

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Clay Electric)
Cooperative, Inc. and City of Newberry,))
Florida for approval of territorial)
agreement.))

DOCKET NO. 910678-EU
ORDER NO. 25080
ISSUED: 9-18-91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

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

On June 13, 1991, Clay Electric Cooperative, Inc. (Clay) and the City of Newberry (Newberry) filed a joint petition for approval of a territorial agreement they executed on January 24, 1991. (See Appendix 1) The territorial agreement establishes exclusive retail service territories between the parties in and around Newberry in Alachua County, Florida. The agreement runs for a period of eighteen years from the date of Commission approval. Clay and Newberry state in their petition for approval that they executed the agreement to prevent unreasonable and uneconomic duplication of electric facilities in the affected areas.

The agreement contemplates the transfer of five (5) residential customers from Clay to Newberry. Newberry has no customers located in the proposed territory assigned to Clay. According to the petition for approval all the affected customers were contacted by letter on February 27, 1991, and all responded favorably to the transfer. The five customers will be transferred from Clay to Newberry within one year of the Commission's approval of the agreement. Section 2.4 of the agreement, entitled "Transfer" states that those;

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[e]xisting customers being served by one party but located in the territorial area of the other party may request to become customers of the other party at any time after approval of this Agreement, in which event the parties agree that such customer shall then be transferred if it is or as soon as it is economically and operationally feasible to do so.

We interpret this language to mean that some or all of the five customers to be transferred by Clay to Newberry may be transferred earlier than one year from the date of our approval of the agreement, if they so desire, and if it is economically and operationally feasible to do so; but in any event all five customers shall be transferred no later than one year from the date of our approval.

The agreement states that neither Clay nor Newberry shall serve or offer to serve a new customer located in the territorial area of the other, except on an interim basis as provided in section 2.3 of the agreement. The agreement also provides that Newberry shall not have the right to acquire by eminent domain or condemnation any customers or facilities located in Clay's territory even if that portion of Clay's territory is in the city limits or is subsequently annexed by Newberry.

Section 3.4 of the agreement, entitled "Facilities to be Served" states:

Nothing herein shall be construed to prevent or in any way inhibit the right and authority of the City or Clay to serve any of their own facilities wheresoever they may be located and for such purpose to construct all necessary lines and facilities; provided, however that such party shall construct, operate and maintain said lines and facilities in such a manner as to minimize any interference with the operation of the other party's facilities.

We interpret the word "facilities" used in this provision to refer to "service facilities" as that term is defined in section 1.9 of the agreement:

As used herein, the term 'service facilities' shall mean all poles, lines, lighting equipment, meters and transformers, together

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with related equipment, facilities and property rights, used solely or useful solely in furnishing electricity to customers to transferred or exchanged hereunder. Service facilities shall not include property still needed by the transferring to serve any of its other customers

The proposed agreement satisfies the provisions of Section 366.04(2)(d), Florida Statutes and Commission Rule 25-6.0440, Florida Administrative Code. It furthers the purpose and intent of Section 366.04 (5), Florida Statutes to avoid further uneconomic duplication of generation, transmission, and distribution facilities in the state. The agreement is in the best interest of the general body of ratepayers and should be approved.

As Rule 25-6.040(1), Florida Administrative Code, specifically states, any modification, changes, or corrections to this agreement must be approved by this Commission.

It is therefore

ORDERED by the Florida Public Service Commission that for the reasons and by the terms set forth in the body of this order, the Territorial Agreement between Clay Electric Cooperative, Inc. and the City of Newberry, Florida is hereby approved. It is further

ORDERED that this Order shall become final unless an appropriate petition for formal proceeding is timely filed herein. It is further

ORDERED that this docket will be closed if no petition is timely filed.

By ORDER of the Florida Public Service Commission, this 18th
day of September, 1991.



STEVE TRIBBLE, 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 120.59(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 10-9-91.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 the date described above, 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.

MEMORANDUM

September 17, 1991

TO : DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (BROWN) MCB
RE : DOCKET NO. 910678-EU JOINT PETITION OF CLAY
ELECTRIC COOPERATIVE, INC. AND CITY OF
NEWBERRY, FLORIDA FOR APPROVAL OF TERRITORIAL
AGREEMENT.

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The attached Proposed Agency Action Order is ready to be
issued: ORDER APPROVING TERRITORIAL AGREEMENT.

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Attachment
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