



# Public Service Commission

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RECORDS AND REPORTING

**DATE:** FEBRUARY 22, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (ISAAC) *RNI*  
DIVISION OF SAFETY & ELECTRIC RELIABILITY (BREMAN) *RVE WBM JDJ*

**RE:** DOCKET NO. 001834-EU - JOINT PETITION FOR APPROVAL OF AMENDMENT TO TERRITORIAL AGREEMENT BETWEEN CLAY ELECTRIC COOPERATIVE, INC. AND CITY OF NEWBERRY.

**AGENDA:** 03/06/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\001834.RCM

### CASE BACKGROUND

Pursuant to Section 366.04(2)(d), Florida Statutes, the Commission has jurisdiction "to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction." The Commission approved a territorial agreement between Clay Electric Cooperative, Inc. (Clay Electric) and the City of Newberry (the City) by Order No. 25080, issued September 18, 1991, in Docket 910678-EU.

On December 29, 2000, pursuant to Section 366.04(2)(d), Florida Statutes, and Rule 25-6.0440, Florida Administrative Code, Clay Electric and the City filed a Joint Petition for Approval of Amendment to Territorial Agreement. A copy of the proposed amendment is included as Attachment A to this recommendation and is incorporated by reference herein.

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**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant the joint petition by Clay Electric Cooperative, Inc. (Clay Electric) and the City of Newberry, Florida (the City), for approval of the Amendment to their territorial agreement in Clay county?

**RECOMMENDATION:** Yes. The Commission should grant Clay Electric Cooperative's and City of Newberry's joint petition for approval of the amendment to their territorial agreement. The amendment avoids uneconomic duplication and is in the best interest of companies' ratepayers and the public. (ISAAC, BREMAN)

**STAFF ANALYSIS:** In interpreting the Commission's authority to review territorial agreements, the Florida Supreme Court has held the appropriate standard is the "no-detriment test." Utilities Comm'n of City of New Smyrna v. FPSC, 469 So. 2d 731 (Fla. 1985). The Court stated that PSC approval should be based on the effect the territorial agreement will have on all customers in the territory, not just whether transferred customers will benefit. See id. at 732. "For PSC approval, any customer transfer in a proposed territorial agreement must not harm the public." Id. at 733.

Rule 25-6.0440(2), Florida Administrative Code, describes the standards of approval of territorial agreements as follows:

(2) Standards for Approval. In approving territorial agreements, the Commission may consider, but not be limited to consideration of:

- (a) the reasonableness of the purchase price of any facilities being transferred;
- (b) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement; and
- (c) the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities.

The above standards were adopted to ensure that the general body of ratepayers is not harmed by the approval of territorial agreements.

In this case, Section 2.4 of the original territorial agreement which was approved between Clay Electric and the City provided for the transfer of customers from Clay Electric to the City. In 1991, the parties identified five customers to be transferred and none had any objection to the transfer. Those five customers were transferred to the City as provided in the Agreement.

In March, 2000, the City advised Clay Electric that it identified twelve additional customers still served by Clay Electric that were inside the City's territorial area. The parties had overlooked these customers initially when the notices were sent out to affected customers in 1991. The parties notified the twelve customers in March, 2000. Nine of the customers had no objection, but three objected to the transfer.

The parties do not wish to change their territorial boundary at this time. However, recognizing that the three objecting customers were not given notice in 1991, Clay Electric and the City have proposed, subject to the Commission's approval, to modify Section 2.4 to provide "Change in Use" language, as set forth in Attachment A. This language allows the three affected customers which had objections to the transfer to remain customers of Clay Electric until such time as there is a change in use. Once there is a change in use, the utility, where the real property is located, will provide electric service to those customers.

Staff believes that the proposed amendment to Clay Electric's and the City's 1991 territorial agreement should be approved. The amendment avoids uneconomic duplication of electric service, consistent with the original territorial agreement. In addition, the amendment minimizes the impact on the ratepayers, and is in the public interest.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (ISAAC)

**STAFF ANALYSIS:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.