

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Clay Electric Cooperative, Inc. and Florida Power and Light Company for approval of territorial agreement.)	DOCKET NO. 890606-EU
)	ORDER NO. 21832
)	ISSUED: 9-5-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 GERALD L. GUNTER
 JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING IN PART AND DENYING IN PART TERRITORIAL AGREEMENT BETWEEN CLAY ELECTRIC COOPERATIVE, INC. AND FLORIDA POWER AND LIGHT COMPANY

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 adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On May 1, 1989, Clay Electric Cooperative, Inc. (Clay), and Florida Power and Light Company (FPL) filed an application for approval of the territorial agreement they had entered into on April 7, 1989. Said territorial agreement differentiates and divides Clay's territorial area from FPL's territorial area in Columbia County, Florida. According to the applicants, their respective areas of retail service are contiguous in many locations in Columbia County.

The applicants assert that through the proposed agreement they have sought to avoid and eliminate circumstances giving rise to duplication of service facilities. We have previously recognized that such duplication of service facilities results

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in needless and wasteful expenditures and may create hazardous situations, both being detrimental to the public interest.

The agreement provides that neither party shall "serve or offer to serve a customer whose in-use facilities are located in the territorial area of the other party..." Exceptions to this provision however are found in Section 2.2 of the agreement which gives each party the right to serve retail electric customers in the others territory upon agreement of the parties. Section 2.2 further provides that the Commission be notified of any such agreements however, it contains no provision requiring the utilities to seek the Commission's approval for such agreed variances.

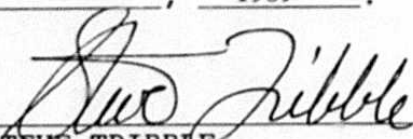
While we believe that Section 2.2 of the proposed agreement is inadequate in that it only requires notification where it should at a minimum require the approval of the Commission, the parties at the agenda conference of August 15, 1989, stipulated that Section 2.2 be deleted from the Agreement. Absent the provisions of Section 2.2, it would appear that the territorial agreement herein constitutes a good faith attempt by the parties to avoid future duplication of service facilities and that the territorial agreement is in the best interest of the public.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the territorial agreement between Clay Electric Cooperative, Inc. and Florida Power and Light Company dated April 7, 1989, as amended by the parties with deletion of Section 2.2, is hereby approved.

ORDERED that this docket shall become final and this docket closed unless a petition or formal proceeding is received by the close of business day on September 26, 1989.

By ORDER of the Florida Public Service Commission,
 this 5th day of September, 1989.


 STEVE TRIBBLE
 Director of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on September 26, 1989. In the absence of such a petition, this order shall become effective September 27, 1989, as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent 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.

If this order becomes final and effective on September 27, 1989, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.