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May 22, 1997

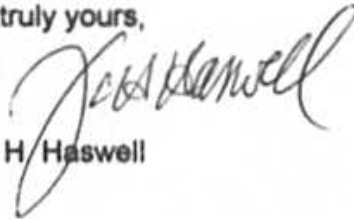
Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2549 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Clay Electric Cooperative, Inc.
and Florida Power & Light Company
Docket No. ~~970502-EG~~ **970512-**

Dear Ms. Bayo:

Enclosed herewith please find the original and fifteen (15) copies of the Answer, Affirmative Defenses and Motion to Dismiss of Clay Electric Cooperative Inc. to be filed in the above referenced case.

Very truly yours,



John H. Haswell

- ACK _____ JHH/lez
- AFA _____ Enclosures
- APP 1 cc: Bill Phillips, General Manager
- CAF _____ Mark Logan, Esquire
- CMU _____ Vicki Johnson
- CTR _____ Michelle Hershel
- EAC** _____
- LEG _____
- LIN 5
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

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5/27/97 - Dkt number changed per phone call and letter to follow.

DOCUMENT NUMBER-DATE

05162 MAY 23 6

FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of Rules 25-6.0441(2)(a))
and 25.6.0441(2)(d), Florida Administrative)
Code to a Customer Request for Service)
_____)

970512
DOCKET NO.: 970502-EC
Filed: May 23, 1997

ANSWER, AFFIRMATIVE DEFENSES, AND
MOTION TO DISMISS OF CLAY ELECTRIC COOPERATIVE, INC.

Clay Electric Cooperative, Inc. ("Clay"), by and through its undersigned attorneys, in response to the Petition to Resolve a Territorial Dispute in Baker County filed by Florida Power & Light Company ("FPL") says as to each numbered allegation:

- 1. Admitted.
- 2. Admitted, and all pleadings and other documents to be served or filed in this

cause should be served or mailed to the following representatives of Clay:

John H. Haswell, Esquire
Chandler, Lang & Haswell, P.A.
Post Office Box 23879
Gainesville, Florida 32602
Florida Bar No.: 162536
(352) 376-5226

William C. Phillips, General Manager
Clay Electric Cooperative, Inc.
Post Office Box 308
Keystone Heights, Florida 32656
(352) 473-8000

- 3. Admitted.
- 4. Admitted.
- 5. Admitted.
- 6. Admitted that FPL provides service in Baker County, and on information and

belief, FPL has two substations near I-10 and US 90 between Macclenny and Sanderson. However Clay is without knowledge as to whether one or both of those substations serve

the area described by FPL. Clay is also without knowledge of the accuracy of Exhibit A attached to the petition and such exhibit is subject to further review and check as to accuracy.

7. Admitted.

8. Clay admits the first two sentences of this allegation. Clay admits that the new River City Plastics facility will be located on property that is adjacent to property owned by Florida Wire and Cable. Clay is without knowledge as to the distances from FPL substation to the point of service requested by River City Plastics.

9. The first two sentences of this allegation are admitted. The rest of the allegation is denied except that Clay admits the substation it will use to serve the customer is approximately three miles away and its closest three phase service is 1.4 miles away.

10. Admitted, due to the time constraints of the customer's service needs and his request for service from Clay, Clay has begun the process of constructing distribution service facilities to River City.

11. Without knowledge and therefore denied.

12. Denied, except that Clay admits neither it nor FPL could provide service to River City Plastics without the construction of additional electrical facilities. Denied that service by Clay will result in uneconomic duplication of FPL facilities.

Having fully answered the petition, Clay Electric Cooperative, Inc. asserts the following affirmative defenses:

AFFIRMATIVE DEFENSES

1. FPL is not entitled to the relief requested because it refused to provide the service requested by the customer. The customer requested proposals from both

companies, received proposals from both companies, independently evaluated those proposals, and requested service from Clay.

2. FPL is not entitled to the relief requested, nor does a territorial dispute exist where a customer requests a quality and character of service essential to its business operations that only one of the two neighboring utilities agrees to provide. FPL ought not to be heard to complain when it refused to provide the quality and character of service requested.

3. FPL is not entitled to the relief requested, for if it were awarded the service to the customer, the customer would not receive the quality and character of service it requires for its business operations.

MOTION TO DISMISS

Clay Electric Cooperative, Inc. hereby respectfully requests that the Commission dismiss the petition filed by Florida Power & Light Company for failure to state a claim upon which relief can be granted in that:

1. FPL admits that both it and Clay have service facilities in the area alleged to be in dispute.

2. FPL's petition does not allege that it is serving or has ever served the property where River City Plastics is constructing a plant and where it will require a point of service.

3. FPL claims that Clay cannot provide reliable service unless it builds additional facilities to serve the site. Since FPL has not alleged that it is serving the site and claims that it can serve the site at minimal cost, it nonetheless is admitting that neither utility can serve the site without constructing additional facilities.

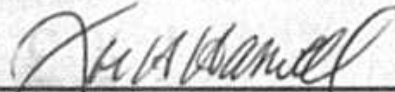
4. FPL fails to allege that the service it claims to be able to provide at minimal

cost will be the service requested and required by the customer. In Paragraph 11 of its petition, FPL claims that it "can provide retail electric service to River City in the same reliable and efficient manner that it currently provides its other customers served by the Wiremill and Macclenny substations", but fails to allege that it can provide the customer with the service it requires, not what other FPL industrial customers are receiving.

5. Unless FPL has offered to provide the quality and character of service the customer requires, as Clay has done, then its petition fails to state a claim upon which relief can be granted.

6. A utility ought not to be heard to demand the right to serve an area or a customer when it fails to provide the very service the customer requests.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. mail to the following:

Mark K. Logan, Esquire
Bryant, Miller & Olive
201 South Monroe Street
Suite 500
Tallahassee, Florida 32301

Vicki Johnson, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

on this 23 day of May, 1997.



John H. Haswell