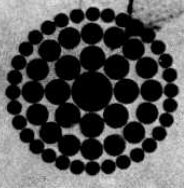


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**ORIGINAL
FILE COPY**



**Florida
Power
CORPORATION**

**Pamela I. Smith
ASSISTANT COUNSEL**

January 22, 1991

**Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301-8153**

**Re: Territorial Dispute Between Clay Electric Cooperative, Inc.
and Florida Power Corporation in Alachua County**

Dear Mr. Tribble:

Please find enclosed for filing in the above-referenced docket the original and fifteen (15) copies of a Motion to Approve Territorial Agreement in Settlement of Territorial Dispute.

Kindly acknowledge receipt and filing on the copy of this correspondence which is also enclosed.

Thank you for your assistance in this matter.

Very truly yours,

Pamela I. Smith
Pamela I. Smith

- ACK
- AFA _____
- APP _____
- C/P _____
- CLX
- CTE _____
- EAG PS/min
- LEG Enclosures
- LIN cc: Parties of Record
- OPC _____
- RCH _____
- SEC
- WAS _____
- WTH _____

RECEIVED & FILED

TB
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
00734 JAN 23 1991
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

**MOTION TO APPROVE TERRITORIAL AGREEMENT
IN SETTLEMENT OF TERRITORIAL DISPUTE**

Florida Power Corporation (FPC) moves that the Florida Public Service Commission (Commission) approve the attached territorial agreement in settlement of the territorial dispute between the parties to this proceeding and states:

(1) On January 29, 1990, Clay Electric Cooperative, Inc. (Clay) filed its petition to resolve a territorial dispute between the parties as to certain service in Alachua County, Florida.

(2) FPC and Clay have subsequently engaged in discussions in an attempt to resolve the dispute.

(3) Attached to this motion as Exhibit 1 is a territorial agreement entered into between FPC and Clay subject to Commission approval. Upon approval by the Commission, the dispute between the parties will be resolved.

(4) Counsel for FPC has been informed by counsel for Clay that it will join in this motion.

DOCUMENT NUMBER-DATE

00734 JAN 23 1991

FPSC-RECORDS/REPORTING

WHEREFORE, FPC requests that the Commission approve the attached territorial agreement between FPC and Clay and grant such other relief as it deems appropriate.

OFFICE OF THE GENERAL COUNSEL
FLORIDA POWER CORPORATION

By: *Pamela I. Smith*
Pamela I. Smith, Esquire
Assistant Counsel
Florida Power Corporation
3201 34th Street South
Post Office Box 14042
St. Petersburg, FL 33733-4042
(813) 866-5777
Florida Bar No. 508934

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to John H. Haswell, Esquire, Chandler, Gray, Lang & Haswell, P.A., Post Office Box 23879, Gainesville, Florida 32602, and Michael A. Palecki, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32301, by United States Mail this 22d day of January, 1991.

Pamela I. Smith

AGREEMENT

Section 0.1: THIS AGREEMENT, made and entered into this 22nd day of January, 1991 by and between Florida Power Corporation, (referred to in this Agreement as "FPC") a corporation organized and existing under the laws of the State of Florida and an electric utility as defined in Chapter 366, Florida Statutes, and Clay Electric Cooperative, Inc. (referred to in this Agreement as "CEC"), a rural electric cooperative organized and existing under Chapter 425, Florida Statutes, and Title 7, Chapter 31, United States Code each of whose retail service territories are subject to regulation pursuant to Chapter 366, Florida Statutes and which are collectively referred to in this Agreement as the "Parties";

WITNESSETH:

Section 0.2: WHEREAS, each of the Parties is authorized, empowered and obligated by its corporate charters and the laws of the State of Florida to furnish retail electric service to persons desiring to use such service within their respective areas of service; and

Section 0.3: WHEREAS, each of the Parties presently furnishes retail electrical service to customers in Alachua County, Florida; and

Section 0.4: WHEREAS, the respective areas of service of the Parties are contiguous in many places, and the Parties desire to minimize costs to their respective ratepayers by avoiding duplication of generation, transmission, and distribution facilities; and

Section 0.5: WHEREAS, the Florida Public Service Commission (referred to in this Agreement as the "Commission"), has previously recognized that any such duplication of facilities results in needless and wasteful expenditures and may create hazardous situations, both being detrimental to the public interest; and

Section 0.6: WHEREAS, the Parties desire to avoid and eliminate the circumstances giving rise to potential duplications of facilities and hazardous situations, and toward that end have established the Territorial Boundary Line to delineate their respective retail Territorial Areas; and

Section 0.7: WHEREAS, the Commission is empowered by Section 366.04(2)(d), Florida Statutes, to approve and enforce territorial agreements between electric utilities, has often recognized the wisdom of such agreements, and has held that such agreements, when properly presented to the Commission, are advisable in proper circumstances, and, indeed, in the public interest;

Section 0.8: NOW, THEREFORE, in consideration of the premises aforesaid and the mutual covenants and agreements herein set forth the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1: Territorial Boundary Line. As used in this Agreement, the term "Territorial Boundary Line" shall mean the boundary lines which define the geographic areas shown on the maps attached hereto as composite Exhibit "A", which differentiate and divide the CEC Territorial Area from the FPC Territorial Area.

Section 1.2: CEC Territorial Area. As used in this Agreement, the term "CEC Territorial Area" shall mean the geographic areas of Alachua County shown

on composite Exhibit "A" designated "CEC", and the balance of the geographic area of Alachua County, not shown on index maps A, B, C, D, and E of Exhibit "A", but not including those geographic areas currently being provided electric service by the City of Gainesville, the City of Alachua, the City of Newberry, and Florida Power & Light Co.

Section 1.3: FPC Territorial Area. As used in this Agreement, the term "FPC Territorial Area" shall mean the geographic areas of Alachua County, shown on composite Exhibit "A", designated "FPC", and shall not include the balance of the geographic area of Alachua County not shown on index maps A, B, C, D, and E of Exhibit "A". The geographic areas allocated by this section to FPC shall not include those geographic areas currently being provided electric service by the City of Gainesville, the City of Alachua, the City of Newberry, and by Florida Power & Light Co.

Section 1.4: Transmission Line. As used in this Agreement, the term "Transmission Line" shall mean any Transmission Line of either Party having a rating of 69 kV or greater.

Section 1.5. Distribution Line. As used in this Agreement, the term "Distribution Line" shall mean any Distribution Line of either Party having a rating of up to, but not including 69 kV.

Section 1.6. Person. As used in this Agreement, the term "Person" shall have the same inclusive meaning given to it in Section 1.01(3), Florida Statutes.

Section 1.7. New Customer. As used in this Agreement, the term "New Customer" shall mean any Person that applies to either CEC or FPC for retail electric service after the effective date of this Agreement.

Section 1.8. Existing Customer. As used in this Agreement, the term "Existing Customer" shall mean any Person receiving retail electric service from

either CEC or FPC on the effective date of this Agreement or a surviving or divorced spouse of an Existing Customer who remains at the same service location.

Section 1.9. Change in Use. As used in this Agreement, the term "Change in Use" shall mean: (1) change in the use of real property from residential to business or business to residential; (2) a change in the use of real property that would normally require a reclassification of service under the applicable tariff of either Party; (3) a change in the use of real property that results in the addition of three or more meters during the term of this Agreement; or (4) a change in the use of real property by reason of a change in the ownership or occupancy thereof to any Person other than a surviving or divorced spouse of an Existing Customer who received electric service at the same location.

Section 1.10. End Use. As used in this agreement, the term "end use" means the use of electric energy by a customer at a geographic location where the electric energy is ultimately consumed.

Section 1.11. End Use Facilities. As used in this agreement, the term "end use facilities" means those facilities at a geographic location where the electric energy used by a customer is ultimately consumed.

ARTICLE 2

AREA ALLOCATIONS AND NEW CUSTOMERS

Section 2.1: Territorial Allocations. Except as otherwise specifically provided herein, during the term of this Agreement, CEC shall have the exclusive authority to furnish retail electric service for end use within the CEC Territorial Area and FPC shall have the exclusive authority to furnish retail electric service for end use within the FPC Territorial Area.

Section 2.2: Service to New Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any New Customer whose end-use facilities are located within the Territorial Area of the other Party, except as specifically provided in this Section of the Agreement.

The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a customer's end-use facilities either cannot or should not be immediately served in whose Territorial Area they are located. In such instances, upon written request by the Party in whose Territorial Area the end-use facilities are located, to the other Party, the other Party may agree in writing to temporarily provide service to such customer's end-use facilities. Any such agreement for temporary service shall be submitted to the Florida Public Service Commission for approval in accordance with Article IV, Section 4.1 hereof.

In the event that a New Customer or prospective New Customer requests or applies for service from either Party to be provided to end-use facilities located in the Territorial Area of the other Party, the Party receiving such a request or application shall refer the New Customer or prospective New Customer to the other Party with citation to this Agreement as approved by the Commission, and shall notify the other Party of such request or application.

If the New Customer or prospective New Customer delivers a written application for service after being referred to the other Party, or continues to demand service under an application made prior to a referral to the other Party, the Party receiving the application shall file a Petition for Declaratory Statement requesting the Commission to apply this Agreement to the facts presented. The petitioning Party shall notify the other Party and the applicant of its intent to file a Petition for Declaratory Statement prior to filing such

Petition and shall request the joinder of the other Party as a Party to the proceeding. The petitioning Party shall not provide or attempt to provide electric service to such a New Customer unless the Commission authorizes such service in an order binding upon both Parties.

Section 2.3: Transition Period. In order to minimize inconvenience to their customers, each Party may continue to serve their respective Existing Customers listed on Exhibit "B" as provided in this Section of this Agreement, even though the location at which they are using electric service shall be located in the Territorial Area of the other Party effective upon the approval of this Agreement by the Commission. Each of such Existing Customers and the Party by which they are presently served are listed on Exhibit "B" attached to and made a part of this Agreement. This Section of this Agreement shall also apply to additional requirements for electric service by Existing Customers listed on Exhibit "B" at their existing locations, subject to the "Change in Use" limitations set forth below. Existing Customers listed on Exhibit "B" may request to become customers of the other party at any time after approval of this agreement by the Commission. In addition, Existing Customers listed on Exhibit "B" shall be transferred to the other Party (in whose territory they lie) whenever there is a "Change in Use." In either event, the parties agree that such customer shall be transferred as soon as is reasonably practicable, taking into account economics, good engineering practices, and the efficient operation of the affected utility.

Section 2.4 : Bulk Power for Resale. Nothing herein shall be construed to prevent either Party from providing a bulk power supply for resale purposes to any other electric utility or Person regardless of where such other electric utility or Person may be located. Further, no other Section or provision of this

Agreement shall be construed as applying to a bulk power supply for resale purposes.

Section 2.5: Service Areas of Other Utilities. This Agreement between CEC and FPC does not constitute an agreement on or allocation of any geographic area of Alachua County, that is currently being provided electric service by the City of Gainesville, the City of Alachua, the City of Newberry, and Florida Power & Light Company.

ARTICLE 3

OPERATION AND MAINTENANCE

Section 3.1: Facilities to Remain. Except as expressly provided herein, any generating plant, transmission line, substation, distribution line or related facility now or hereafter constructed or used by either Party in conjunction with its electric utility system, which is directly or indirectly used and useful in service to its customer by either of the Parties in its Territorial Area, shall be allowed to remain where situated and shall not be subject to removal or transfer hereunder; provided, however, that each Party shall operate and maintain all such plants, lines, substations or facilities in such a manner as to minimize any interference with the operations of the other Party.

ARTICLE 4

PREREQUISITE APPROVAL

Section 4.1: Commission Approval. The provisions and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by the Commission of the provisions of this Agreement shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect

whatsoever until that approval has been obtained, and the date of the Commission's order, if any, granting initial Commission approval of this Agreement shall be deemed to be the effective date of this Agreement. Any proposed modification to this Agreement shall be submitted to the Commission for approval. In addition, the Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance of this Agreement.

Section 4.2: No Liability in the Event of Disapproval. In the event approval of this Agreement pursuant to Section 4.1 hereof is not obtained, neither Party will have any cause of action against the other arising under this document or on account of such nonattainment of approval.

Section 4.3: Supersedes Prior Agreements. Upon its approval by the Commission, this Agreement shall be deemed to specifically supersede any and all prior agreements between the Parties defining the boundaries of their respective Territorial Areas in Alachua County.

ARTICLE 5

DURATION

Section 5.1: This Agreement shall continue and remain in effect for a period of fifteen (15) years from the date of the Commission's initial Order approving this Agreement, and shall be automatically renewed for additional fifteen (15) year periods unless either Party gives written notice to the other of its intent not to renew at least six (6) months prior to the expiration of any fifteen (15) year period; provided, however, that each such renewal of this Agreement shall require prerequisite approval of the Commission with the same

effect as the original Commission approval of this Agreement as required and provided for in Article 4 hereof.

ARTICLE 6

CONSTRUCTION OF AGREEMENT

Section 6.1: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further this State's policy of actively regulating and supervising the service territories of electric utilities; supervising the planning, development, and maintenance of a coordinated electric power grid throughout Florida; avoiding uneconomic duplication of generations, transmission and distribution facilities; and encouraging the installation and maintenance of facilities necessary to fulfill the Parties' respective obligations to serve.

ARTICLE 7

MISCELLANEOUS

Section 7.1: Negotiations. Regardless of any other terms or conditions that may have been discussed during the negotiations leading up to the execution of this Agreement, the only terms or conditions agreed upon by the parties are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties hereto unless the same shall be in writing, attached hereto, signed by both of the parties and approved by the Commission in accordance with Article 4, Section 4.1 hereof.

Section 7.2: Successors and Assigns; for Benefit Only of Parties. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person other than the Parties hereto, or their respective successors or assigns, any right, remedy, or claim under or by reason of this Agreement, or any provision or condition hereof; and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of the Parties or their respective successors or assigns.

Section 7.3: Notices. Notices given hereunder shall be deemed to have been given to CEC if mailed by certified mail, postage prepaid, to

General Manager
Clay Electric Cooperative, Inc.
225 West Walker Drive
Keystone Heights, Florida 32656

and to FPC if mailed by certified mail, postage prepaid to:

Florida Power Corporation's Resident Agent for service of process
Patricia A. Brown, or her successor
Legal Department, Florida Power Corporation
3201 Thirty-Fourth Street South,
St. Petersburg, Florida 33711.

The person or address to which such notice shall be mailed may, at any time, be changed by designating a new person or address and giving notice thereof in writing in the manner herein provided.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

ATTEST:

Kathleen M. Haley

(SEAL)

ATTEST:

Raymond Whizata
Secretary

(SEAL)

FLORIDA POWER CORPORATION

By: W. J. Howell
Vice President
Title: Central and Northern Divisions

CLAY ELECTRIC COOPERATIVE, INC.

By: Floyd L. Lamm
Title: As President 11-21-90

EXHIBIT B

I. Florida Power Corporation Existing Customers in Territorial Area of Clay Electric Cooperative, Inc.

<u>Account Number</u>	<u>Customer Name</u>
15 1072 5001.2	Mar-Lyn Barnes
15 1072 5003.1	Sarah L. Murray
15 1072 5005.2	Joan P. Crawford
25 0239 13007	Wynona Dudley

II. Clay Electric Cooperative, Inc. Existing Customers in Territorial Area of Florida Power Corporation

<u>Account Number</u>	<u>Customer Name</u>
61400482	Mr./Mrs. Sonny Tillman
61400800	Praise the Lord Ministries
61400909	Harold I. Hale
61400960	Harold I. Hale, Sr.
61401330	Maxine Gregory Godwin
61401475	Clarence E. Hendrix
61401616	Raymond G. Hatch
61401700	Lee B. Thacker
61401757	Sherry Brock
61401800	Leona M. Wirta
61401898	Dorothy R. Samson
61401920	Lee B. Thacker
61402039	Perry E. Blanton
61402603	Mary A. Laqua
61402885	Agnes J. Betts
61403026	Diana Elaine Howell
61403167	Juanita B. Simmons
61403308	Vivian Robinette
61403449	Vivian Robinette
61403475	Carol A. Kiernan
61403600	Mr./Mrs. Sonny Tillman
61677656	S. L. Rogers, Jr.
61678136	Mildred Benefield
61755801	Penny M. Odom
61756500	Toms Auto Repair

Clay Electric Cooperative, Inc. Existing Customers in
Territorial Area of Florida Power Corporation (continued)

Account Number

Customer Name

61756530	Tom Stalbaum Auto Sales
61756540	Edgar Lee Pruitt, III
61756550	David F. Barber, Jr.
61856020	John Henry Hill
61856960	Andy Mantlo
61856980	Rev. Wayne W. Pugh
61857001	James Hamby
61857021	Micanopy Cable TV
61857040	Robert Adams
61857060	Mr./Mrs. James Hamby
61857070	James Hamby
61857080	Saint Madeleine Catholic
61857100	Saint Madeleine Catholic
61857300	Leonard Grace
61857601	John S. Bacon
61857700	Mr./Mrs. Baxter Forrester
61857720	Stacey K. Gay
61857800	Mr./Mrs. James P. Forrester
61857900	W. E. Nettles
61857960	Jeffrey D. Summers
61857980	Lester Hoyt
61858100	Gene Hollingsworth
61858110	Paul Minor
61858120	Wilbur Harris
61858140	Wilbur Harris
61858150	Wilbur Harris
61859430	G. E. McElroy
61859450	Walter H. Travilla
61859460	Mr./Mrs. Stephen Fenton Lang
61956200	Mr./Mrs. Sonny Tillman
61956220	Iris Tomlinson
61956457	Mr./Mrs. Sonny Tillman
61958000	James L. Barton
61958090	Dorothy Baddorf
61958100	Mr./Mrs. William D. Tough
61958186	R. E. Summers
61958650	Micanopy Group Companies
61958700	Edna Ruth Chesser
61958722	Edna Ruth Chesser
61958730	Dorothy Davis Evans
61958734	Thomas Robert Mitchell
61958880	Chris J. Walls
61958900	Mr./Mrs. Melvin Horton
61959100	Edward J. Bramlage
61959105	Mark Weiner

Clay Electric Cooperative, Inc. Existing Customers in
Territorial Area of Florida Power Corporation (continued)

<u>Account Number</u>	<u>Customer Name</u>
61959110	John L. Moore
61959112	Mr./Mrs. Paul T. Briggs
61959121	Robert A. Shelley
61959126	Alan A. Alligood
61959130	Diane D. Martin
61959135	Double S Ranch
61959140	Double S Ranch
61959145	W. D. Pope, Jr.
61959170	J. N. Cole
61959175	Mr./Mrs. Paul R. Wright
61959200	Eileen M. Arndt
61959210	Barbara J. Wise
61959215	Mr./Mrs. Gary W. Kinser
61959220	Kevin William Brown
61959225	George H. Devaney, Sr.
61959230	Mr./Mrs. James D. Paxton
61959235	Mike Magura, Jr.
61959240	Mr./Mrs. Harry M. Barr
61959250	Pamela A. Goff
61959255	Mr./Mrs. Gerald A. Sweat
61959261	Steven J. Devaney
61959270	Mr./Mrs. Calvin R. Weier
61959280	Mr./Mrs. George H. Devaney
61959290	Maggie E. Odum
61959300	Mr./Mrs. George T. Hemphill
61959401	Leonard E. Withey, Jr.
61959450	Arthur P. Withey
61959500	David Patrick Flynn
61959580	L. E. Withey
61959620	Dan Withey
61959655	W. A. Withey
61959660	W. A. Withey
61959670	Wayne Presnell
61959680	Wayne Presnell
61959730	W. D. Poultry Farm #1
61959750	George Cain
61959760	Audie Alan Wheeler
61959782	Mr./Mrs. Gary H. Swilley
61959790	George Cain
61959810	Kenny/Coral Cain
61959820	Phyllis D. Blanton
61959940	Pamela Troll
61959944	Don H. Raulerson
61959950	Mr./Mrs. Gene E. Carter
61959960	Perry C. Hollingsworth
61959965	Bobby T. Hodges

**Clay Electric Cooperative, Inc. Existing Customers in
Territorial Area of Florida Power Corporation (continued)**

Account Number

Customer Name

61959970	Thomas W. Ivey
61959975	Linda G. Mowery
61959980	Santa Fe Egg Producers
61959985	Santa Fe Egg Producers
61959990	Santa Fe Egg Producers
62060205	Nelson M. Harvender
62060500	Charles Jacobs
62060560	Alberta Johnson
64057700	Gerald W. McQuinney
64057921	Jehovah Witness
64057940	Aniel G. Jarstfer
64057944	Mitchell S. Boyd
64057950	Mr./Mrs. Richard A. Glover
64057960	Virgie S. Boyd
64058080	H. D. Boyd
68429300	Buford C. Scott, Jr.
68429524	Noel Keith Maclaren
68429648	Noel Keith Maclaren