

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve territorial dispute with Clay Electric Cooperative, Inc. in Baker County by Florida Power & Light Company.

DOCKET NO. 970512-EU
ORDER NO. PSC-97-1310-PHO-EU
ISSUED: October 22, 1997

Pursuant to Notice, a Prehearing Conference was held on Wednesday, October 15, 1997, in Tallahassee, Florida, before Commissioner Joe Garcia, as Prehearing Officer.

APPEARANCES:

MARK K. LOGAN, Esquire, Bryant Miller & Olive, P.A., 201 South Monroe Street, Suite 500, Tallahassee, Florida 32301, and
On behalf of Florida Power & Light Company.

JOHN H. HASWELL, Esquire, Chandler Lang & Haswell, P.A., Post Office Box 23879, Gainesville, Florida 32602
On behalf of Clay Electric Cooperative, Inc..

GRACE A. JAYE, Esquire, and ROBERT V. ELIAS, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

A hearing is set for October 27, 1997, in this docket. The hearing will address the issues set out in the body of this prehearing order.

Pursuant to Section 366.04(2)(e), Florida Statutes, and Rules 25-6.044(1) and 25-036(4)(b), Florida Administrative Code, on April 29, 1997, Florida Power and Light Company (FPL) filed a petition to resolve a territorial dispute between FPL and Clay Electric Cooperative, Inc. (Clay) in Baker County. FPL alleges that both FPL and Clay currently provide retail electric service to customers

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FPL-RECORDS REPORTING

within an area of Baker County where River City Plastics Inc. (River City) is in the process of constructing a manufacturing facility.

On May 23, 1997, Clay filed its Answer, Affirmative Defenses and Motion to Dismiss. In this pleading, Clay alleges that FPL refused to provide the character of service demanded by River City. Clay also maintains that because FPL's proposed service to River City was not of the character demanded by River City, FPL did not state a claim upon which relief could be granted.

On June 5, 1997, FPL filed its Memorandum in Opposition to Motion to Dismiss. In this Memorandum, FPL claims that Clay had adequate notice of the claim against it and that character of service is not a statutory requirement for a territorial dispute to exist. FPL argues, therefore, that the Motion to Dismiss should be denied. The Commission denied Clay's Motion to Dismiss in Order No. PSC-97-0922-PCO-EU (August 4, 1997).

On July 10, 1997, FPL filed its Motion to Award Interim Service. FPL claims that Clay could not provide adequate electrical service without making massive improvements to its system when River City started its operations. On July 17, 1997, Clay filed its Response to FPL's Motion to Award Interim Service. Clay argues that the character of service demanded by River City was such that FPL's concerns were immaterial. Clay also asserts that it is already providing temporary power to the site and to award interim service to FPL would result in uneconomic duplication of electrical facilities. The Commission panel denied FPL's Motion to Award Interim Service in Order No. PSC-97-1235-PCO-EI (October 13, 1997).

This matter is set for Hearing on October 27, 1997.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality

has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issue #</u>
<u>Direct</u>		
Robert A. Hood	FPL	1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, and 15
William C. Phillips	Clay	1, 3, 5, 6, 10, 11, 12, 13, and 15
Henry D. Barrow	Clay	1, 3, 4, 5, 6, 10, 11, 12, 13, and 15
Herman Dyal	Clay	3, 4, 5, 6, 8, 9, 10, 11, 12, 13, and 15
<u>Rebuttal</u>		
Robert A. Hood	FPL	1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, and 15
Rex Noble	FPL	6, 8, 9, 10, 11, 12, and 13
Ed Brill	FPL	6, 8, 9, 10, 11, 12, and 13
Herman Dyal	Clay	3, 4, 5, 6, 8, 9 10, 11, 12, 13, and 15
Stafford Mc Cartney	Clay	4, 6, 13, and 15

V. BASIC POSITIONS

FPL: The Commission should award the disputed area, including the River City Plastics facility to FPL as only FPL can provide for the current and reasonably foreseeable demand for reliable electric service in the disputed area. Customer preference should have no bearing in the Commission's determination of this dispute as FPL's capability to meet current and future needs of the area in dispute a reasonable cost is superior to Clay's ability to meet the same current and future needs. Even if customer preference is considered by the Commission, the Commission should determine that such preference must be based upon a realistic evaluation of each utility's ability to provide service in a cost-effective, reliable and prudent manner. Customer preference should not be considered as it is not in accordance with FPSC Rule 25-6.0441 Territorial Disputes for Electric Utilities, rule d: "if all factors are substantially equal." Customer preference based upon a mistaken evaluation of these factors should not be considered as it will effectively thwart the rational and reasonable establishment of territorial service areas via the dispute process.

Clay: The customer, River City Plastics, which has purchased the disputed site, evaluated service proposals from both Clay and FPL for its new plastic pipe manufacturing plant located in rural Baker County, where no territorial agreement exists between Clay and FPL, and in an area where Clay has historically served since the 1940's. Based on the customer's unique needs and desire to limit down time and restart costs and time of its plastic pipe manufacturing process, together with an evaluation of the rates to be charged by the two utilities, and the benefits of using load management generators to lower electric service costs and to provide back up generation capabilities, River City Plastics chose Clay as its electric service provider. The character and quality of the service offered by Clay is different that offered by FPL. While both utilities are capable of providing approximately equal reliable primary service, the customer was not interested in just primary service. There is no real comparison of the service offered by FPL and that offered by Clay. The customer asked for primary service with on site load management generators which

could be used by River City Plastics not only for the load management benefits but also for the ability to isolate itself from the electric grid. FPL was not willing to offer that service requested by the customer, and should not now be heard to complain that the customer chose Clay. The cost to provide primary service only favors Clay over FPL. If FPL were to offer the same service that Clay has agreed to provide, the costs again favor Clay. Even if the Commission were to determine that the increased cost for FPL to provide the same comparable service was "de minimis" then in that case the customer's choice should prevail. Since the customer chose Clay, Clay should be awarded the service to this site. Since neither utility served the site, and Clay's cost to provide the service are lower than FPL's, there has been and will be no uneconomic duplication of facilities for service by Clay.

Staff: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

Issues denoted with an asterisk (Issues 2, 7, and 14) are stipulated.

Issue 1: What is the geographic description of the disputed area?

Positions

FPL: The area in dispute is an industrial park in central Baker County, south of US Highway 90 (SR 10), north of Interstate 10 (SR 8) and immediately to the east of FPL's Wiremill substation. The area includes River City Plastics, Inc., a PVC pipe manufacturing facility scheduled to be operational in late 1997, which is located within the industrial park next to FPL's industrial customer, Florida Wire and Cable, and approximately 1/4 mile east of the FPL Wiremill substation.

Clay: The disputed area is located in a rural area of Baker County, Florida, in a parcel designated by Baker County as an industrial park, between US Highway 90 to the north and Interstate 10 to the south. The community of Sanderson lies to the west, and the town of Glenn St. Mary and Macclenny lie to the east.

Staff: The disputed area is restricted to the River City Plastics plant site in Baker County, Florida.

STIPULATED

*Issue 2: What is the nature of the disputed area, including population, the type of utilities seeking to serve it, degree of urbanization of the area, the area's proximity to other urban areas, and the area's present and reasonably foreseeable requirements for other utilities?

Position: Baker County is primarily an agricultural and conservation area, having the Okefenokee National Wildlife Refuge, the Nature Conservancy and Osceola National Forest comprising over half its land area. The 1997 projected population of Baker County is 20,787 with the incorporated areas of Macclenny and Glen St. Mary populations being 4,201 and 467 respectively. The next largest area would be the area of Sanderson with some 1200 - 1500 in population.

Much of the surrounding area is designated as conservation, wild life or refuge management areas, and national forests. There are no unique outstanding or distinguishing geographic features. The area is rural. No one resides on the site that is in dispute.

FPL, an investor-owned utility, has primarily served the central corridor of Baker County, including Sanderson, Glen St. Mary and Macclenny. The Sanderson community, which includes the area surrounding FPL's Wiremill substation is approximately 5 miles from the city of Glen St. Mary and approximately 7 miles from the city of Macclenny. FPL serves approximately 330 accounts in Sanderson, 100 accounts in Glen St. Mary, 2600 accounts in Macclenny and 3000 accounts in the surrounding rural area.

Clay serves approximately 1,900 customers in Baker County and some along Rhoden Road just east of the disputed area. There are no other utility services seeking to serve the site.

Issue 3: Which utility has historically served the disputed area?

Positions

FPL: FPL has traditionally served the area in dispute for eight decades. FPL has provided service to the Sanderson area since 1938 and the Macclenny area since 1926. The Wiremill substation was constructed in 1976 and has served Florida Wire & Cable, the customer immediately adjacent to the River City Plastics facility since 1976.

Clay: Clay has historically served the areas around the disputed site to the north, south, and east. FPL has historically served to the west including its Wiremill substation. Neither utility had service to the specific site of the River City Plastics manufacturing plant until Clay built service to the site at the request of the customer.

Staff: Neither utility has historically served the disputed area.

Issue 4: What is the expected customer load and energy growth in the disputed area?

Positions

FPL: Based on historical load growth and information from estimates of future construction plans, the expected load and energy growth in the disputed area is projected to be 1.2% or 8.6mva through the year 2001. However, this forecast does not take into account the likely addition of any significant, large load customers who may locate in the area, such as River City Plastics. With River City Plastics included in the estimate, the expected load and energy growth would be 24.7% or 10.6mva through the year 2001.

Clay: In the foreseeable future, only River City Plastics is the expected customer load, at an expected demand of approximately 2,000kw, and energy growth of approximately 13.8 million kwh.

Staff: The expected customer load is approximately 1955kw. Expected energy consumption in the disputed area is approximately 13,600,000 kwh annually.

Issue 5: Has unnecessary and uneconomic duplication of electric facilities taken place in the vicinity of the disputed area or in other areas of potential dispute between the utilities?

Positions

FPL: Unnecessary and uneconomic duplication of electric facilities has not taken place in the industrial park as FPL is serving all current operational facilities within this area. However, allowing Clay to serve the River City Plastics will result in unnecessary and uneconomic duplication of electrical facilities as such service will result in Clay having to install and maintain facilities within the immediate area of FPL's existing Wiremill substation and associated distribution lines. In addition, Clay will need to upgrade their substation in order to provide service to this disputed area, duplicating a portion of FPL's existing Wiremill substation capacity of 44mva.

Clay: No as to Clay Electric. However, the construction of the Wiremill substation by FPL at a rated capacity of 44 megawatts when its existing load is only 8.5 megawatts could certainly be characterized as a duplication of the facilities of Clay Electric and an attempt by FPL to position itself to serve or attempt to serve customers located within Clay's historic service area.

Staff: No position pending further discovery and the evidence adduced at hearing.

Issue 6: Is each utility capable of providing adequate and reliable electric service to the disputed area?

Positions

FPL: While both utilities are capable of providing electric service to the area in dispute, given the immediate proximity and nature of FPL's Wiremill substation, FPL's service to the area will be predictable more reliable than that proposed to be provided by Clay.

Clay: Clay is capable of providing adequate and reliable service of the character and quality requested by the customer, and only Clay has offered to provide that service. FPL may be capable of providing the same comparable service if it resolves reliability issues related to the location of its proposed facilities along a traveled road, or across lands that it does not own.

Staff: No position pending further discovery and the evidence adduced at hearing.

STIPULATED

*Issue 7: What is the location, purpose, type and capacity of each utility's facilities existing as of the filing of the petition to resolve the territorial dispute?

Position: Clay Electric Cooperative, Inc. has a 1 mile radial tap off of the 115kv Baldwin-Columbia transmission line. Clay's Sanderson substation is approximately 3.75 miles from the disputed area. The Sanderson substation has a capacity rating of 7500kva. Its load is 6800kva. Clay has a 3 phase feeder line running from the Sanderson substation to within approximately 1.5 miles of the disputed area (1.3 miles to the Industrial Park). Within ½ mile (2815 feet to customer's point of service) of the disputed area, Clay has a single phase 14.4kv distribution line.

FPL has the Baldwin-Columbia 115kv transmission line. FPL has a two mile radial tap which connects the Baldwin-Columbia 115kv transmission line with the Wiremill substation. FPL's Wiremill substation is approximately 1/4 mile from the disputed area (2950 feet to customer's

point of service). The Wiremill Substation has a capacity rating of 44mva. Its load is 8.5mva. There are 2 feeder lines from the Wiremill substation, 1561 and 1562.

Issue 8: What additional facilities would each party have to construct in order to provide service to the disputed area?

Positions

FPL: Three substation regulators and associated bus work. A three phase service 1000 mcm underground feeder as River City Plastics primary service (approximately 2945 ft. in length). In addition, FPL would install a three-phase service 3/0 aluminum overhead feeder as a backup to the underground feed (approximately 2825 ft. in length). FPL would install an automatic throwover switch for transfer from the primary service to the backup service.

Clay: For Clay, add cooling fans to the Sanderson substation transformers and step up transformers for feeder #3, rebuild .6 miles of single phase on Rhoden Road to three phase, add .25 miles of three phase along Rhoden Road, add new three phase along Rhoden Road and up the plant site road approximately .65 miles (which would include rebuilding the existing single phase construction power to three phase).

Staff: No position pending further discovery and the evidence adduced at hearing.

Issue 9: What would be the cost to each utility to provide electric service to the disputed area?

Positions

FPL:

- (a) FPL would add three single-phase voltages regulators at a cost of \$64,600.
- (b) FPL's cost for the dual feed service would be:
Underground feeder service costs \$80,281;
Backup overhead service costs \$20,550;

- loss of revenues from customers in the immediate vicinity of its existing substation
- additional costs for longer alternate routes and the disputed area
- longer time to recover its investment
- cost of private rights-of-way or easements instead of public routes-of-way

Clay: \$11,985,089.00, representing the gross power revenue over the fifteen year contract with River City Plastics without taxes. Clay's cumulative cash flow at the end of the fifteen year contract which includes line costs, customer site generation costs, wholesale power costs and retail power revenues would total \$2,431,756.00.

Staff: No position pending further discovery and the evidence adduced at hearing.

Issue 12: What would be the effect on each utility's ratepayers if it were not permitted to serve the disputed area?

Positions

FPL: The impact of FPL's ratepayers would be the inability to seek maximum utilization of FPL's existing facilities which helps keep the rates charged to FPL customers as low as possible. The impact on Clay's members, if FPL was permitted to serve, should also be beneficial as they would not have to subsidize the cost of Clay's provision of backup generators and associated credits to River City Plastics.

Clay: Loss of the revenues identified in Issue 11, loss of the opportunities for Clay's members to reap the benefits of load management and therefore reducing the cooperative's overall demand costs and the likelihood of further territorial disputes with FPL in the area.

Staff: No position pending further discovery and the evidence adduced at hearing.

Issue 13: If all other factors are equal, what is the customer preference in the disputed area?

Positions

FPL: All other factors are not substantially equal so customer preference should not be considered by the Commission in this dispute. FPL's cost to provide dual service to River City Plastics would be \$140,831 or \$205,431 if we included the substation improvements. Clay's cost to provide dual service to River City Plastics would be \$1,198,000. These costs represent a distinct substantial difference in costs to serve. Even if customer preference is considered, the only reason the customer (River City Plastics) chose Clay is due to the provision of backup generation units, at no cost to the customer, which will not even address the particular needs of the customer's facilities. The Commission should not allow a customer decision based upon mistaken information to effectively determine the result of a territorial dispute including the establishment of a territorial boundary.

Clay: The customer has chosen Clay Electric Cooperative, Inc. as its service provider.

Staff: The customer has expressed a preference for service from Clay Electric Cooperative, Inc.

STIPULATED

*Issue 14: Are the utilities bound by a territorial agreement?

Position: No territorial agreement governs service in the disputed area.

Issue 15: Which utility should be awarded the service area in dispute?

Positions

FPL: FPL should be awarded the service area in dispute. Furthermore, Clay should be required to remove those facilities built to provide three phase service to River City Plastics and the disputed area.

Clay: Clay Electric Cooperative, Inc. based on the following factors: its lower cost to provide primary service, its lower cost to provide primary service with load management generation, its provision of the only service the customer needs, historic service to the general area, and the logical and natural extension of Clay's facilities and their optimal utilization.

Staff: No position pending further discovery and the evidence adduced at hearing.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Hood	FPL	_____ (RAH - 1)	Comprehensive Plan for Baker County, Future Land Use
"	"	_____ (RAH - 2)	FPL Drawing 2Y524401, Wiremill Substation Area
"	"	_____ (RAH - 3)	FPL Drawing B-0000-03, Baker County territorial map with OREMC
"	"	_____ (RAH - 4)	NED Transmission Patro Map I-19
"	"	_____ (RAH - 5)	Five Year Plan - North Florida Area - Wiremill Substation
"	"	_____ (RAH - 6)	Overhead Job Sketch - \$39,985
"	"	_____ (RAH - 7)	Paragraph 2.2, FPL's Rules and Regulations

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
"	"	<u> </u> (RAH - 8)	Dual Service Sketch - Overhead with overhead backup - \$39,985 and \$20,550
"	"	<u> </u> (RAH - 9)	Dual Service Sketch - Underground with overhead backup - \$80,281 and \$20,550
"	"	<u> </u> (RAH - 10)	GSLD-2 Rate Schedule - General Service Large Demand
"	"	<u> </u> (RAH - 11)	GSLDT-2 Rate Schedule - General Service Large Demand Time of Use
"	"	<u> </u> (RAH - 12)	CS-2 Rate Schedule - Curtaillable Service
"	"	<u> </u> (RAH - 13)	CST-2 Rate Schedule - Curtaillable Service Time of Use
Phillips	Clay	<u> </u> (WCP - 1)	Typical large power loads
"	"	<u> </u> (WCP - 2)	Letter of intent dated February 2, 1986
"	"	<u> </u> (WCP - 3)	Letter to Broadhead dated July 24, 1993
Barrow	Clay	<u> </u> (HDB - 1)	Chamber of Commerce site information
"	"	<u> </u> (HDB - 2)	Sample calculation of electric charges LGSD with a generator credit
"	"	<u> </u> (HDB - 3)	Post Buckley report and documentation

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
"	"	<u>(HDB - 4)</u>	Updated rate proposal
"	"	<u>(HDB - 5)</u>	Fiore request of January 20, 1997
"	"	<u>(HDB - 6)</u>	River City Plastics' request for electric service from Clay Electric
"	"	<u>(HDB - 7)</u>	Letter from Barrow to McCartney with purchased power agreement and enclosures
"	"	<u>(HDB - 8)</u>	Equipment lease and load management agreement sent to River City Plastics
Dyal	Clay	<u>(HD - 1)</u>	Service area of Clay Electric in Baker County
"	"	<u>(HD - 2)</u>	Diagram of service to be provided to River City Plastics
McCartney	Clay	<u>(SM - 1)</u>	Summary of River City Plastics' costs of outages on JEA system
Hood	Staff	<u>(FPOD-1)</u>	FPL's response to Staff's Request for Production of Documents Nos. 1 - 6
"	"	<u>(FCINT-1)</u>	FPL's response to Clay's Interrogatories Nos. 1 - 39

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
"	"	<u>(FCPOD-1)</u>	FPL's Response to Clay's Request for Production of Documents Nos. 1 - 12
"	"	<u>(HLATE-4)</u>	Robert A. Hood - late filed deposition exhibit 4
"	"	<u>(HLATE-5)</u>	Robert A. Hood - late filed deposition exhibit 5
"	"	<u>(HLATE-6)</u>	Robert A. Hood - late filed deposition exhibit 6
"	"	<u>(FSINT-1)</u>	FPL's Response to Staff's Interrogatories Nos. 1 - 7
Brill	Staff	<u>(BLATE-1)</u>	Edward R. Brill - late filed deposition exhibit 1
Noble	Staff	<u>(NLATE-1)</u>	Rex E. Noble - late filed deposition exhibit 1
Barrow	Staff	<u>(HBLATE-1)</u>	Henry Barrow - late filed deposition exhibit 1
Dyal	Staff	<u>(DLATE-9)</u>	Herman Dyal - late filed deposition exhibit 9
"	"	<u>(DLATE-10)</u>	Herman Dyal - late filed deposition exhibit 10

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
"	"	<u>(DLATE-12)</u>	Herman Dyal - late filed deposition exhibit 12
"	"	<u>(DLATE-14)</u>	Herman Dyal - late filed deposition exhibit 14
"	"	<u>(CSPOD-1)</u>	Clay's Responses to Staff's Request for Production of Documents Nos. 1 - 12
"	"	<u>(CSINT-1)</u>	Clay's responses to Staff's Set of Interrogatories Nos. 1 - 15

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

Issues 2, 7, and 14 are stipulated.

IX. PENDING MOTIONS

There are no pending motions at this time.

It is therefore,

ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Commissioner Joe Garcia, as Prehearing Officer,
this 22nd day of October, 1997.



JOE GARCIA, Commissioner
and Prehearing Officer

(S E A L)

GAJ

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 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.

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary,

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procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.