

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of amendment to territorial agreement between Clay Electric Cooperative, Inc. and City of Newberry.

DOCKET NO. 001834-EU  
ORDER NO. PSC-01-0566-PAA-EU  
ISSUED: March 12, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING AMENDMENT TO TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. CASE BACKGROUND

We approved a territorial agreement between Clay Electric Cooperative, Inc. (Clay Electric) and the City of Newberry, Florida (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. The amendment to the territorial agreement is included as Attachment A to this Order and is incorporated by reference herein.

DOCUMENT NUMBER-DATE

03121 MAR 12 2001

FPSC-RECORDS/REPORTING

## II. STATUTORY AUTHORITY

Section 366.04(2)(d), Florida Statutes, gives this Commission express authority "to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction." 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 interpreting this 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. It is with this standard in mind, as articulated by the Florida Supreme Court, we address the requirements for approving the proposed amendment to the territorial agreement.

### III. PROPOSED AMENDED TERRITORIAL AGREEMENT

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 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.

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. We hereby approve the proposed amendment to Clay Electric's and the City's 1991 territorial agreement.

Based on the foregoing, it is

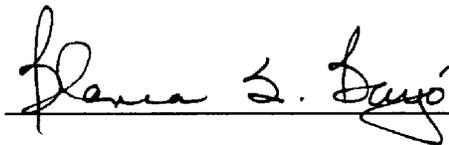
ORDERED by the Florida Public Service Commission that the Joint Petition for Approval of Amendment to Territorial Agreement filed by Clay Electric Cooperative, Inc. and the City of Newberry, Florida is approved. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 12th day of March, 2001.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 2, 2001.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

**FIRST AMENDMENT TO TERRITORIAL AGREEMENT  
BETWEEN CLAY ELECTRIC COOPERATIVE, INC.  
AND THE CITY OF NEWBERRY, FLORIDA**

Section 0.1: This is the first Amendment to the Territorial Agreement between CLAY ELECTRIC COOPERATIVE, INC. ("Clay"), and THE CITY OF NEWBERRY, FLORIDA ("City"), which was initially approved by the Florida Public Service Commission by Order Number 25080, dated 9-18-91, in Docket Number 910678-EU.

Section 0.2: Because of a mutual mistake, twelve customers of Clay, who should have been transferred to the City in 1991 in accordance with the Territorial Agreement, were overlooked by both parties and were not notified of the Petition to Approve the Territorial Agreement, hence did not have the opportunity to agree or disagree with the Petition. Upon the discovery of the mistake, Clay notified the twelve customers and advised them of the 1991 Territorial Agreement. Nine of those customers have no objection to the transfer to the City. Three of the customers have objected. Hence, to accommodate those three customers while at the same maintaining the integrity of the territorial boundary between Clay and the City, the parties agree to amend Section 2.4 of the Territorial Agreement as hereinafter set-forth.

Section 1.0: Section 2.4 of the Territorial Agreement is hereby amended to provide that as to the three customers identified on Schedule "A" hereto, and as to any other customers of either party discovered to be in the territorial area of the other party, the transfer of such customers shall be deferred until there is a change in use of those customers' accounts.

Section 2.0: Under the Change and Use Policy, an affected customer shall remain a customer of the customer's current electric service provider until the customer:

- (a) Transfers his account to another person,
- (b) Closes his account,
- (c) Changes the use of the service from residential to commercial or from commercial to residential; or
- (d) Changes the service from single phase to three phase, adds meters, facilities, or increases the voltage.

Section 3.0: When a change in use occurs, the service location shall be promptly transferred to the utility, which has been assigned the territorial area in which the customer's service facilities are located.

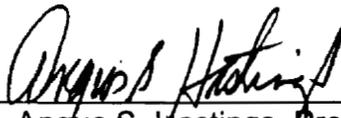
Section 4.0: This Amendment shall have no force and effect, and shall not be deemed an Agreement, unless and until this Amendment is approved by the Commission.

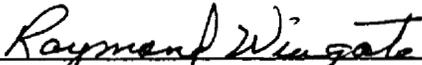
Section 5.0: The parties hereto shall submit this Amendment to the Commission with a Joint Petition for Approval, and shall notify the customers listed on Schedule "A" of the filing of the Petition to approve this Agreement.

IN WITNESS WHEREOF the undersigned have hereunto set their hands and seals.

**CLAY ELECTRIC COOPERATIVE, INC.**

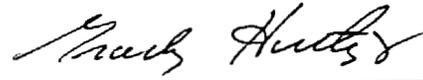
ATTEST:

By:   
Angus S. Hastings, President  
Date: \_\_\_\_\_

By:   
Raymond Wingate, Secretary  
Date: 12-21-2000

**CITY OF NEWBERRY, FLORIDA**

ATTEST:

By:   
Grady W. Hartzog, Mayor  
Date: \_\_\_\_\_

By:   
Gayle B. Pons, City Clerk  
Date: 12/12/00

Approved as to form/legality by:

  
S. Scott Walker, City Attorney  
for City of Newberry  
Date: 12-12-00

**Schedule "A"**

<u>Name</u>	<u>Customer Number(s)</u>
James Wallace	171801 and 172632
Davis W. Holt	172269 and 181364
Jean R. Bronson	178237