

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

June 3, 1992

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF ELECTRIC AND GAS (COLSON) *RC*
DIVISION OF LEGAL SERVICES (CHRIST) *MRC* *RET*

RE : DOCKET NO. 910991-EU, PETITION OF SUWANNEE VALLEY ELECTRIC COOPERATIVE, INC. TO RESOLVE A TERRITORIAL DISPUTE WITH FLORIDA POWER AND LIGHT COMPANY (LIVE OAK INNKEEPERS, INC. -- BEST WESTERN MOTEL.) *30*

AGENDA: JUNE ~~10~~³⁰, 1992 - NOTICE OF PAA

PANEL: FULL COMMISSION

CRITICAL DATES: NONE

CASE BACKGROUND

On September 25, 1991, Suwannee Valley Electric Cooperative, Inc. (SVEC) filed with this Commission a petition to resolve a territorial dispute with Florida Power and Light Company (FPL). The petition alleged that on or about July 1, 1991, FPL constructed a service lift pole, a temporary power pole and added a transformer to serve the construction of a motel to be located on the south side of Badcock Road. The petition stated that "the area south of Badcock Road, including the motel construction site has traditionally been served by SVEC. SVEC has maintained a distribution line on the subject property since 1954." The petition included, as Exhibit #1, a diagram depicting the location of the motel construction site, the service lines and transformer of SVEC that were previously in place and the recent construction by FPL crossing under SVEC lines. The petition also alleges that SVEC should be directed to serve the disputed area and FPL should be directed to dismantle and remove its poles, distribution line and transformer.

On October 15, 1991, FPL answered SVEC's petition denying most of its assertions, but admitted they had crossed under the distribution line of SVEC to provide service to a portion of the property that SVEC had previously served. FPL stated it provided service to the customer "pursuant to its statutory obligation to serve as set forth in Section 366.03, Florida Statutes."

On December 18, 1991, the parties requested the Commission delay action in

DOCUMENT NUMBER-DATE

05750 JUN-4 1992

FPSC-RECORDS/REPORTING

this proceeding until they had a chance to resolve the dispute in question. The parties could not resolve the dispute. On May 1, 1992 they filed a Stipulation of Facts and a Joint Motion for Resolution of Territorial Dispute requesting that the Commission resolve the dispute without a hearing.

DISCUSSION OF ISSUES

Rule 25-6.0441 Florida Administrative Code outlines the criteria to be analyzed when resolving a territorial dispute. They are:

- (a) the capability of each utility to provide reliable electric service within the disputed area with its existing facilities and the extent to which additional facilities are needed;
- (b) the nature of the disputed area including population and the type of utilities seeking to serve it, and degree of urbanization of the area and its proximity to other urban areas, and present and foreseeable future requirements of the area for other utility services;
- (c) the cost of each utility to provide distribution and subtransmission facilities to the disputed area presently and in the future; and
- (d) customer preference if all factors are substantially equal.

ISSUE 1: What is the capability of each utility to provide reliable electric service within the disputed area with existing facilities and the extent to which additional facilities are needed?

POSITIONS: The parties stipulated to the following: Both utilities provide identical electric service. SVEC and FPL are both capable of providing service to the disputed area. However, FPL must use an underground extension to cross SVEC's facilities running parallel to Badcock Road.

RECOMMENDATION: The Commission should accept these facts as stipulated.

ISSUE 2: What is the nature of the disputed area?

POSITIONS: The parties stipulated to the following: The disputed area is rural. The area will be used by Innkeepers of Live Oak, Inc. to operate a Best Western Motel.

RECOMMENDATION: The Commission should accept these facts as stipulated.

DOCKET NO. 910991-EU
June 3, 1992

ISSUE 3: What additional facilities are necessary in order to provide service to the customer in the disputed area?

POSITIONS: The parties stipulated to the following: FPL crossed under SVEC's overhead lines by installing an overhead triplex cable service from existing FPL facilities to the customer-owned service pole to provide temporary service. In order to provide permanent service, FPL will have to cross SVEC's facilities running parallel to Badcock Road using an underground extension. SVEC can serve the hotel without crossing or interfering with any of FPL's distribution facilities.

RECOMMENDATION: The Commission should accept these facts as stipulated.

ISSUE 4: What are the costs to provide the services requested by the customer?

POSITIONS: The parties stipulated to the following: The approximate cost for SVEC to provide permanent service to the area in dispute is \$3,154.28. The approximate cost for FPL to provide permanent service to the area in dispute is \$7,877.00.

RECOMMENDATION: The Commission should accept these facts as stipulated.

ISSUE 5: Should customer preference be determinative in this matter?

POSITIONS: The parties did not take a position on this issue. However, they stated that if the Commission resolved the dispute, that it could relieve a public utility of its obligation to serve under Subsection 366.03 F.S.

RECOMMENDATION: No. Customer preference should not be the determining factor in this matter. Customer preference is but one factor to consider in resolving a territorial dispute if all other factors are substantially equal. In this matter, all factors are not substantially equal.

ISSUE 6: Should the Commission grant the motion to resolve the territorial dispute upon the stipulated facts filed by SVEC and FPL?

POSITIONS: Both parties urge the Commission's resolution of this dispute.

RECOMMENDATION: Yes. The Commission should grant the motion and in so doing, require FPL to discontinue service to the customer in question in deference to SVEC.

DISCUSSION: Essentially, the parties agree to the facts outlined above. According to the motion, the parties agree that the Commission can decide the territorial dispute without a hearing using these stipulated facts.

DOCKET NO. 910991-EU
June 3, 1992

Staff recommends that the motion be granted and that the Commission should direct FPL to discontinue service and remove its facilities. The facts indicate that SVEC and FPL have distribution lines on opposite sides of Badcock Road and that SVEC's lines have been in the area since 1950. FPL would have to cross SVEC's facilities to provide permanent service to the motel. FPL's cost to provide service is \$7,877.00 compared to \$3,154.28 for SVEC to provide electric service to the motel. To permit FPL to continue to serve the customer in question on a permanent basis would allow the uneconomical duplication of SVEC's facilities.

BEFORE THE PUBLIC SERVICE COMMISSION

IN RE: Petition of Suwannee Valley
Electric Cooperative, Inc. to resolve
a territorial dispute with Florida
Power and Light Company (Live Oak
Innkeepers, Inc. -- Best Western Motel)

Docket No: 910991-EU

JOINT MOTION FOR RESOLUTION
OF TERRITORIAL DISPUTE

Petitioner, Suwannee Valley Electric Cooperative, Inc.
(hereinafter SVEC) and Respondent, Florida Power & Light Company
(hereinafter FPL), jointly move the Commission for resolution of
the instant territorial dispute upon the stipulated facts filed
herewith by SVEC and FPL. In support thereof SVEC and FPL state
the following:

1. Pursuant to Section 366.04(2)(e), Florida Statutes, the
Commission has jurisdiction to resolve any territorial dispute
between public utilities and rural electric cooperatives.

2. There are no issues of fact regarding the circumstances
and conditions that caused the dispute. See SVEC's and FPL's
Stipulation of Facts filed concurrently herewith.

3. Pursuant to Subsection 3~~6~~⁶.03, Florida Statutes, FPL
has an obligation to "furnish to each person applying therefore
... service...". Therefore, absent an order of the Commission
relieving FPL of its obligation to serve, FPL may not refuse
service to Live Oak Innkeepers, Inc.

4. Through the resolution of a territorial dispute
pursuant to Subsection 366.04(2)(e), the Commission may relieve a
public utility of its obligation to service under Subsection
366.03, Florida Statutes.

DOCUMENT NUMBER-DATE

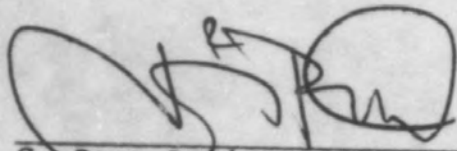
04234 MAY-1 1992

FPSC-RECORDS/REPORTING

5. In the interest of judicial economy, FPL and SVEC request resolution of this matter on the basis of the stipulated facts presented. As there are no material facts in dispute, a hearing in this matter and the prefiling of testimony by the parties would not aid the Commission in the resolution of this dispute.

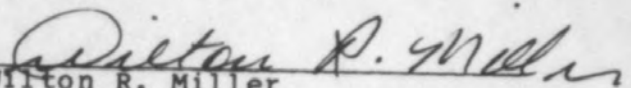
WHEREFORE, SVEC and FPL request that the Commission resolve the instant territorial dispute upon the stipulated facts presented herewith.

Respectfully submitted,



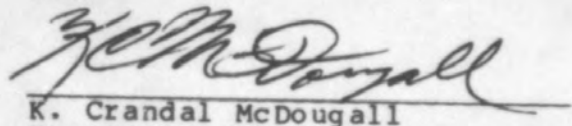
C. Dean Lewis
Florida Bar No: 047076
James W. Prevatt, Jr.
Florida Bar No: 352012
AIRTH, SELLERS, LEWIS & PREVATT
Post Office Drawer 8
Live Oak, Florida 32060
(904) 362-1411

Attorneys for
SUWANNEE VALLEY ELECTRIC
COOPERATIVE, INC.



Wilton R. Miller
BRYANT, MILLER & OLIVE, P.A.
201 South Monroe Street
Suite 500
(904) 222-8611
Florida Bar No: 055506

and



K. Crandal McDougall
FLORIDA POWER & LIGHT COMPANY
Post Office Box 029100
Miami, Florida 33102-9100
(305) 552-3921
Florida Bar No: 763284

Attorneys for
FLORIDA POWER & LIGHT COMPANY

BEFORE THE PUBLIC SERVICE COMMISSION

IN RE: Petition of Suwannee Valley
Electric Cooperative, Inc. to resolve
a territorial dispute with Florida
Power and Light Company (Live Oak
Innkeepers, Inc. -- Best Western Motel)

Docket No: 910991-EU

STIPULATION OF FACTS BETWEEN
FLORIDA POWER & LIGHT COMPANY AND
SUWANNEE VALLEY ELECTRIC COOPERATIVE

Petitioner, Suwannee Valley Electric Cooperative, Inc.
(hereinafter SVEC) and Respondent, Florida Power & Light Company
(hereinafter FPL), jointly stipulate to the following facts:

1. On September 23, 1991, SVEC filed the instant territorial dispute.
2. The area in dispute consists of property owned by Innkeepers of Live Oak, Inc. on the south side of Badcock Road located in Section 12, Township 2 South, Range 13 East, Suwannee County, Florida.
3. The area is rural in nature.
4. Prior to 1950, SVEC had an existing three phase distribution feeder line on, over and across the area in dispute and other property then owned by Robert and Virginia Engstrom.
5. In July 1969, the Engstrom's sold property north and west of the area in dispute to W. S. Badcock Corporation with a sixty foot easement for ingress and egress along a proposed county road. In June 1970, Engstrom deeded to Suwannee County the 60 foot easement area to construct what would become Badcock Road.

DOCUMENT NUMBER-DATE

04285 MAY-1 1992

FPSC-RECORDS/REPORTING

6. In order to accommodate the plans of the Badcock building site, in early 1971, SVEC moved its distribution line to a location west of the proposed building site.

7. Later in 1971, FPL then extended a distribution line over 1400 feet from the east side of US 129 parallel to the north side of Badcock Road to provide service to W.S. Badcock Corporation. (See SVEC Exhibit 1 to SVEC's Response to Staff's First Set of Interrogatories.)

8. In June, 1983, Beefmaster of Live Oak, Inc. acquired from Engstrom property south of Badcock Road including the area in dispute and in July, 1983 began construction of a restaurant. Beefmaster representatives requested SVEC to relocate its three phase feeder which ran across the property acquired in an effort to accommodate a future hotel site. SVEC then relocated its line parallel to the south side of Badcock Road, in order to serve the Beefmaster, Inc. restaurant. (See SVEC Exhibit 1 to SVEC's Response to Staff's First Set of Interrogatories.)

9. In 1985, the Beefmaster restaurant closed and SVEC discontinued service thereto but did not retire any of the facilities. SVEC continued to have area lights on the subject premises.

10. In 1991, Innkeepers of Live Oak, Inc. purchased the area in dispute from Beefmaster of Live Oak. The original Beefmaster property is now two properties.

11. The Beefmaster restaurant building has since reopened as a gift shop and Huddlehouse Restaurant and SVEC is supplying electric service to the same.

12. Innkeepers of Live Oak, Inc. now owns the property identified as the area in dispute and have requested permanent service from FPL. Innkeepers of Live Oak, Inc. will operate a Best Western Motel.

13. On July 26, 1991, FPL crossed under SVEC's existing overhead facilities to supply temporary construction service to the area in dispute. FPL's temporary service consists of an overhead triplex cable service drop from existing FPL facilities to a customer-owned service pole. Clearances between SVEC's facilities and FPL's temporary service are in compliance with those standards prescribed in the National Electric Safety Code and Commission Rule 25-6.0345, F.A.C. Consequently, no safety violations exist in regard to FPL's temporary service.

14. Both FPL and SVEC are capable of providing service to the disputed area. However, for FPL to serve the area in dispute, FPL would cross (through an underground extension) SVEC's facilities running parallel to Badcock Road.

15. The approximate cost to SVEC to provide service to the area in dispute is \$3,154.28

16. The approximate cost to FPL to provide service to the area in dispute is \$7,877.00

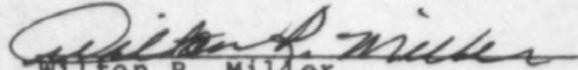
17. There is no territorial agreement between SVEC and FPL regarding the area in dispute or otherwise.

Respectfully submitted,



C. Dean Lewis
Florida Bar No: 047076
James W. Prevatt, Jr.
Florida Bar No: 352012
AIRTH, SELLERS, LEWIS & PREVATT
Post Office Drawer 8
Live Oak, Florida 32060
(904) 362-1411

Attorneys for
SUWANNEE VALLEY ELECTRIC
COOPERATIVE, INC.



Wilton R. Miller
BRYANT, MILLER & OLIVE, P.A.
201 South Monroe Street
Suite 500
(904) 222-8611
Florida Bar No: 055506

and



K. Crandal McDougall
FLORIDA POWER & LIGHT COMPANY
Post Office Box 029100
Miami, Florida 33102-9100
(305) 552-3921
Florida Bar No: 763284

Attorneys for
FLORIDA POWER & LIGHT COMPANY