of those public utilities the Commission regulates. The Commission may relieve a public utility of its obligation to serve by order, pursuant to Section 366.04(e) or (d), Florida Statutes. That is the Commission may relieve a public utility of its obligation to

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serve by approval and adoption of a territorial agreement or by resolution of a territorial dispute on its own motion or that of another. In the instant matter there is no Commission order which has relieved FPL of its obligation to serve du Pont and through its position presented herein FPL seeks to maintain that obligation.

du PONT: Yes.

- 5. ISSUE: What is the expected customer, load, and energy growth in the disputed area?

POSITIONS

STAFF: Du Pont's load is expected to be approximately 10 MWS over the life of the mine.

CLAY: At this point Clay has no reason to believe that the customer, load and energy growth will not be different from that projected by FPL, however, Clay would project such growth only in the next five years and not over the next 18 to 20 years. Going out 18 to 20 years is too speculative. The load for this particular customer (du Pont) is expected to be 10 megawatts, 24 hours a day at a voltage of approximately 22.9 KV.

FPL: There will be only one customer, du Pont, for the next eighteen years. Du Pont's load is expected to be approximately 10 MWS over the life of the mine on a consistent basis.

du PONT: Minimal.

- 6. ISSUE: What is the location, purpose, type and capacity of each utility's facilities existing as of the filing of Clay's petition?

POSITIONS

STAFF: Clay has distribution lines to the north and west of the property in dispute. FPL has a transmission line

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traversing the property in dispute from north to south. FPL also has distribution lines to the south of the property in dispute.

CLAY: As of the filing of Clay's petition, Clay has maintained distribution lines in and around the disputed area for approximately 30 years. Clay also has access by contract to the transmission line that transverses the property through its power supplier, Seminole Electric Cooperative, Inc. Clay maintains distribution facilities on and surrounding the property and serves all the customers in the immediate area except for a small area in Highland at the southern end of the property. Clay's Maxville substation, one-half mile from the boundary of the disputed area, provides service to Clay's customers in and around the disputed area and could provide service to the mine site as an alternative to transmission service.

FPL: FPL has a 115 Kv transmission line traversing the area in dispute from north to south as part of FPL's interconnected grid. Its purpose is to provide service to points between Starke and Baldwin. FPL lacks sufficient knowledge at this time to specifically identify Clay's distribution facilities, if any, located within the area in dispute. Clay has no transmission facilities in the area in dispute.

du PONT: FPL's transmission line transacts the property while Clay's distribution facilities are one-half mile east of the property in question. Clay's nearest substation is 2-1/2 miles north of the service point in issue.

7. ISSUE: What additional facilities are necessary in order to provide service for the customer in the disputed area?

POSITION

STAFF: Du Pont has requested transmission level voltage to be delivered to a substation on the mine property.

CLAY: For direct transmission service, Clay would construct a substation on the proposed mine site with the cost in the

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range of approximately \$400,000 to \$500,000. Clay can also provide service from Clay's Maxville 20 MVA substation. If Clay did so, the cost to provide distribution service would be less than transmission service. The cost could be as little as \$152,000 depending on which option du Pont selected and Clay agreed on.

FPL: FPL contends that an extension of FPL's Starke-Baldwin transmission line and a substation dedicated to du Pont are necessary to serve du Pont.

du PONT: Construction of a transmission voltage substation.

- 8. ISSUE: What is the ability of each utility to extend adequate and reliable services to this area?

POSITION

STAFF: Both utilities can provide adequate and reliable service to the disputed area.

CLAY: Clay is able to provide adequate and reliable service to the disputed area either by direct transmission service from the existing transmission line or from Clay's Maxville substation. FPL could also provide direct transmission service from the existing transmission line, but it has no existing substation in the immediate area. Certainly whichever utility is awarded the area has the ability to provide adequate and reliable service, its simply a matter of cost.

FPL: FPL contends that both utilities are equally able to extend adequate and reliable service to du Pont.

du PONT: FPL has a superior ability to extend adequate and reliable services.

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

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POSITIONS

STAFF: Both utilities will have to provide identical electric service. Both Clay and FPL are equity able to secure an extension of existing FPL facilities and provide transmission level service to du Pont.

CLAY: Clay is able to provide adequate and reliable service to the disputed area either by direct transmission service from the existing transmission line or from Clay's Maxville substation. FPL could also provide direct transmission service from the existing transmission line, but it has no existing substation in the immediate area. Certainly whichever utility is awarded the area has the ability to provide adequate to provide adequate and reliable service, its simply a matter of cost.

FPL: Clay has no existing facilities which could be extended to provide adequate service to du Pont. The only existing facility from which service may be extended to du Pont is FPL's Starke-Baldwin transmission line. Both Clay and FPL are equally able to secure an extension of existing FPL facilities and provide a substation for service to du Pont.

du PONT: Both utilities have the capability of extending their facilities to the area in question.

10. ISSUE: Do the utilities in this controversy possess the capability to provide the type of service requested by the customer?

POSITIONS

STAFF: No. Du Pont have requested transmission level service at an interruptable route. Only FPL can provide that service.

CLAY: Yes, both utilities are capable of providing the type of service requested by the customer. FPL is capable of providing transmission service only. Clay is capable of providing transmission service and service from Clay's distribution substation.

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FPL: FPL is prepared, pursuant to its tariff, to provide interruptable transmission level service to du Pont. While Clay has transmission level service available, Clay does not presently provide interruptable service.

du PONT: Du Pont has requested non-firm service. FPL provides such service but Clay does not.

- 11. ISSUE: Is the location of FPL's Starke-Baldwin transmission lines determinative of whose territory the disputed area lies in?

POSITIONS

STAFF: No.

CLAY: No. The Commission's policy has long been that transmission facilities shall not be included in any determination of a territorial dispute.

FPL: No.

du PONT: Yes.

- 12. ISSUE: Would the provision of services by either utility result in duplication of existing facilities?

POSITIONS

STAFF: No.

CLAY: Providing service at transmission level to du Pont at this specific site and no other site, would not be a duplication of existing facilities since none of those facilities exist. However, service by FPL to any other areas of the site could lead to a duplication of Clay's existing distribution system.

FPL: Regardless of which utility serves du Pont, an extension of FPL's Starke-Baldwin transmission line and a substation

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will be required. Consequently, no duplication of facilities will occur if FPL provides service.

du PONT: The provision of services by either utility would not duplicate services unless Clay attempts to provide service from its distribution substation.

13. ISSUE: What are the costs to provide the services requested by the customer?

POSITIONS

STAFF: To provide the electric service requested by du Pont the cost will be identical no matter which utility provides service. \$190,000 for transmission related facilities and \$545,000 for distribution substitution facilities.

CLAY: For direct transmission service, Clay would construct a substation on the proposed mine site with the cost in the range of approximately \$400,000 to \$500,000. Clay can also provide service from Clay's Maxville 20 MVA substation. If Clay did so, the cost to provide distribution service would be less than transmission service. The cost could be as little as \$152,000 depending on which option du Pont selected and Clay agreed on.

FPL: FPL has estimated the cost to extend service to du Pont at \$190,000 for transmission related facilities and \$545,000 for distribution substation facilities given the level of reliability requested by du Pont.

du PONT: Du Pont is without knowledge on this issue.

14. ISSUE: Should customer preference be determinative in this matter?

POSITIONS

STAFF: Yes.

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CLAY: While a customer should be permitted the opportunity to raise appropriate issues and criteria such as adequacy and reliability of service, such customer's preference itself should not be relied upon by the Commission to resolve a territorial dispute, and in particular, in this case, since the disputed area is wholly within Clay Electric's historic service area, customer preference should not be considered.

FPL: All of the other factors important in resolving territorial disputes are either substantially equal, or are in FPL's favor. The type of facilities necessary to serve are the same. No duplication of facilities will occur. The cost to provide service and the reliability of service are substantially equal. And, the capability of each utility to serve is the same (since as a practical matter service will be from FPL through its Starke-Baldwin transmission line); therefore, all factors being substantially equal, du Pont's stated preference should be followed.

du PONT: Yes.

STIPULATED ISSUES

The parties have stipulated to a position on Issue No. 11.

MOTIONS

A Motion to Strike was filed by FPL on May 2, 1990. During the Prehearing Conference, Clay agreed to withdraw paragraph 6 of their petition, the last 3 line of paragraph 7, the last sentence of paragraph 20, all of paragraph 21, and subpart C of the Petition's prayer for relief. In light of Clay's agreement to withdraw the abovementioned provisions, FPL agreed to withdraw its Motion to Strike.

Clay also filed a motion titled "Objection to Use of Additional Witness of Du Pont and in the Alternative, Motion for Continuance of Final Hearing" on October 17, 1990. This motion is pending at this time.

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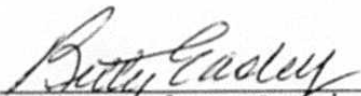
OTHER MATTERS

None.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that these proceedings shall be governed by this order unless modified by the Commission.

By ORDER of Commissioner Betty Easley, as Prehearing Officer,
this 23rd day of OCTOBER, 1990.


Betty Easley, Commissioner
and Prehearing Officer

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