

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve territorial dispute with Clay Electric Cooperative, Inc. in Baker County by Florida Power & Light Company.

DOCKET NO. 970512-EU  
ORDER NO. PSC-98-0178-FOF-EU  
ISSUED: January 28, 1998

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK  
JOE GARCIA

APPEARANCES:

MARK K. LOGAN, Esquire, Bryant, Miller & Olive, P.A., 201 South Monroe Street, Suite 500, Tallahassee, Florida 32301, and PATRICK M. BRYAN, Esquire, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408  
On behalf of Florida Power & Light Company.

JOHN H. HASWELL, Esquire, Chandler, Lang & Haswell, 211 Northeast First Street, Post Office Box 23879, Gainesville, Florida 32602  
On behalf Clay Electric Cooperative, Inc.

GRACE A. JAYE, Esquire, and ROBERT V. ELIAS, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Commission Staff.

FINAL ORDER RESOLVING TERRITORIAL DISPUTE BETWEEN FLORIDA POWER & LIGHT COMPANY AND CLAY ELECTRIC COOPERATIVE, INC.

BY THE COMMISSION:

**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 & Light Company (FPL) filed a petition to

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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 or RCP) is constructing a manufacturing facility.

On July 10, 1997, FPL filed a Motion to Award Interim Service. FPL claimed 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 providing temporary power to the site and to award interim service to FPL would result in uneconomic duplication of electrical facilities. We denied FPL's Motion to Award Interim Service in Order No. PSC-97-1235-PCO-EI, issued on 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. We include our ruling on each proposed finding in Attachment One to this Order.

FPL 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 in excess of 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 within the meaning of the Prehearing Order and Rule 25-22.056, Florida Administrative Code. Our decisions on both this motion and the issues addressed at the hearing are set forth below.

#### **Post Hearing Motion**

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 one exceeds the limit by eight words, issue three by five, issue five by 11, issue six by 11, issue eight by 17, and issue 15 by two. Clay's Statement of Issues and Positions issue one exceeds the limit by eight words, issue five exceeds the limit by 11, issue eight exceeds the limit by 17, issue 15 exceeds the limit by three. None of these excesses is a considerable, much less flagrant disregard for either the Prehearing Order or the Rule.

Florida Power & 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 or Waive Issues Contained in Clay's Post Hearing Brief and Statement of Issues and Positions 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 a summary of its positions and a detailed analysis of its positions on the issues in its Brief.

FPL's positions on the issues have not changed since the Prehearing Order. Rule 25-22.056(3)(b), Florida 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. We find that FPL has presented us with its Post Hearing Filing and is in compliance with the Rule and the Prehearing Order.

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 the Post Hearing Brief and Statement of Issues and Positions Filed by Clay Electric Cooperative is denied.

**DECISION**

**Commission Authority**

Section 366.04(2)(e), Florida Statutes, gives this Commission the express authority to resolve territorial disputes between all electric utilities in the state. We have implemented that authority in Rules 25-6.0439 through 25-6.0442, Florida Administrative Code. Rule 25-6.0441(2), Florida Administrative Code sets out the matters that the Commission may consider in resolving territorial disputes. That subsection provides that:

- (2) In resolving territorial disputes, the Commission may consider, but not be limited to consideration of:
  - (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 the present and reasonably 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 other factors are substantially equal.

The statute and our rules give us considerable authority and discretion to resolve territorial disputes and to fulfill our responsibilities over the planning, development, maintenance, and coordination of Florida's energy grid. Section 366.04(5), Florida Statutes, states that:

- (5) The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida

to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

We have considered the factors set out in our rules, as well as the Grid Bill's (Section 366.04, Florida Statutes) direction to avoid uneconomic duplication of generation, transmission and distribution facilities in the state, in deciding that Florida Power & Light Company should serve the area in dispute in Baker County.

**Stipulated Issues**

The parties agreed to the following stipulations. We find them reasonable and hereby approve them.

1. 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 Two-- Prehearing Order)

2. 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 ½ 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 Seven--Prehearing Order)

3. No territorial agreement governs service in the disputed area. (Issue 14--Prehearing Order)

#### **Nature of the Disputed Area**

The area in dispute is located in Baker County, Florida. 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 is Sanderson, with a population between 1200 and 1500. The area in dispute is uninhabited.

In the disputed area, the expected load growth and annual energy requirements are at least 1,955 KW and 13,567,560 KWH, respectively for whichever utility serves the area. These numbers represent River City Plastics' expected load and annual energy requirements. Growth in energy requirements and load is expected to be slow in the disputed area, no more than two percent per year.

The parties disagree over the identification of the disputed area in this case. This disagreement was evident in the parties response to Issue One of the Prehearing Order and their inability

to reach a stipulation on this issue before the Hearing. In its response both as set forth in the Prehearing Order and defended at Hearing, Clay contends that the disputed area is the physical boundary of the real property acquired by RCP to construct its manufacturing plant. FPL, in its response to Issue One as set forth in the Prehearing Order and defended at Hearing, argues that growth of commercial and industrial customers in the immediate area around the RCP plant requires that the disputed area include open parcels in the industrial park. FPL's 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. FPL believes that if the Commission limits its determination to the single RCP facility than future disputes are inevitable.

We find 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. We find that the RCP facility and the other open parcels could most economically be served by one utility. Therefore, we find that the disputed area is the industrial area north of Arnold Rhoden Road that includes the RCP facility and parcels of an undeveloped industrial park.

We also find that 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. The parties, however, raise two questions in response to this issue which we find appropriate to address. One is with regard to existing facilities, and the other addresses their views of awarding the customer to the other utility.

Clay's assertions that there has been ongoing unnecessary and uneconomic duplication center around the excess capacity of FPL's Wiremill substation. As Clay asserts in its position on Issue 5, FPL's capacity of 44 megawatts (MW) at its Wiremill substation when the substation's 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 at the hearing to support this conclusion. FPL Witness Hood indicated that the excess capacity is primarily because of contingency planning, a change in transformer loading criteria, as well as the size of transformers readily available at the time of each upgrade. FPL asserts that the excess capacity was not intended to prepare FPL for anticipated growth in the disputed area. Therefore, there

was no evidence to support a finding that unnecessary and uneconomic duplication of existing electric facilities has taken place in the disputed area because of the excess capacity at FPL's Wiremill substation.

The determination of future unnecessary and uneconomic duplication leads us to find that Clay must invest more than FPL to serve the disputed area in every instance. Clay must upgrade its substation capacity and according to Clay Witness Dyal, Clay's feeders will be about 2.5 miles longer than FPL's. Therefore, future uneconomic duplication of facilities could occur if Clay serves the disputed area. In addition, FPL Witness Hood testified that unnecessary and uneconomic duplication will exist if both FPL and Clay become commingled in their attempts to serve RCP and the industrial park.

FPL Witness Hood indicated other areas of potential dispute between the utilities. 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, we find that it is premature at this time to find that these locations were a source of potential dispute where unnecessary and uneconomic duplication would occur. We find, therefore, in conclusion, 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.

### **Ability to Serve**

In Baker County, according to FPL Witness Hood, FPL has provided service since at least 1926, and currently serves approximately 6,300 customers. More specifically, the record reflects that 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 disputed area site is located approximately 1/4 mile from the Wiremill substation. FPL also has the Baldwin-Columbia 115kv transmission line. The Wiremill Substation has a capacity rating of 44mva. Its current (without RCP) load is 8.5mva. There are two feeder lines from the Wiremill substation, numbered 1561 and 1562.

According to Clay Witness Dyal, Clay has provided service to customers located within the general vicinity of the disputed area



since the early 1940s. The record shows that Clay currently serves approximately 1,900 members within Baker County. Also, Clay has served members from a single phase line along the easterly part of Rhoden Road since 1947. In 1973, Clay built its Sanderson substation to serve its members who are located within the general vicinity of the disputed area. The Sanderson substation has a capacity rating of 7500kva. Its load is 6800kva.

The stipulations show that the disputed area is approximately 3.75 miles from the Sanderson substation. Clay's closest distribution line is a 14.4 kV single phase distribution line approximately 1/3 mile from the disputed area. Approximately one and one half 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.

We find that FPL has historically served the disputed area. Upon consideration, 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.

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. We address each utility's additions separately and in the context of these two categories.

#### FPL's service to the disputed area

FPL Witness Hood stated that the Wiremill substation has approximately 34 MW of excess capacity. We find that 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. FPL's testimony indicates that the timing of this improvement is opportunistic rather than necessary for meeting RCP's specific service requirements.

We find that at a minimum, as detailed by FPL Witness Hood, FPL will have to add approximately 0.36 miles of new three phase feeder because they do not have three phase service in the disputed area. 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. We find that a future FPL feeder line extension along Arnold Rhoden Road may be required to bring service to all of the undeveloped industrial sites in the disputed area. 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, according to Clay Witness Dyal, maintains a single phase line. Therefore, it is reasonable to conclude that FPL may have to install between 0.36 to one mile of three phase feeder to serve the disputed area in the foreseeable future.

FPL's service to River City Plastics, Inc.

According to FPL Witness Hood, because RCP requested higher than average reliability, FPL has proposed that the entire primary three phase feeder serving the disputed area be installed underground rather than overhead. 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.

Clay's service to the disputed area

Based on the testimony of Clay's Witness Dyal, we find that the Sanderson substation's current rated capacity and load is 7500 KVA and 6800 KVA respectively. A new industrial customer located in the disputed area would overload the Sanderson substation; therefore, Clay must upgrade the Sanderson substation. Clay's proposed addition of cooling fans will increase capacity to 10,500 KVA. 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.

We are persuaded by Clay Witness Barrow's testimony that any future industrial customer could request on-site load management generators from Clay. This is based on Clay's representation of the customers to whom Clay offers on-site load management generators. However, according to Clay Witness Barrow, Clay's provision of generators at its discretion to large load customers

is not a tariff and may be offered to qualifying customers subject to Clay's discretion. Therefore, whether Clay is required to offer or even if it would choose to offer this service to future industrial customers in the disputed area is questionable. Clay must also upgrade approximately three miles of distribution feeder lines to serve the disputed area.

Clay's service to River City Plastics, Inc.

We find that Clay's load management generators are a required facility addition for Clay to serve RCP, in addition to a .2 mile overhead primary three phase service. The generator option was offered by Clay in the course of negotiations with RCP. The generators are system peakers owned, operated and maintained by Clay. They are 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 lease agreements, according to Clay Witness Barrow. Because Clay's basic position, as presented by Clay Witness Dyal's prefiled direct testimony, 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.

General Reliability Concerns

Concerning each utility's view of awarding service to the other utility, we find that both companies are capable of providing adequate and reliable electric service to the disputed area. If cost were no consideration, either utility could install facilities that would reliably serve expected customer load and growth in the disputed area. Section 366.04(2)(e), Florida Statutes, and Rule 25-6.0441(2)(c), Florida Administrative Code, permit us to take cost and present facilities and capability to serve future load growth into consideration. Accordingly, we narrow our inquiry to focus on both the present capability and cost as well as the amount of new facilities each utility will need in order to serve the disputed area.

The historical reliability of both utilities from their respective substations was presented to us in terms of outage times by both FPL in its response to Staff Interrogatories 1-7 (Hearing Exhibit No. 3) and by Clay's Witness Dyal. 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, we do 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 witness Hood characterized FPL's service from its Wiremill substation is primarily industrial. Clay's Witness Dyal characterized its service as primarily rural residential. We find that, typically, rural residential service is less reliable than industrial service because 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, in its response to FPL's Interrogatory 20 (Composite Hearing Exhibit No. 20) does not assert that FPL's primary service is any less reliable than Clay's primary service. Instead of addressing the quality of service to the area, FPL and Clay argue the more specific reliability concerns of the customer. According to Clay Rebuttal Witness McCartney, the General Manager of RCP, 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. Clay Rebuttal Witness McCartney testified that RCP has expressed a preference for Clay's service method because it provides for on-site generation. Clay characterizes its offer for on-site generation as a means of system load management. However, Clay has not filed any tariff with this Commission which defines the nature, availability, or credits for any such program. In fact, according to Clay Witness Barrow's Exhibits 7 and 8, it is apparent that Clay did not use any specific methodology for determining the on-site generation credit offered to RCP. Clay Witness Barrow acknowledged that the availability of on-site generation with a credit was solely at Clay's discretion.

We are concerned that RCP's preference for on-site generation is not based entirely on reliability because of the lag time in starting the generators from a cold start. RCP appears to require generators because of the economic benefits it can derive from having on-site generation. These benefits include the on-site generation credit offered by Clay to RCP at a price below that for which RCP could purchase and site the generators itself. Initially, According to Clay Witness Dyal, RCP stated that it was willing to incur production expenses associated with momentary interruptions which lasted up to 12 cycles. However, FPL Witness Hood and Clay Witnesses Philips and Barrow testified that, conditional upon receiving Clay's on-site generation service, RCP

was willing to incur production expenses associated with longer interruptions. Therefore, we put less emphasis in this case on the specific reliability required by the customer.

In examining FPL Witnesses Brill and Hood, Clay called into question FPL's new throw over switch. FPL Witnesses Brill and Hood could not confirm whether the switch was in use on FPL's system nor could FPL confirm that the switch was certified factory tested. However, FPL Witness Hood testified that the new throw over switch is FPL's standard switch and switches can be customized. If the switch performs as stated in Exhibit 13, the switch should address most momentary interruptions of 12 cycles or more. This is the threshold of service the customer requested.

Based on the foregoing discussion, we find that both companies are capable of providing adequate and reliable electric service to the disputed area if cost is no consideration. Cost, however, is a factor which we may address under Rule 25-6.0441(2)(c), Florida Administrative Code.

#### **Cost to Serve**

As discussed below, we find that the cost estimates for basic primary three phase service to RCP are \$108,000 for Clay and \$104,585 for FPL. The cost estimates for the primary dual feed service available to River City Plastics are \$1,208,000 for Clay and \$205,431 for FPL. These costs include estimates to address future growth concerns in the disputed area.

#### **FPL's cost to provide service to the disputed area**

The estimated cost of the Wiremill substation upgrades for adding voltage regulators is \$64,600 according to FPL Witness Hood, and \$135,000 according to Clay Witness Dyal. 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, we do not find Clay's arguments persuasive. We accept FPL's estimate of \$64,600.

FPL's Witness Hood testified that utility's preferred feeder installation method is overhead. We find that estimates of \$25,705 and \$71,402 to be FPL's cost to install 0.36 and 1 mile of overhead three phase feeder from the Wiremill substation eastward along

Arnold Rhoden Road are reasonable and correct. According to FPL Witness Hood, 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. Using the same method, it is estimated that the 0.2 mile primary service line from Arnold Rhoden Road to the point of service will cost \$14,280. We find 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 service and growth concerns. We find that \$20,550 is more appropriate for a dedicated feeder than one intended to be added to in the future. We find that the line extension costs for both utilities become equivalent on a per mile basis. (FPL:\$71,402=\$39,985/.56 and Clay:\$76,923=\$50,000/.65) We calculate FPL's cost to bring three phase service into the disputed area of \$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 we discussed above, 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 Witness Hood testified that FPL's estimate for a 0.56 underground feeder is \$80,281 or \$143,359 per mile and supported by Clay's Witness Dyal. Therefore, a 0.36 to one mile underground feeder installation will cost approximately \$51,609 to \$143,359 respectively.

According to FPL Witness Hood, 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 throw over switch.

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

Clay's cost to provide service to the disputed area

Based upon Clay Witness Dyal's testimony, we find that the following estimated and actual costs are appropriate. 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. Clay's proposed feeder upgrades from single to three phase (0.85 miles) along Arnold Rhoden Road is estimated to cost \$42,000. 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 pro-rating it over 0.45 miles. Therefore, the estimated cost for Clay to bring 3 phase service into the disputed area is \$82,615 (\$6,000 + \$42,00 + \$34,615).

We do note, however, that 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. The record does not provide specific costs which Clay may incur to meet future industrial loads in the disputed area. We find that according to Clay Witness Dyal, Clay would have to add an additional step-up transformer at the Sanderson substation. 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. We note, however, that the assumed growth expense figure of \$10,000 for Clay does not include expenses for on-site load management generation.

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 three phase lines and pro-rating it over 0.2 miles.

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

As explained in its response to Issue 9 in the Prehearing Order and in Clay Witness Dyal's testimony, 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 because of 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 Witnesses Hood, Noble and Brill estimate the cost to be closer to \$1.5 million. We accept 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).

#### Opportunity Costs

Not only are there actual costs associated with servicing the disputed area, there are also opportunity costs associated with not serving the area. We find that the utility which does not serve the disputed area would incur opportunity costs. Our analysis leads us to find that FPL would lose an opportunity to earn \$1,087,470 in net income over a five year period, we also find that Clay would lose an opportunity to earn \$1,100,715 in margins over a five year period. Other opportunity costs were identified, but could not be quantified. We find that 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, we find that FPL may incur additional costs to construct transmission and distribution facilities in more circuitous routes to reach future customers near the disputed area.

In addressing opportunity costs, we find that 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. We find also that 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.

We find that 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.

#### Customer Preference

RCP has expressed a preference for service from Clay. However, because all other factors are not substantially equal, we find that this is not a basis for awarding the right to serve the disputed area to Clay.



After acquiring a parcel of property east of the Baker County Industrial Park, RCP discovered that both FPL and 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. Post Buckley calculated RCP's electricity costs under several rate classes and service options from each utility. 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.

FPL initially offered RCP its "usual and customary service" which would be three phase, single feed, overhead, primary electric service. 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.

After being informed of FPL's various changes in character of service and willingness to waive Contribution in Aid of Construction, Clay Witness McCartney, still is of the opinion that Clay's service is preferable to that of FPL for River City. Witness McCartney did not indicate any knowledge of FPL's proposed rapid throw over switch.

Both Section 366.04(2)(e), Florida Statutes, and Rule 25-6.0441(2), Florida Administrative Code, indicates that this Commission should only consider customer preference in resolving a territorial dispute when all other factors are substantially equal. We find that all other factors in this dispute are not equal. Therefore, RCP's preference for Clay should not be the determining factor.

#### **CONCLUSION**

After considering all the evidence, we find that FPL should be awarded the service area in dispute. The deciding factor in our decision is the cost to serve both the instant customer and future

customers in the disputed area. We find that the cost to serve is lower for FPL than for Clay. The cost to provide basic, primary three phase service to RCP for FPL is estimated to be \$104,585; for Clay, it is estimated to be \$108,000. For primary dual feed service, FPL's cost to serve the RCP site is estimated to be \$205,431. Clay's cost to serve the RCP site is estimated to be \$1,208,000.

In its position on issue 10 in the Prehearing Order, FPL states that it can provide full service to RCP within four weeks of Commission approval. FPL will coordinate with Clay the transfer of service to the RCP site. The transfer is to occur with minimum interruption of service to the customer. Clay shall remove its distribution facilities installed to serve the RCP site and absorb the costs thereof.

In addition, pursuant to Rule 25-6.0441(4), Florida Administrative Code, the parties shall submit to this Commission, within three months of the issuance of this Order, an official Florida Department of Transportation General Highway County map depicting the boundary lines established by the resolution of the territorial dispute.

Furthermore, FPL is ordered to install monitoring equipment on the switch at the Wiremill substation to measure the performance of the throw over switch. The monitoring period for evaluation of the switch's reliability will last for 12 months from the installation of the switch. The results of the monitoring will be made available both to RCP and to this Commission at the end of the 12 month period. 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, we may take further action to address the situation.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the disputed area is an industrial area just east of the community of Sanderson, in central Baker County. The disputed area as described in this Order 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. It is further

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ORDERED that we do not reach the issue of customer preference in this Order because all other factors are not substantially equal. It is further

ORDERED that FPL is awarded service to the disputed area for the reasons set forth in the body of this Order. It is further

ORDERED that FPL shall provide permanent service to River City Plastics within four weeks of the issuance of this Order. It is further

ORDERED that Clay and FPL will coordinate the transfer of service to the RCP site to insure the minimum of interruption of service to the customer. Clay will remove its distribution facilities from the RCP site at its own expense. It is further

ORDERED that FPL shall install monitoring equipment on the switch at its Wiremill substation to assure that the throw over switch performs as expected. The monitoring period for evaluation of the throw over switch's reliability shall last for 12 months. The results of this monitoring shall be made available both to RCP and to this Commission. It is further

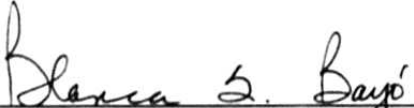
ORDERED that Florida Power & Light's Motion to Strike or Waive Issues Contained in the Post Hearing Brief and Statement of Issues and Positions Filed by Clay Electric Cooperative, Inc., is denied. It is further

ORDERED that our specific rulings on Clay Electric Cooperative's Proposed Findings of Fact and Conclusions of Law are set forth in Attachment One to this Order and incorporated herein. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 28th  
day of January, 1998.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

GAJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This

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filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.