

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

RECEIVED

MEMORANDUM

July 24, 1997

JUL 23 1997
3:50 PM
FPSC - Records/Reporting

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

FROM: DIVISION OF LEGAL SERVICES (KEATING) *RVE WCC*
DIVISION OF ELECTRIC & GAS (BOHRMANN) *Tb Pad JDS*

RE: DOCKET NO. ~~970492~~ - JOINT PETITION FOR APPROVAL OF
TERRITORIAL AGREEMENT BETWEEN CLAY ELECTRIC COOPERATIVE,
INC. AND SUWANNEE VALLEY ELECTRIC COOPERATIVE, INC. IN
SUWANNEE AND COLUMBIA COUNTIES

AGENDA: 08/05/97 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\970492EC.RCM

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant the Joint Petition for Approval of Territorial Agreement between Clay Electric Cooperative, Inc., and Suwannee Valley Electric Cooperative, Inc.?

RECOMMENDATION: Yes. The Joint Petition for Approval of Territorial Agreement between Clay Electric Cooperative, Inc., and Suwannee Valley Electric Cooperative, Inc., should be granted. The territorial agreement is in the public interest and should be approved.

STAFF ANALYSIS: On April 23, 1997, Clay Electric Cooperative, Inc. (Clay), and Suwannee Valley Electric Cooperative, Inc. (SVEC), filed a Joint Petition for Approval of Territorial Agreement (the Petition). A copy of the Territorial Agreement (Agreement) between Clay and SVEC is attached, excluding the referenced exhibits (Attachment A). The purpose of the Agreement is to delineate each utility's respective retail territorial service areas and simultaneously avoid future uneconomic duplication of facilities by these utilities in Suwannee and Columbia Counties.

To accomplish this goal, the Agreement provides for a transfer of customers between the two utilities.

EXHIBIT B-616
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FPSC-RECORDS/REPORTING

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Agreement identifies 15 SVEC customer accounts and two SVEC street lights which will be transferred to Clay within five years of Commission approval of this Agreement. SVEC estimates that the total annual revenue associated with these customers will be approximately \$15,720. Neither utility has identified any customers who are expected to be transferred from Clay to SVEC. Section 2.7 of the Agreement explains that all customers, new and existing, subject to this Agreement shall be transferred within five years of Commission approval of the Agreement.

The parties provided a copy of a form letter sent to SVEC's existing customers, identified in Exhibit B, who will be affected by this Agreement. This letter informed the customers that their service would be transferred pending Commission approval of the Agreement. The letter also informed the customers of the difference in rates between the utilities for their class of service and included telephone numbers of company contacts. SVEC stated that it has not received any feedback or comments from the affected customers.

To ensure that transferred customers suffer no hardship due to the different deposit requirements of each utility, Section 2.8 of the Agreement provides for the transferring utility to refund customer deposits to the transferring customers. The receiving utility will then bill the transferred customers a deposit no greater than the deposit previously charged by the other utility. If SVEC refunded a transferring customer's deposit prior to the Agreement, Clay will not require that customer to pay a new deposit upon transfer. However, the Agreement does not require either party to deviate from its deposit policy for customers with unfavorable payment histories.

The capital credits of the SVEC customers who are scheduled to be transferred to Clay will remain with SVEC upon transfer of service and will be distributed according to the current regular cycle or to beneficiaries at death in accordance with existing SVEC by-laws. Although not addressed in the Agreement, Clay has agreed to consider on a case-by-case basis whether a customer, upon request or change in use, can be transferred earlier than anticipated by the Agreement.

Section 6.3 of the Agreement provides that the parties will file annual reports to the Commission concerning the status of the existing customers listed in Exhibit B. The parties should file these reports so that the Commission may monitor customer transfers during the transition period. When all existing customers have been transferred according to the Agreement, no

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further annual reports shall be filed, except at the Commission's request.

Section 2.2 of the Agreement contains a provision concerning interim service. The parties agree that they will not knowingly serve or attempt to serve any new customer whose end-use facilities are located within the territorial area of the other party, unless exceptional circumstances, such as economic constraints or good engineering practices call for such service. In such instances, a party may submit a written request to the other party to temporarily provide service to the customer. The party providing temporary service shall not be required to pay the other party for any loss of revenue associated with the provision of such service. The utilities agree to notify the Commission of all interim service arrangements that last or are expected to last for a period greater than one year.

Section 2.4 of the Agreement outlines the utilities' proposed method of compensation for transferred facilities and for lost revenues associated with transferred customers. Each utility confirmed that, upon completion of the five year transfer period, all electric facilities used to serve its retail customers will be located wholly within its respective service area as defined in the Agreement. In the event that the property transfers from SVEC to Clay proposed in the Agreement are not approved by the United States Department of Agriculture, the Rural Utilities Service, and the Cooperative Financing Corporation, Clay and SVEC have agreed to notify the Commission.

If approved by the Commission, the Agreement should become effective on the date the Commission's Proposed Agency Action Order becomes final. According to Section 6.1, the Agreement shall then remain in effect for a period of thirty years.

Staff recommends that the Territorial Agreement between Clay Electric Cooperative, Inc., and Suwannee Valley Electric Cooperative, Inc., be approved as discussed in this recommendation. The Agreement is in the public interest and is consistent with the Commission's goal to eliminate all existing and potential uneconomic duplication of electrical facilities in the State of Florida.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the Commission's proposed agency action files a protest within 21 days of the order, this docket should be closed.

STAFF ANALYSIS: If no person whose substantial interests are affected by the Commission's proposed agency action files a request for hearing within 21 days of the order, no further action will be required and this docket should be closed.

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ATTACHMENT A
PAGE 1 OF 14

Territorial Agreement
Between
Clay Electric Cooperative, Inc.
and
Suwannee Valley Electric Cooperative Inc.
Columbia & Suwannee Counties

AGREEMENT

Section 0.1: THIS AGREEMENT, made and entered into this 26th day of February, 1997, by and between the SUWANNEE VALLEY ELECTRIC COOPERATIVE, INC., ("SVEC") and CLAY ELECTRIC COOPERATIVE, INC. ("CLAY"), each of which are corporations organized and existing under the laws of the State of Florida and electric utilities as defined in, and whose retail service territories are subject to regulation pursuant to Chapter 366, Florida Statutes and which corporations are herein collectively called the "Parties";

WITNESSETH:

Section 0.2: WHEREAS, SVEC, by virtue of its Charter and legislative authority, is authorized and empowered to furnish electricity and power to its members, private individuals, corporations and others, and pursuant to such authority, presently furnishes electricity and power to customers located in certain areas of Suwannee and Columbia Counties, Florida, and elsewhere; and

Section 0.3: WHEREAS, CLAY, by virtue of its Charter and legislative authority, is authorized and empowered to furnish electricity and power to persons, firms and corporations throughout the State of Florida and presently furnishes electricity and power to customers in certain areas of Suwannee and Columbia Counties, Florida, and elsewhere; and

Section 0.4: WHEREAS, the respective areas of retail service of the parties hereto are contiguous in many places with the result that duplication of service facilities may occur

in the future unless such duplication is precluded by virtue of this Agreement; and

Section 0.5: WHEREAS, the Florida Public Service Commission ("Commission") has previously recognized that duplication of service facilities may result in needless and wasteful expenditures and may create hazardous situations, both being detrimental to the public interest; and

Section 0.6: WHEREAS, the parties hereto desire to avoid and eliminate the circumstances giving rise to the aforesaid potential hazards and duplications and toward that end have established the Territorial Boundary Line to delineate their respective retail territorial areas in certain areas of Suwannee and Columbia Counties; and

Section 0.7: WHEREAS, the Commission is empowered by the legislature of the State of Florida, pursuant to F.S. 366.04(2)(d), to approve territorial agreements and the Commission has recognized on numerous occasions the wisdom of retail territorial agreements between electric utilities and has adhered to the general policy that retail territorial agreements, when properly presented to the Commission, in the proper circumstances, are advisable and indeed in the public interest.

Section 0.8: NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties hereto, subject to and upon the terms and conditions set forth, do hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1: Territorial Boundary Line. As used herein, the term "Territorial Boundary Line" shall mean the county line separating the counties of Suwannee and

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Columbia, except for the shaded areas as defined in Sections 1.2 and 1.3 below. Those portions of Suwannee County and Columbia County which are not subject to the terms of this Agreement are identified as the areas marked with diagonal lines on the maps included as Exhibit "A".

Section 1.2: SVEC Territorial Area. As used herein, the term "SVEC Territorial Area" shall mean the area shown on Exhibit "A" lying west of the Territorial Boundary Line, except for the shaded area lying west of said line. The shaded area lying west of the Territorial Boundary Line shall be served by Clay.

Section 1.3: CLAY Territorial Area. As used herein, the term "CLAY Territorial Area" shall mean the area shown on Exhibit "A" lying east of the Territorial Boundary Line, except for the shaded area lying east of said line. The shaded area lying east of the Territorial Boundary Line shall be served by SVEC.

Section 1.4: Point of Use. The point of use and not the point of connect or metering shall be determinative as to who shall be the provider of electric service under this Agreement.

Section 1.5: Transmission Lines. As used herein, the term "Transmission Lines" shall mean all electric lines of either party having a rating of 69kV or greater.

Section 1.6: Distribution Lines. As used herein, the term "Distribution Lines" shall mean all electric lines of either party having a rating up to but not including 69kV.

Section 1.7: New Customers. As used herein, the term "New Customers" shall mean those customers applying for electric service during the term of this Agreement at a point of use in the Territorial Area of either party which has not previously been served by either utility.

Section 1.8: Existing Customer. As used herein, the term "Existing Customer" shall mean any person receiving retail electric service from either SVEC or CLAY at the location for which the service is existent on the effective date of this Agreement. The term Existing Customer shall include the widow, widower, or divorced spouse of an Existing Customer who received retail electric service at the same location as of the effective date of this Agreement.

Section 1.9: Consulting Engineer. As used herein, the term "Consulting Engineer" will mean a person or firm registered in the State of Florida as a professional engineer.

Section 1.10: Person. As used herein, the term "Person" shall have the same inclusive meaning given to it in Section 1.01(3), Florida Statutes.

Section 1.11: End Use Facilities. As used herein, the term "End Use Facilities" shall mean a geographic location where the electric energy used by a customer is ultimately consumed.

ARTICLE II RETAIL ELECTRIC SERVICE

Section 2.1: In General. Except as otherwise specifically provided herein, SVEC shall have the exclusive authority to furnish retail electric service to all New Customers within the SVEC Territorial Area and CLAY shall have the exclusive authority to furnish retail electric service to all New Customers in the Clay Territorial Area. The Territorial Boundary Line shall not be affected by any change that may occur in the corporate limits of any municipality lying within the SVEC Territorial Area or the CLAY Territorial Area.

Section 2.2: Service to New Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any new customer whose end-use facilities are

located within the Territorial Area of the other party, except as specifically provided in this Section 2 of the Agreement.

The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a customer's end-use facilities either cannot or should not be immediately served by the party in whose Territorial Area they are located. In such instances, upon written request by the party in whose Territorial Area the end-use facilities are located, to the other party, the other party may agree in writing to temporarily provide service to such customer's end-use facilities. Any such agreement for temporary service which is anticipated to last for more than one (1) year shall be submitted to the Commission for approval in accordance with Article V, Section 5.1 hereof. Provided, however, the party providing temporary service hereunder shall not be required to pay the other party for any loss of revenue associated with the provision of such temporary service.

In the event that a new customer or prospective new customer requests or applies for service from either party to be provided to end-use facilities located in the Territorial Area of the other party, the party receiving such a request or application shall refer the new customer or prospective new customer to the other party with citation to this Agreement as approved by the Commission, and shall notify the other party of such request or application.

Section 2.3: Transition. In order to minimize inconvenience to SVEC's customers, and to allow CLAY sufficient time to properly plan and schedule an orderly transfer of such customers to CLAY, SVEC may continue to serve its Existing Customers listed on Exhibit "B" as provided in this Section of this Agreement, even though the location at which they are using electric service shall be located in the Territorial Area of CLAY after the approval

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of this Agreement by the Commission. This Section shall also apply to additional requirements for electric service by Existing Customers listed on Exhibit "B" at their existing locations. At such time as CLAY has completed its plans to proceed with a transfer of customers, CLAY shall notify SVEC, specifying which of the customers listed on Exhibit "B" will be transferred to CLAY. Thereafter SVEC and CLAY shall agree on the timing of the transfer and compensation to be paid to SVEC as provided in Section 2.6. Notwithstanding the foregoing, all transfers shall be completed within five (5) years after approval of this agreement.

Section 2.4: Transfer of Facilities Upon the transfer of any Customer of Customers pursuant to this Agreement, CLAY may elect to purchase some or all of the service facilities of SVEC related to the transferred Customer or Customers for the replacement cost of such facilities, less depreciation calculated on a thirty (30) year straight line basis.

With each such transfer and purchase of facilities, the SVEC will make, execute and deliver to CLAY a conveyance, deed or other instrument of transfer as is appropriate in order to convey all rights, title and interest of SVEC party in any facilities, rights-of-way, easements, road permits or other rights so transferred.

Section 2.5: RUS and CFC Approval Any property transfer from SVEC to CLAY, is subject to approval by the United States of America, Department of Agriculture, Rural Utilities Service and the Cooperative Financing Corporation (collectively, the "RUS Agencies"), which approval SVEC and CLAY agree to promptly and diligently pursue.

Section 2.6: Time of Payment Payment by CLAY to SVEC for the service facilities that CLAY elects to purchase upon a transfer shall be made within thirty (30) days

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of a transfer.

Section 2.7: Deadline for Transfers. Notwithstanding any other provision of this Agreement, all transfers of customers subject to this Agreement including New and Existing Customers shall be completed within five (5) years of the Effective Date hereof. The parties shall therefore cooperate to effect all such transfers within this time period.

Section 2.8: Customer Deposits. The parties intend that transferred customers suffer no hardship due to different deposit requirements required by each party. When possible, the transferring party will refund the deposit of a customer to the customer. The receiving party will then bill the customer a deposit no greater than the deposit previously charged by the other party. When the existing deposit is less than normally required by the receiving party, the receiving party will accept the amount of customer's previous deposit as adequate. When the existing deposit is more than is normally required, the receiving party will refund the excess to the customer. Nothing herein shall require either party to deviate from its deposit policy for customers with unfavorable payment histories

**ARTICLE III
BULK POWER SUPPLY**

Section 3.1: Bulk Power for Resale. Nothing herein shall be construed to prevent either party from providing a bulk power supply for resale purposes as defined in the Final Judgment dated August 19, 1971 in United States of America v. Florida Power Corporation and Tampa Electric Company, United States District Court for the Middle District of Florida, Case No. 68-297-Civ-T ("the Final Judgment"), regardless of where the purchaser for resale may be located. Further, no other section or provision of this Agreement shall be construed as applying to a bulk power supply for resale purposes as defined in the Final

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Judgment.

**ARTICLE IV
OPERATION AND MAINTENANCE**

Section 4.1: Facilities to Remain. No generating plant, transmission line, substation, distribution line or related equipment shall be subject to transfer or removal hereunder, provided, however, that each party shall operate and maintain its lines and facilities in such a manner as to minimize any interference with the operations of the other party.

Section 4.2: SVEC Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of the SVEC to serve any SVEC facility located in the CLAY Territorial Area; provided, however, that the SVEC shall construct, operate and maintain said lines and facilities in such manner as to minimize any interference with the operation of CLAY in the CLAY Territorial Area.

Section 4.3: CLAY Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of CLAY to serve any CLAY facility located in the SVEC Territorial Area; provided, however, that CLAY shall construct, operate and maintain said lines and facilities in such manner as to minimize any interference with the operation of SVEC in the SVEC Territorial Area.

Section 4.4: Resolution of Facilities Issues. If the parties are unable to agree on the calculation of any payment for facilities pursuant to Section 2.4 of this Agreement, or are unable to agree as to any technical requirement of this Agreement, including any provision requiring conformance to sound and economical engineering and operating practices, the parties shall agree upon and appoint a Consulting Engineering to resolve the

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dispute. The parties shall share equally the costs of the Consulting Engineer's fees and expenses for services rendered in connection with this Agreement. The compensation to be paid to the Consulting Engineer for services rendered in connection with this Agreement shall be such fees and expenses as are usually applicable to services of a similar nature.

**ARTICLE V
PREREQUISITE APPROVAL**

Section 5.1: Commission Approval. The provisions and the parties' performance of this Agreement are subject to the regulatory authority of the Commission, and appropriate approval by that body of the provisions of this Agreement shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until that approval has been obtained, and the date of the Commission's order, if any, granting initial Commission approval of this Agreement shall be deemed to be the effective date of this Agreement. Any proposed modifications to this Agreement shall be submitted to the Commission for prior approval. In addition, the parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the parties' performance of this Agreement.

Section 5.2: Liability in the Event of Disapproval. In the event approval pursuant to Section 5.1 is not obtained, neither party will have any claim against the other arising under this Agreement, and this Agreement shall be void.

**ARTICLE VI
DURATION - REPORTS**

Section 6.1: Term. This Agreement shall continue and remain in effect for a period of thirty (30) years from the date of the Commission's initial Order approving this Agreement.

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Section 6.2: Commission's Supervision. The parties recognize the jurisdiction and authority of the Commission to actively supervise and monitor the performance of the parties under this Agreement, and to supervise, monitor, and regulate territorial boundaries between and among Florida's electric utilities. Although this Agreement has a term of thirty (30) years, the parties recognize that either or both parties, an affected consumer, or the Commission itself, may seek to modify this Agreement upon the filing of a proper petition or proceeding before the Commission.

Section 6.3: Reports. The parties shall file an annual report with the Commission on each anniversary of the order approving this Agreement. The report shall advise the Commission on the number of customers transferred, the number remaining to be transferred, the plans for the transfer of the remaining customers, and any other matter relevant to the performance of each utility's obligations under this Agreement. Once all transfers have been completed in accordance with this Agreement, no further reports to the Commission shall be filed, except on the request of the Commission.

ARTICLE VII CONSTRUCTION OF AGREEMENT

Section 7.1: Other Electric Utilities. Nothing in this Agreement is intended to define, establish or affect in any manner the rights of either party hereto relative to any other electric utility not a party to this Agreement with respect to the furnishing of retail electric service including, but not limited to, the service territory of either party hereto relative to the service territory of any other electric utility not a party to this Agreement.

Section 7.2: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other

things, to further this State's policy of actively regulating and supervising the service territories of electric utilities; supervising the planning, development and maintenance of a coordinated electric power grid throughout Florida; avoiding unnecessary or uneconomic duplication of generation, transmission and distribution facilities, and encouraging the proper installation and maintenance of facilities necessary to fulfill the Parties' respective obligations to serve.

**ARTICLE VIII
MISCELLANEOUS**

Section 8.1: Entire Agreement. This is the entire agreement between the parties. Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Agreement, the only ones agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the parties hereto unless the same shall be in writing, attached hereto, signed by both parties and approved by the Commission.

Section 8.2: Successors and Assigns. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon or give to any person or corporation, other than the parties hereto, any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding only upon the parties hereto and their respective representatives, successors and assigns.

Section 8.3: Notices. Notices given hereunder shall be deemed to have been given to the SVEC if mailed by certified mail, postage prepaid, to General Manager,

Suwannee Valley Electric, Post Office Box 160, Live Oak, Florida 32060, and to CLAY if mailed by certified mail, postage prepaid, to: General Manager, Clay Electric Cooperative Inc., 225 West Walker Drive, Keystone Heights, Florida 32656. Such address to which such notice shall be mailed may be, at any time, changed by designating such new address and giving notice thereof in writing in the manner as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

ATTEST:

SUWANNEE VALLEY ELECTRIC
COOPERATIVE, INC.

By Dwight Howard
Secretary

By J. C. Walker
J. C. WALKER, President of the Board

(SEAL)

ATTEST:


CLAY ELECTRIC COOPERATIVE, INC.

By Iwan J. Reeves
Secretary

By Raymond Wingate
RAYMOND WINGATE, President of the
Board

(SEAL)

APPROVED AS TO FORM AND LEGALITY.

By: 
Legal Counsel to Suwannee Valley Electric Cooperative, Inc.
Name: _____
Address: _____
Telephone Number: _____

By: 
Legal Counsel to Clay Electric Cooperative, Inc.
Name: John H. Haswell
Address: Post Office Box 23879
Gainesville, Florida 32602
Telephone Number: (352) 376-5226