

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Resolve	)	DOCKET NO. 900284-EU
Territorial Dispute Between	)	
Clay Electric Cooperative,	)	ORDER NO. 24318
Inc., and Florida Power &	)	
Light Company	)	ISSUED: 4/3/91
	)	

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
BETTY EASLEY

ORDER ON RECONSIDERATION

BY THE COMMISSION:

On April 12, 1990, Clay Electric Cooperative, Inc. (Clay) filed a Petition to Resolve Territorial Dispute In Clay County Between Clay Electric Cooperative, Inc. and Florida Power and Light Company. Clay and Florida Power and Light Company (FPL) both sought to provide electric service for a proposed mine site in Clay county, which is owned by E.I. du Pont de Nemours & Company (du Pont). This mine site is known as the Maxville mine site.

A hearing was held on this matter on October 24, 1990.

On January 18, 1991, we issued Order No. 24003 which provided that FPL was entitled to provide electric service to the Maxville mine site. On February 4, 1991, Clay filed a Motion for Reconsideration, wherein it requested that we reconsider our decision rendered in Order No. 24003.

The basis for Clay's motion is that Order No. 24003 fails to address Clay's interest in continuing to provide service to one residential customer which Clay currently serves on the Maxville mine site property. Clay asserts that in its present language, Order No. 24003 could be construed to prohibit Clay from serving current and future residential and other distribution level customers on the Maxville Mine site, even when the evidence presented at the hearing showed that Clay continues to possess a distribution line on the site and that Clay actually serves a residential customer on the site. Clay further asserts that Order No. 24003 could also be construed to allow FPL to serve other loads on the site at distribution levels, such as residential customers, or distribution level commercial and industrial customers, which would then duplicate Clay's existing distribution system. In order to resolve this dispute, Clay suggests that we amend Order No. 24003 to allow FPL only transmission level service to the mining facility itself and to recognize Clay's interest in serving existing

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and future distribution level customers who may locate on the Maxville mine site.

In its motion for reconsideration Clay is now raising, for the first time, an issue that was not before us at the hearing. In fact Clay, in its motion, recognizes that the issue of service to future distribution level customers who may locate on the mine site was never raised. In its motion for reconsideration Clay states:

no issue was then raised at the hearing regarding Clay's right to serve and continue to serve the existing residential customer on the site or its right to future distribution level service generally on the site.

Nevertheless, Clay now suggests that we adopt language which would protect its interest in serving future customers on the Maxville mine site. Because this issue was not addressed in the hearing, we find that it would be improper for us to amend Order No. 24003 as Clay has suggested. This issue should be addressed in a separate hearing, when the issue becomes ripe.

While we reject Clay's suggested ordering paragraphs, we do find that Clay's interest in continuing to serve customers currently found on the Maxville Mine site should be protected. Accordingly, we amend Order No. 24003's ordering paragraphs to read as follows:

ORDERED by the Florida Public Service Commission that Florida Power and Light Company is hereby entitled to provide electric service to the disputed area described herein as the du Pont Maxville mine site. It is further

ORDERED that Clay Electric Cooperative, Inc. shall be allowed to continue to serve any customer it currently serves on the Maxville Mine site. It is further

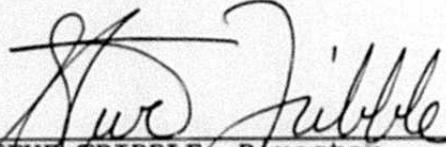
ORDERED that apart from continuing to provide service to any existing customer, Clay Electric Cooperative is hereby prohibited from serving the disputed area described herein as the du Pont Maxville mine site.

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It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. 24003, issued January 18, 1991, is hereby amended as reflected in the body of this order.

By ORDER of the Florida Public Service Commission, this 3rd day of APRIL, 1991.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MAB/MAP

NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 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 or sewer 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 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.