

FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

JANUARY 8, 1998

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FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (JAYE, ELIAS) *NO RVE*
DIVISION OF ELECTRIC AND GAS (BREMAN, BASS, BOHRMANN) *Yes Feb TB RY*

RE: DOCKET NO. 970512-EU - PETITION TO RESOLVE TERRITORIAL
DISPUTE WITH CLAY ELECTRIC COOPERATIVE, INC. IN BAKER
COUNTY BY FLORIDA POWER & LIGHT COMPANY

AGENDA: 01/20/98 - REGULAR AGENDA - POST HEARING DECISION -
PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\970512o2.RCM

CASE BACKGROUND

Pursuant to Section 366.04(2)(e), Florida Statutes, and Rules 25-6.044(1) and 25-036(4)(b), Florida Administrative Code, on April 29, 1997, Florida Power and Light Company (FPL) filed a petition to resolve a territorial dispute between FPL and Clay Electric Cooperative, Inc. (Clay) in Baker County, Florida. FPL alleges that both FPL and Clay currently provide retail electric service to customers within an area of Baker County where River City Plastics, Inc. (River City) is in the process of constructing a manufacturing facility.

On July 10, 1997, FPL filed a Motion to Award Interim Service. FPL claims that Clay could not provide adequate electrical service without making massive improvements to its system when River City started its operations. On July 17, 1997, Clay filed its Response to FPL's Motion to Award Interim Service. Clay argued that the character of service demanded by River City was such that FPL's concerns were immaterial. Clay also asserted that it is already

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providing temporary power to the site and to award interim service to FPL would result in uneconomic duplication of electrical facilities. The Commission panel denied FPL's Motion to Award Interim Service in Order No. PSC-97-1235-PCO-EI (October 13, 1997).

A hearing was held in this matter on October 27, 1997. In accordance with Rule 25-22.056(3), Florida Administrative Code, each party was required to file a post hearing statement of issues and positions. On November 24, 1997, Clay Electric Cooperative filed its brief, proposed findings of fact and conclusions of law and post hearing statement of issues and positions. Florida Power and Light Company also filed its post hearing brief on November 24, 1997. FPL did not file a separate statement of issues and positions. On December 8, 1997, FPL filed a Motion to Strike or Waive Issues Contained in Clay's Post Hearing Brief and Statement of Issues and Positions. FPL argued that Clay's brief and statement of issues and positions contained statements of Clay's position that exceeded the 50 word limit contemplated by the Prehearing Order, Order No. PSC-97-1310-PHO-EU, issued October 22, 1997, and Rule 25-22.056(3), Florida Administrative Code. Clay responded by filing a response to FPL's motion to strike in which it alleged that FPL's post hearing filing did not include a separate statement of issues and positions as contemplated by the Prehearing Order and Rule 25-22.056, Florida Administrative Code.

DISCUSSION OF ISSUES

STIPULATED ISSUES

Staff recommends approval of Stipulated Issues 2, 7 and 14 at the January 20, 1998, Agenda Conference.

Issue 2: What is the nature of the disputed area, including population, the type of utilities seeking to serve it, degree of urbanization of the area, the area's proximity to other urban areas, and the area's present and reasonably foreseeable requirements for other utilities?

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Position: Baker County is primarily an agricultural and conservation area, having the Okefenokee National Wildlife Refuge, the Nature Conservancy and Osceola National Forest comprising over half its land area. The 1997 projected population of Baker County is 20,787 with the incorporated areas of Macclenny and Glen St. Mary populations being 4,201 and 467 respectively. The next largest area would be the area of Sanderson with some 1200 - 1500 in population.

Much of the surrounding area is designated as conservation, wildlife or refuge management areas, and national forests. There are no unique outstanding or distinguishing geographic features. The area is rural. No one resides on the site that is in dispute.

FPL, an investor-owned utility, has primarily served the central corridor of Baker County, including Sanderson, Glen St. Mary and Macclenny. The Sanderson community, which includes the area surrounding FPL's Wiremill substation is approximately 5 miles from the city of Glen St. Mary and approximately 7 miles from the city of Macclenny. FPL serves approximately 330 accounts in Sanderson, 100 accounts in Glen St. Mary, 2600 accounts in Macclenny and 3000 accounts in the surrounding rural area.

Clay serves approximately 1,900 customers in Baker County and some along Rhoden Road just east of the disputed area. There are no other utility services seeking to serve the site.

ISSUE 7: What is the location, purpose, type and capacity of each utility's facilities existing as of the filing of the petition to resolve the territorial dispute?

Position: Clay Electric Cooperative, Inc. has a 1 mile radial tap off of the 115kv Baldwin-Columbia transmission line. Clay's Sanderson substation is approximately 3.75 miles from the disputed area. The Sanderson substation has a capacity rating of 7500kva. Its load is 6800kva. Clay has a 3 phase feeder line running from the Sanderson substation to within approximately 1.5 miles of the disputed area (1.3 miles to the Industrial Park). Within ¼

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mile(2815 feet to customer's point of service)of the disputed area, Clay has a single phase 14.4kv distribution line.

FPL has the Baldwin-Columbia 115kv transmission line. FPL has a two mile radial tap which connects the Baldwin-Columbia 115kv transmission line with the Wiremill substation. FPL's Wiremill substation is approximately 1/4 mile from the disputed area (2950 feet to customer's point of service). The Wiremill Substation has a capacity rating of 44mva. Its load is 8.5mva. There are 2 feeder lines from the Wiremill substation, 1561 and 1562.

ISSUE 14: Are the utilities bound by a territorial agreement?

Position: No territorial agreement governs service in the disputed area.

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POST HEARING MOTION

ISSUE 1A: Should FPL's motion to strike or waive issues contained in post-hearing brief and statement of issues and positions filed by Clay Electric Cooperative be granted?

RECOMMENDATION: No. FPL's motion to strike or waive issues contained in post-hearing brief and statement of issues and positions filed by Clay Electric Cooperative should be denied. It appears that FPL and Clay have substantially complied with both the Prehearing Order and Rule 25-22.056(3), Florida Administrative Code. [JAYE]

ANALYSIS: On November 24, 1997, Clay Electric Cooperative filed its brief, proposed findings of fact and conclusions of law and post hearing statement of issues and positions. On December 8, 1997, FPL filed a motion to strike or waive issues contained in Clay's post hearing brief and statement of issues and positions. FPL argued that Clay's brief and statement of issues and positions contained statements of Clay's position that exceeded the 50 word limit contemplated by the Prehearing Order, Order No. PSC-97-1310-PHO-EU, issued October 22, 1997, and Rule 25-22.056(3), Florida Administrative Code. Clay's brief response to issue 1 is over by 8 words, issue 3 by 5, issue 5 by 11, issue 6 by 11, issue 8 by 17, and issue 15 by 2. Clay's statement of issues and positions issue 1 is over by 8 words, issue 5 is over by 11, issue 8 is over by 17, issue 15 is over by 3. None of these excesses is a considerable, much less flagrant disregard for either the Prehearing Order or the Rule.

Florida Power and Light Company also filed its post hearing brief on November 24, 1997. Clay responded on December 12, 1997, by filing a response to FPL's motion to strike in which it alleged that FPL's post hearing filing did not include a statement of issues and positions as contemplated by the Prehearing Order and Rule 25-22.056, Florida Administrative Code. FPL did not file a separate statement of issues and positions, but it did provide staff with a summary of its position and a detailed analysis of its positions on the issues in its brief.

It appears that FPL's positions on the issues have not changed since the prehearing order. Rule 25-22.056(3)(b), Florida

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Administrative Code, does not require parties to file any other post-hearing documents except the post-hearing statement (brief), unless otherwise required by the presiding officer. FPL has filed its post-hearing brief and is, in staff's opinion, in compliance with the Rule and the Prehearing Order.

In staff's opinion, Clay has substantially complied with both the Prehearing Order and Rule 25-22.056(3), Florida Administrative Code. Therefore, FPL's motion to strike or waive issues contained in post-hearing brief and statement of issues and positions filed by Clay Electric Cooperative should be denied.

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ISSUE 1: What is the geographic description of the disputed area?

RECOMMENDATION: The disputed area is an industrial area just east of the community of Sanderson, in central Baker County. The disputed area extends from Arnold Rhoden Road northward to US Highway 90 (SR 10) and includes the plant site of River City Plastics, Inc. and parcels of an undeveloped industrial park. [BREMEN]

POSITIONS OF THE PARTIES:

FPL: The area is an industrial park in Baker County and immediately to the east of Wiremill substation. The area includes River City Plastics, which is located within the industrial park next to FPL's industrial customer, Florida Wire and Cable, and approximately 1/4 mile east of the FPL Wiremill substation.

CLAY: The disputed area is located in a rural area of Baker County, Florida, in a parcel designated by Baker County as an industrial park, between US Highway 90 to the north and Interstate 10 to the south. The community of Sanderson lies to the west, and the town of Glenn St. Mary and Macclenny lie to the east.

STAFF ANALYSIS: The parties disagree over the identification of the disputed area in this case. Clay contends that the disputed area is the physical boundary of the real property acquired by RCP to construct its manufacturing plant. FPL argues that growth of commercial and industrial customers in the immediate area around River City Plastics, Inc. (RCP) plant requires that the disputed area include open parcels in the industrial park. [TR 41, 49, 50, 55] Witness Hood testified that when RCP's facility is operational and the road to that facility and the industrial park is completed, Baker County's Chamber of Commerce plans to actively advertise the two open parcels. [TR 55] FPL believes that if the Commission limits its determination to the single RCP facility than future disputes are inevitable.

Subsection (2) of Rule 25-6.0441 sets out the matters that the Commission may consider in resolving territorial disputes. The language of that subsection reads:

(2) In resolving territorial disputes, the Commission may consider, but not be limited to consideration of:

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(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 the present and reasonably foreseeable future requirements of the area for other utility services;

This Rule allows the Commission to consider the growth characteristics and demographics of the territory surrounding a disputed area. In this case, RCP's new factory is situated in an area where heavy industrial growth is highly likely within the foreseeable future. The ability of the utility and its cost to serve the highly likely growth in this area are the questions this Commission should address in reaching a decision in this matter. If the territory in dispute is too constricted, the potential for future conflict between these two utilities is as highly likely as is the future load growth in this area. Rule 25-6.0441(2)(h) allows the Commission to forestall future conflict in this disputed area by giving the disputed area a wide enough definition to embrace the area where future load growth is likely to occur, that is, the industrial park.

Staff believes that the preponderance of the evidence in the record demonstrates that the potential for future conflict and uneconomic duplication of facilities does exist if the area of dispute is limited to the specific site of the RCP facility. Based upon the evidence contained in TR 41, 49, 50 and 55 cited in paragraph one of this analysis, staff believes that the RCP facility and the other open parcels could most cost effectively be served by one utility. Therefore, the disputed area is the industrial area north of Arnold Rhoden Road that includes the RCP facility and parcels of an undeveloped industrial park.

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ISSUE 3: Which utility has historically served the disputed area?

STAFF RECOMMENDATION: FPL has a historical presence in providing service to customers near the disputed area as defined in Issue 1. [BOHRMANN]

POSITIONS OF THE PARTIES

FPL: FPL has traditionally served the area in dispute for eight decades. FPL has provided service to the Sanderson area since 1938 and the Macclenny area since 1923. The Wiremill substation was constructed in 1976 and has served, the customer immediately adjacent to the River City Plastics facility since 1976.

CLAY: Clay has historically served the areas around the disputed site to the north, south, and east. FPL has historically served to the west including its Wiremill substation. Neither utility had service to the specific site of the River City Plastics manufacturing plant until Clay built service to the site at the request of the customer.

STAFF ANALYSIS: For reasons stated in Issue 1, staff recommends that the area immediately north of Rhoden Road which includes the River City Plastics site and the two parcels within the industrial park is in dispute be included in the disputed area. Since 1976, FPL has provided three phase service to Florida Wire and Cable, an industrial customer adjacent to the RCP site, from its Wiremill substation. [TR 41] Therefore, FPL has a historical presence in providing service to customers near the disputed area.

In Baker County, FPL has provided service since at least 1926, and currently serves approximately 6,300 customers. [TR 18] More specifically, FPL has provided service to customers in the Sanderson area since 1938. FPL built its Wiremill substation in 1976 to serve Florida Wire and Cable, the Sanderson community, and other areas. The RCP site is located approximately 1/4 mile from the Wiremill substation. [TR 19]

However, Clay has also provided service to customers located within the general vicinity of the disputed area. Clay initially established a presence in the early 1940's, and currently serves approximately 1,900 members within Baker County. Also, Clay has served members from a single phase line along the easterly part of

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Rhoden Road since 1947. [TR 175] In 1973, Clay built its Sanderson substation to serve its members who are located within the general vicinity of the disputed area. [TR 175, 242] The disputed area is approximately 3.75 miles from the Sanderson substation. [TR 177] Clay's closest distribution line is a 14.4 kV single phase distribution line approximately 1/3 mile from the disputed area. However, this distribution line can not currently serve a load similar to River City Plastics. Approximately one mile from the disputed area, Clay has a three phase distribution line which would be capable of providing service to a load similar to River City Plastics. [TR 175]

Staff recommends, therefore, that FPL has historically served the disputed area because FPL has been providing three phase service as required by the RCP to Florida Wire and Cable which is adjacent to the RCP site. Clay, on the other hand, has only been providing single phase power to the general vicinity of the disputed area. Clay's nearest three phase line is approximately one mile from the disputed area.

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ISSUE 4: What is the expected customer load and energy growth in the disputed area?

STAFF RECOMMENDATION: In the disputed area, the expected load and annual energy requirements are at least 1,955 KW and 13,567,560 KWH, respectively. These numbers represent River City Plastics' expected load and annual energy requirements. However, due to the uncertain nature, timing, and size of future customers' loads at the two undeveloped parcels within the industrial park, it is not possible to determine precisely the expected customer load and annual energy requirements for the remainder of the disputed area. [BOHRMANN]

POSITIONS OF THE PARTIES

FPL: Based on historical load growth and information from estimates of future construction plans, the expected load and energy growth in the disputed area is projected to be 1.2% or 8.6 mva through the year 2001. However, this forecast does not take into account the likely addition of any significant, large load customers who may locate in the area, such as River City Plastics. With River City Plastics included in the estimate, the expected load and energy growth would be 24.7% or 10.6 mva through the year 2001.

CLAY: In the foreseeable future, only River City Plastics is the expected customer load, at an expected demand of approximately 2,000 KW and energy growth of approximately 13.8 million KWH.

STAFF ANALYSIS: River City Plastics' expected load and annual energy requirements are approximately 1,955 KW and 13,567,560 KWH, respectively. [TR 152 and Clay Witness Barrow's prefiled exhibits 2, 3, 4, and 6] Both witnesses Hood (FPL) and Dyal (Clay) had projected River City Plastics' load at approximately 2,000 KW. [TR 21, 176] However, Clay prepared a monthly bill comparison of its and FPL's rates and charges based upon a projected 1,955 KW load and 13,567,560 KWH annual energy requirement. [EX 6] Staff believes that this projection is more precise due to the high level of detail in the monthly bill comparison. FPL did not present as evidence a similar comparison.

Each utility believes that River City Plastics would increase the load at its respective substation by approximately 2 mva. [TR

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21, 45, 183] FPL would serve River City Plastics from its Wiremill substation which has a current load of 8.5 mva. [TR 19] Clay would serve River City Plastics from its Sanderson substation which has a current load of 6.8 mva. [TR 176] In Issue 6, staff discusses each utility's ability to provide adequate and reliable service to RCP based upon each utility's load and capacity at its respective substation.

For reasons expressed in Issue 1, staff believes that the area immediately north of Rhoden Road which includes the River City Plastics site and the two parcels within the industrial park is in dispute. Staff does agree with FPL that "it would not be reasonable to assume no growth would occur in the industrial park over the next five years". [TR 78] However, due to the uncertain nature, timing, and size of future customers' loads at the two undeveloped parcels within the industrial park, neither FPL's nor Clay's projections contemplate additional load from other future customers who may locate within the industrial park. [TR 78-79, 176] Therefore, sufficient evidence does not exist to provide the Commission with any basis to precisely project the additional load created by these future customers of either utility.

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Issue 5: Has unnecessary and uneconomic duplication of electric facilities taken place in the vicinity of the disputed area or in other areas of potential dispute between the utilities?

RECOMMENDATION: No. Unnecessary and uneconomic duplication of electric facilities has not taken place in the vicinity of the disputed area nor in other areas of potential dispute between the utilities. [BREMEN]

POSITIONS OF THE PARTIES:

FPL: Not as to FP&L as it is serving all operational facilities with this area. Allowing Clay to serve the disputed area will result in such duplication as Clay will have to install facilities within the immediate area of FP&L's existing Wiremill substation and associated distribution lines and add substation capacity.

CLAY: No as to Clay Electric. However, the construction of the Wiremill substation by FPL at a rated capacity of 44 megawatts when its existing load is only 8.5 megawatts could certainly be characterized as a duplication of the facilities of Clay Electric and an attempt by FPL to position itself to serve or attempt to serve customers located within Clay's historic service area.

STAFF ANALYSIS: The parties raise two questions in response to this issue. One is with regard to existing facilities, and the other addresses their views of awarding the customer to the other utility.

Clay's arguments concerning existing facilities which may be unnecessary and uneconomic duplication, centered around the excess capacity of FPL's Wiremill substation. As Clay asserts in its position, having a capacity of 44 megawatts (MW) when the load is 8.5 MW could be characterized as uneconomic duplication. (It should be noted that Clay has used MW and MVA interchangeably.) However, Clay did not offer evidence to support this conclusion. FPL indicated that the excess capacity is due primarily to contingency planning, a change in transformer loading criteria, as well as the size of transformers readily available at the time of each upgrade and not for growth. [TR 41, 43, 44, 46, 47] Therefore, Clay appears to argue that unless installed substation capacity is dedicated for future growth, instant or assumed, it

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should not be considered as available capacity to meet load. Staff does not agree. It is common sense to expect conditions to change, standards to change and scales of economies to exist. How resources become used in the future does not have any bearing on the prudence of their initial installation. Therefore, staff does not believe that it has been shown that unnecessary and uneconomic duplication of existing electric facilities has taken place in the disputed area.

The determination of future unnecessary and uneconomic duplication is based on the findings of Issues 6, 8 and 9. In every case staff concluded that Clay must invest more than FPL to serve the disputed area. Clay must upgrade their substation capacity and Clay's feeders will be about 2.5 miles longer than FPL's. [TR 176-178] Therefore, future uneconomic duplication of facilities could occur if Clay serves the disputed area. In addition, unnecessary and uneconomic duplication will exist if both FPL and Clay become commingled in their attempts to serve RCP and the industrial park. [TR 32, 33]

FPL indicated other areas of potential dispute between the utilities. [TR 31, 33, 50, 54] This discussion centered around the possibility of conflicting long term plans each utility may have. Neither utility offered specific detail regarding the expansion of facilities included in long term plans. Without this evidence, staff believes it would be premature at this time to find that these locations were a source of potential dispute where unnecessary and uneconomic duplication would occur.

Based on the foregoing discussion, staff recommends that unnecessary and uneconomic duplication of electric facilities has not taken place in the disputed area nor in other areas of potential dispute between the utilities.

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Issue 6: Is each utility capable of providing adequate and reliable electric service to the disputed area?

RECOMMENDATION: Yes. Both companies are capable of providing adequate and reliable electric service to the disputed area.
[BREMEN]

POSITIONS OF THE PARTIES:

FPL: While both utilities are capable of providing electric service to the area in dispute, given the immediate proximity and nature of FPL's Wiremill substation, FPL's service to the area will be predictably more reliable than that proposed to be provided by Clay.

CLAY: Clay is capable of providing adequate and reliable service of the type requested by the customer. Since FPL has not offered that same service, its dual feed backup service with an unknown and untested throw-over switch will not be adequate or reliable for the customer's needs.

STAFF ANALYSIS: The capability of either utility has not been questioned in the record. The key questions in this case are the amount of additional facilities and the cost of service, which will be addressed in Issues 8 and 9. Regarding capability to serve, the proposals of each utility to provide new service are adequate to serve. By taking carefully enumerated actions, both utilities become capable of providing 3 phase primary service to the disputed area.

The historical reliability of both utilities from their respective substations was presented in terms of outage times. [EX 3, 4, 11, TR 191-192] FPL reported a total of 1.65 hours over the past five years and Clay reported a total of 8.22 hours of interrupted service over the past three years. However, staff does not believe this information to be a proper comparison of each utility's reliability for the purposes of awarding a large commercial or small industrial customer. This is because the nature of service provided by each company is different. FPL's service from its Wiremill substation is primarily industrial while Clay's service is primarily rural residential. [TR 20, 43, 219] Staff believes it is typical that rural residential service

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reliability is less than that of industrial service by virtue of the differences in the distribution facilities and proximity to the substation. Therefore, the comparison is informative but does not clearly indicate which utility could more reliably serve the disputed area.

Clay does not assert that FPL's primary service is any less reliable than Clay's primary service. [EX 11, Clay's response to FPL's Interrogatory number 20] Instead of addressing the quality of service to the area, FPL and Clay argued the more specific reliability concerns of the customer. The customer's concern is to minimize both the frequency and duration of momentary service interruptions because these events cause RCP to incur additional operating expenses. [TR 132, 330-335] RCP has expressed a preference for Clay's service method because it provides for on-site generation. [TR 336, 337] Clay purports its offer for on-site generation to be for system load management. However, Clay has not filed any tariff with this Commission which defines the nature, availability, or credits for any such program. [TR 336, 337] In fact, it is apparent that Clay did not use any specific methodology for determining the on-site generation credit offered to RCP. [EX 7,8] Clay acknowledged that the availability of on-site generation with a credit was solely at its discretion. [TR 138-147, 157]

Staff is concerned that RCP's preference for on-site generation is not based entirely on reliability but rather the total economic benefits they perceive. These benefits include the on-site generation credit offered by Clay to RCP at a price below what RCP could purchase and site the generators themselves. [TR 117, 136, 141] Initially, RCP stated that it was willing to incur production expenses associated with momentary interruptions which lasted up to 12 cycles. [TR 242] However, conditional upon receiving Clay's on-site generation service, RCP was willing to incur production expenses associated with longer interruptions. [TR 38-40, 117, 141] Therefore, there should be less emphasis in this case on the specific reliability required by the customer.

Clay called into question FPL's new throw-over switch. [TR 71, 72, 302, 307] FPL could not confirm whether the switch was in use on FPL's system nor could FPL confirm that the switch was certified factory tested. [TR 71, 72, 302, 307] However, the new throw over switch is FPL's standard switch and switches can be customized. [TR 72, 74] If the switch performs as stated in Exhibit 13, the switch should address most momentary interruptions of 12 cycles or more.

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As previously indicated, this is the threshold of service the customer proposed.

Based on the foregoing discussion and staff's recommendation in Issues 8 and 9, staff recommends that both companies are capable of providing adequate and reliable electric service to the disputed area.

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Issue 8: What additional facilities would each party have to construct in order to provide service to the disputed area?

RECOMMENDATION: FPL will have to install substation regulators, associated bus work, and approximately 1 mile of three phase feeder to provide service to the disputed area. To serve RCP, FPL will have to install a dual feeder primary 3 phase service and an automatic throw over switch. Clay will have to install additional substation capacity and approximately 3 miles of three phase feeder to serve the disputed area. To serve RCP, Clay will have to install a primary 3 phase service and load management generators.
[BREMAN]

POSITIONS OF THE PARTIES:

FPL: Three substation regulators and associated bus work. A three phase service 1000 mcm underground feeder as River City Plastics primary service and a three-phase service 3/0 aluminum overhead feeder as a backup to the underground feed. FPL would install an automatic throw over switch.

CLAY: For Clay, add cooling fans to the Sanderson substation transformers and step up transformers for feeder #3, rebuild .6 miles of single phase on Rhoden Road to three phase, add .25 miles of three phase along Rhoden Road, add new three phase along Rhoden Road and up the plant site road approximately .65 miles (which would include rebuilding the existing single phase construction power to three phase).

STAFF ANALYSIS: There are two categories of additional facilities to be constructed by these utilities: those required to bring service to the disputed area, and those required to serve RCP. Staff addresses each utility's additions separately and in the context of these two categories.

Clay's service to the disputed area

The Sanderson substation current rated capacity and load is 7500 KVA and 6800 KVA respectively. [TR 176] A new industrial customer located in the disputed area would overload the Sanderson

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substation. Therefore, Clay must upgrade the Sanderson substation. Clay's proposed addition of cooling fans will increase capacity to 10,500 KVA. [TR 176] This increase is adequate to address RCP's 2000 KW load and maintain Clay's 10 percent substation capacity margin. However, an additional industrial customer in the disputed area with the same size load as the smallest customer (957 KW) Clay serves with load management generators will require Clay to upgrade substation capacity again. For example, assume a new industrial customer load appears within the disputed area. [EX 11 (Response to FPL Interrogatory 16)] This future hypothetical industrial load would use all available substation capacity margins and possibly overload the Sanderson substation absent additional capacity increases. This is also true for the existing step-up transformer proposed to serve the disputed area's feeder. The step-up transformer rating must be increased 2,058 KVA by adding cooling fans to address RCP's 2,000 KW load. However, any future industrial load would impact the step-up transformer loading and reserve margins in a similar manner as RCP's load has impacted them. Therefore, Clay will have to increase its Sanderson substation rated capacity and the step-up transformer capacity to serve the disputed area.

Clay's proposed feeder upgrades from single to 3 phase (0.85 miles) and new feeder construction (0.45 miles) are necessary because Clay does not have 3 phase service in the disputed area. [TR 177, EX 9(HD-2)] Both of these feeder projects are along Arnold Rhoden Road and rated in excess of 8600 KVA. It is important to note that Clay will be using approximately 2.25 miles of an existing 3 phase line from the substation to Arnold Rhoden Road. This existing line is rated at 5600 KVA. With the additional load of RCP the line will be loaded to 4800 KVA. [TR 177] Therefore, should an additional industrial customer locate in the disputed area, this section of feeder would become overloaded. Therefore, Clay will have to upgrade approximately 3.55 miles of feeder to serve the disputed area.

Staff believes that any future industrial customer could request on-site load management generators. This is based on Clay's representation of the customers to whom Clay offers on-site load management generators. [TR 157-164] However, Clay also indicated that this service is not a tariff and may be subject to Clay's discretion. [TR 138-147, 157] Therefore, whether Clay is

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required to offer or even if it would choose to offer this service to future industrial customers in the disputed area is questionable.

Clay's service to River City Plastics, Inc.

As indicated above, Clay's proposed facility additions at the Sanderson substation, feeder upgrades and line extension are required to provide service to RCP. Clay will also install 0.2 miles of feeder or primary service line from Arnold Rhoden Road to the point of service. [EX 9(HD-2)] Whether this line is a feeder or dedicated service line depends on how Clay uses it in the future as the industrial site develops.

Staff believes that load management generators are also a required facility addition for Clay to serve RCP. The generator option was offered by Clay in the course of negotiations with RCP. [TR 92, 108, 112, 114, 115, 131, 135, 136, 143, 144, 145] The generators are system peakers owned, operated and maintained by Clay and located on private property with conditional provisions for the customer also to use them for reliability. This arrangement is structured through Clay's load management service and Clay's lease agreements. [EX 5, TR 157] Because Clay's basic position is that on-site generation is paramount to providing service to RCP the generators should be considered required facility additions for Clay to serve RCP.

FPL's service to the disputed area

The Wiremill substation has approximately 34 megawatts of excess capacity. [TR 45] Staff believes this level of unused capacity is sufficient to serve the disputed area in the foreseeable future. FPL plans to add three substation regulators and associated bus work to accommodate future growth. [TR 24, 37] FPL's testimony indicates that the timing of this improvement is opportunistic rather than necessary for meeting RCP's specific service requirements.

At a minimum, FPL will have to add approximately 0.36 miles of new three phase feeder because they do not have 3 phase service in the disputed area. [TR 36, EX 1(RAH 6, 8, 9)] This length of primary feeder is based on a total length of approximately 0.56 miles required for FPL to service RCP from the Wiremill substation less the estimated service entrance from Arnold Rhoden Road of 0.2 miles. Staff believes a future FPL feeder line extension along

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Arnold Rhoden Road may be required to bring service to all the undeveloped industrial sites in the disputed area. [TR 49] A line extension from the RCP entrance eastward along Arnold Rhoden Road for 0.7 miles would bring FPL's facilities to the same point where Clay maintains a single phase line. [EX 9(HD-2)] Therefore, it is reasonable to conclude FPL may have to install between 0.36 to 1 mile of 3 phase feeder to serve the disputed area in the foreseeable future.

FPL's service to River City Plastics, Inc.

Because RCP requested higher than average reliability, FPL is proposing that the entire primary 3 phase feeder serving the disputed area be installed underground rather than overhead. [TR 36-39, 79, 80] In addition, FPL will install a dedicated overhead backup feeder and automatic throw over switch to address in the eventuality of a primary underground service failure. [TR 26-30, 36-39, 66, 108, EX 1(RAH-9)]

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Issue 9: What would be the cost to each utility to provide electric service to the disputed area?

RECOMMENDATION: The cost estimates for basic primary 3 phase service to River City Plastics are \$108,000 from Clay and \$104,585 from FPL. The cost estimates for the primary dual feed service available to River City Plastics are \$1,208,000 from Clay and \$205,431 for FPL. These costs include estimates to address future growth concerns in the disputed area. [BREMAN]

POSITIONS OF THE PARTIES:

FPL: FP&L's cost for basis primary service: \$20,550; for additional primary service (with backup and throw over): \$99,097; and for total cost, including future growth:\$205,431. Clay's comparable costs are at least \$98,000, at least \$1,198,000 and at least 1,250,000, respectively.

CLAY:	<i>Primary Service</i>	Clay	FPL
		\$98,000.00	\$ 181,985.00
	<i>Primary service with LMG</i>	Clay	FPL
		\$ 98,000.00	\$ 294,881.00
		<u>\$1,100,000.00</u>	<u>\$1,511,169.00</u>
		\$1,198,000.00	\$1,806,050.00

STAFF ANALYSIS: The table below reflects staff's analysis of facility additions as detailed in issue 8. Staff believes this method provides the Commission with the appropriate comparative information necessary to conclude which utility will incur more costs to serve the disputed area and the relative cost differences between the utilities.

	Clay		FPL	
	Standard	RCP	Standard	RCP
Substation & Feeders	\$ 82,615	\$ 82,615	\$ 0	\$ 0
Substation, Feeders & Growth	0	0	90,305	116,209
Future Growth	10,000	10,000	0	0
<u>Service</u>	<u>15,385</u>	<u>1,115,385</u>	<u>14,280</u>	<u>89,431</u>
Total Cost of Service	\$ 108,000	\$1,208,000	\$ 104,585	\$ 205,431

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Growth considerations and on-site generation are the major cost factors to keep in mind when comparing the differences between the utilities. FPL's estimates incorporate the assumption that growth will occur while Clay's estimates do not. (See issue 8) Staff believes this is indicative of the normal way each company operates. Approximately \$84,000 of FPL's substation and feeder cost estimates can be specifically traced to growth assumptions. [TR 20-25] FPL's basic primary service cost was \$20,550 but accounting for growth became \$39,985. The balance of FPL's growth impact is due to the voltage regulator installation at the Wiremill substation.

Clay's cost to provide service to the disputed area

The cost of the Sanderson substation upgrades by adding cooling fans to increase its nominal rating and feeder step-up transformer rating is \$6,000. [TR 177] Clay's proposed feeder upgrades from single to 3 phase (0.85 miles) along Arnold Rhoden Road is estimated to cost \$42,000. [TR 177] The estimated cost of the new feeder construction for an additional 0.45 miles westward along Arnold Rhoden Road is \$34,615. This amount is calculated by using the estimated total cost of \$50,000 for .65 miles and prorating it over 0.45 miles. [TR 177] Therefore, the estimated cost for Clay to bring 3 phase service into the disputed area is \$82,615 (\$6,000 + \$42,00 + \$34,615).

As indicated in issue 8, additional industrial customers could overload a 2.25 mile section of Clay's feeder from the substation to Arnold Rhoden Road as well as their Sanderson Substation. However, the record does not provide specific costs which Clay may incur due to future industrial loads in the disputed area only that Clay would have to add an additional step-up transformer at the Sanderson substation. [TR 209] An argument could be made that Clay's costs for adding a second 2.25 mile feeder circuit and setting an additional step-up transformer could be comparable to their current substation improvement costs and feeder upgrade costs totaling \$48,000. However, staff prefers to be conservative and assume that Clay can respond to load growth within the disputed area by incurring only \$10,000 in additional distribution expenses. Staff's assumed growth expense figure of \$10,000 for Clay does not include expenses for on-site load management generation.

The incremental cost for Clay to serve an industrial customer in the disputed area can be developed from RCP's service entrance

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data. The estimated cost for the 0.2 mile primary service line from Arnold Rhoden Road to the expected point of service is \$15,385. This amount is calculated by using the estimated total cost of \$50,000 for 0.65 miles for new 3 phase lines and pro-rating it over 0.2 miles. [TR 177, EX 6(HD-2)]

Clay's cost to provide service to River City Plastics, Inc.

The incremental cost for Clay to serve RCP after bringing service to the area is comprised of the service line and on-site generation installation costs. The estimated cost for the primary service line is \$15,385 as previously stated. However, Clay's proposed service to RCP is not standard service due to RCP's reliability concerns. Clay's response to this concern is to install on-site generators. Clay's generator estimate is \$1.1 million while FPL estimates the cost to be closer to \$1.5 million. [TR 67, 270, 274, EX 3] Staff recommends using Clay's estimate because it provides a more conservative comparison between the utilities. Therefore, the estimated cost for Clay's service to RCP is \$1,115,385 (\$1,100,000 + \$15,385).

FPL's cost to provide service to the disputed area

The estimated cost of the Wiremill substation upgrades due to adding voltage regulators is \$64,600 by FPL and \$135,000 by Clay. [TR 25, 319] Clay's higher estimate is based on the belief that FPL omitted the additional costs for a \$20,000 feeder breaker. If FPL had omitted this item then Clay's estimate should have increased proportionally. However, Clay's estimate is more than double that of FPL. Therefore, staff does not find Clay's arguments persuasive and recommends using FPL's estimate of \$64,600.

FPL's preferred feeder installation method is overhead. [TR 79] Staff estimates \$25,705 and \$71,402 to be FPL's cost to install 0.36 and 1 mile of overhead 3 phase feeder from the Wiremill substation eastward along Arnold Rhoden Road. This amount is based on FPL's estimated cost of \$39,985 for the total 0.56 run from the substation to RCP's point of service with an overhead design. [TR 23-28, EX 1(RAH-6, 8, 9)] Using the same method, staff estimates the 0.2 mile primary service line from Arnold Rhoden Road to the point of service be cost \$14,280. Staff believes that \$39,985 is a better estimate of FPL's feeder costs than FPL's other estimate of \$20,550 because it captures FPL's usual and customary

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service. [TR 24] Staff believes the \$20,550 is more appropriate for a dedicated feeder than one intended to be added to in the future. As a result of staff's adjustment to FPL's estimate, the line extension costs for both utilities becomes equivalent on a per mile basis. (FPL:\$71,402=\$39,985/.56 and Clay:\$76,923=\$50,000/.65)

Therefore, staff estimates FPL's cost to bring 3 phase service into the disputed area to be \$90,305 (\$64,600 + \$25,705) and \$14,280 for FPL's 0.2 mile primary service line.

FPL's cost to provide service to River City Plastics, Inc.

As previously discussed, FPL's response to a new customer in the disputed area includes adding voltage regulators at the Wiremill substation. The cost of this addition is estimated by FPL to be \$64,600.

FPL's proposed feeder installation method will be underground rather than overhead. FPL's estimate for a 0.56 underground feeder is \$80,281 or \$143,359 per mile and supported by Clay. [EX 1(RAH-9), TR 322] Therefore, a 0.36 to 1 mile underground feeder installation will cost approximately \$51,609 to \$143,359 respectively.

FPL's proposed service to RCP, provides for a primary underground line from Arnold Rhoden Road and a dedicated overhead backup feeder from the substation to RCP. Using the \$143,359/mile figure above, the 0.2 miles underground service is estimated to cost \$28,672. FPL's estimated \$20,550 for the backup feeder and \$40,000 for a throwover switch. [EX 1(RAH-9)]

Therefore, staff estimates of FPL's cost to bring 3 phase service into the disputed area after consideration of RCP's service requirements is \$116,209 (\$64,600 + 51,609) for substation and feeder additions and \$89,222 (\$40,000 + \$20,550+ \$28,672) for a throwover switch, dedicated backup feeder, and 0.2 mile primary service line.

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ISSUE 10: How long would it take for each utility to provide service to the disputed area?

STAFF RECOMMENDATION: Pursuant to Order No. PSC-97-1235-PCO-EI, issued October 13, 1997, Clay is currently providing temporary service to River City Plastics (RCP). If the Commission awards service to FPL, FPL could provide service within four (4) weeks of Commission approval. [BOHRMANN]

POSITIONS OF THE PARTIES

FPL: This service could be provided within four (4) weeks.

CLAY: Clay is already providing service to the disputed area.

STAFF ANALYSIS: Clay received a request for service from the customer on January 27, 1997. [TR 128] Approximately two months later, Clay and RCP signed a purchased power agreement and an equipment lease and load management agreement. [EX 11] Subsequently, Clay performed a six step process to upgrade existing and install new distribution facilities to provide service to RCP. [TR 176-178] Pursuant to Order No. PSC-97-1235-PCO-EI, issued October 13, 1997, Clay is currently providing temporary service to RCP.

FPL states on page 13 of the Prehearing Order that it could provide full service to RCP within four weeks of Commission approval. FPL would coordinate with Clay the transfer of service to the RCP site. Staff would expect the transfer to occur with minimum interruption of service to the customer. Finally, pursuant to Order No. PSC-97-1235-PCO-EI, issued October 13, 1997, if the Commission awards FPL permanent service of RCP, then Clay must remove its distribution facilities installed to serve the RCP site and absorb the costs thereof.

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ISSUE 11: What would be the cost to each utility if it were not permitted to serve the area in dispute?

STAFF RECOMMENDATION: The utility which does not serve the disputed area would incur opportunity costs. FPL would lose an opportunity to earn \$1,087,470 in net income over a five year period. Clay would lose an opportunity to earn \$1,100,715 in margins over a five year period. Staff identified, but could not quantify, other opportunity costs. The utility which does not provide service to RCP may need additional time to recover its investment in plant and equipment near the disputed area. In addition, FPL may incur additional costs to construct transmission and distribution facilities in more circuitous routes to reach future customers near the disputed area. [BOHRMANN]

POSITIONS OF THE PARTIES

FPL: The cost to FPL, if it were not permitted to serve the disputed area would be:

- loss of revenues from customers in the immediate vicinity of its existing substation
- additional costs for longer alternate routes and the disputed area
- longer time to recover its investment
- cost of private rights-of-way or easements instead of public routes-of-way

CLAY: \$11,985,089.00, representing the gross power revenue over the fifteen year contract with River City Plastics without taxes. Clay's cumulative cash flow at the end of the fifteen year contract which includes line costs, customer site generation costs, wholesale power costs and retail power revenues would total \$2,431,756.00.

STAFF ANALYSIS: Based upon assumptions provided by FPL, staff calculates the net present value of FPL serving RCP from 1997 to 2001 at approximately \$1,087,470. Staff used the following assumptions.

1. RCP would receive service under FPL's GSLD-2 Rate Schedule. [TR 29]

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2. FPL's fixed costs of providing service to RCP would be \$77/KW in 1997 and increase to \$85/KW in 2001 (EX 4). Staff adjusted FPL's fixed costs per KW by subtracting the return on average net plant to reflect RCP's impact upon FPL's net income more accurately.
3. FPL's variable costs of providing service to RCP would be 1.67 cents per KWH in 1997 and increase to 1.94 cents per KWH in 2001. [EX 4]
4. FPL's discount rate would be 11.83 percent during the five year period. [EX 4]
5. RCP's load and annual energy requirements would be 1,955 KW and 13,567,560 KWH, respectively. [EX 6]

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The table below illustrates the revenues and costs associated with FPL providing service to RCP during a five year period (1997-2001).

\$000s	TOTAL
REVENUES	\$3,311.55
Customer	\$10.20
Energy	\$1,073.19
Demand	\$750.00
CRCs	\$1,525.10
Credits	(\$46.92)
COSTS	\$1,982.97
Variable	\$1,195.44
Fixed	\$787.53
NET INCOME	\$1,328.59
NET PRESENT VALUE	\$1,087.47

Note: CRCs refer to cost recovery clauses: fuel, environmental, capacity, and conservation.

Based upon assumptions provided by Clay, staff calculates the net present value of Clay serving RCP from 1998 to 2002 at approximately \$1,100,715. Staff used the following assumptions.

1. RCP would receive service under Clay's LGSD Rate Schedule. [TR 125]
2. Clay's fixed costs of providing service to RCP would be \$92,340 in 1998 and increase to \$105,370 in 2002. [EX 11] Staff adjusted Clay's purchased power costs to reflect

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staff's position on RCP's load requirements stated in Issue 4.

3. Clay's variable costs of providing service to RCP would be \$307,120 in 1998 and increase to \$310,560 in 2002. [EX 11] Staff adjusted Clay's fuel costs associated with its purchased power to reflect staff's position on annual energy requirements stated in Issue 4.
4. Clay's discount rate would be 7.00 percent during the five year period. [EX 11]
5. RCP's load and annual energy requirements would be 1,955 KW and 13,567,560 KWH, respectively. [EX 6]

The table below illustrates the revenues and costs associated with Clay providing service to RCP during a five year period (1998-2002).

\$000s	TOTAL
REVENUES	\$3,344.34
Customer	\$15.00
Energy	\$738.99
Demand	\$3,737.86
Credits	-\$1,147.50
COSTS	\$2,029.93
Variable	\$1,520.97
Fixed	\$508.96
NET INCOME	\$1,314.41
NET PRESENT VALUE	\$1,080.25

Note: The \$4/KW load management credit is NOT included

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Furthermore, Clay has installed load management generators at six (6) other customer sites to manage its peak demand from its power supplier, Seminole Electric Cooperative. [TR 104, 229] If the Commission awards service to Clay, Clay would install two (2) load management generators at the RCP site to further reduce its peak demand when conditions warrant. [TR 112] Witness Barrow for Clay indicated that the load management generators at the RCP site would create an annual \$50,186 net benefit to Clay through reduced peak demand charges and reassignment of RCP's capital credits. [EX 7]

However, the Commission should not consider reassignment of capital credits a benefit of the load management generators. When Clay distributes capital credits, it is essentially returning a proportional share of the cooperative's accumulated margins to its members. Clay distributes these capital credits on the basis of electricity used by each member, not on the presence of a load management generator at the member's location. [TR 148] Also, Clay's board of directors have the discretion to determine the frequency, timing, and amount of capital credits returned to its members. [TR 148] Although Clay distributed \$4 million in capital credits to its members this past year, Clay, RCP, and staff can not predict the future actions and decisions of Clay's board of directors. [TR 148] Therefore, if the Commission does not award service to Clay, Clay would lose an annual \$4,665 net benefit associated with operating the two (2) load management generators. With a seven (7) percent discount rate, the present value of the lost opportunity during the 1998-2002 time period is approximately \$20,465.

Clay indicates that \$11,985,089 represents the gross power revenues before taxes during the 15 year contract with RCP. After considering line costs, customer site generation costs, and wholesale power costs, Clay asserts that the cumulative cash flow during the 15 year would be \$2,431,756. However, Clay presented revenue, cost, and operating assumptions for providing electric service to RCP only for the first five years of the contract. Clay did not present any assumptions for the remaining years of the contract. Although the magnitude of the gross power revenues and cumulative cash flow appear reasonable, sufficient evidence does not exist to gauge whether these numbers are accurate.

As discussed in stipulated Issue 7, each utility has invested in transmission and distribution facilities to serve its customers

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near the disputed area. The utility which does serve the disputed area would increase the utilization of its transmission and distribution facilities near the disputed area. Hence, the utility which does not serve the disputed area would not experience an increase in the utilization of its transmission and distribution facilities near the disputed area. Therefore, either utility may need additional time to recover its investment in plant and equipment near the disputed area.

Staff agrees that FPL may experience an increase in costs to extend its distribution facilities near the disputed area, if the Commission did not award service to FPL. Access to the area eastward along Rhoden Road toward Macclenny is critical to FPL's ability to serve this area cost effectively. [TR 31] Instead of constructing distribution facilities along the most direct, public right-of-way along Rhoden Road, FPL could be required to purchase circuitous, private rights-of-way or easements at additional costs or reduced reliability for FPL's ratepayers. [TR 31] Although Clay has expressed concern about the technical feasibility of extending distribution facilities along Rhoden Road [TR 317], Clay does not dispute that the public right-of-way along Rhoden Road is the most direct route to serve within and near the disputed area from the Wiremill substation.

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ISSUE 12: What would be the effect on each utility's ratepayers if it were not permitted to serve the disputed area?

STAFF RECOMMENDATION: As discussed in Issue 11, the utility which does not serve RCP would incur opportunity costs. However, FPL's shareholders, not its ratepayers, would bear the vast majority of these opportunity costs. FPL's ratepayers would not bear any opportunity costs until after the next base rate case. Clay's members could incur opportunity costs from not serving which would impact distribution of their customer credits. In this, Clay's members may be impacted in the same way FPL's shareholders would be if the utility were not allowed to serve. [BOHRMANN]

POSITIONS OF THE PARTIES

FPL: The impact on FPL's ratepayers would be the inability to seek maximum utilization of FPL's existing facilities which helps keep the rates charged to FPL customers as low as possible. The impact on Clay's members, if FPL was permitted to serve, should also be beneficial as they would not have to subsidize the cost of Clay's provision of backup generators and associated credits to River City Plastics.

CLAY: Loss of the revenues identified in Issue 11, loss of the opportunities for Clay's members to reap the benefits of load management and therefore reducing the cooperative's overall demand costs and the likelihood of further territorial disputes with FPL in the area.

STAFF ANALYSIS: As stated in Issue 11, the utility which does not serve RCP would incur opportunity costs. According to staff's calculations in Issue 11, the present value of FPL's lost net income is approximately equal to the present value of Clay's lost margins. Moreover, although not quantified, staff believes the additional time required for a utility to recover its investment would be directly proportional to its investment near the disputed area. Finally, FPL did not provide any information about the additional costs associated with constructing transmission and distribution facilities in more circuitous routes; therefore, staff could not estimate the associated opportunity costs associated with this scenario.

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Until the utility adjusted its base rates, staff believes that the utility would impose most opportunity costs on its members or shareholders, but not its ratepayers, in the case of FPL. Clay's members are its shareholders, they would incur similar opportunity costs to those faced by FPL's shareholders should Clay not be chosen to serve the disputed area. FPL's earnings or Clay's margins would be directly affected by not serving RCP. Moreover, the additional time required for a utility to recover its investment near the disputed area would primarily affect FPL's shareholders or Clay's members. Finally, the additional costs that FPL would pay to acquire private rights-of-way and easements and construct distribution facilities on more circuitous routes would be borne by its shareholders until its next rate case.

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ISSUE 13: If all other factors are equal, what is the customer preference in the disputed area?

STAFF RECOMMENDATION: The customer, River City Plastics, has expressed a preference for service from Clay Electric Cooperative, Inc. However, because all other factors are not substantially equal, this should not be the basis for awarding the right to serve the disputed area. [BOHRMANN]

POSITIONS OF THE PARTIES

FPL: All other factors are not substantially equal so customer preference should not be considered by the Commission in this dispute. FPL's cost to provide dual service to River City Plastics would be \$140,831 or \$205,431 if we included the substation improvements. Clay's cost to provide dual service to River City Plastics would be \$1,198,000. These costs represent a distinct substantial difference in costs to serve. Even if customer preference is considered, the only reason the customer (River City Plastics) chose Clay is due to the provision of backup generation units, at no cost to the customer, which will not even address the particular needs of the customer's facilities. The Commission should not allow a customer decision based upon mistaken information to effectively determine the result of a territorial dispute including the establishment of a territorial boundary.

CLAY: The customer has chosen Clay Electric Cooperative, Inc. as its service provider.

STAFF ANALYSIS: River City Plastics (RCP), a PVC pipe manufacturer, uses a continuous extrusion process with a very sensitive d.c. drive, and even a very brief power drop will cause the drive to quit. [TR 330] On each occasion that RCP experiences an outage or momentary glitch longer than 12 to 18 cycles, at least half of its production lines shut down. [TR 242] Then, RCP commences a restart process which can take up to eight hours to complete, and the production lines do not reach optimal operational conditions for another 24 to 48 hours. [TR 331] For the period July 01, 1995 through June 30, 1997, witness McCartney, Executive Vice President and General manager of River City Plastics, calculated that the 67 outages cost RCP approximately \$805,026 in additional costs, reduced productivity, and reduced profits at RCP's Jacksonville facility. [EX 15]

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After acquiring a parcel of property east of the Baker County Industrial Park, RCP discovered that both Florida Power & Light Company (FPL) and Clay Electric Cooperative, Inc. (Clay) were providing electric service to other customers within the vicinity of the site. RCP requested information from both FPL and Clay, and forwarded that information to their consulting engineers, Post, Buckley, Schuh, and Jernigan, Inc. (Post Buckley) for their review and evaluation. Witness McCartney, Executive Vice President and General manager of River City Plastics, stated that the cost of the electric service and a high reliability level were his two priorities when choosing the electric service provider for RCP's Baker County plant. [TR 333] Post Buckley calculated RCP's electricity costs under several rate classes from each utility. [EX 6] Subsequently, Post Buckley concluded that electric service from Clay under its Large General Service Demand (LGSD) rate class in conjunction with the lease of two "load management generators" from Clay was the customer's most cost-effective alternative. [TR 333]

Clay would provide RCP with three phase, single feed, overhead primary service with two load management generators at the RCP site for backup power as needed. [TR 176-178] FPL initially offered RCP its "usual and customary service" [TR 336] which would be three phase, single feed, overhead, primary electric service. [TR 22] Later, FPL supplemented its "usual and customary service" with three backup options: backup generators provided by FPL Services; an overhead feeder with overhead feeder backup; and an underground feeder with overhead feeder backup. [TR 25-26]

After being informed of FPL's various changes in character of service and willingness to waive CIAC, Witness McCartney, Executive Vice President and General manager of River City Plastics, still is of the opinion that Clay's service is preferable to that of FPL for River City. [TR 336-337] Witness McCartney did not specifically address if he had any knowledge of FPL's proposed rapid throw over switch.

FPL asserts that all other factors in this dispute are not equal. Therefore, FPL states that RCP's preference of Clay should not be considered. Rule 25-6.0441(2), Florida Administrative Code, indicates that the Commission may only consider customer preference in resolving a territorial dispute when all other factors are substantially equal. Staff agrees. As discussed in Issue 15, since all other factors are not substantially equal, the Commission

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should not consider customer preference as a determining factor in its decision.

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Issue 15: Which utility should be awarded the service area in dispute?

RECOMMENDATION: FPL should be awarded the service area in dispute. In addition, pursuant to Rule 25-6.0441(4), Florida Administrative Code, the parties should submit to the Commission within 3 months of the order an official Florida Department of Transportation General Highway County map depicting the boundary lines established by the resolution of the territorial dispute. If FPL is awarded service it should be required to install monitoring equipment on the switch at the Wiremill substation. The monitoring period for evaluation of the switch's reliability should last for 12 months. The results of the monitoring should be made available both to RCP and to this Commission. [Breman]

POSITIONS OF THE PARTIES:

FPL: FPL should be awarded the service area in dispute. Furthermore, Clay should be required to remove those facilities built to provide three phase service to River City Plastics and the disputed area.

CLAY: Clay based on the following factors: its lower cost to provide primary service, its lower cost to provide primary service with load management generation, its provision of the only service the customer needs, historic service to the general area, and the logical and natural extension of Clay's facilities and their optimal utilization.

STAFF ANALYSIS: This issue is a fallout issue and hinges on the resolutions of the prior issues. All factors, as enumerated in Rule 25-6.0441 "Territorial Disputes for Electric Utilities", excluding cost to serve are found to be substantially equal and summarized below.

Neither Clay nor FPL have historically served the RCP site. However, FPL has a historical presence in providing service to customers near the disputed area. Both utilities are capable of serving River City Plastics if they make specific additions to their existing facilities. Their respective additions have been reviewed in detail in Issue 8. Clay must do extensive upgrade work on its facilities just to serve RCP. This does not account for any

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additional upgrading which will become necessary as the Industrial Park is developed.

Neither utility has significantly greater reliability than the other on a historical basis. The natural extension of facilities and their optimal utilization suggests that FPL's Wiremill substation excess capacity and proximity to the disputed area relative to Clay's Sanderson substations is a better allocation of utility resources.

The deciding factor is the cost to serve both the instant customer and future customers in the disputed area. As indicated in Issue 9 above, the cost to serve is lower for FPL than for Clay. Therefore, in this docket, the Commission does not need to address customer preference because all other factors are not substantially equal.

However, staff stresses its concern over the reliability and performance of FPL's proposed throw over switch. If FPL is awarded service it should be required to install monitoring equipment on the switch at the Wiremill substation. The monitoring period for evaluation of the switch's reliability should last for 12 months. The results of the monitoring should be made available both to RCP and to this Commission. If the switch does not work as proposed by FPL during this 12 month period, the customer has the option of so informing the Commission. If appropriate, the Commission could take further action to address the situation.

Pursuant to Rule 25-6.0441(4), Florida Administrative Code, the parties should submit to the Commission an official Florida Department of Transportation General Highway map of Baker County depicting the boundary lines established by the resolution of this dispute. The parties should file this map within 3 months of the order. The dispute is not extensive or complicated as it involves only one customer and adjacent undeveloped parcels fronting on Arnold Rhoden Road. Therefore, 3 months is a reasonable period of time for the parties to reach agreement on the boundaries of their respective service areas pursuant to the findings in this docket.

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ISSUE 16: How should the Commission rule on Clay Electric Cooperative, Inc.'s proposed findings of fact and conclusions of law?

RECOMMENDATION: The appropriate rulings are detailed in Attachment 1. [JAYE]

STAFF ANALYSIS: Staff has examined the record and applicable law in recommending rulings on the specific findings of fact and conclusions of law. Staff's recommended findings are consistent with the recommendations on Issues 1 through 15.

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ISSUE 17: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed. [JAYE]

STAFF ANALYSIS: Absent a timely filed Motion for Reconsideration or Notice of Appeal, no further action will be required. Therefore, the docket should be closed. Should the maps required to be filed under Rule 25-6.044(4), Florida Administrative Code, be found to be insufficient, they may be addressed by either reopening this docket or by opening another docket.

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ATTACHMENT ONE
PROPOSED FINDINGS OF FACT

Staff makes the following recommendations with regard to the findings of fact and conclusions of law submitted by Clay Electric Cooperative, Inc.

1. The disputed area is the specific site of the location of the River City Plastics facility in the Baker County Industrial Park.

RECOMMENDATION: Reject as unsupported by the greater weight of the evidence. (Issue 1)

2. The nature of the disputed area including its population, the type of utilities seeking to serve it, the degree of urbanization of the area, the areas proximity to other urban areas, and the areas present and reasonably foreseeable requirements for the utilities are as follows:

Baker County is primarily an agricultural and conservation area, having the Okefenokee National Wildlife Refuge, the Nature Conservancy and Osceola National Forest comprising over half its land area. The 1997 projected population of Baker County is 20,787 with the incorporated areas of Macclenny and Glen St. Mary populations being 4,201 and 467 respectively. The next largest area would be the area of Sanderson with some 1,200 - 1,500 in population.

Much of the surrounding area is designated as conservation, wild life or refuge management areas, and national forests. There are no unique outstanding or distinguishing geographic features. The area is rural. No one resides on the site that is in dispute.

FPL, an investor-owned utility, has primarily served the central corridor of Baker County, including Sanderson, Glen St. Mary and Macclenny. The Sanderson community, which includes the area surrounding FPL's Wiremill substation is approximately five miles from the city of Glen St. Mary and approximately seven miles from the city of Macclenny. FPL serves approximately 330 accounts in Sanderson, 100 accounts in Glen St. Mary, 2,600 accounts in Macclenny and 3,000

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accounts in the surrounding rural area. Clay serves approximately 1,900 customers in Baker County and some along Rhoden Road just east of the disputed area. There are no other utility services seeking to serve the site.

RECOMMENDATION: Accept and incorporate to the extent that this proposed finding of fact reflects stipulated Issue 2. To the extent that this proposed finding of fact attempts to characterize reasons for the stipulated Issue 2, it is rejected as unsupported by the greater weight of the evidence.

3. Neither utility has historically served the disputed area. Both Clay and Florida Power & Light Company ("FPL") have historically served areas around the disputed area. FPL has provided service to the Sanderson area since 1938, and the Macclenny area since 1926. The Wiremill substation was constructed in 1976, and has served Florida Wire and Cable, the customer immediately adjacent to the Wiremill substation since 1976. Clay has historically served the areas around the disputed area to the north, south and east since 1943.

RECOMMENDATION: Reject as unsupported by the greater weight of the evidence. (Issues 1 and 3)

4. The expected customer load and energy growth in the disputed area is 1.2 percent through the year 2001 without the addition of the River City Plastics load, and twenty percent with the addition of the River City Plastics load. The only expected customer is River City Plastics with a demand of approximately 1955kw and energy growth of 13.6 million kwh.

RECOMMENDATION: Reject as unsupported by the greater weight of the evidence. (Issues 1 and 4)

5. Unnecessary and uneconomic duplication has not taken place in the vicinity of the disputed area, unless the overbuilding of FPL's Wiremill substation to an excess capacity of 34 megawatts is claimed by FPL as the basis for granting it additional territory, in which event, FPL has unnecessarily and uneconomically duplicated facilities of Clay.

RECOMMENDATION: Accept and incorporate to the extent that it is consistent with staff's recommendation in Issue 5 supporting the recommendation that unnecessary and uneconomic duplication of electric facilities has not taken place in the vicinity of the

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disputed area nor in other areas of potential dispute between the utilities. Otherwise reject this finding of fact as inconsistent with staff's recommendation in Issue 5.

6. If both utilities offered to provide the same service that River City Plastics requires, then both utilities can provide adequate and reliable service.

RECOMMENDATION: Accept and incorporate to the extent it is consistent with staff's recommendation in Issue 6 that both utilities are capable of providing adequate and reliable electric service to the disputed area. Otherwise, reject this proposed finding of fact as inconsistent with staff's recommendation in Issue 6.

7. Clay is capable of providing adequate and reliable service to the disputed area by providing the primary overhead service and the dual backup load management generators for dual feed service as the customer requires.

RECOMMENDATION: Reject as unsupported by the greater weight of the evidence. (Issues 2, 3, 8 and 9)

8. Based on FPL's proposal for using dual feed UG/OH service with a throwover switch, FPL is not capable of providing the adequate and reliable service the customer requires.

RECOMMENDATION: Reject as unsupported by the greater weight of the evidence.

9. The location, purpose, type and capacity of each utility's facilities existing as of the filing of the Petition to Resolve the Territorial Dispute is as stipulated in Issue 7.

RECOMMENDATION: Accept and incorporate.

10. To serve River City Plastics with single feed overhead primary service, FPL will add three substation single phase voltage regulators, an underground pull-off, and overhead facilities at a total cost of \$181,985.00.

Alternate No. 10: To serve River City Plastics with single feed overhead primary service, FPL will add three

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substation single phase voltage regulators, an underground pull-off, and overhead facilities at a total cost of \$105,585.00.

RECOMMENDATION: Reject both of these proposed findings of fact as unsupported by the greater weight of the evidence. (Issue 9)

11. To serve River City Plastics with single feed overhead primary service, Clay would add cooling fans to the Sanderson substation transformer and step-up transformers for feeder 3, rebuild .6 miles of single phase line on Rhoden Road to three phase, add .25 miles of three phase along Rhoden Road, add new three phase line along Phoden Road and up to the plant site road approximately .65 miles at a cost of \$98,000.00.

RECOMMENDATION: Reject as unsupported by the greater weight of the evidence. (Issue 9)

12. As a previously planned improvement, FPL's costs to re-insulate its two mile tap to the Wiremill substation from its Baldwin-Columbia transmission line is not includable as a cost to serve River City Plastics, even though it will increase the reliability of such service.

RECOMMENDATION: Reject as unsupported by the greater weight of the evidence. (Issues 8 and 9)

13. As a previously planned improvement, Clay's costs to acquire a new recloser for installation north of the tap from feeder 3 out of the Sanderson substation is not includable in its cost to serve River City Plastics, although the relocation costs of that recloser to a point on feeder 3 as part of the planned service to River City Plastics is includable.

RECOMMENDATION: Reject as unsupported by the greater weight of the evidence. (Issues 8 and 9)

14. Clay's cost to provide the type and quality of service that the customer requires, which is overhead primary service with dual feed backup generation is \$98,000.00 for the primary overhead service and \$1,100,000.00 for the purchase and installation of the generators for a total of \$1,198,000.00.

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RECOMMENDATION: Reject as unsupported by the greater weight of the evidence as discussed in Issues 8 and 9. These costs and referenced facilities are estimates and are not the actual costs. The customer has never required backup generation, only "a high level of reliability of service." [McCartney, TR 333-22 through 23]

15. If FPL were to provide the dual feed backup service it proposes as Option No. 3 (underground primary with overhead backup and a throw-over switch) its total cost to provide such service is \$294,881.00.

Alternate No. 15: If FPL were to provide the dual feed backup service it proposes as Option No. 3 (underground primary with overhead backup and a throw-over switch) its total cost to provide such service is \$205,431.00.

RECOMMENDATION: Reject as unsupported by the greater weight of the evidence. (Issues 8 and 9)

16. Clay is already providing service to the disputed area.

RECOMMENDATION: Accept and incorporate with the modification that Clay is providing **temporary** service to the site of **River City Plastics**.

17. It will take FPL at least four weeks to provide service to the disputed area.

RECOMMENDATION: Accept and incorporate to the extent consistent with staff's recommendation on Issue 1. Staff notes, however, that the definition of the disputed area is not a fact. To the extent this proposed finding of fact attempts to define the disputed area other than as defined by staff in staff's recommendation to Issue 1, it is rejected as unsupported by the greater weight of the evidence.

18. If Clay is not allowed to serve the disputed area, it will lose the net revenues over the life of its contract with River City Plastics totaling \$2,431,756.00.

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RECOMMENDATION: Reject as unsupported by the greater weight of the evidence. (Issue 11)

19. If FPL is not permitted to serve the disputed area, its loss is \$-0-.

RECOMMENDATION: Reject as unsupported by the greater weight of the evidence. (Issue 11)

20. If Clay is not allowed to serve the disputed area, Clay will lose \$11,985,089.00 in gross revenues, \$2,431,756.00 in net revenues, loss of opportunities for Clay's members to reap the benefits of load management and therefore lose the ability to reduce the Cooperative's overall demand cost and incur the likelihood of further territorial disputes with FPL in the area.

RECOMMENDATION: Reject as unsupported by the greater weight of the evidence. (Issue 11)

21. The customer has chosen Clay Electric Cooperative, Inc. as its service provider.

RECOMMENDATION: Accept and incorporate to the extent consistent with staff's recommendation on Issue 13. Staff recommends that customer preference not be addressed in this dispute because all other factors are not equal between the two competing utilities.

22. There is no territorial agreement governing service to the disputed area between Clay and FPL.

RECOMMENDATION: Accept and incorporate.

CONCLUSIONS OF LAW

1. Clay should be awarded service to the disputed area.

RECOMMENDATION: Reject. This statement is not a conclusion of law, but merely the statement of Clay's desired outcome.

2. In an area where the neighboring utilities have never provided historic service, and an industrial customer with specific

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operating needs requires a particular kind of electric service which one utility offers to provide but the other does not, the utility who is prepared to offer the required service should be awarded service to the area if a dispute arises over such service between the two utilities.

RECOMMENDATION: Reject. The statement is not a conclusion of law, but merely a conclusory statement based on facts not supported by the greater weight of the evidence.