

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve)	Docket No. 911141-EU
territorial dispute between)	
Okefenoke Rural Electric)	
Membership Corporation and)	
Jacksonville Electric Authority)	FINAL HEARING
)	VOLUME I, Pages 1 - 160

BEFORE:

COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK**RECEIVED**

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JUN 26 1992

FPSC Hearing Room 106
Fletcher Building
101 East Gaines Street
Tallahassee, Florida

Florida Public Service Commission

Met pursuant to notice at 9:35 a.m.
Wednesday, June 17, 1992

Reported by:

Lisa Girod Jones, RPR, CM

APPEARANCES:

JAMES HAROLD THOMPSON, Esquire, and J. JEFFRY WAHLEN, Esquire, Ausley, McMullen, McGehee, Carothers & Proctor, P.O. Box 391, Tallahassee, Florida 32302; on behalf of Okefenoke Rural Electric Membership Corporation.

KENNETH A. HOFFMAN, Esquire, Messer, Vickers, Caparello, Madsen, Lewis, Goldman and Metz, P.A., Post Office Box 1876, Tallahassee, Florida 32302; on behalf of Jacksonville Electric Authority.

BRUCE PAGE, Esquire, City of Jacksonville, Office of General Counsel, 1300 City Hall, Jacksonville, Florida 32202; on behalf of the Jacksonville Electric Authority.

* * * *

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PSC-RECORDS/REPORTING

1
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INDEX

1		
2	<u>MOTION TO DISMISS OR STRIKE</u>	<u>PAGE</u>
3	By Mr. Hoffman	6
4	Response by Mr. Thompson	14
5	By Mr. Hoffman	20
6	Motion Denied	28
7		
8	<u>OPENING STATEMENTS:</u>	
9	By Mr. Hoffman	29
10	By Mr. Thompson	37
11		
12	<u>WITNESSES:</u>	
13		
14	ROBERT FRANKLIN PAGE	
15	Direct Examination by Mr. Thompson	45
16	Cross Examination by Mr. Page	64
17	Cross Examination by Ms. Brown	73
18	Redirect Examination by Mr. Thompson	98
19		
20	PETE J. GIBSON and EMORY MIDDLETON	
21	Direct Examination by Mr. Thompson	107
22	Cross Examination by Mr. Page	150
23	Cross Examination by Ms. Brown	153
24	CERTIFICATE OF REPORTER	160
25		

EXHIBITS

<u>EXHIBIT NO.:</u>	<u>FOR I.D.</u>	<u>RECEIVED</u>
1 - (Composite) RP-1 and RP-2	63	107
2 - (Composite) Customer Release Letters	65	107
3 - (Late-filed) Protest Letter Since 1968	72	
4 - Map submitted in response to Staff's 1st POD request	85	106
5 - (Composite) Exhibits to Dew's prefiled testimony	87	
6 - (Composite) PJG-1, 2, 3, 4 and 5	126	159
7 - (Composite) EM-1, 2, 3 and 4	144	159

PROCEEDINGS

COMMISSIONER DEASON: Call the hearing to order.
Counselor, would you please read the notice?

MS. BROWN: By notice issued March 26, 1992, this time and place was set for a hearing in Docket 911141-EU, In Re: A territorial dispute between Okefenoke Rural Electric Membership Corporation and the Jacksonville Electric Authority of the City of Jacksonville in Duval County. Purpose of the hearing is more fully set out in the notice.

COMMISSIONER DEASON: Thank you. Take appearances at this time, please.

MR. THOMPSON: Jeff Wahlen and James Harold Thompson for the Co-op.

MR. HOFFMAN: Good morning, Commissioners. My name is Kenneth A. Hoffman. I'm with the Messer, Vickers Law Firm, P. O. Box 1876, Tallahassee, Florida 32303; appearing on behalf of the Jacksonville Electric Authority.

MS. BROWN: Martha Carter Brown -- I'm sorry, Mr. Page, go ahead.

MR. PAGE: Bruce Page. I'm from the Office of General Counsel, Jacksonville, Florida, representing Jacksonville Electric Authority.

MS. BROWN: Now it's my turn. Martha Carter Brown

1 and Mary Anne Birchfield representing the Florida
2 Public Service Commission Staff. Our address is 101
3 East Gaines Street, Tallahassee, Florida.

4 MR. PRUITT: And I'm Prentice Pruitt, same
5 address, Counsel to the Commissioners.

6 COMMISSIONER DEASON: Ms. Brown, I understand that
7 we have a motion pending, an oral argument set for
8 first thing this morning.

9 MS. BROWN: Yes, we do. That's the only
10 preliminary matter we have to deal with. The oral
11 argument has been set for ten minutes aside on JEA's
12 motion to dismiss and motion to strike.

13 COMMISSIONER DEASON: Mr. Hoffman, it's your
14 motion, I assume you'll go first.

15 MR. HOFFMAN: Thank you, Commissioner. JEA has
16 filed a motion to dismiss, or in the alternative a
17 motion to strike a portion of the Co-op's petition to
18 resolve the territorial dispute in Duval County.

19 The first thing I'd like to explain to you is that
20 this motion is different than a previous motion to
21 dismiss you have already ruled on. Back in November of
22 '91, the JEA filed a motion to dismiss Okefenoke's
23 petition and that motion was based on what we think is
24 the key provision, statutory provision in this case,
25 which is found under Section 366.04, Section 2,

1 subsection F, part of the originally-enacted Grid Bill
2 in 1974. And what that statute says is that, "No
3 provision of this chapter, the chapter being 366, shall
4 be construed or applied to impede, prevent or prohibit
5 municipally-owned electric utility system from
6 distributing at retail electric energy within its
7 corporate limits, as such corporate limits exist on
8 July 1, 1974. However, existing territorial agreements
9 shall not be altered or abridged hereby."

10 The JEA's position in its originally-filed motion
11 was, and it remains today, that this provision provides
12 a statutory jurisdictional exclusion to the
13 Commission's jurisdiction to resolve territorial
14 disputes where two things occur: One the area in
15 dispute is inside the July 1, 1974 municipal limits;
16 and two, the municipality operates an electric
17 utility. You disagreed with the JEA's position and you
18 denied the motion to dismiss.

19 Now, today, pending before you is a motion to
20 dismiss or strike a portion of the Co-op's petition.
21 This motion is in no way premised on the statutory
22 provision that I just read to you. That statute is not
23 even mentioned in the motion. What we're saying to you
24 today is not that you do not have jurisdiction to hear
25 the case, because you already said that you do. We're

1 saying that you do not have the statutory authority
2 because you lack the subject matter jurisdiction to
3 grant certain remedies requested by Okefenoke.

4 And I think you should bear in mind that there's
5 another provision in Chapter 366, Section 366.11, which
6 provides an express limitation on your authority over
7 municipal electric utilities and rural electric
8 cooperatives. And that limitation says that your
9 jurisdictional authority is limited to what's set forth
10 in Section 366.04.

11 Now, one remedy that the Co-op requests in its
12 petition is that you order the parties to enter into a
13 territorial agreement. I would respectfully submit to
14 you that you have no such authority. The Commission
15 can approve an agreement. It can reject one or it can
16 modify one, but it cannot require two electric
17 utilities to enter into a territorial agreement. I
18 think that that's fairly simple and fairly clear.

19 The second thing that the Co-op asks you to do is
20 to determine and define the territorial boundaries of
21 the two utilities in Duval County, Florida. In other
22 words, what the Co-op is saying to you in its petition
23 is that it is not only the Holiday Inn on Airport Road
24 that is in dispute, but that a territorial dispute
25 exists as to the Co-op's 2200 or so customers which

1 they currently serve in the consolidated corporate
2 limits of the City of Jacksonville.

3 What you need to bear in mind is that the Co-op
4 has served these customers for a number of years. Many
5 of these customers have been served by the Co-op for a
6 number of years. The JEA is not attempting to oust the
7 Co-op. We're not attempting to prevent the Co-op from
8 serving their customers. What the Co-op is saying is
9 we may lose these customers some time in the future.
10 Maybe in two years, maybe in ten years. We may lose
11 them in the future. And therefore we think there's a
12 territorial dispute. And JEA thinks as a matter of law
13 that they're wrong because there is no right
14 territorial dispute, there is no case or controversy
15 and they're essentially seeking an advisory opinion,
16 apart from the Holiday Inn, as to their remaining
17 customers in the City of Jacksonville.

18 I think it's helpful if you look at what your rule
19 says, your rule defines a territorial dispute as a
20 disagreement as to which utility has the right and
21 obligation to serve a particular geographical area.
22 Now under the ordinances of the City of Jacksonville,
23 the JEA is authorized to grant permission to the Co-op
24 to furnish electrical service within its consolidated
25 municipal limits. The Co-op members have received this

1 permission and they serve pursuant to this permission.
2 And the JEA has not attempted to revoke this
3 permission. And there's no disagreement among these
4 two utilities as to the Co-op's current right to serve
5 its members in the City of Jacksonville.

6 So we believe, as a matter of fact and as a matter
7 of law, there is no territorial dispute today regarding
8 the provision of electric service to Okefenoke members
9 in Duval County. To the extent there is anything
10 pending before you today, it is limited to the Holiday
11 Inn.

12 We also believe by requesting the Commission to
13 define territorial boundaries when there is no
14 territorial dispute, the Co-op is asking the Commission
15 to grant a remedy which it lacks statutory authority to
16 grant.

17 Now a lot of the testimony in this case is devoted
18 to the issue of uneconomic duplication of facilities,
19 which I think both utilities would agree is a bad
20 thing. However, the presence or possible addition of
21 uneconomic duplication of facilities does not equal a
22 territorial dispute.

23 Now, over the last eight years there have been a
24 number of attempts by the Legislature -- before the
25 Legislature, to change the law, to change Chapter 366,

1 to grant the Commission the authority to establish
2 territorial lines and boundaries where no disputes --
3 where no dispute exists. Those laws have not passed.
4 So, again, we think that that is persuasive and it's
5 important for you to keep in mind that these laws have
6 not passed, and without a dispute in the first place,
7 the Commission lacks the authority to establish
8 territorial boundaries.

9 The last thing that I would say to you is that you
10 need to look very carefully at the request the
11 cooperative seeks in this case. If you look at
12 Mr. Dew's testimony, look at Page 42. The Co-op is
13 asking you, they're asking you to draw a line somewhere
14 in the City of Jacksonville. They have not given you
15 the line. They said perhaps the "magic line," the
16 quote, unquote, "magic line." But if you look in
17 Mr. Dew's testimony, they're asking you to draw the
18 line. They're not saying, award us this specific
19 service area. And if you look at the testimony in this
20 case, if you look at the maps, you'll see that no
21 matter where you draw that line, you cannot draw a line
22 in the City of Jacksonville which will put all of one
23 utility's facilities on one side and all of another
24 utility's facilities and customers on the other side.
25 It just can't be done.

1 So when you really think about what they're asking
2 you to do, they're asking you to come up with some
3 line, but what you're going to have, if you make it
4 meaningful, is a mix of customers. So what they're
5 asking you to do is to craft a territorial agreement
6 and impose it on these two parties. It would have to
7 address transfer of customers, compensation, transfer
8 of facilities, stranded facilities, reintegration
9 costs. You've got no record on that in this case, and
10 I don't believe that you have the authority to craft a
11 territorial agreement for two utilities and impose it
12 on them.

13 So I'll close by saying that it's our position
14 that you lack the statutory authority and the subject
15 matter jurisdiction to order these two parties to enter
16 into a territorial agreement. We think you also lack
17 subject matter jurisdiction to define territorial
18 service boundaries apart from the Holiday Inn because
19 there is presently no territorial dispute between these
20 two utilities other than the Holiday Inn.

21 And finally, we do not think you have the factual
22 record or the statutory authority to come up with some
23 line because you are -- you would be, in essence,
24 drafting a territorial agreement and imposing it on the
25 two utilities. Thank you.

1 COMMISSIONER DEASON: Let me ask a question at
2 this point. What, in your mind, constitutes a dispute,
3 a territorial dispute?

4 MR. HOFFMAN: Traditionally, Commissioner, and in
5 my mind, a dispute involves a situation where there is
6 a specific location. Traditionally the Commission has
7 considered cases involving a high school, a
8 subdivision, some type of development, where both
9 utilities are presently vying to serve that particular
10 location or area. And the JEA is not presently vying
11 to serve the 2200 or so Co-op members in the City of
12 Jacksonville.

13 COMMISSIONER DEASON: The JEA is saying that it
14 has the right to serve if and when it sees fit?

15 MR. HOFFMAN: No, sir, the JEA is saying that it
16 has the right to serve and that it may delegate
17 permission to the Cooperative to serve.

18 COMMISSIONER DEASON: And along with that it can
19 revoke that permission when and if it sees fit?

20 MR. HOFFMAN: I don't know of any situation,
21 Commissioner Deason, where they've done that.

22 COMMISSIONER DEASON: Did they revoke the
23 permission to serve the Holiday Inn?

24 MR. HOFFMAN: No. What they did was, the
25 customer, Holiday Inn, chose to disconnect from the

1 Co-op. They then asked the JEA to serve. Because the
2 JEA believes it has a legal obligation to respond to
3 that request, it did.

4 COMMISSIONER DEASON: Did they disconnect and then
5 ask to be served? Or did they ask to be served and
6 after they got permission to be served, then
7 disconnect?

8 MR. HOFFMAN: I'm not sure. I'd have to go back
9 and look at the facts on that, Commissioner.

10 COMMISSIONER DEASON: Commissioner Clark, do you
11 have any questions at this point?

12 COMMISSIONER CLARK: Oh, no.

13 COMMISSIONER DEASON: Mr. Thompson?

14 MR. THOMPSON: Let me read you from Page 4 of the
15 motion to dismiss that is the subject of our debate
16 here, paragraph 7, which cites Rule 25-6.04391(b),
17 Florida Administrative Code, which purports to define a
18 territorial dispute as follows: "Territorial dispute
19 means a disagreement as to which utility has the right
20 and obligation to serve a particular geographical
21 area."

22 I believe the testimony that's been developed in
23 this matter makes it obvious that both of these parties
24 believe they have a right to serve in the northern part
25 of Duval County. And I think if you look through it,

1 the testimony, you will find that our witnesses and
2 their one witness, Mr. Ferdman, has basically said that
3 in many different ways.

4 The case has been developed over these months
5 since November, when we filed it, in that way. I was
6 looking -- let's see if I can find what I'm looking
7 for. (Pause) Moving around too much this morning. I
8 had it all set out on my library table. If you'll just
9 give me a minute.

10 In the pleadings you will find Jacksonville
11 Electric -- Jacksonville Electric Authority's response
12 to Staff's first request for production of documents.
13 In response to the request No. 1-A which asks for the
14 location and boundaries of the disputed area, JEA
15 answers this way: "Attached is JEA's transmission
16 system map revised 2-12-92. JEA believes this map best
17 demonstrates information about JEA's entire system and
18 will be referred to frequently. Superimposed upon this
19 map, as shown with diamond-shaped lines, are all of
20 Okefenoke's lines known to JEA at this time. It is
21 these lines that JEA believes to be the area of
22 dispute." That's all of our lines in northern Duval
23 County they believe to be in dispute. Therefore the
24 case has been prepared by us and by your Staff
25 reflecting that.

1 In addition, over on the response to paragraph
2 2-C, where they were asked for a plat and a one-line
3 engineering diagram which identifies the additions and
4 improvements to primary and secondary distribution
5 facilities necessary to provide service to each
6 customer within the disputed area for the next five
7 years, their answer is this: "JEA has no plans for
8 major additions and improvements in the disputed area
9 at this time. It has been JEA's intention to purchase
10 Okefenoke's facilities in the disputed area and utilize
11 these facilities to provide service to each customer."

12 In addition, the first set of recommendations for
13 the prehearing conference included a -- the issue as to
14 what's in dispute, and JEA said, all of Okefenoke's
15 presence in the County and City, if you want to call it
16 that, are in dispute. It was a revised set of
17 recommendations once they got the new law firm and
18 Mr. Hoffman involved in the case, that changed their
19 recommendation and tried to isolate just the Holiday
20 Inn. Their focus, I think, all along has been that our
21 presence in the entire county is in dispute.

22 Now, during the course of the discovery and the
23 work on the case, there have been things developed that
24 have indicated that while this problem has been
25 festering for a number of years, it's just now

1 ripening. And part of that, I think, is JEA's new and
2 aggressive nature.

3 In response to request for production, they have
4 produced a couple of letters that are obviously
5 responses to inquiries by the Holiday Inn through the
6 years. One is dated in 1973, and it's addressed to
7 Mr. Douglas N. Fisher of the Holiday Inn-Jacksonville
8 Airport, and it's on JEA's letterhead and it says,
9 "However, when an existing customer is being served by
10 another utility, such as Okefenoke Rural Electric, we
11 cannot run our electric service into such property
12 until the other electric utility agrees to the removal
13 of its lines and electric service to said property."
14 That was their position in '73.

15 In '83, their position was, "If you wish to pursue
16 using JEA as your utility company" -- this is a letter
17 to Airport Holiday again -- "we will generate proper
18 paper work and approval drawings showing your two
19 options. Your first step will be to contact Okefenoke
20 Rural Electric and ask that they notify us in writing
21 of their willingness to discontinue service to your
22 site and allow JEA to provide your future
23 electricity."

24 When they changed that attitude and said, If you
25 want to change over, you disconnect, you don't have to

1 get any kind of permission from the Co-op, all you've
2 got to do is disconnect and be ready for us, and then
3 went out and spent \$53,000 of their ratepayers' money
4 to get service to somebody that was already getting
5 service, that's when I think the issue ripened
6 throughout the county.

7 And I think that their counsel and JEA has,
8 throughout this proceeding, until very, very recently,
9 maintained that they have the right and the obligation
10 to serve throughout the county. I think their
11 testimony indicates that and I think their cross
12 examination indicates that also.

13 In addition, just this week, it's interesting to
14 note that you have had a Staff recommendation in
15 respect to a proposed agreement between JEA and Clay.
16 And the Staff recommendation was that if they don't get
17 together and finally agree on this thing, that the
18 Commission should probably go ahead and declare that
19 entire area where they mix and match to be in dispute.

20 So I think you clearly have a dispute in front of
21 you. And I think you clearly have the authority to
22 settle the dispute. I think the pleadings and
23 certainly the case progress indicate that there is a
24 dispute as to who has the right and obligation to serve
25 throughout the northern part of the county.

1 The other aspect, I think, of Mr. Hoffman's motion
2 has to do primarily with the remedy. And it's
3 difficult for us, or I think any provider, to know
4 exactly the nature and extent of your authority over
5 the remedies in a situation like this. I think the old
6 Storey vs. Mayo case pretty well indicates that you
7 have some latitude, and I don't think the statute
8 spells out to begin with what you can do as far as
9 resolving a territorial dispute, but I think you've got
10 a great amount of discretion.

11 I agree with Mr. Hoffman that you probably cannot
12 take property of one utility and give it on to the
13 other one or set a price on it and those kind of
14 things. But I do think that you have the authority to
15 say, "You have the right to serve here, you have the
16 right to serve there. This whole area is in dispute,
17 so I think this line would be a good dividing line, and
18 you can't expand beyond where you are on that side of
19 the line and you can't expand where you are on that
20 side of the line, unless you generally agree." This
21 will not prohibit duplication of facilities in the
22 future absolutely. Nothing will do that. Even the
23 agreements that you approve won't do that. But it will
24 certainly inhibit and certainly confine the areas where
25 the public is going to be paying twice for the same

1 service.

2 And for those reasons, and the fact that during
3 the course of this matter we found that through the
4 discovery two residential services have been changed
5 over and we are about to hit another squabble with the
6 postal facility where we have a three-phase line right
7 at it, and we are serving the temporary and
8 construction service and we've been notified by JEA to
9 be sure that we just understand that's temporary
10 service because they're going to build out to it. And
11 the expense of that will be visited on the ratepayers
12 on both of these utilities unless the issue is resolved
13 as to what their relative rights are. So for those
14 reasons we would did you ask you to deny the motion.

15 COMMISSIONER DEASON: Mr. Hoffman, I think you
16 have about one minute, if you care to respond in
17 anyway.

18 MR. HOFFMAN: Commissioner Deason, I think that
19 Mr. Thompson inadvertently made a mistake when he
20 talked about the money spent to build facilities to the
21 Holiday Inn. I think the testimony is very clear that
22 it was not the JEA who spent the \$50,000, that it was
23 the Holiday Inn who spent the money to build in and
24 allow the JEA to provide service.

25 Secondly, in listening to his argument, I really

1 don't see the connection that he makes between the
2 Holiday Inn, which I think, you know, there clearly is
3 a potential territorial dispute on and the balance --
4 and the remainder of the Okefenoke customers in the
5 City of Jacksonville. Again, Okefenoke serves them
6 today, the JEA is not trying to oust them, they're not
7 trying to solicit them away. There's simply no
8 territorial dispute, and I'm not sure why the Co-op has
9 come in to obtain confirmation of their permission to
10 serve these customers which they already have.

11 In terms of the answer to the question that you
12 asked me before, it's my understanding that the Holiday
13 Inn contacted Okefenoke and discussed with them
14 disconnection, but essentially, as the facts will show,
15 the JEA did not agree to provide service until there
16 was a disconnection by the Co-op. Thank you.

17 COMMISSIONER DEASON: Thank you.

18 COMMISSIONER CLARK: Mr. Hoffman, let me ask you a
19 question. What is the basis of your claim that you
20 have the right to serve this customer?

21 MR. HOFFMAN: The basis, the source, the legal
22 basis -- are you talking about the Holiday Inn,
23 Commissioner Clark?

24 COMMISSIONER CLARK: Getting back to your original
25 motion to dismiss, it's that this territory was within

1 the boundaries of Duval County that existed, is that
2 correct?

3 MR. HOFFMAN: Correct.

4 COMMISSIONER CLARK: It seems to me if we agree
5 with your argument on that, we, in effect, decide all
6 the territory that Okefenoke serves in Duval; if we
7 agree with your legal conclusion you have the right to
8 serve all of the territory in Duval County. So how is
9 this not a dispute involving the whole thing?

10 MR. HOFFMAN: I guess because you disagreed, for
11 one.

12 COMMISSIONER CLARK: But the basis of your claim
13 in effect will decide the whole territory.

14 MR. HOFFMAN: Yes, our ultimate legal position
15 would impact the whole territory. But from a
16 precedential standpoint, I simply have never seen a
17 case the Commission has decided before where one
18 electric utility was serving a customer and then they
19 filed a petition to resolve a territorial dispute
20 saying grant us the right to serve the customer we
21 serve today.

22 I mean I understand that -- I understand the
23 arguments, and that there's certainly, based on the
24 positions the JEA has taken, there is the potential
25 down the road that the Co-op could lose other customers

1 who wish to disconnect and request service from the
2 JEA. But utilities throughout the state could lose
3 customers. And at that time there would be territorial
4 disputes. That's all I have.

5 COMMISSIONER DEASON: Would you agree that -- let
6 me ask a question. Would you agree that one of the
7 fundamental bases for the Grid Bill and the authority
8 granted to the Commission to settle territorial
9 disputes is to prevent further uneconomic duplication
10 of services?

11 MR. HOFFMAN: Yes.

12 COMMISSIONER DEASON: If the Commission were to
13 accept your argument, do you think that there would
14 continue to be uneconomic duplication in north Duval
15 County?

16 MR. HOFFMAN: If the Commission were to limit this
17 case to the Holiday Inn, to the extent there is a
18 dispute involving the Holiday Inn, and based on what I
19 have seen in the testimony, I think there is that
20 potential today.

21 COMMISSIONER DEASON: Then you think that if we
22 were to accept your argument then that we would be
23 violating one of the fundamental reasons why the
24 Legislature saw fit to give us the authority to settle
25 territorial disputes?

1 MR. HOFFMAN: Well, Commissioner, I think that you
2 do have the authority and a statutory obligation to do
3 what you can to avoid further uneconomic duplication of
4 facilities, but I think that that's a different
5 question than whether or not you have an issue before
6 you in the first place as to whether there's a
7 territorial dispute. In other words, there's probably
8 present and potential uneconomic duplication of
9 facilities throughout this state, apart from the
10 consolidated City of Jacksonville. That does not mean
11 that there are territorial disputes throughout the
12 state.

13 COMMISSIONER DEASON: Do you agree that the
14 statutes give the Commission the authority to declare a
15 territorial dispute under its own motion?

16 MR. HOFFMAN: Yes.

17 COMMISSIONER DEASON: So if the Commission is made
18 aware of other potential areas of additional
19 duplication of services, if the Commission saw fit, we
20 could declare that as a territorial dispute, regardless
21 of whether any of the parties involved in that area
22 approached the Commission about a dispute?

23 MR. HOFFMAN: This is where I think we differ,
24 Commissioner Deason, respectfully, and that is that you
25 have a rule which defines what a territorial dispute

1 is, and it does not mention presence, lack of presence,
2 potential or lack of potential, of uneconomic
3 duplication of facilities. And in resolving a
4 territorial dispute that is properly before you in the
5 first place, I do believe it's your obligation to
6 consider avoiding the further uneconomic duplication of
7 facilities.

8 But the fact that there's uneconomic duplication
9 does not equate to a territorial dispute. There's
10 uneconomic duplication in the Leon County. There's no
11 territorial dispute. There's a territorial agreement.
12 But I just don't -- I don't think that the presence of
13 uneconomic duplication of facilities or the potential
14 for it equates to triggering the territorial dispute.

15 COMMISSIONER DEASON: Let me put a different light
16 on that. If there appears to be the situation where
17 there is likely to be further uneconomic duplication,
18 in your mind that does not constitute the territorial
19 dispute in which the Commission could declare under its
20 own motions?

21 MR. HOFFMAN: No, it does not, because by your
22 rules, until you change them, territorial disputes are
23 defined to be a disagreement over the rights and
24 obligations to serve, period.

25 COMMISSIONER CLARK: I think we have this here

1 because we are talking in part about the right and
2 obligation to serve, and it isn't the customer's
3 request that triggers the territorial dispute in my
4 mind. It's the fact that we have two companies saying,
5 or two entities saying, we need to establish who has
6 the right and obligation to serve. And it isn't
7 triggered by a customer selecting one of those, because
8 to me that's evidence of the very thing the territorial
9 -- the obligation on our part to approve agreements
10 and disputes addresses, is to make it clear to the
11 customer who serves, because we're not going to have
12 competition in geographic areas. That's the basis of
13 the whole statute.

14 MR. HOFFMAN: Commissioner, and the only thing I
15 would say in response to that, very simply, is that
16 there is no question. There is no disagreement to
17 these customers of the Co-op as to who is serving
18 them.

19 COMMISSIONER CLARK: But there is disagreement
20 over who has the obligation and the right to serve in
21 Duval County.

22 MR. HOFFMAN: That's correct. To the extent, I
23 think, that the Co-op would say it is their obligation
24 today to serve their customers. And I think the JEA
25 would say it is also their obligation, and that

1 obligation is being satisfied by the Co-op. And if the
2 customer chooses to disconnect, the JEA must provide
3 service in accordance with its tariffs.

4 COMMISSIONER CLARK: Which leads to uneconomic
5 duplication, which is the primary objective of the Grid
6 Bill.

7 COMMISSIONER DEASON: Commissioner Clark, what's
8 your preference on handling this situation at this
9 time? You want to handle it now or do you want to wait
10 until later?

11 COMMISSIONER CLARK: I'm ready to handle it now.

12 COMMISSIONER DEASON: I'm sorry?

13 COMMISSIONER CLARK: I'm ready to handle it now,
14 and I would move to deny the motion to dismiss and the
15 motion to strike. I think while it may be true that we
16 don't have the ability to order you to enter an
17 agreement, if you choose not to, we, in effect, dictate
18 agreement by resolving the territorial dispute. You
19 get to the same place. And I would call it, it's an
20 order resolving a dispute. It's not an order requiring
21 you to agree. Because at that point your opportunity
22 to agree is gone. We told you what you're going to
23 do.

24 Even if Okefenoke is seeking an advisory agreement
25 by saying that Duval is at issue, I think we have an

1 obligation to issue that opinion because they're
2 designed to avoid disputes in the future and to inform
3 parties of their rights and obligations under the laws,
4 statutes and orders. So I think even if that's what
5 you call it, it's appropriate for us to do it.

6 And I do think that the presence or possibility of
7 uneconomic duplication is reason enough for us to
8 declare a dispute on our own motion. Whether or not
9 the rules say that, I think it's clear from the
10 statute, if that's the purpose of the statute, that's
11 got to be a basis on which that we should act.

12 COMMISSIONER DEASON: That's your motion?

13 COMMISSIONER CLARK: That's my motion.

14 COMMISSIONER DEASON: I agree with the motion and
15 all of your statements supporting the motion and so the
16 motion is denied.

17 MR. HOFFMAN: Thank you, Commissioners.

18 COMMISSIONER DEASON: Ms. Brown.

19 MS. BROWN: We're ready to proceed. There's
20 nothing further that we need to deal with ahead of
21 time.

22 COMMISSIONER DEASON: Do the parties wish to make
23 opening statements, or I guess that's pretty much, to
24 an extent, been accomplished with the oral argument.
25 Still leave that open to the parties. Opening

1 statements?

2 MR. HOFFMAN: I prepared one, I'd like to give
3 it.

4 COMMISSIONER DEASON: I hope it's brief.

5 MR. HOFFMAN: Try and get through as quickly as I
6 can, Commissioner.

7 As you know, this is a dispute over the right to
8 provide service to the Airport Holiday Inn, and as
9 you've just ruled, it is also a dispute pertaining to
10 the balance of the Okefenoke customers in the City of
11 Jacksonville. As you also know, we maintain that the
12 Commission lacks the statutory authority to require
13 these two utilities to enter into a territorial
14 agreement. We also maintain that you lack the
15 authority to draw a line determining exclusive service
16 area under the facts of this case because you would
17 essentially be required to draft the territorial
18 agreement for these parties, which would include issues
19 regarding transfer, levels of compensation and the
20 other things that I discussed previously.

21 Now the focal point of JEA's position in this case
22 centers on the provision of the Grid Bill that I read
23 to you before, which is found in Section 366.04,
24 Section 2, subsection F. I'm going to, again, go back
25 through that because there are some things I'd like to

1 say about that. And what it says, again, is that, "No
2 provision of Chapter 366 shall be construed or applied
3 to impede, prevent or prohibit any municipally-owned
4 electric utility system from distributing at retail
5 electrical energy within its corporate limits as such
6 corporate limits exist on July 1, 1974. However,
7 existing territorial agreements shall not be altered or
8 abridged hereby."

9 So the first thing you have to ask yourself is
10 whether there was a territorial agreement defining
11 service rights on or before July 1, 1974. When you
12 look at this statute, the answer is no. The second
13 thing you would ask yourself was was there any
14 Commission order determining and defining service
15 territories of these two utilities prior to July 1,
16 1974? The answer is no.

17 So the issue becomes whether any provision, any
18 provision of Chapter 366, may be construed -- that's
19 the language that the statute uses -- may be construed
20 to impede, prevent or prohibit the JEA from
21 distributing retail electric service within its
22 consolidated corporate limits as such existed on July
23 1, 1974. And I don't think you need to get into any
24 statutory interpretation because the statute is very
25 clear. The statute says: No provision of this chapter

1 shall be so construed.

2 So it's our position then that you cannot take the
3 statutory criteria for resolving territorial disputes,
4 because that's in another section of Chapter 366, and
5 use that to impede, prevent or prohibit the JEA from
6 providing retail electric service within its
7 consolidated 1974 corporate limits. Likewise, we would
8 say to you, and it is our position, that you can't use
9 your responsibility to deter further uneconomic
10 duplication, also found in a different section of
11 Chapter 366, to impede, prevent or prohibit the JEA
12 from its right to provide retail electric service
13 within it's July 1, 1974 consolidated limits.

14 Since no other provision in Chapter 366 may be
15 construed to have the superseding impact on the JEA's
16 rights, the question then becomes what were those
17 rights in July of 1974? What rights were preserved to
18 municipal electric utilities pursuant to the Grid
19 Bill? In Okefenoke, in their prehearing statement, I
20 think hits the issue squarely on the head. They say,
21 quote "Stated another way, the 1974 clause in the Grid
22 Bill was not intended to create any new rights in favor
23 of municipally-owned electric utilities, but it was
24 intended only to preserve whatever rights to serve
25 within its corporate boundaries a municipally-owned

1 electric utility may have had at the time the Grid Bill
2 becomes effective. With this in mind, the issue
3 becomes what rights did JEA have to serve in Duval
4 County as of July 1, 1974. And we think -- we agree
5 that is a very important issue. That's the issue,
6 because whatever rights the JEA had were preserved,
7 they were vested by the passage of the Grid Bill.

8 Now, if you look at Mr. Ferdman's testimony you'll
9 see that he has cited certain sections of the charter
10 of the consolidated government of Jacksonville. He's
11 cited ordinance provisions of the City of Jacksonville
12 Code, and it's pursuant to those provisions, all of
13 which were adopted prior to July 1, 1974, which
14 authorize the JEA to provide retail electric service
15 within the consolidated corporate limits of the City of
16 Jacksonville. And it also authorizes and delegates to
17 the JEA the authority to grant permission to other
18 electric utilities, including Okefenoke, to furnish
19 electric service.

20 That right existed before the Grid Bill was
21 passed. That right was preserved by the Grid Bill.
22 Indeed, I think, as the Commission evaluates this case,
23 it should ask itself why, over the years, since I
24 believe 1969, the Co-op has acquiesced in a process
25 under which it received permission from the JEA to

1 provide service, why would it do that when in fact and
2 in law the JEA did not have the right to provide
3 service within its consolidated corporate limits.

4 In addition, and now I want to turn to the
5 obligation issue, prior to the passage the Grid Bill,
6 the Florida Supreme Court decided the Storey vs. Mayo
7 case that Mr. Thompson referred to. Now, in that case
8 the Supreme Court of this state confirmed that a
9 municipal electric utility has the obligation to
10 provide retail electric service to all residents who
11 reside within the corporate limits, and I want to quote
12 to you a very -- two very brief passages from that
13 decision, quote, "Under Florida law, municipally-owned
14 electric utilities enjoy the privileges of legally-
15 protected monopolies within municipal limits. An
16 individual has no organic, economic or political right
17 to service by a particular utility merely because he
18 deems it advantageous to himself. If he lives within
19 the limits of the city which operates its own system,
20 he can compel service by the city." Storey vs. Mayo
21 was decided in 1968.

22 Again, the Grid Bill in no way impeded or
23 diminished JEA's obligation to serve, but it preserved
24 its obligation to serve as articulated in the Storey
25 vs. Mayo decision.

1 I think there is another question that you need to
2 look at, and I'm moving away now from the legal issue,
3 and that is Okefenoke's burden of proof as a petitioner
4 in this case. There are a number of decisions issued
5 by the Florida Supreme Court which confirm that it is
6 the petitioner requesting affirmative relief who bears
7 the burden of proving its right to be awarded the
8 relief it seeks in establishing its prima facie case.

9 Now, Okefenoke's case is set forth in their direct
10 testimony and exhibits. We have no reason to believe
11 that all of this testimony and exhibits which will be
12 offered by Okefenoke will not be placed into the
13 record. However, in attempting to meet their prima
14 facie case for territorial relief, Okefenoke cannot
15 rely on their rebuttal testimony, nor can they rely on
16 assistance from the Staff or the Commission because
17 it's their burden.

18 Now if you look at your rule, and that's rule
19 25-6.0441, that's the rule that addresses territorial
20 disputes, if you look at Section 1 of that rule, it
21 says that, "In resolving territorial disputes, each
22 utility must provide a description of the existing and
23 planned load to be served in the area of dispute and a
24 description of the type, additional cost and
25 reliability of electrical facilities and other utility

1 services to be provided within the disputed area."

2 There's no choice. That's a mandatory requirement of
3 your rule. Okefenoke's direct testimony and exhibits
4 do not contain this information. Therefore, it is our
5 position that their petition has to be dismissed
6 because it is clear to us they have not submitted the
7 required information to obtain the relief which they
8 seek.

9 I would also point out to you that your rule --
10 Section 2 of that same rule, also says that there are
11 other criteria which you will look at in resolving a
12 territorial dispute. You're not limited to these
13 criteria, but normally you look at them.

14 Let me run through them real quickly. One is the
15 capability of each utility to provide reliable electric
16 service within the disputed area with its existing
17 facilities, and the extent to which additional
18 facilities are needed. Okefenoke's direct testimony
19 does not address this criteria. Part of the problem
20 they have, I believe, is that they've asked you to draw
21 the line. So it's very difficult for them, I suppose,
22 to know what it is they're supposed to submit. They're
23 asking you to draw the line.

24 The second criteria is the nature of the disputed
25 area, including population and the type of utility

1 seeking to serve it, and the degree of urbanization,
2 and the present and reasonably foreseeable future
3 requirements for other utility service. They haven't
4 presented that. They're saying you should disregard
5 it. Mr. Dew says just disregard that, they haven't
6 presented anything on that. You're also supposed to
7 provide the cost of each utility to provide
8 distribution facilities to the disputed area; their
9 distribution costs to serve the disputed area, not in
10 their direct testimony and exhibits.

11 And the last one in your rule is customer
12 preference. Here again, Okefenoke says disregard it.
13 So rather than entering a ruling on the merits, we
14 believe the Commission must dismiss Okefenoke's
15 petition because its direct testimony and exhibits,
16 which will be entered into the record, fail to
17 establish a prima facie case for territorial dispute
18 relief under Commission rules.

19 I'll close and say that if you disagree with us on
20 that point, we believe that the pertinent provision of
21 the Grid Bill, which I've recited to you twice,
22 requires the Commission to enter an order awarding the
23 JEA the right to provide service to the Holiday Inn,
24 and with respect to the remainder of the customers we
25 again stand on the provision of the Grid Bill. We

1 think you should also find that as a matter of law that
2 it is the JEA that has the right and obligation to
3 provide electric service to these customers upon their
4 request. Thank you.

5 COMMISSIONER DEASON: Thank you. Mr. Thompson, do
6 you have an opening statement?

7 MR. THOMPSON: Well, I didn't do as good as
8 Mr. Hoffman, I didn't have something prepared. But I
9 would like a moment of your attention to kind of give
10 you our theory of the case.

11 First of all let me say that he has dwelled on the
12 legal aspects because they have not developed any
13 factual basis or foundation for you. Their argument is
14 legal because I think you'll find from the evidence
15 presented that they don't have any case as far as the
16 facts. The facts are clearly, I think, in our favor as
17 far as the Holiday Inn matter, and in regards to you
18 settling this dispute long range, I think we also will
19 prevail factually there. And some equitable system
20 will be worked out by you. And when I say equitable, I
21 mean for the consuming public in that county.

22 In respect to his first legal argument about the
23 '74 clause and I'll only dwell on that very briefly
24 because you've ruled on it one time before, you've got
25 to deal with it however as to how it really impacts the

1 set of facts that will be coming to you.

2 Let me just say that in the motion to dismiss our
3 petition, that he mentions Chapter 67-1320, Laws of
4 Florida, which is the charter the City of Jacksonville,
5 was quoted and Section 2.04 was referred to, but let me
6 give you the full referral on the first sentence which
7 is purported to grant this great right to serve
8 electricity in Duval County.

9 "Throughout the entire general services district,
10 the consolidated government shall furnish the following
11 governmental services:" Well you say, goodness, does
12 that mean they'll be the only provider? Does that mean
13 that it's exclusive, they have the exclusive right?
14 Let me mention to you the things that they have the
15 authority to furnish under that clause. Number one,
16 airports, No. 2, agricultural agent, child care. Are
17 they the only provider, sole provider of child care in
18 that county? Courts, electricity is mentioned in
19 there, fire protection, health, hospitals, library,
20 police protection, recreation and parks, schools. Are
21 there no private schools in the county? Streets and
22 highways, traffic engineering and welfare services --
23 are they the only entity that provides welfare services
24 in the county? I don't think so. I think when the
25 Legislature is about to grant by special act, exclusive

1 authority to provide electricity, they do it like they
2 do here in Leon County to Tallahassee and they say
3 within a three-mile radius of your city, as the
4 boundary may be from time to time, you have the
5 exclusive authority to be the provider of electricity.
6 And even in that case, in '71, prior to the '74 act,
7 which gave you broad discretion, Judge Willis here
8 ruled that you can waive that kind of right. You can
9 even waive an exclusive right. You can be estopped,
10 excuse me, to go back in 1992 and provide electricity
11 to somebody that took it in 1968 from another
12 provider.

13 So in respect to rights that they may have and the
14 way they were generated, I assume that everybody would
15 agree that the 1974 clause in 366 didn't create any new
16 rights. The best that you could hope for is to
17 maintain what you had. I think what the Legislature
18 was really saying, if you want to take a real
19 no-nonsense approach to that, is, okay, cities, within
20 your '74 boundaries, you might be duplicating
21 facilities right now in some of your service, whatever
22 you're doing in '74, if you're serving a Piggly Wiggly
23 here and somebody else is serving a service station
24 over here and somebody then, you've tripped around
25 their lines and you're serving something else, you can

1 continue those services, but I don't think the
2 Legislature intended to grandfather in these pockets of
3 population throughout the state where the Grid Bill
4 generally would not apply and that a municipality could
5 duplicate at will.

6 I was thinking about sort of the logical extension
7 of that, and this is a real potential case here, by the
8 way, that is a city has a franchise with a provider,
9 let's say it's an investor-owned utility, and the
10 franchise expires and they can't get together. Now,
11 does the JEA's theory of this case and of that clause
12 mean that if the city wants to go into the business,
13 they find them a wholesaler, that they don't have to
14 deal with the facilities, distribution, transmission or
15 whatever, of the other provider in that city, they can
16 just run lines parallel, put drops right next to it and
17 so forth? That cannot be the logical explanation for
18 the reason that this clause is in the '74 act. So from
19 those couple of points of view, I'll just pass on
20 because I'm sure that that legal issue will be dealt
21 with as we wind the case up and probably file some
22 kinds of further memorandums with you.

23 What we expect our case to show you is facts,
24 facts that will show that the history of these
25 utilities has generally been pretty good, that they

1 generally have nonaggressive approaches to serving
2 people in the northern part of this county. As a
3 matter of fact, the evidence shows that when JEA or the
4 old city of Jacksonville wouldn't come out there, the
5 people needed the service so bad that this co-op came
6 down and put a generator, an old army generator out
7 there to provide electricity to people that couldn't
8 get it any other way. And from there they have built a
9 system and they've tried to build a system with some
10 integrity and they got along well with JEA and JEA with
11 them.

12 At a certain point in '77, they tried to enter
13 into an agreement, and JEA was obviously in favor of
14 it. It was drafted, but counsel for the City
15 Commission said that it might violate their bond
16 covenants, and so they decided that they couldn't do
17 that. So in '78 -- and you'll see that agreement in
18 your information also, and hear testimony about that --
19 in '78, they took the same general line and they said,
20 let's kind of observe on either side of this line who
21 will be the primary provider and try to clean this
22 thing up.

23 Well, that lasted a while, but it didn't last too
24 long as JEA became a little bit more and more
25 aggressive. I've cited to you already examples in '73

1 and '83 of where the Holiday Inn considered changing,
2 and JEA said, no, we won't change you -- we won't
3 change you unless the Co-op agrees, but now they've
4 come to the posture, and this is justified from their
5 legal point of view, that if somebody asks them to
6 serve and think will disconnect from us, they have to
7 do it. And therefore what you have is the potential
8 for a lot of problems.

9 As a matter of fact, as I mentioned in the
10 response to requests for production, we found that we
11 are being allowed to serve a post office in the area
12 and we are right there with the three-phase line and
13 they've got to build one to it. I have no idea as to
14 the expense of that and so forth, but it's certainly
15 going to be more expensive than it would be for us to
16 just provide a service drop. So what you're finding is
17 more and more problems. The two systems have run
18 together long enough and the two systems need to be
19 unscrambled, and I think the public will be best served
20 by that.

21 So what we hope to do during the course of this
22 proceeding is just to demonstrate to you that you have
23 a situation that is ripe for your resolution, that
24 Okefenoke wants to be reasonable in resolving the
25 matter and we want to do what's in the best interest of

1 the public. Thank you.

2 COMMISSIONER DEASON: Thank you.

3 MR. PAGE: Commissioners, before we call any
4 witnesses, I have two documents that were presented to
5 me yesterday, and I'd like to have them marked and
6 entered into the record without much discussion. The
7 first is a letter from the mayor of Jacksonville
8 forwarding a resolution of the Jacksonville City
9 Council, which the president and the mayor signed. The
10 other is a letter to the Commission from Representative
11 Betty Holzendorf from the House of Representatives,
12 Florida House of Representatives, who happens to be the
13 representative for the district in question. And I
14 have copies of both of these documents. I've already
15 provided Mr. Thompson with copies.

16 COMMISSIONER DEASON: Is it your intention to have
17 these identified as an exhibit?

18 COMMISSIONER CLARK: What are you offering them
19 for?

20 MR. PAGE: They were -- when these documents were
21 prepared, they asked us how to get this to the
22 Commission, whether they should drop it in the mail or
23 we should deliver it. I'm merely a functionary in that
24 delivery process here. I would like these entered into
25 the record, not for purposes of discussion today, but

1 merely delivered to this Commission for consideration
2 in this case.

3 COMMISSIONER DEASON: Mr. Pruitt, could you give
4 us some advice on how we should handle this?

5 MR. PRUITT: Mr. Chairman, those could be received
6 on the correspondence side of the docket. They cannot
7 be introduced as evidence unless there's someone here
8 who can respond to cross examination on them.

9 MR. PAGE: They're not submitted as evidence.

10 COMMISSIONER DEASON: We'll take those then and
11 enter them on the correspondence side of the docket.

12 At this time I would request that all those
13 persons who will be testifying today, we'll swear all
14 witnesses in at one time, so if you'll please rise,
15 raise your right hand.

16 (Witnesses collectively sworn.)

17 COMMISSIONER DEASON: Before we call the first
18 witness, we're going to take a ten-minute break.

19 (Recess)

20 COMMISSIONER DEASON: Reconvene. Mr. Thompson,
21 would you call your first witness please?

22 MR. THOMPSON: Yes, Commissioner, before I do, if
23 you don't mind, let me just make one statement. Mr.
24 Hoffman and Mr. Page and I have discussed during the
25 break, I made a statement in argument on the motion

1 that it would cost JEA -- or it did cost JEA \$53,000
2 approximately to serve the Holiday Inn. Mr. Hoffman
3 made the statement that I was incorrect, and I think he
4 agrees with me now that I was incorrect according to
5 his witness.

6 MR. HOFFMAN: That is correct, Commissioners, and
7 I apologize for the misstatement.

8 MR. THOMPSON: Co-op calls Mr. Robert Page. Mr.
9 Page has previously been sworn.

10 Whereupon,

11 ROBERT FRANKLIN PAGE,
12 was called as a witness, having first been duly sworn to
13 speak the truth, the whole truth, and nothing but the truth,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. THOMPSON:

17 Q. Mr. Page, would you state your full name for the
18 record please?

19 A. Robert Franklin Page.

20 Q. What is your business or occupation, Mr. Page?

21 A. I'm the manager of Okefenoke Rural Electric
22 Cooperative.

23 Q. Did you previously prepare direct testimony that
24 was submitted on February the 7th, 1992 consisting of 16
25 pages?

1 A. Yes, sir.

2 Q. Are there any corrections or changes you wish to
3 make to your testimony at this time?

4 A. I believe there's some typos on Page 8 and 9.

5 Q. Would you be very specific when you refer to
6 those?

7 A. The next to the last paragraph entitled, 1. Black
8 Hammock Island, was typed as RP-6, it should be RD.

9 Q. That's a Page 8?

10 A. Yes, sir.

11 Q. RP-6 on Line 21 should be changed on RP-8?

12 (Pause) RP-6 should be changed to RD-6?

13 A. Right. The top of Page 9, Line 1, that exhibit
14 listed as RP-5 should be RD-5.

15 Q. Any other changes?

16 A. Line 8 should also be RD-4 rather than RP-4. Line
17 13 should be RD-3, not RP-3. On Line 17, we listed RP-2.
18 That should be RD-2. I think that's all.

19 Q. With the changes, if I were to ask you the same
20 questions today, would your answers be the same?

21 A. Yes, sir.

22 Q. I'd like to request, Commissioners, that
23 Mr. Page's prefiled direct testimony be inserted into the
24 record as read.

25 COMMISSIONER DEASON: It will be so inserted.

OKEFENOKE RURAL ELECTRIC
MEMBERSHIP CORPORATION
DOCKET NO. 911141-EU
SUBMITTED FOR FILING 2/7/92

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

PREPARED DIRECT TESTIMONY

OF

ROBERT PAGE

1

2

3

4

5

6

Q. Please state your name and business address.

7

8

A. My name is Robert Page. My business Address is P. O. Box 602,
Nahunta, Georgia, 31553.

9

10

11

Q. By whom are you employed and in what capacity?

12

13

A. I am employed by the Okefenoke Rural Electric Membership
Corporation ("OREMC," "Okefenoke" or "Corporation") as its
General Manager. I have been employed in this capacity since
July 1990.

14

15

16

17

18

Q. What are your duties and responsibilities as Okefenoke's
General Manager?

19

20

21

A. I have direct and full responsibility for the day-to-day
management of the Corporation. I report directly to the Board
of Directors of the Corporation which sets the policies for
the Corporation. The Board of Directors ("Board") in turn are
responsible to the Corporation's members who elect the Board.

22

23

24

25

1 Q. Please describe your employment and educational background and
2 experience.

3
4 A. I was graduated from the University of Georgia in 1967 with a
5 Bachelors of Science degree in Agriculture. Thereafter, I
6 enlisted in the United States Army for a three-year hitch in
7 the Signal Corps.

8
9 In May 1971, following my honorable discharge from the United
10 States Army in November 1970, I became employed by Okefenoke
11 as Sales Manager. During my eighteen years as Sales Manager,
12 I was responsible for member services, large power sales,
13 safety and customer relations throughout our service
14 territory. I was promoted to Assistant Manager in 1989 and
15 Manager in July 1990.

16
17 Purposes

18
19 Q. What are the purposes of your testimony in this proceeding?

20
21 A. The purposes of my testimony are to (1) describe Okefenoke,
22 (2) explain the status of our relationship with the Holiday
23 Inn-Jacksonville Airport, and (3) describe the areas of
24 dispute involved in this proceeding.

25

1 Q. Have you prepared exhibits for presentation to the Commission
2 in this proceeding?

3
4 A. Yes. The following exhibits were prepared under my direction
5 and supervision for filing in this proceeding:

6 <u>Exhibit</u>	<u>Document</u>	<u>Description</u>
7 —	(RP-1)	Map of OREMC Facilities as of 1-1-92
8 —	(RP-2)	OREMC's Facilities in the State of 9 Florida as of 1-1-92

10
11 Each of these exhibits were prepared using the business
12 records of Okefenoke and reflect the location of Okefenoke's
13 facilities at this time with reasonable accuracy.

14
15 Description of OREMC

16
17 Q. Tell us generally about Okefenoke.

18
19 A. Okefenoke is a non-profit cooperative organized to supply
20 electric services to its members. The members of the
21 Corporation elect a Board of Directors from among themselves
22 to manage the business and affairs of the Corporation, and are
23 consumers of the electric and other services provided by the
24 Corporation. Okefenoke was incorporated in 1939 to bring
25 electric service to persons needing electric service in

1 southeast Georgia and northeast Florida.

2
3 OREMC began serving members in Duval County in the late 1940s.
4 The growth and development of the Okefenoke system in Duval
5 County is more fully explained in the prepared direct
6 testimonies of Mr. Pete J. Gibson and Mr. Emory Middleton.
7

8 Okefenoke currently provides electric services to members in
9 portions of Baker, Nassau and Duval Counties in Florida, as
10 well as six counties in Georgia. Okefenoke has 22,800 members
11 and approximately 2,800 miles of distribution lines, of which
12 600 miles is underground and 2,200 is overhead. Approximately
13 8,500 of Okefenoke's members are located in the State of
14 Florida. Of those members, approximately 2,200, or about 10%
15 of our total membership, are currently receiving service in
16 Duval County. One of our members in Duval County is the
17 Consolidated Government of Jacksonville.
18

19 Over the years, Okefenoke has provided retail electric service
20 to persons and businesses in areas where no municipal or
21 investor-owned utility would serve, or when the terms and
22 conditions they offered were either unacceptable or
23 unaffordable. People and businesses therefore applied for
24 membership in order to provide themselves an essential service
25 that they could not otherwise obtain or could not obtain in an

1 affordable manner from anyone else. Since introducing
2 electric service to the areas it has historically served,
3 Okefenoke has served new growth and development in those areas
4 in which it first introduced service.

5
6 Okefenoke's service area density varies from moderately dense
7 in subdivision developments and commercial areas to sparsely
8 populated areas with very few members per mile of line.
9 Okefenoke has an average of 8.1 members per mile of line.
10 Providing essential electric power service to its members,
11 whether in a densely or sparsely populated area, is consistent
12 with the reasons Okefenoke was founded, which is to serve its
13 members with electric power.

14
15 Okefenoke is a member-owned electric utility, and is
16 considered an electric cooperative under Chapter 425, Florida
17 Statutes.

18
19 Q. Do you have any maps which show OREMC's overall service
20 territory and its territory in Florida?

21
22 A. Yes. A map showing Okefenoke's overall service area has been
23 identified as Exhibit __ (RP-1). A map showing the areas
24 where Okefenoke serves in Baker, Nassau and Duval Counties is
25 identified as Exhibit __ (RP-2). These maps show our

1 facilities in those areas with reasonable accuracy.

2

3 Q. Is the density of Okefenoke's system the same throughout the
4 areas in which it serves?

5

6 A. No. The areas around a city or town have more members per
7 mile of line than those in the outlying areas of a county.
8 That, of course, is to be expected. For example, our overall
9 density is 8.1 members per mile of line. In Duval County, our
10 density is 12.1 members per mile of line.

11

12 Q. What impact would the loss of areas with the greatest density
13 have on Okefenoke's system?

14

15 A. As the density per mile of line increases, the cost of service
16 to each member declines. The loss of areas with the greatest
17 density will accordingly increase the cost of service to
18 Okefenoke's members. Since our service territory in Duval
19 County is our most dense area, the loss of this area will hurt
20 us the most. The impact on OREMC and its members associated
21 with the loss of territory in Duval County is discussed
22 further in the prepared direct testimony of Mr. Glenn
23 Wrightson of Southern Engineering Company, Inc.

24

25 Q. What is the current composition of Okefenoke's membership?

1 A. Okefenoke's members are 95% residential consumers.
2 Approximately 5% of Okefenoke's members are
3 commercial/industrial consumers.

4
5 Q. Please describe OREMC's relationship with Seminole Electric
6 Cooperative, Inc.

7
8 A. Okefenoke has an "all power requirements" contract with
9 Seminole Electric Cooperative, Inc. ("Seminole"). Under the
10 terms of this contract, Okefenoke is obligated to purchase all
11 of the power it purchases in Florida from Seminole. Seminole
12 has the capacity and ability to fulfill our power needs in
13 Florida for the foreseeable future. Okefenoke has a similar
14 contract with Oglethorpe Power Corporation for its power
15 purchases in Georgia.

16
17 Okefenoke receives power from Seminole at four locations in
18 Florida. Three of these locations are used to serve our
19 members in Duval County. Two of these locations, the Yulee
20 metering point and the Callahan substation, are in Nassau
21 County. The Macclenny metering point is located in Baker
22 County and is not used to provide service in Duval County.
23 The other location, the Oak Grove metering point, is located
24 in Duval County and is the subject of a special contract
25 between JEA and Seminole. Under the terms of this special

1 contract, Seminole purchases power from JEA for resale to
2 Okefenoke at the Oak Grove metering point. Okefenoke, in
3 turn, uses this power, which was generated by JEA, to serve
4 its customers in northeast Duval County.
5

6 Mr. Middleton discusses the details of this contract and the
7 circumstances surrounding the execution of this contract in
8 his prepared direct testimony.
9

10 Q. Where does OREMC currently provide service in Duval County?
11

12 A. The five general areas in which OREMC serves in Duval County
13 can be summarized and described as set forth below:
14

15 1. Black Hammock Island: Okefenoke serves approximately 650
16 members in this area. This area is located in northeast
17 Duval County and contains the Black Hammock Subdivision,
18 the Boney Road area and the Cedar Point Road area. OREMC
19 is the only retail supplier of power in this area. This
20 area and our facilities in this area are shown on Exhibit
21 RD-6
— (RP-6).

22 2. Yellow Bluff/Starrett Road Area: Okefenoke serves
23 approximately 690 members in this area which is in north
24 central Duval County generally lying east of Highway 17.
25 This area and our facilities in this area can be seen on

1 Exhibit ^D__ (RR-5).

2 3. Airport Area: Okefenoke serves approximately 220 members
3 in the airport area which includes Airport Road, Pecan
4 Park Road, Owens Road, Bird Road and Bernard Road. From
5 June 3, 1968, to November 25, 1991, the Holiday Inn-
6 Jacksonville Airport was a member of OREMC in this area.
7 The airport area and our facilities in this area are shown
8 on Exhibit ^D__ (RR-4).

9 4. Lannie Road Area: Okefenoke serves approximately 220
10 members in the Lannie Road area. This area includes
11 Braddock Road, Eberhart Road and Lem Turner Road. This
12 area and our facilities in this area are shown on Exhibit
13 ^D__ (RR-3).

14 5. West Dinsmore Area: Okefenoke serves approximately 420
15 members in this area which can be described as northwest
16 Duval County. This area and our facilities in this area
17 are shown on Exhibit ^D__ (RR-2). Major concentration of
18 members in this area are found in Cisco Gardens
19 Subdivision, Carver Subdivision, Garden Street, Plummer
20 Road, Acree Road, Sycamore Street and Old Kings Road.

21
22 Most of our customers are served at locations north of the
23 "magic line boundary" set forth in the 1978 Operating
24 Guidelines agreed to by OREMC and JEA. These guidelines are
25 discussed in the testimony of Mr. Pete J. Gibson.

1 Q. Have you reviewed Exhibits __ (RD-1) through __ (RD-6) of Mr.
2 Robert Dew?

3
4 A. Yes. These exhibits reflect the service territory of OREMC
5 and OREMC's facilities in Duval County with reasonable
6 accuracy.

7
8 Q. Where in Duval County does OREMC provide service to the
9 Consolidated Government of Jacksonville?

10
11 A. Based on a review of our business records, OREMC provides
12 service to the Consolidated Government under several different
13 accounts. These accounts include street lights, a ball field,
14 a concession stand, and a fire department. OREMC provides
15 street light service to the Consolidated Government, pursuant
16 to a 1971 contract between OREMC and the Consolidated
17 Government.

18
19 Q. Does the Consolidated Government of Jacksonville impose a
20 utility tax on Okefenoke?

21
22 A. Yes. OREMC collects and pays a 10% utility tax from each of
23 its customers in Duval County. This amounted to approximately
24 \$156,000 for the year ended December 31, 1991.

25

Holiday Inn-Jacksonville Airport

1

2

3 Q. Please describe the status of OREMC's relationship with the
4 Holiday Inn-Jacksonville Airport.

5

6 A. After receiving service from Okefenoke for over 20 years, the
7 Holiday Inn-Jacksonville Airport ("Holiday Inn") partially
8 disconnected itself from our system on November 25, 1991. The
9 Holiday Inn partially disconnected from our system for the
10 purpose of taking retail electric service from JEA.

11

12 Q. Does the Holiday Inn continue to take service from OREMC?

13

14 A. Yes. As I alluded to above, the Holiday Inn has only
15 partially disconnected itself from our system. Specifically,
16 the "Holiday Inn" sign fronting on the interstate (I-95)
17 continues to be served by Okefenoke. The main buildings of
18 the Holiday Inn are now served by JEA. By letting us serve
19 Holiday Inn's sign and providing service to the Holiday Inn's
20 main buildings, the JEA now serves the vast majority of the
21 Holiday Inn's electric needs.

22

23 Q. When did OREMC first learn of the Holiday Inn's desire to
24 disconnect from its system?

25

1 A. On or about June 17, 1991, OREMC received a letter from Mr.
2 Frederick Koberlien, Holiday Inn's attorney. In that letter,
3 Mr. Koberlien told us that the Holiday Inn wanted to
4 disconnect from our system, and cited paragraph 5 of our
5 contract with the Holiday Inn.

6
7 Q. What does paragraph 5 say?

8
9 A. Paragraph 5 says, among other things, that the contract can be
10 terminated by either party giving to the other three months
11 notice in writing. We have never interpreted this paragraph
12 to allow a customer to change utility providers upon three
13 months written notice. Rather, we have interpreted this
14 paragraph to allow a customer to change rate schedules and/or
15 enter into a new contract with us upon three months written
16 notice. This interpretation of paragraph 5 is based on our
17 understanding that utility customers do not have an absolute
18 right to choose their utility suppliers in the State of
19 Florida.

20
21 Q. Did OREMC agree to disconnect the Holiday Inn from its system?

22
23 A. No. As discussed in Mr. Pete J. Gibson's prepared direct
24 testimony, we have had a contract to provide service to the
25 Holiday Inn since before the Consolidated Government came into

1 existence in 1968. Accordingly, we have always felt we have
2 the right and the obligation to serve the Holiday Inn. With
3 this in mind, we could not agree to disconnect the Holiday Inn
4 from our system, even at their request.
5

6 Q. In order to serve the Holiday Inn, was the JEA required to
7 expand its distribution facilities?
8

9 A. Yes. The type of equipment recently installed by the JEA so
10 they could serve the Holiday Inn is discussed in the prepared
11 direct testimony of Mr. Robert Dew of Southern Engineering
12 Company, Inc.
13

14 Q. Did the JEA consult with Okefenoke before expanding its
15 distribution facilities to serve the Holiday Inn or before JEA
16 began serving the Holiday Inn?
17

18 A. No. The JEA expanded its facilities to serve the Holiday Inn
19 without consulting OREMC.
20

21 Areas in Dispute
22

23 Q. Other than the Holiday Inn-Jacksonville Airport, what member
24 locations are currently in dispute in Duval County?
25

1 A. As a practical matter, every location in Duval County where
2 Okefenoke provides service to members is presently in dispute.
3

4 Q. Why do you believe that all locations where OREMC provides
5 service in Duval County are in dispute?
6

7 A. For two reasons. First, with the exception of the 1978
8 Operating Guidelines, the JEA has refused to enter into an
9 agreement with Okefenoke to establish a firm territorial
10 agreement within Duval County. Until this occurs or until the
11 FPSC resolves this matter, Okefenoke faces uncertainty. The
12 harm associated with this uncertainty is discussed by Mr.
13 Robert Dew in his prepared direct testimony.
14

15 Second, as described in Mr. Gibson's testimony, the
16 Consolidated Government and the JEA have taken the position
17 that Okefenoke can serve in Duval County only when JEA decides
18 it is "practical and economical" for JEA for OREMC to do so.
19 As we understand this policy, the JEA may at sometime in the
20 future decide it is "practical and economical" to serve some
21 of the areas where we are currently serving and force us out
22 of those areas. Since nothing has stopped them from doing so
23 thus far, it appears that the JEA will continue to install
24 equipment in the areas we have historically served so it will
25 be in a position to provide service to our members if those

1 members ever decide to change utility providers. A good
2 example of this activity is the Holiday Inn episode in which
3 the JEA installed additional distribution facilities to serve
4 the Holiday Inn after we had been serving the Holiday Inn for
5 over 20 years. The harm to the ratepayers of JEA and OREMC
6 from this type of activity is discussed in the prepared direct
7 testimonies of Mr. Robert Dew and Mr. Glenn Wrightson.
8

9 As discussed in the testimony of Mr. Robert Dew, it is in the
10 best interests of our members and JEA's customers to have this
11 dispute resolved once and for all by the FPSC.
12

13 Conclusion
14

15 Q. Please summarize your testimony.
16

17 A. Okefenoke is a rural electric cooperative providing retail
18 electric service to approximately 8,500 members in Florida and
19 approximately 2,200 in Duval County. Okefenoke has been
20 serving its members in Duval County since the late 1940s. All
21 of the locations served by OREMC in Duval County are either in
22 dispute presently or are areas of potential dispute in the
23 future. It is in the best interests of our members in Florida
24 and JEA's customers to have the disputed areas in Duval County
25 resolved once and for all by the FPSC.

1 Q. Does this conclude your testimony?

2

3 A. Yes it does.

4

5

6

7 jjw\p1d\page.tst

8

1 BY MR. THOMPSON:

2 Q. Mr. Page, attached to your prefiled direct
3 testimony were there exhibits identified as RP-1 and RP-2?

4 A. Yes, sir.

5 Q. Could we have those exhibits marked?

6 COMMISSIONER DEASON: Those will be marked as
7 Composite Exhibit No. 1. Both RP-1 and RP-2.

8 (Composite Exhibit No. 1 marked for
9 identification.)

10 BY MR. THOMPSON:

11 Q. Were those exhibits prepared by you or under your
12 direction and supervision?

13 A. Yes, sir.

14 Q. Do you have any corrections or changes to those
15 exhibits?

16 A. No, sir.

17 Q. Mr. Page, would you give us a general summary of
18 your testimony at this time?

19 A. Okefenoke is a rural electric cooperative which
20 provides retail electric service in Georgia and Florida. We
21 serve approximately 2300 member consumers in northern rural
22 Duval County. We've served in this portion of Duval County
23 since the late 1940's.

24 These -- this area, the disputes we've had with
25 the Jacksonville Electric Authority, has reached this point

1 because of the loss of our largest customer that we serve
2 anywhere on our system, which was the Holiday Inn. We feel
3 that this dispute should be settled for the good of all the
4 consuming public in Duval County, our members and JEA's
5 customers.

6 Q. Mr. Page is available for cross examination.

7 COMMISSIONER DEASON: Mr. Hoffman? Mr. Page?

8 CROSS EXAMINATION

9 BY MR. PAGE:

10 Q. Mr. Page, we have met before. I am Bruce Page,
11 representing Jacksonville Electric Authority. On Page 5 of
12 the prehearing order, the Okefenoke Rural Electric
13 Membership Corporation, statement of their position says
14 that the JEA has never made a reasonable offer to purchase
15 Oke's Duval County facilities, is that true?

16 A. Yes, sir.

17 Q. What would you consider a reasonable offer, sir?

18 A. That would be up to the board of directors, rather
19 than me, but I've never put a monetary figure on it.

20 Q. So is it your position that JEA has never made an
21 offer or a reasonable offer?

22 A. I don't think they've ever made a full bona fide
23 offer or reasonable offer.

24 Q. Have you ever made a counteroffer?

25 A. No, sir.

1 Q. Have you ever put a price tag on your facilities
2 and customers in Duval County?

3 A. No, sir.

4 Q. You talk in your testimony and in your statement
5 about your right and obligation to serve customers. I'm
6 going to show you an exhibit and ask, first of all, that
7 this be marked. This is Exhibit No. 3, late-filed to the
8 deposition of May 18th, 1992.

9 COMMISSIONER DEASON: Mr. Page, do you care to
10 have this identified as an exhibit?

11 MR. PAGE: Yes, sir.

12 COMMISSIONER DEASON: This would be identified as
13 Exhibit No. 2.

14 MR. PAGE: No. 2?

15 (Exhibit No. 2 marked for identification.)

16 BY MR. PAGE:

17 Q. Can you explain, Mr. Page -- well, first of all,
18 have you seen this before?

19 A. Yes, sir.

20 Q. Would you explain to the Commissioners what this
21 is?

22 A. During depositions taken by the PSC Staff, they
23 requested, as I recall, a sample, representative example of
24 the release letters that JEA had sent to Okefenoke over the
25 years and also copies of all the letters that we had

1 received since we filed this petition in November releasing
2 customers for us to serve. And I think that's what this is.

3 Q. Would you explain to the Commission how the
4 process works, what these letters mean?

5 A. When we received these letters from JEA
6 authorizing us to serve a customer in Duval County, then our
7 engineering people proceeded to construct the facilities to
8 serve them.

9 Q. Do you have any right or obligation to serve
10 anyone without a letter from JEA?

11 A. We feel like we do, but we have complied with this
12 procedure under protest for years. But we feel like we have
13 a right and obligation to serve there, both legal and
14 otherwise.

15 Q. But you have never served a customer without first
16 the authority being granted by JEA in Duval County?

17 A. I don't think so. We could have inadvertently,
18 but since this procedure was set up, following 1968, we
19 generally have gone by this procedure.

20 Q. And you have never challenged this procedure
21 before, have you, either before the Public Service
22 Commission or in any court?

23 A. I don't think so. We've challenged it with JEA,
24 saying to them and to the City that, you know, this is not
25 proper. To my knowledge we've never gone to court or to the

1 PSC.

2 Q. Have you ever put those challenges in writing?

3 A. I have not personally. I think prior management
4 has protested this with the Jacksonville Electric Authority.

5 Q. So then what is your basis for saying that you
6 have a right, other than through granting of the granting of
7 the right by JEA to serve a customer in Duval County?

8 A. Because you have people that want service and you
9 have the possibilities of two electric utilities serving
10 them, and one utility makes that decision, a unilateral
11 decision, and we don't know what it's based on, whether it's
12 based on sound economics, or what it's based on. That's why
13 we would object to that.

14 Q. So one of your purposes here today is to take from
15 JEA the right to grant you the authority to serve as we have
16 done in the past? Is that your purpose?

17 A. Not in the entire county, just in northern Duval
18 County.

19 Q. Okay. So JEA's rights in northern Duval County
20 are different from the JEA's rights in the other parts of
21 the County?

22 A. Yes, sir, yes, because it's right in Florida --
23 you have a franchise, I think, with Florida Power & Light,
24 and your rights there are different under that franchise
25 with them.

1 Q. But insofar as what you call the area of dispute
2 in this case, the JEA's rights to grant you the authority,
3 you want to take that away from the JEA as part of this
4 proceeding, is that true?

5 A. Yes, sir.

6 Q. You mention the contract that you had for electric
7 service with the Holiday Inn. In your deposition you say
8 that you interpret paragraph 5 of that contract, which says
9 that the contract shall remain in effect for a period of
10 five years and thereafter until terminated by either party
11 giving to the other party three months notice in writing.
12 You said in your deposition that you interpret that not that
13 Holiday Inn has the right to terminate their contract for
14 service with you, but that you take that to mean that it's
15 renegotiable after three months notice. Is that your
16 position?

17 A. Whatever the timeframe is, whether it's three
18 months or five years, the contract -- these contracts, when
19 we do make contracts to serve people, says that you become a
20 member of the Co-op and you will agree to abide by the
21 bylaws and the rules and regulations. And in our rules and
22 regulations there's certain ways and reasons why you no
23 longer become a member, and one is not to take central
24 station electricity from any other utility just to switch.
25 So we've always said that if you're serving a customer in

1 large power and they want a release or residential -- if
2 they want to be released or be served by someone else, it's
3 not in the public interest. That's the nature of the
4 business.

5 Q. But your contract did in fact say that they had
6 the right to terminate the contract if they gave you three
7 months written notice? Those were the words of the
8 contract?

9 A. Yes.

10 Q. And did in fact Holiday Inn give you three months
11 written notice in this case?

12 A. Yes.

13 Q. They told you that they were going to disconnect
14 or ask you to disconnect on a date certain?

15 A. Yes, and we refused.

16 Q. And then they on their own initiative disconnected
17 from you, is that true?

18 A. I don't know who disconnected, might be they
19 should tell us who disconnected.

20 Q. You did not disconnect?

21 A. We did not disconnect them.

22 Q. When were you first aware of what you call
23 Jacksonville Electric's Authority policy of serving only
24 those customers which are practical and economical? When
25 were you first aware of that policy?

1 A. What do you mean their policy?

2 Q. Your prehearing statement of position and your
3 testimony of you and others in this case talks about JEA's
4 selective service to only those customers which they believe
5 are practical and economical. Do you remember that?

6 A. No, sir.

7 Q. Do you have any service personnel or facilities in
8 Jacksonville?

9 A. That live in Jacksonville?

10 Q. Offices or repair facilities, shops, anything of
11 that sort in Duval County?

12 A. No, sir.

13 Q. I'm sorry?

14 A. No, sir.

15 Q. Do you know the value of the property that you
16 have in Duval County?

17 A. What method of evaluation are you asking on?

18 Q. Any eval -- if your facilities and equipment and
19 everything in Jacksonville were for sale, do you have a
20 value on that property?

21 A. No, sir.

22 Q. Do you every year tell the Jacksonville property
23 appraiser what the value of that property is?

24 A. Oh, I'm sure we do.

25 Q. Do you know what that figure is?

1 A. No, sir.

2 Q. May I have a moment with co-counsel?

3 COMMISSIONER DEASON: Sure.

4 COMMISSIONER CLARK: I have a question. Is it
5 Okefenokee or Ofenoke? I can't tell. I looked at the
6 prehearing order and in one case it's spelled with just
7 an E and in another case it's spelled with two Es.

8 WITNESS PAGE: When you first asked the question I
9 thought you were talking about pronunciation. In this
10 case you pronounce it anyway you'd like and I won't
11 object. I think when we were originally chartered, the
12 correct spelling of the swamp and the area has two Es
13 on the end, but we were chartered without one E and
14 we've lived with that stigmatism ever since of having
15 to correct everybody with just one E on the end of it
16 in our charter and bylaws and so forth. So we spell
17 with without two Es.

18 MR. PAGE: One further question. Commissioners, I
19 would like to ask Mr. Page for a late-filed exhibit, if
20 he has any, or to produce any letters by himself or his
21 predecessors regarding a protest of this policy of
22 which we speak, if there are any such letters. He said
23 that he did not have any, that he had not written any.
24 I would just like to ask him to produce as a late-filed
25 exhibit any, if they exist at all.

1 COMMISSIONER CLARK: Protesting -- describe the
2 policy.

3 MR. PAGE: The policy which we've been talking
4 about wherein JEA authorized Okefenoke Rural Electric
5 to serve a particular customer.

6 COMMISSIONER CLARK: You mean the need for JEA
7 authorizing?

8 MR. PAGE: Anything that protests the procedure,
9 the policy, the way these two utilities have been doing
10 business in the last several years. He qualified his
11 answer in saying that he had never specifically
12 protested or written anything. I would like to expand
13 that to find out if anybody in the Co-op did or any of
14 his predecessors did.

15 COMMISSIONER DEASON: Do you have a time certain
16 on that? You want one year, ten years, 20 years?

17 MR. PAGE: Since 1968, any and all.

18 (Late-filed Exhibit No. 3 identified.)

19 COMMISSIONER DEASON: Mr. Thompson, are you in
20 agreement or protest that request?

21 MR. THOMPSON: No, no, Commissioner, we'll do our
22 best.

23 COMMISSIONER DEASON: This will be identified as
24 Late-filed Exhibit No. 3. And a short title for this
25 would be Protest Letter Since 1968, if any.

1 MR. PAGE: And I have nothing further at this
2 time.

3 CROSS EXAMINATION

4 BY MS. BROWN:

5 Q. Good morning, Mr. Page.

6 A. Good morning.

7 Q. Would you take a minute more to inform the
8 Commission about the process by which JEA gives Okefenoke
9 permission to serve customers? Start from the beginning and
10 walk us through the way that works?

11 A. You mean the beginning of a particular request or
12 date, or historically years ago when --

13 Q. How the process works. When a customer in Duval
14 County needs electric service, what does he do and what
15 happens after that? Who do -- all right, I'll help you walk
16 through it and --

17 A. I think I know what you're saying.

18 Q. Okay.

19 A. If we have a customer that contacts us by letter
20 or in person or by phone, we you usually ask them, to begin
21 with, which county you're in. If you're in Duval County,
22 then have they contacted the JEA? Do you have a letter from
23 them? And most of the time they say no. We advise them
24 that they have to contact the City of Jacksonville, that we
25 cannot, you know, take any action to serve them until we

1 have this release letter from the City.

2 And then the people will go, sometimes they ask us
3 other questions about well, if I do get this, some time
4 frames, but it's just generally operational information.
5 Then they go back to the City. I don't know who all they go
6 to, what various permits they have to have, assume it's some
7 other than just from JEA, but I think I've been told that
8 this is probably the final step. If they've gone through
9 any tax permits or sewer permits or so forth, the JEA has
10 the final release on them. But at some point, if it's not
11 final, at some point they say, yes, we're going to allow
12 Okefenoke to serve you.

13 Q. Do you have any information on how they make that
14 decision?

15 A. No, ma'am.

16 Q. All right, well, then, proceed. After the
17 decision is made that you will serve, what happens then?

18 A. If the people contact us -- call us back or come
19 back in and say, JEA is going to release me, then a lot of
20 times we go ahead and start doing some field work to save
21 them time. And sometimes JEA calls us and says we're going
22 to release this person at this address for you to serve and
23 the permit letter will come in the mail. That expedites
24 that. We both do that to expedite it on behalf of the
25 customer. And I don't think we ever actually set a meter

1 and turn on power until we receive this -- something in
2 writing from them.

3 Q. Would you look at --

4 COMMISSIONER DEASON: Ms. Brown, let me ask a
5 question.

6 MS. BROWN: Yes.

7 COMMISSIONER DEASON: Have you ever gotten any
8 customer complaints from people who say, "All I want is
9 electricity. I don't want to have to go talk to the
10 City and get this or that straightened out, why can't
11 you just put in a meter give me service?" Do you ever
12 have complaints or is this kind of an understood
13 procedure that has to be followed in Duval County?

14 WITNESS PAGE: No, I think almost every one of
15 them are surprised by it. I don't know that you'd say
16 everyone that asks us complain about it, but they
17 certainly have a lot of questions. "Why is that
18 necessary?" And we have to spend some time informing
19 them that, well, this is the procedure that we've been
20 under with JEA, and JEA says that legally we cannot.
21 We have to try to explain to that customer.

22 COMMISSIONER DEASON: How much additional time
23 does this place on the process for -- from once a
24 customer requests service until he actually gets
25 service from you?

1 WITNESS PAGE: That explanation would only take,
2 you know, a few minutes on the telephone.

3 COMMISSIONER DEASON: I'm talking about --

4 WITNESS PAGE: But for them to go back and to,
5 gosh, it would be hard for me to exactly quantify it,
6 but I think at least a few days.

7 COMMISSIONER DEASON: Thank you.

8 BY MS. BROWN:

9 Q. Mr. Page, look to what has been identified as
10 Exhibit 2 in this case, which is a sample of the release
11 letters. Yes, right. If you'll just turn to the first one
12 and read the substantive paragraph to us there after the
13 name of the customer requesting service starts, "In keeping
14 with..."

15 A. "In keeping with our understanding and agreement
16 not to inconvenience any customer requesting service,
17 residing in the City of Jacksonville, we have no objection
18 at this time to you serving this customer."

19 Q. Mr. Page, what is your understanding of the --
20 what is your opinion of the -- what the understanding and
21 agreement mentioned here was?

22 A. I understand it as being their way of saying we're
23 not going to allow Okefenoke to serve. We didn't execute
24 any agreement or understanding with them. I think, and some
25 of Mr. Middleton or Mr. Gibson that was involved in this in

1 '68, and thereafter, may be able to explain how this
2 procedure was set up, but I think I understand that at one
3 point JEA said to us, you send the customers to us,
4 originally -- I may be misinformed on this -- but that you
5 send the customer to us. And we say, wait a minute. We
6 shouldn't -- you know, if you're not going it let us decide
7 who we can serve and who we can't, then you should be the
8 one to tell them, we'll only serve the ones you send. They
9 wanted us to tell the customers that there was an agreement
10 and why and we asked them to tell the customer.

11 Q. Well, let's look to the second letter in that
12 exhibit, and the second sentence in that letter reads: "In
13 accordance with our agreement, we have no objection to your
14 serving these customers at this time." Do you know what
15 that agreement is that is referred to there?

16 A. No.

17 Q. Do you think it might be the Operating Guidelines
18 of 1978?

19 A. I think this similar -- it could be. I think this
20 similar type sentence was in the letters prior to '78 also.
21 Now they've changed the letters from time to time.

22 Q. All right, well we'll ask Mr. Gibson or
23 Mr. Middleton about it.

24 In what Florida counties does Okefenoke presently
25 serve?

1 A. Baker, Nassau and Duval.

2 Q. Do other electric utilities operate in those
3 counties?

4 A. Yes.

5 Q. What are they?

6 A. Florida Power & Light, and then also in the county
7 of Nassau you have a utility that serves Fernandina Beach
8 and Amelia Island. I'm not sure of the name of that
9 utility. We don't go across the river to Fernandina though.

10 Q. Does Okefenoke have any territorial agreements
11 with any utilities operating in those counties?

12 A. No, ma'am.

13 Q. Has Okefenoke, to your knowledge, ever initiated
14 discussions with any of those utilities toward reaching a
15 territorial agreement?

16 A. Yes, we've discussed it with Florida Power &
17 Light, and let me rephrase my answer. When you asked the
18 question, I immediately interpreted it to mean you were
19 asking did we have a written agreement between us and the
20 other utility that has been approved by these folks at the
21 Public Service Commission. No, we do not. For years we've
22 had a working agreement, oral working agreement, with
23 Florida Power & Light in Baker and Nassau Counties that
24 we've gone by. So from time to time we've each one
25 discussed that agreement.

1 Q. All right, is Okefenoke presently involved in any
2 territorial disputes with any of those utilities, other than
3 this one?

4 A. In Baker County and also in Nassau, Florida Power
5 & Light has filed a petition in each one of those with the
6 Public Service Commission, over a particular customer in
7 each one of those counties.

8 Q. Has Okefenoke made any effort to resolve those
9 disputes by agreement?

10 A. Are you talking about the two that -- the two
11 petitions that Florida Power & Light filed, I believe, on
12 May the 12th in each county over those customers?

13 Q. Yes.

14 A. Have we made any effort to resolve those two?

15 Q. Yes.

16 A. Yes, we called Florida Power & Light immediately.
17 We were surprised that they never contacted us without
18 filing this, when they -- filing the petition with the
19 Public Service Commission. We contacted Florida Power &
20 Light on a local level. They referred us to Lake City. The
21 guy from Lake City calls and sets an appointment to meet
22 with me to discuss it the day before the meeting, because I
23 wanted to -- and he said, "What do you want to talk about?"
24 And I said, "If we have a disagreement we need to resolve it
25 anyway possible and not bother the folks at the Public

1 Service Commission." And the day before the meeting he
2 called back and canceled and said they couldn't talk with us
3 about it. And that's the status of those two.

4 Q. What in your opinion is the area in dispute in
5 this case?

6 A. With JEA?

7 Q. Yes.

8 A. Northern Duval County.

9 Q. How many customers does Okefenoke currently serve
10 in northern Duval County?

11 A. Approximately 2300.

12 Q. You refer to, and other Okefenoke witnesses in
13 direct testimony -- your direct testimony and their direct
14 testimony -- discuss an operating agreement developed in
15 1978 between Okefenoke and JEA, is that correct?

16 A. Yes, ma'am.

17 Q. Can you generally describe that operating
18 agreement for the Commission?

19 A. It will be very general. I'm glad you gave me
20 that adjective in there, or adverb. We had a lot of
21 territorial problems in the mid seventies, and this -- a lot
22 of it stemmed from the fact that we were having a tremendous
23 number of JEA customers who wanted to be served by
24 Okefenoke. JEA's rates were much higher, and I don't know
25 what all the other reasons were.

1 We met with them on several occasions to try to
2 reach an agreement, and we ultimately did, with the line --
3 an operating line being drawn through the northern part the
4 county, and I didn't help draw the line and wasn't directly
5 involved in all of these discussions.

6 And then a several-page operating agreement was
7 formulated. I believe JEA helped draft that and sent drafts
8 to Mr. Gibson to approve, and we thought we were going to be
9 under it until the -- I believe the general counsel for the
10 City of Jacksonville advised them not to execute that
11 agreement with us.

12 Q. And that's the 1978 Operating Guidelines
13 Agreement?

14 A. Yes, ma'am.

15 Q. Is it your testimony that that agreement was
16 developed in 1978 to prevent uneconomic duplication of
17 facilities between the utilities?

18 A. Yes.

19 Q. Is it your testimony that JEA has used these
20 guidelines to prevent Okefenoke from serving new customers
21 in Duval County without its permission?

22 A. Partially.

23 Q. Is that your answer?

24 A. Yes, ma'am.

25 Q. Since you became manager of Okefenoke, have you

1 operated the utility in accordance with these guidelines?

2 A. Has Okefenoke abided by them?

3 Q. Yes.

4 A. Yes, ma'am.

5 Q. Since 1978, has JEA continued to duplicate
6 existing facilities of Okefenoke even though the operating
7 agreement went into effect at that time?

8 A. Yes, ma'am. One of the prime examples would be
9 this Holiday Inn duplication.

10 Q. Is it your opinion that the operating agreement
11 will not prevent JEA from duplicating Okefenoke's facilities
12 in the future?

13 A. If both parties to it abided by it, it would not
14 totally eliminate it, but it would seriously decrease it.
15 It would go a long way towards solving the duplication.

16 Q. Mr. Page, you see a lot of maps over there. I
17 think I'm going to -- (Pause). The wrinkled one, I'd like
18 you to look at, at the moment. This was a map submitted in
19 response -- by Mr. Dew in response to interrogatories
20 proposed by Staff. Are you familiar with this map?

21 A. Yes, ma'am.

22 Q. Can you identify what's on it for the Commission?

23 A. Can you hear me without the microphone, any feed
24 back? The green boundary on the top is the basic county
25 line between Nassau and Duval County. And we think it

1 encompasses the area in dispute, the green. This pink line
2 that travels through the area was the operating guidelines
3 that was drawn basically east to west in '78. The other
4 different-colored lines you see are -- the lines are color
5 coded as to when they were constructed. I don't believe
6 JEA's lines are on this map. I believe these are
7 Okefenoke's lines.

8 Q. The blue lines on that map, Mr. Page, what do they
9 represent?

10 A. They're the lines which we have -- we don't know
11 when they were constructed. We don't have a date specific
12 on the construction time of them.

13 Q. Okay. Now, is it your understanding that the 1978
14 operating agreement established north of that magic line,
15 that pink magic line that you just pointed out, the area
16 where Okefenoke would serve customers in Duval County?

17 A. Yes. We would attempt to serve those north of the
18 line and continue to serve the ones we were serving, and
19 hopefully, through attrition, JEA would release those north
20 of the line, and we would serve -- they were serving -- the
21 ones we were serving south of the line we would attempt to
22 release through attrition and they would eventually serve
23 most of it south of the line.

24 Q. Has that happened? Has JEA released customers
25 north of that line?

1 A. No, ma'am.

2 Q. Has Okefenoke released customers south of that
3 line?

4 A. No, ma'am.

5 Q. Where is the Holiday Inn located in relation to
6 that line?

7 A. South of the line.

8 Q. When you look at that map -- we were talking just
9 a minute ago about the uneconomic duplication that's taking
10 place in Duval County. Can you identify for the Commission
11 where that uneconomic duplication is specifically?

12 A. This occurred during the entire period of time,
13 not just that's occurred in any -- the last few years or
14 anything like that.

15 Q. But where in northern Duval County in your opinion
16 is the uneconomic duplication taking place? If you want
17 to --

18 A. I believe if you would take the top map off of
19 there -- was it going to mess you up if we refer to a
20 different exhibit?

21 COMMISSIONER DEASON: Let me interrupt at this
22 point. I think we need to clarify for the record what
23 maps we're talking about, and the map that's been under
24 discussion for the last few minutes needs to be
25 identified.

1 MS. BROWN: Could we have that map identified?

2 COMMISSIONER DEASON: That will be identified as
3 Exhibit No. 4. And what is the identification of that
4 map?

5 MS. BROWN: What is the name on that? We can --
6 actually it was response to Staff's interrogatory, map
7 of -- submitted by Okefenoke in response to Staff's
8 interrogatory.

9 COMMISSIONER DEASON: What interrogatory?

10 WITNESS PAGE: First request.

11 MS. BROWN: It's a request for production of
12 documents.

13 WITNESS PAGE: 1-A, 1-F, 1-B, 1-C and 1-D. Is
14 that the numbers that you're looking for?

15 MS. BROWN: Thank you.

16 (Exhibit No. 4 marked for identification.)

17 BY MS. BROWN:

18 Q. Mr. Page, are you ready to identify the specific
19 areas --

20 A. You want me to try to stay on this map rather than
21 introduce another one? This is identified as RD-1, and I
22 think it's already been introduced, hasn't it?

23 Q. Why don't you use that map?

24 A. We'll just use the existing one then. I can
25 pretty well verbally tell you by -- the reason I was going

1 to use that is we had it divided into five different areas.
2 The one that's on the extreme east side, what refer to
3 mostly as Black Hammock Island, there's very little
4 duplication in that area. The other four areas there is
5 some duplication, and all the other four areas that I
6 mentioned in my direct testimony. Do you want me to read
7 the names?

8 COMMISSIONER DEASON: Mr. Page, let me interrupt
9 for just a second. I see that counsel is conferring
10 with each other. I don't know, perhaps they have a
11 better way of trying to handle these maps, and if they
12 do, I'd like to find out from them if they have any
13 suggestions. I want to make sure the record is clear,
14 and that's my only concern.

15 MR. THOMPSON: I want to make a suggestion, and
16 it's simply that, but RD-1 has a hard back on it and he
17 was trying to go over to it. The reason he was trying
18 to go over to it -- it is not marked yet, it will come
19 in with Mr. Bob Dew's testimony -- but it has both
20 facilities on it. I was just discussing this with
21 counsel. The one you're referring to does not have
22 their facilities on it; it only has ours because it was
23 provided in response to your request for just ours. So
24 if you want to familiarize yourself with it -- and what
25 we've done is blown up the areas that are itemized in

1 Mr. Page's testimony here and shown the relationship of
2 the two systems. So if you want to use that one, or
3 ask him to direct his attention to that one, he is more
4 familiar with it, because he studied it.

5 MS. BROWN: That's fine with me, if that's fine
6 with the commissioners.

7 MR. THOMPSON: Can we go ahead and identify it
8 then, Commissioners?

9 COMMISSIONER DEASON: This is part of the exhibits
10 which were prefiled with whose testimony?

11 MR. THOMPSON: Mr. Dew. That's Exhibit RD-1
12 attached to Mr. Robert Dew's prefiled testimony.

13 COMMISSIONER DEASON: All right what we'll do at
14 this point is -- we may be getting things out of order,
15 but so the record is clear, we'll go ahead and identify
16 Mr. Dew -- all of Mr. Dew's prefiled exhibits as
17 Composite Exhibit No. 5.

18 MR. THOMPSON: That would be just fine because I
19 think the other maps with his testimony are the small
20 take-offs on that big one, and what he did was just
21 kind of make a composite exhibit there, so it would all
22 be before you at one time.

23 (Composite Exhibit No. 5 marked for
24 identification.)

25 BY MS. BROWN:

1 Q. Mr. Page, are you ready to identify the areas,
2 specific areas, where uneconomic duplication has taken
3 place?

4 A. There is very little in the section we refer to as
5 Black Hammock Island detail maps, five details on this large
6 map. There's not a lot of duplication in that area. There
7 is some in the Yellow Bluff Road detail, Airport detail,
8 Lannie Road and the Dinsmore detail, which is on the west
9 side of the county.

10 Q. Thank you. Mr. Page, since 1968 has JEA
11 consistently asserted an exclusive right to serve all
12 customers in Duval County?

13 A. Yes.

14 Q. To your knowledge, have they ever sent a written
15 document repudiating the operating guidelines of 1978?

16 A. I believe they sent a letter saying that we're
17 unable to sign this and execute it. I believe there may be
18 some letters that said, we will generally still try to abide
19 by it.

20 Q. Do you believe that Okefenoke has the right to
21 serve in Duval County?

22 A. Yes, ma'am.

23 Q. Why do you believe that?

24 A. The public interest is very seldom served, to my
25 knowledge, by changing an existing utility that's in place.

1 It will cost a lot for JEA to serve that area or to buy us
2 out. Those folks were not receiving electric service at
3 all. And it's one thing for some of them, such as a Holiday
4 Inn to say to us now, we'd like to switch or we want to be
5 on JEA because they're a little bit cheaper, but even in the
6 forties and fifties and sixties and seventies, it is another
7 way of life to live in northern Duval County in the dark and
8 say, I want electricity, and nobody hears your call. And we
9 heard their call and we answered their call and they paid
10 more of an economic price, of a burden, because of the
11 expense of having to serve those people and build miles of
12 line with low density. And we feel like that continues to
13 give us the right to stay there.

14 Q. Do you know of any specific instance where JEA has
15 affirmed that you have a right to serve in Duval County?

16 A. Permanently, they've affirmed it? You can stay
17 and serve this customer permanently?

18 Q. Yes.

19 A. No, ma'am.

20 Q. How many new customer services has JEA permitted
21 Okefenoke to serve since this petition was filed?

22 A. I think approximately 40. This was on the exhibit
23 that Mr. Page here gave to me, and they're written on the
24 bottom of each one of those pages. I think there's
25 approximately 40 since November. There's been 63 since --

1 within the last year. We went back and counted that number
2 specifically. Since May of '91, we've served 63 additional
3 accounts in Duval County.

4 Q. Has JEA ever prevented Okefenoke from making
5 improvements to its distribution system in Duval County?

6 A. I don't know that physically or legally they've
7 ever gone out and said, you know, don't climb that pole,
8 don't set a pole there, but by simply operating the way they
9 have, that prevents you from -- and I think their
10 engineering staff will admit also that it's hard for them to
11 design a system and give you these figures that Mr. Hoffman
12 talked about if you don't know where you're going to be
13 serving. By the virtue of operating the way they have, they
14 have prevented us from building the lines.

15 Q. Have they ever -- I gather you would say then that
16 JEA has never assisted or encouraged Okefenoke in making
17 improvements in their distribution system in Duval County?

18 A. No, ma'am.

19 Q. Mr. Page, when Okefenoke's lines and transformers
20 and cables were removed from the Holiday Inn, what happened
21 to them?

22 A. We had to look for them.

23 Q. Did you find them?

24 A. Yes, ma'am, we found them in the back parking lot
25 of the Holiday Inn. We loaded them on a truck and carried

1 them back to our warehouse.

2 Q. Has JEA ever offered to compensate you for the
3 loss of those transformers from the system?

4 A. No, ma'am.

5 COMMISSIONER CLARK: Did you say who removed
6 them?

7 WITNESS PAGE: We don't know.

8 COMMISSIONER CLARK: Okay.

9 BY MS. BROWN:

10 Q. Is it your testimony that Okefenoke has between
11 \$7,500,000 and \$8 million of replacement cost distribution
12 facilities in Duval County?

13 A. Is that the figure -- you asked for some figures
14 from my late-filed testimony. Is that one of those?

15 Q. Yes. Would you agree, subject to check, that
16 that's the amount?

17 A. Yes, subject to me verifying it.

18 Q. In a very general way, Mr. Page, do you have an
19 idea of how much -- how many of these facilities are
20 duplicated by JEA? I'm trying to get a focus on the
21 magnitude of the duplication problem in this area, just a
22 percentage, a ball park amount?

23 A. That would call for too much of an estimate on my
24 part. I may be able to get it for you, but percentage wise,
25 whether five, ten, 20, 30, 50 percent, I'm just not sure,

1 how much of our lines has actually been duplicated. Sorry.

2 Q. Well, perhaps another witness can give us that
3 idea.

4 What would be the impact on Okefenoke's remaining
5 members if Okefenoke were to lose a year's worth of revenue
6 associated with its facilities in Duval County?

7 A. Negative.

8 Q. There would be no impact on Okefenoke?

9 A. I say a negative impact. You said what would be
10 the impact; I said it would be negative. Wouldn't be a
11 positive impact to them. It would affect them financially
12 and it would affect our entire system.

13 Q. Okay. Would you agree that in order to eliminate
14 uneconomic duplication of facilities and provide the most
15 economic service to customers, two utilities can use common
16 facilities to serve their customers?

17 A. Yes, there's occasions where joint use, you know,
18 is acceptable.

19 Q. Do you believe that the Commission should require
20 the parties in this case to develop a joint plan as to how
21 best to serve the customers in northern Duval County?

22 A. Yes, ma'am.

23 Q. Would Okefenoke be amenable to an agreement that
24 would provide for Okefenoke's gradual withdrawal from Duval
25 County?

1 A. No, ma'am.

2 Q. Does Okefenoke itself have a plan by which it
3 hopes to accomplish the resolution of this dispute?

4 A. We feel like if each utility has a specific
5 territory to serve in, then you solve the problems of
6 designing that system short term and long term as far as
7 your backbone system, from an engineering standpoint, from a
8 safety standpoint. You have some safety violations that
9 occur when you have duplication. We feel like if that is
10 done, you have a clear cut territory, then the public is
11 better served, cuts down on the duplication, and
12 economically you can serve them cheaper. That would be our
13 plan.

14 Q. One more question, Mr. Page. Is it your testimony
15 that Okefenoke's total revenues for 1991 are \$3,031,328, or
16 thereabouts?

17 A. I believe that was in the late-filed testimony
18 also, and I believe we qualified that with the fact that it
19 was only ten months revenue. I believe on our current data
20 files, without going to backup computer files, we could only
21 give you March through December of '91's revenues. Are we
22 talking about the right question?

23 Q. Yes. Is it possible for you to provide that for a
24 year?

25 A. I think it would be -- the weather was not that

1 abnormal in February and January of '91. Simply by a
2 mathematical calculation you could get one a few thousand
3 dollars of it.

4 Q. That would be fine.

5 A. If you take ten percent of it, and realize these
6 were total revenues figures that you asked for.

7 Q. Yes, yes, can you provide that for us?

8 A. Yes, we just do that calculation and add that to
9 the 3 million annual revenue.

10 Q. Would another Okefenoke witness be able to testify
11 to that? Then I won't ask for a late-filed.

12 All right, thank you, Mr. Page, I have no further
13 questions.

14 A. Thank you.

15 COMMISSIONER DEASON: Commissioner Clark, you do
16 have any questions?

17 COMMISSIONER CLARK: I have no questions.

18 COMMISSIONER DEASON: Mr. Page, I have a
19 question. If the Commission were inclined to basically
20 draw a line to separate the territories between JEA and
21 Okefenoke, if the Commission were to do that, obviously
22 there would be situations where there would be
23 facilities of one utility in the territory of another
24 because there's existing overlap today, is that
25 correct?

1 WITNESS PAGE: Yes, sir.

2 COMMISSIONER DEASON: How would you propose that
3 those overlap facilities be handled after that line is
4 drawn?

5 WITNESS PAGE: With a minimum inconvenience to the
6 customers, minimum impact on those customers. And it
7 may be that you never completely take those out, it may
8 be that you never get them all out of both sides of the
9 line, but you could work towards that. If both sides
10 know what's going on and are working together, it makes
11 a lot of difference.

12 COMMISSIONER DEASON: Would you propose that
13 existing customers just be grandfathered in and be
14 served by whomever they are presently being served by
15 regardless of which side of the line they may happen to
16 reside?

17 WITNESS PAGE: Let me be sure I understand you on
18 that.

19 COMMISSIONER DEASON: Let me say it a different
20 way. If the Commission were to draw a line and there
21 were a customer, say, in your territory, that was
22 presently being served by JEA, would you propose that
23 he just continue to be served by JEA, or would you
24 propose that that customer be transferred at some
25 time?

1 WITNESS PAGE: I think you could do it either
2 way. We would have no great objection to doing it
3 whatever you preferred, whatever is in the best
4 interest of those customers. One way to do it would be
5 by attrition; as long as that customer is there active
6 and, in your example you're using, north of the line
7 that JEA would be serving, that customer, let them stay
8 and then if that account becomes vacant or moves off or
9 whatever, then we take it over, rather than JEA, but
10 otherwise you can leave them there during that period
11 of time. But one of the things you want to avoid is
12 all new customers coming into that area then would be
13 served by the party that's assigned that territory.

14 COMMISSIONER DEASON: And you think that would
15 prevent uneconomic duplication and improve planning and
16 safety?

17 WITNESS PAGE: It would decrease it to a great
18 extent. You could also trade some of those facilities
19 or customers out on each side of the line. I think --
20 I don't know how many JEA serves on the north side of
21 the line, but we're serving approximately 700, I think,
22 as of today, or maybe -- yeah, about 700 that's south
23 of the line. And some of those facilities could be
24 purchased by the other utility and changed title to
25 them and operation, and some of those members may could

1 trade out to go ahead and decrease that duplication as
2 fast as possible. But as long as you continue to build
3 lines to new customers, you're going to continue --
4 you're increasing the duplication rather than to
5 decrease it.

6 COMMISSIONER DEASON: Do you think it should be --
7 if the line were to be drawn, do you think it should be
8 left to the parties to decide what compensation there
9 should be for any transferred facilities that takes
10 place?

11 WITNESS PAGE: Yes, sir, I think we could work
12 that out. I think we could talk about who needs to be
13 traded and agree on the value of those lines, if we
14 have some territorial agreement. Most of the
15 discussions we've had with JEA has simply to -- has
16 said to us, the only territory we're granting Okefenoke
17 is the county line. We want you to go back to the
18 county line, go to Nassau County, go to Baker County.

19 And to our management and to our board of
20 directors and we think to our members in that area,
21 there's a lot of them that want to stay with us. Those
22 folks in Black Hammock Island, the last meeting I had
23 with them, they said, "Who wants to stay?" in a group
24 meeting, home owners' association, I think what you
25 would call it, the name of it, they voted 13,

1 unanimous, they didn't want JEA; they wanted to stay
2 with Okefenoke.

3 So I think we could work with JEA if each one of
4 us have some agreement, and recognize the other's
5 rights in that area. We certainly recognize their
6 right to continue to provide the good service that
7 they've been providing to their customers.

8 COMMISSIONER DEASON: Let me ask you another
9 question from a little bit different perspective. If
10 it were evident that the Commission were inclined to
11 draw a line, but inclined to do so and left it up to
12 the parties to negotiate that, realizing that if they
13 didn't negotiate that the Commission would draw the
14 line, do you think that would cause the parties to be
15 able to reach an agreement?

16 WITNESS PAGE: Very possibly. Okefenoke would do
17 everything on our part to try to reach an agreement,
18 and you see we did -- I think we'd all have to think
19 it's possible because we almost did it in '78.

20 COMMISSIONER DEASON: Okay. Thank you.

21 Redirect?

22 REDIRECT EXAMINATION

23 BY MR. THOMPSON:

24 Q. Mr. Page, is it accurate to say that the only kind
25 of agreement you had to your knowledge, as manager from JEA

1 has been to sell out and leave the County?

2 A. Yes, sir.

3 Q. You were given a set of letters by Mr. Hoffman --
4 excuse me, Mr. Page, when he was cross examining you, that
5 refer to various consumers that purport to release them to
6 the Co-op from JEA, is that right?

7 A. Yes, sir.

8 Q. What exhibit number is that?

9 A. Exhibit 2.

10 Q. Composite No. 2. Okay, in that exhibit is one of
11 those letters related to a post office that is being built?

12 A. Yes, sir, they released two customers temporary to
13 us at that time. One is on Tiki Lane and the other one is
14 on Pecan Park Road. It will be a U. S. Postal Service
15 facility, I believe it's connected with the airport, maybe
16 air mail. This is -- do you want me to read the paragraph
17 they added to that letter? I think it's a little bit
18 different from the other letter.

19 Q. Yeah, that will be just fine. I was about to ask
20 you to do that.

21 A. "The City of Jacksonville billing and zoning
22 Division has made a final electrical inspection of the
23 attached permit for temporary service to the Haskell Company
24 construction trailers at 14200 Pecan Park Road, Unit TP01.
25 The JEA has no objection to your serving this temporary

1 construction offices.

2 "The Haskell Company is constructing the United
3 States Postal Air Mail Facility at Jacksonville
4 International Airport. The JEA will be providing
5 underground service to the Postal Facility. This release is
6 for the temporary service only and in no way should be
7 construed as a release for the right of the permanent
8 service."

9 This is the one that -- to accomodate these
10 customers, we went out and run the service and put in --
11 spent a little bit of money hanging the transformers,
12 they're right next to us, and JEA is a country mile down the
13 road. And apparently they intend to build to that and to
14 serve it.

15 Q. Could you show the Commissioners on the map that
16 we've identified as RD-1 where that facility will be located
17 or is located?

18 A. Can you see the airport detail square here? See
19 the blue line that travels north and south, this is Pecan
20 Park Road, we parallel that road. The airport facility will
21 be in this area, here -- the Post Office Facility. The
22 airport is here. JEA is the red line south of that.

23 Q. So we have a three-phase line immediately adjacent
24 to the property?

25 A. Yes, sir.

1 Q. At this point? And JEA is a mile away. Does it
2 have a three-phase line there?

3 A. I'm not sure. I believe they three-phase power in
4 that area to the airport.

5 Q. The language in the last paragraph of that letter,
6 is that the first time you've ever seen that in one of these
7 letters, specifically that "This release is for temporary
8 service only and in no way should be construed as a release
9 for the right of the permanent service"?

10 A. No, sir, I believe from time to time we've had
11 other letters that said they'll only release them for
12 temporary service.

13 Q. Have you ever released any?

14 A. You mean refused to serve?

15 Q. No, have you ever released any back to them?

16 A. Yes, sir, because they wouldn't give us a permit
17 for the permanent service, so we -- when the permanent
18 service was built, they, in effect -- we didn't release them
19 back to them, they went and in effect built to the permanent
20 part of the building. And I believe that's happened on a
21 few occasions. I can't quote you the instances off --

22 Q. When you have in fact installed the permanent
23 service on facilities, have you ever then later on released
24 back to them that service?

25 A. No, sir, us going and saying you can serve this,

1 no. We've had some that's attempted to, residential, and
2 the Holiday Inn, and we've told the people not to mess with
3 our facilities, that we --

4 MR. HOFFMAN: Commissioner Deason, may I ask a
5 point of clarification with respect to the series of
6 questions Mr. Thompson was asking?

7 COMMISSIONER DEASON: Yes, sir.

8 MR. HOFFMAN: Mr. Dew, when you were referring to
9 the map that's been identified as RD-1 -- I think that
10 was the map you were just referring to in response to
11 Mr. Thompson's questions, about this United States
12 Postal Air Mail facility. Were you designating that
13 facility north or south of wherever that magic line --
14 so called magic line is on that map?

15 WITNESS PAGE: I didn't look at it in relationship
16 to the line, but I will. It's south of the line.

17 MR. HOFFMAN: Okay, thank you.

18 BY MR. THOMPSON:

19 Q. How many -- I can't remember whether anybody asked
20 you this question, but how many new services in Duval County
21 has the Co-op installed since this petition was filed?

22 A. Yes, sir, I believe Martha Brown asked us. It was
23 about 40, approximately 40, since November of '91.

24 Q. She asked you the question of whether or not JEA
25 had ever assisted the Co-op in serving its members in Duval

1 County before, and you answered that JEA had not. In fact,
2 there is a substation in Duval County that JEA provides the
3 electricity for which is ultimately consumed by your
4 consumers in Duval County, is that correct?

5 A. Yes, sir, right.

6 Q. And that is done through an agreement with
7 Seminole Electric?

8 A. Right. They -- that would be a form of
9 assistance. They sell wholesale power at that metering
10 point, to Seminole Electric, who we're a member owner of
11 Seminole, and we purchase wholesale electric from Seminole
12 at that metering point. So most of those customers that
13 we're serving -- not most of them, a portion of them in
14 Duval County, are in fact getting their electric generated
15 by JEA.

16 MR. THOMPSON: Nothing further.

17 COMMISSIONER DEASON: I have one other question.
18 In relation to the letter which had the terminology
19 "temporary service" in it, in relation to the postal
20 facility, did you ever contemplate the possibility of
21 not connecting temporary service realizing that
22 whatever facilities you put in place would have to be
23 taken down later?

24 WITNESS PAGE: Yes, sir, we contemplated a lot of
25 things over the years.

1 COMMISSIONER DEASON: Do you feel like that when
2 you're called upon to provide temporary service, that
3 that puts an undue cost upon your ratepayers, realizing
4 that those facilities are going to be just for
5 temporary use?

6 THE WITNESS: Yes, sir, we do, and we have -- and
7 the main reason we have tried to cooperate on those
8 types of things on and on and on is because put the
9 customer out there first. The needs of the U.S. Postal
10 Service and of the Haskell Company and of JEA is for us
11 not to say to them, you know, we're not going to serve
12 this person temporary. You come on out here and serve
13 them, you do it immediately if you're going to serve
14 them permanently. But in the spirit of cooperation and
15 trying to serve the public, you continue to do these
16 things. And that's the reason we've told them -- we
17 have their customers that come to us from time to time
18 and say -- quite frequently and say, "We want to be
19 served by you." We tell them no. Some of them have
20 even been people who have been disconnected by JEA for
21 nonpayment of bills, and maybe we don't have the right
22 to refuse these people. I don't know whether any the
23 statutes says we've got to serve them or not, but I
24 believe that if a customer is disconnected by -- from
25 JEA for nonpay, I don't believe we should serve that

1 customers, and I don't believe they should serve ours
2 in those kind of cases, and they've said yes, they
3 would, if we disconnect a customer for nonpay, that
4 they would come in and serve that customer.

5 COMMISSIONER DEASON: Okay, I believe there are no
6 other questions. You're excused.

7 (Witness Page excused).

8 COMMISSIONER DEASON: What I propose to do at this
9 time is to go ahead, and Mr. Thompson, have you call
10 your next witness and we'll go ahead and get the
11 preliminaries taken care of, and before he begin cross
12 examination, we'll probably break for lunch.

13 MR. THOMPSON: What I -- Commissioners what I
14 propose to do, and I really haven't had a chance to
15 talk to counsel about it, and it's purely at your
16 discretion, is the next two witnesses are Mr. Gibson
17 and Mr. Middleton, both of them have been managers.
18 Mr. Gibson was the manager for 30 something years, I
19 think, and Mr. Middleton served with him quite a bit
20 and then became manager just for a short time before
21 Mr. Page became manager. My thought was that -- of
22 course you've got their prefiled testimony -- we might
23 put them on as a panel and it might abbreviate the time
24 that is necessary, because both of them were there, by
25 and large, in the same period of time since World

1 War II, and they're going to give you a historical
2 perspective, and so I guess that's my idea, and
3 whatever you want to do is fine with me, whatever
4 counsel wants to do is fine with me.

5 MS. BROWN: Staff has no objection to that.

6 MR. PAGE: Nor does JEA, and I might add, unless
7 the two witnesses add anything to their already
8 prefiled testimony, cross will be virtually
9 nonexistent.

10 COMMISSIONER DEASON: Given that situation,
11 Mr. Thompson, go ahead and call your next two
12 witnesses.

13 MS. BROWN: Commissioner Deason, Staff would like
14 to move Exhibit 4.

15 COMMISSIONER DEASON: Without objection, Exhibit 4
16 will be entered into the record.

17 (Exhibit No. 4 received into evidence.)

18 MR. THOMPSON: The Co-op would like to move
19 Exhibit 1.

20 COMMISSIONER DEASON: Without objection, Exhibit 1
21 will be entered into the record.

22 COMMISSIONER CLARK: How about Exhibit 2?

23 MR. THOMPSON: What is it?

24 MR. PAGE: That exhibit was offered by JEA, and we
25 will move it into evidence if they don't want to.

1 MR. THOMPSON: That means it's without objection.

2 COMMISSIONER DEASON: Exhibit 2 will be entered
3 into the record without objection.

4 (Exhibit Nos. 1 and 2 received into evidence.)

5 MR. THOMPSON: Ready for me to call? Co-op will
6 call Mr. Pete Gibson and Emory Middleton. If you could
7 sit up where Mr. Robert Page just sat, one in each
8 chair.

9
10 Whereupon,

11 PETE J. GIBSON and EMORY MIDDLETON
12 were called as witnesses, having previously been duly sworn
13 to speak the truth, the whole truth, and nothing but the
14 truth, was examined and testified as follows:

15 (Reporter's Note: The following questions were
16 responded to by Mr. Gibson:)

17 DIRECT EXAMINATION

18 BY MR. THOMPSON:

19 Q. Mr. Gibson, would you state your full name for the
20 record please?

21 A. Pete J. Gibson.

22 Q. What is your business or occupation, Mr. Gibson?

23 A. I'm retired.

24 Q. What was your previous occupation?

25 A. I was general manager of Okefenoke Rural Electric

1 Membership Corporation for 38 years.

2 Q. From when to when? It's in your direct
3 testimony.

4 A. Sir, I'm sorry --

5 Q. From what time until what time?

6 A. From 1947 until 1985.

7 Q. Did you previously prepare direct testimony that
8 was submitted on February the 7th, 1992, consisting of 16
9 pages?

10 A. Yes, sir.

11 Q. Are there any corrections or changes to that
12 testimony that you wish to bring to our attention at this
13 time?

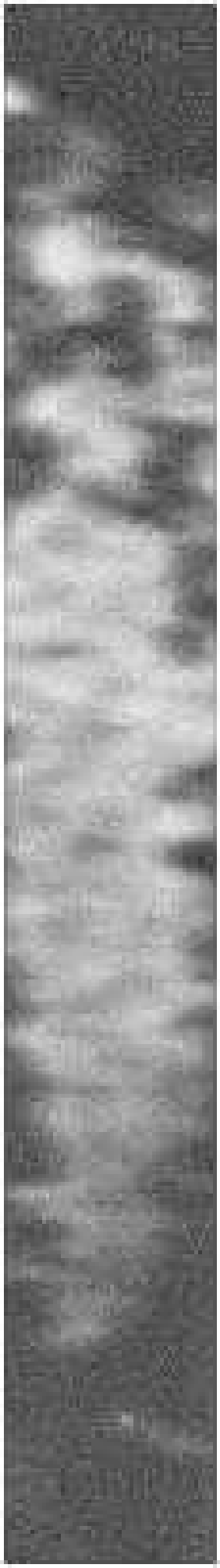
14 A. No, sir.

15 Q. If I were to ask you the same series of questions
16 that were asked there today, would your answers be the
17 same?

18 A. Yes, sir.

19 MR. THOMPSON: At this time I'd like to request
20 that Mr. Gibson's prefiled direct testimony be inserted
21 into the record as though read.

22 COMMISSIONER DEASON: It will be so inserted.
23
24
25



OKEFENOKE RURAL ELECTRIC
MEMBERSHIP CORPORATION
DOCKET NO. 911141-EU
SUBMITTED FOR FILING 2/7/92

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

PREPARED DIRECT TESTIMONY

OF

PETE J. GIBSON

Q. Please state your name and address.

A. My name is Pete J. Gibson. My address is Box 141,
Waynesville, Georgia, 31566.

Q. By whom are you employed and in what capacity?

A. At the present time I am not employed. I retired from
employment by the Okefenoke Rural Electric Membership
Corporation ("OREMC" of "Okefenoke") in 1985. At the time of
my retirement, I was employed as General Manager, the position
currently occupied by Mr. Robert Page. Since my retirement,
I have actively followed the activities of Okefenoke and have
consulted with subsequent Managers, Mr. Middleton and Mr.
Page, on an informal basis.

Q. Please describe your educational background and work
experience.

1 the history of OREMC in Duval County within the context of
 2 several different eras as defined below:

3 <u>Era</u>	<u>Time Period</u>
4 Pre-Consolidation	1947 to 1968
5 Consolidation	1968 and 1969
6 Post-Consolidation	1970 to 1974
7 Post-Grid Bill	1974 to Present

8
 9 Q. Have you prepared an exhibit for presentation to the
 10 Commission in this proceeding?

11
 12 A. Yes. The following exhibits were compiled from the business
 13 records of OREMC under my direction and supervision for filing
 14 in this case. Each of these exhibits are true and correct
 15 copies of documents maintained by OREMC in the normal course
 16 of business. A summary of these exhibits is as follows:

17 <u>Exhibit</u>	<u>Document</u>	<u>Description</u>
18 _____	(PJG-1)	Contract for electrical service 19 between OREMC and Holiday Inn- 20 Jacksonville Airport, dated July 21 3, 1968.
22 _____	(PJG-2)	Letter dated April 3, 1969 from 23 Louis H. Winnard (JEA) to Pete 24 J. Gibson (OREMC) regarding 25 ordinance.

1 _____ (PJG-3) Draft of 1977 proposed
2 territorial agreement.

3 _____ (PJG-4) Letter dated April 2, 1978 from
4 W. M. Irving (JEA) to Pete J.
5 Gibson (OREMC) transmitting 1978
6 Operating Guidelines.

7 _____ (PJG-5) Letter dated April 17, 1978 from
8 Pete J. Gibson (OREMC) to W. M.
9 Irving (JEA) accepting 1978
10 Operating Guidelines.

11
12 Pre-Consolidation Era

13
14 Q. When did Okefenoke first begin providing electric service to
15 members in the State of Florida?

16
17 A. When I began working for Okefenoke in 1947, we were already
18 providing retail electric service to parts of the town of
19 Hilliard in Nassau County, Florida. At that time, Okefenoke
20 had already built a system of distribution lines into
21 northwest Duval County as part of the "Victor" Project. When
22 I came to work, the Victor Project was substantially complete,
23 but the lines were not energized. One of my first priorities
24 as Manager of Okefenoke was to energize the Victor Project
25 lines so our members in west Duval County could have power.

1 We energized the Victor Project lines in late 1947. In so
2 doing, we brought power to a hand full of members in northern
3 Duval County for the first time.
4

5 Our second major distribution project in Duval County was the
6 K Project, which brought central station power to north
7 central and northeast Duval County. This project, as well as
8 the Victor Project, are discussed in the prepared direct
9 testimony of Mr. Emory Middleton.
10

11 Q. Why did Okefenoke extend its lines into Baker, Nassau and
12 north Duval Counties?
13

14 A. At the time Okefenoke built its lines into Baker, Nassau and
15 north Duval Counties, each of these areas was sparsely
16 populated and were considered rural. We built lines in these
17 areas to provide retail electric service to persons and
18 businesses who could not get electric service from a municipal
19 electric system or an investor-owned utility.
20

21 Q. Please describe the relationship between OREMC and the City of
22 Jacksonville Electric System from 1947 to 1968.
23

24 A. During the period from 1947 until 1968, Okefenoke had little
25 significant operating contact with the City of Jacksonville

1 electric system. Okefenoke continued to develop its system
2 and add members in its territory in north and west Duval
3 County. During this time period, and later, OREMC did not
4 provide service to customers already receiving central station
5 power from the city of Jacksonville or another electric
6 provider. During this time period, Okefenoke and Florida
7 Power & Light Company (which served a small area) were the
8 sole electric utility providers in north Duval County because
9 the City of Jacksonville electric system did not want to serve
10 these "rural" areas.

11
12 Consolidation Era
13

14 Q. When did the Consolidated Government of Jacksonville and JEA
15 come into existence?
16

17 A. Based on my review of the City of Jacksonville and JEA Special
18 Acts, the Consolidated Government of Jacksonville and JEA came
19 into existence on October 1, 1968.
20

21 Q. How many members was OREMC serving in Duval County on October
22 1, 1968?
23

24 A. By the time the Consolidated Government and the Jacksonville
25 Electric Authority came into existence on October 1, 1968,

1 Okefenoke had established a significant operating presence in
2 north Duval County. At that time, Okefenoke had approximately
3 622 members in Duval County and, based on our 1968 property
4 tax return for Duval County, had invested approximately
5 \$500,000 to provide service to those members. In his prepared
6 direct testimony, Mr. Emory Middleton describes the
7 configuration of Okefenoke's system in Duval County about this
8 time.
9

10 Q. Was OREMC serving the Holiday Inn-Jacksonville Airport
11 ("Holiday Inn") on October 1, 1968?
12

13 A. Yes. As shown in Exhibit __ (PJG-1), Okefenoke entered into
14 a contract for electric service with the Holiday Inn on July
15 3, 1968, approximately three months before the Consolidated
16 Government of Jacksonville and JEA came into existence.
17

18 The circumstances surrounding the Holiday Inn becoming a
19 member of OREMC are described more fully in the testimony of
20 Mr. Emory Middleton.
21

22 Q. Did the formation of the Consolidated Government and the
23 creation of the Jacksonville Electric Authority change the
24 conditions under which OREMC provided service in Duval County?
25

1 A. Not significantly at first. The Okefenoke system and
2 membership in Duval County had been developing and expanding
3 over twenty years. This development is discussed in the
4 prepared direct testimony of Mr. Emory Middleton. With a few
5 minor exceptions, Okefenoke continued to provide service in
6 Duval County on a "business-as-usual" basis.

7
8 Q. Please describe the exceptions you referred to above.

9
10 A. The exceptions I referred to above all relate to two
11 ordinances passed by the Consolidated Government of
12 Jacksonville in 1968 and 1969.

13
14 The first ordinance, Number 68-120-88, was passed by the
15 council of the Consolidated Government of Jacksonville in 1968
16 and purported to extinguish OREMC's rights to serve in Duval
17 County. We have never thought that this ordinance
18 extinguished our rights and obligations to serve in the areas
19 of Duval County where we had been serving. Even though this
20 ordinance was passed by the Consolidated Government, neither
21 JEA or the Consolidated Government took affirmative steps to
22 condemn or take over our system at that time. Accordingly,
23 Okefenoke has continued to provide service to its existing
24 members and has continued to provide service to new members
25 upon request, notwithstanding the first ordinance.

1 The second ordinance, Number 69-217-119, delegated to the JEA
2 the right to authorize other electric utilities to furnish
3 electric service to certain premises in the City of
4 Jacksonville. Ordinance Number 69-217-119 was passed by the
5 Consolidated Government council on March 25, 1969, and became
6 effective on March 27, 1969, and states:

7 The Jacksonville Electric Authority, or its
8 authorized agent, is hereby delegated the
9 authority to grant permission to other
10 electric utility companies to furnish
11 electric service to additional premises and
12 to extend their lines when it is not
13 practical or economical for the Jacksonville
14 Electric Authority to furnish such service.
15

16 Q. Did OREMC change its operating procedures in response to the
17 second ordinance?
18

19 A. Yes. On or about April 3, 1969, Okefenoke received a letter
20 from Louis H. Winnard, then the Managing Director of JEA,
21 requesting that Okefenoke direct all future requests for line
22 extensions or services to new members in Duval County to the
23 JEA. This letter was dated seven days after the second
24 ordinance became effective, and a copy of this letter is
25 included as Exhibit __ (PJG-2). As requested by Mr. Winnard

1 and in accordance with the second ordinance, Okefenoke
2 directed all such requests to the JEA. Then, when the JEA
3 decided that it was not "practical or economical" for the JEA
4 to provide service to an area in Duval County, we did so at
5 their request.
6

7 Q. Who decides whether or not it is "economical or practical" for
8 the JEA to serve a person or business in northern Duval
9 County?
10

11 A. It appears that the decision on which utility will serve a
12 person or business in northern Duval County is made by the
13 electrical inspectors employed by JEA. Whether these
14 inspectors make their decision based on some internal
15 guidelines prepared by JEA is not known to me. If there are
16 such guidelines, they have not been given to OREMC for our
17 planning purposes.
18

19 Q. Has OREMC served members in Duval County if it was not
20 "practical or economical" for OREMC to do so?
21

22 A. Yes. Okefenoke has always believed that we have an obligation
23 to serve in our service areas. Accordingly, we have provided
24 service to members throughout our territory in Duval county
25 even when it might have been impractical or not economical for

us to do so. This is consistent with the "area coverage" policy adopted by all rural electric cooperatives.

Q. During the consolidation era, did the JEA ever offer to purchase OREMC's system in Duval County?

A. Yes. On or about April 10, 1969, Mr. Louis Winnard indicated JEA's intent to purchase OREMC's system in a letter to me. Okefenokee did not accept JEA's offer to purchase its system in Duval County. Since that initial offer, JEA and OREMC have never come close to executing a purchase/sale transaction.

Post-Consolidation Era

Q. Did OREMC's system in Duval County continue to expand and improve during the post-consolidation era?

A. Yes. After the second ordinance was passed, with the permission of JEA, which permission was granted on a member-by-member basis, Okefenoke continued to develop its system and add members in Duval County. Indeed, from 1968 to 1974, OREMC obtained a net total of 385 new members in Duval County, for a total of approximately 1,007 members.

Q. How many members did OREMC serve in Duval County on July 1,

1 1974?

2
3 A. As of about July 1, 1974, the date the Grid Bill became
4 effective, OREMC provided service to approximately 1,007
5 members in Duval County. Okefenoke's investment in Duval
6 County around this time was approximately \$1 million. In his
7 prepared direct testimony, Mr. Emory Middleton describes the
8 configuration of Okefenoke's system in Duval County at this
9 time in his prepared direct testimony.
10

11 Post-Grid Bill Development: The 1978 Agreement
12

13 Q. Have OREMC and JEA ever considered entering into a territorial
14 agreement for Duval County?
15

16 A. Yes. During the mid-1970s, JEA and Okefenoke held serious
17 discussions for the purpose of entering into a territorial
18 agreement in Duval County. Exhibit __ (PJG-3) is a copy of
19 the draft version of an agreement between OREMC and JEA, dated
20 September 30, 1977.
21

22 Q. Did the parties execute this draft territorial agreement?
23

24 A. No. Even though Okefenoke was willing to do so, the parties
25 did not execute this agreement because the general counsel of

1 the Consolidated Government advised JEA against signing the
2 agreement.

3

4 Q. After the formal territorial agreement was abandoned, did JEA
5 and OREMC enter into any informal agreement(s) dividing the
6 territory in north Duval County?

7

8 A. Yes. By letter dated April 2, 1978, Mr. Irving, then JEA's
9 managing director, requested that Okefenoke agree to adopt
10 certain operating guidelines for northern Duval County. On
11 behalf of OREMC, I agreed to adopt these guidelines in a
12 return letter, dated April 17, 1978. These letters are
13 Exhibits __ (PJG-4) and __ (PJG-5) which accompany my
14 testimony. A signed original of Exhibit __ (PJG-5) was sent
15 to Mr. Irving to signify Okefenoke's acceptance of the 1978
16 Operating Guidelines. Exhibit __ (PJG-5) is a copy of the
17 unsigned file copy of the original sent to Mr. Irving.

18

19 Q. Please generally describe the 1978 Operating Guidelines.

20

21 A. The 1978 Operating Guidelines were patterned after the
22 abandoned territorial agreement. They contain a boundary line
23 dividing the territory in northern Duval County and has
24 certain guidelines for cleaning up the boundary over time.
25 The boundary line contained in the 1978 Operating Guidelines

1 has come to be known as the "magic line."
2

3 Q. Please describe the 1978 Operating Guidelines in more detail.
4

5 A. In paragraph 1, the parties acknowledge that it is in the best
6 interest of the public to operate under the guidelines set
7 forth therein. The 1978 Operating Guidelines were intended to
8 minimize the duplication of facilities in Duval County.
9

10 In paragraph 2, OREMC agreed, to the extent possible, that it
11 would not expand its facilities south of the "magic line."
12 Paragraph 2 also describes the "magic line" via a quasi-legal
13 description of the boundary.
14

15 Paragraphs 3 through 10 outline the guidelines for the
16 elimination of duplicate facilities and procedures for
17 cleaning up the boundary between the two utilities over time.
18 While OREMC has recognized the "magic line" boundary in the
19 1978 Operating Guidelines as the southern border of its
20 service territory in Duval County, very little progress has
21 been made toward eliminating the duplication of facilities in
22 our service territory. This is because JEA has continued to
23 expand its system into our territory when it is "economical
24 and practical" for them to do so.
25

Conclusion

Q. Please summarize your testimony.

A. Okefenoke has a long history of providing retail electric service in north Duval County. Okefenoke first began serving members in Duval County in the late 1940s, long before the Consolidated Government and JEA came into existence, and long before the Grid Bill was passed by the Florida Legislature.

Over the years, the JEA and Okefenoke have considered whether a purchase/sale transaction would be in their mutual interests, but have never come close to consummating such a transaction. In the mid-1970s, JEA and OREMC attempted to enter into a formal territorial agreement but did not do so. Instead, in 1978, the parties agreed to operate under an informal agreement which established a "magic line" and contained guidelines for cleaning up our respective territories on either side of the magic line. During my tenure as General Manager, Okefenoke observed the "magic line" as its southern boundary in Duval County, but little progress was made toward eliminating the duplication of facilities in northern Duval County. This occurred because JEA has expanded its system in our territory when it was "economical or practical" for them to do so.

1 Q. Does this conclude your prepared direct testimony?

2

3 A. Yes, it does.

4

5

6

7 jjw\pld\gibson.tst

1 BY MR. THOMPSON:

2 Q. Mr. Gibson, attached to your prefiled direct
3 testimony were exhibits identified as PJG-1, 2, 3, 4 and 5,
4 is that correct?

5 A. Yes, sir.

6 MR. THOMPSON: Could we have those exhibits marked
7 as the next five, whatever the numbers may be.

8 COMMISSIONER DEASON: That will be marked as
9 Composite Exhibit No. 6.

10 (Composite Exhibit No. 6 marked for
11 identification.)

12 BY MR. THOMPSON:

13 Q. Were these exhibits prepared by you or under your
14 supervision or direction?

15 A. Yes, sir, they were.

16 Q. Do you have any changes or corrections you wish to
17 make to them?

18 A. No, sir.

19 MR. THOMPSON: With Commission's permission, what
20 I'd like to do before I ask him to summarize his
21 testimony is go through and get Mr. Middleton's
22 testimony in and then get the two of them to sit there
23 and summarize for you all at one time, going directly
24 into the questions.

25 COMMISSIONER DEASON: That would fine.

1 (Reporter's Note: The following questions were
2 responded to by Mr. Middleton:)

3 BY MR. THOMPSON:

4 Q. Mr. Middleton, would you state your full name for
5 the record?

6 A. Emory Aly Middleton.

7 Q. What is your business or occupation?

8 A. Retired.

9 Q. It's in your direct testimony, but what was your
10 previous occupation, let's say since World War II?

11 A. Initially my beginning experience with the
12 Cooperative was as a right of way easement solicitor. In
13 the 1960s I moved into administration, was appointed
14 assistant manager and served in that capacity until Mr. Pete
15 Gibson retired in 1985, in August, and I served in that
16 capacity from August 1985 until July 1, 1990 when Mr. Page
17 succeeded me.

18 Q. Okay, you've previously prepared direct testimony
19 that was submitted on February the 7th, 1992, consisting of
20 15 pages, haven't you?

21 A. Yes, sir.

22 Q. Do you have any corrections or changes to that
23 testimony you would like to bring to our attention at this
24 time?

25 A. No changes.

1 Q. If I were to ask you the same questions today that
2 are in your prepared testimony, would your answers be the
3 same?

4 A. Yes.

5 MR. THOMPSON: At this time I'd like to request
6 that Mr. Middleton's prefiled direct testimony be
7 inserted into the record as though read.

8 COMMISSIONER DEASON: It will be so inserted.
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OKEFENOKE RURAL ELECTRIC
MEMBERSHIP CORPORATION
DOCKET NO. 911141-EU
SUBMITTED FOR FILING 2/7/92

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

PREPARED DIRECT TESTIMONY

OF

EMORY MIDDLETON

Q. Please state your name and address.

A. My name is Emory A. Middleton. My address is 106 Drew Street,
Nahunta, Georgia, 31553.

Q. By whom are you employed and in what position.

A. At the present time, I am not employed. I retired from the
employment by the Okefenoke Rural Electric Membership
Corporation ("OREMC" or "Okefenoke") in 1990, having worked
there since 1952. Since my retirement, I have actively
followed the activities of Okefenoke and have consulted with
Mr. Robert Page, my successor, on an informal basis.

Q. Please describe your employment and educational background.

A. Following my graduation from high school in 1941, I enlisted
in what is now the United States Air Force and spent four
years as a radio operator/repairman, personnel NCO and First
Sergeant. Thereafter, I worked on my family's farm for

1 several years until 1952. During this time period, I spent
2 one year at the University of Georgia.

3
4 In 1952, I became employed by Okefenoke as a Right-of-
5 Way/Easement Solicitor, a position I held until 1966 when I
6 was promoted to Assistant Manager. As Right-of-Way/Easement
7 Solicitor, I was responsible for acquiring the easements and
8 right-of-way necessary to expand Okefenoke's system in many
9 areas, including Baker, Nassau and Duval Counties.
10 Accordingly, I am very familiar with the development of
11 Okefenoke's system in those counties.

12
13 In 1966, I was promoted to Assistant Manager under Mr. Pete
14 Gibson. In that position, I was responsible for special
15 projects and "trouble shooting," but continued to be heavily
16 involved in system development and right-of-way acquisitions.

17
18 When Mr. Gibson retired as General Manager in 1985, I
19 succeeded him and held that position until my retirement in
20 1990. As General Manager, I had direct and full
21 responsibility for the day-to-day management of OREMC.

22
23 Purposes

24
25 Q. What are the purposes of your testimony?

1 A. The purposes of my testimony are to (1) describe the
 2 historical development of Okefenoke's system in Duval County,
 3 and (2) discuss the Power Sales Agreement between JEA and
 4 Seminole Electric Corporation, Inc.

5
 6 Q. Have you prepared exhibits for submission to the Commission in
 7 this proceeding?

8
 9 A. Yes. The following exhibits were compiled from the business
 10 records of Okefenoke and Southern Engineering Company under my
 11 direction and supervision for filing in this case. A summary
 12 of these exhibits is as follows:

14	<u>Exhibit</u>	<u>Document</u>	<u>Description</u>
15	_____	(EM-1)	Map showing location of "Victor"
16			Project in Duval County
17	_____	(EM-2)	Map of "K" Project
18	_____	(EM-3)	OREMC System as of 12-19-67
19	_____	(EM-4)	Circuit Diagram of OREMC's
20			Facilities in Duval County as of
21			2-7-75
22	_____	(EM-5)	Wholesale Electric Service
23			Contract Between JEA and
24			Seminole Electric Cooperative,
25			Inc.

OREMC's System Development in Duval County

Q. Was OREMC providing retail electric service in Duval County when you became employed by OREMC in 1952.

A. Yes. At the time I became employed by Okefenoke in 1952, we had built a system of distribution lines into northwestern Duval County as part of the "Victor" project. The location of the "Victor" project in Duval County is shown on the map which constitutes Exhibit __ (EM-1). This map was prepared by Southern Engineering Company, and, based on my present recollection is a reasonable approximation of the distribution lines installed in Duval County as part of the "Victor" project.

Q. Please describe the "Victor" project.

A. Based on my review of the records of OREMC and my recollection of OREMC's system at the time I was employed, the "Victor" project was a project to construct approximately 350 miles of line throughout our system. The major emphasis of this project was in Charlton County, Georgia and Nassau and Baker Counties, Florida. Only a small portion, approximately ten miles, of the "Victor" project lines were constructed in Duval County. Initially, the ten miles of line in Duval County were

1 single phase, 7.2 KV lines. While the "Victor" project had a
2 formal letter designation like all of our other projects, it
3 was called the "Victor" project because the contractor for the
4 project was the "Victory Electric Company."
5

6 Q. What was OREMC's next significant distribution project in
7 Duval County?
8

9 A. Okefenoke's next significant distribution line construction
10 project into Duval County was called the "K" project.
11

12 Q. How were you involved in the "K" project?
13

14 A. The design and planning for the "K" Project was started before
15 I became employed by Okefenoke. One of my first major tasks
16 as right-of-way/easement solicitor was to acquire the right-
17 of-way and easements necessary to construct the "K" Project
18 lines into Duval County.
19

20 Q. Please describe the "K" Project.
21

22 A. The purpose of the "K" project was to serve members in north
23 central and northeast Duval County who were not already
24 receiving central station power from another electric utility
25 provider. At the time the project was planned and

1 constructed, there was no wholesale metering point available
2 to OREMC in Nassau County or northern Duval County.
3 Accordingly, to serve persons who needed service in northern
4 Duval County, we built a fifteen mile distribution line from
5 Kingsland, Georgia along U.S. Highway 17 into north central
6 Duval County. Then, once in Duval County, the "K" project
7 branched out at the Yellow Bluff Road area to serve north
8 central and northeast Duval County. As part of the "K"
9 project, OREMC installed approximately thirty-five miles of
10 line in northeast Duval County to serve the Starrett Road
11 area, the Boney Road area, the Spring Hammock Road area, the
12 Cedar Point Road area and the Sawpit (now Black Hammock) Road
13 area. In north central Duval County, OREMC installed
14 approximately forty-three miles of line beginning at the
15 Yellow Bluff area to serve portions of Bird Road, Bernard
16 Road, Pecan Park Road, Owens Road, Oliver Road, Lem Turner
17 Road, Lannie Road, Ethel Road, Braddock Road and Blyler Road.
18 Most of the "K" project lines were single or three phase, 14.4
19 KV lines.

20
21 As part of the "K" project, OREMC's new facilities in north
22 central Duval County were interconnected with the "Victor"
23 project facilities in northwest Duval County. At that same
24 time, the "Victor" project was upgraded to single phase, 14.4
25 KV service.

1 The "K" project is shown on Exhibit __ (EM-2) which is a map
2 dated June 4, 1951. This map was prepared by Southern
3 Engineering Company and, based on my present recollection, is
4 a reasonable representation of the "K" project as it relates
5 to Duval County. The "K" project was completed in 1956.
6

7 Q. Has OREMC upgraded the "Victor" and "K" project lines since
8 they were originally installed?
9

10 A. Yes. As part of the planning process described in the
11 prepared direct testimony of Mr. Robert Dew, OREMC prepares a
12 bi-annual work plan which details planned system developments.
13 As part of this process, OREMC and its engineers consider
14 voltage level, system loads, service reliability and the
15 overall physical condition of the equipment in the field.
16 Over the years, we have upgraded the "Victor" and "K" project
17 lines to reflect changes in technology, member growth and to
18 improve reliability. In addition, we have expanded our
19 distribution facilities in Duval County. The fact that we
20 have upgraded and expanded our system in Duval County is
21 reflected in our increasing level of investment in Duval
22 County over the years. This increasing level of investment in
23 Duval County is reflected later in my testimony.
24

25 Q. Please describe the growth and development of OREMC's system

1 in Duval County from 1956 to 1968.

2
3 A. After the "K" and "Victor" projects were complete, Okefenoke's
4 system continued to develop within Duval County. Our primary
5 focus was on establishing new members on the "Victor" and "K"
6 project lines; however, over this twelve year period, OREMC
7 installed approximately thirty-two miles of additional
8 distribution line in Duval County. During this time period
9 Okefenoke's membership in Duval County grew to approximately
10 622 in 1968. Exhibit __ (EM-3) is a map dated December 19,
11 1967 which reflects the configuration of OREMC's system in
12 Duval County around 1968. To the best of my recollection,
13 there were no significant expansion projects in Duval County
14 between December 17, 1967 and October 1, 1968.

15
16 Q. Please describe the circumstances surrounding the Holiday Inn
17 becoming a member/customer of OREMC.

18
19 A. The Holiday Inn-Jacksonville Airport ("Holiday Inn") signed a
20 contract and became a member of OREMC on July 3, 1968, about
21 three months before the Consolidated Government of
22 Jacksonville and JEA came into existence. Exhibit __ (PJG-1),
23 discussed in Mr. Pete J. Gibson's prepared direct testimony,
24 is a copy of the contract between the Holiday Inn and
25 Okefenoke.

1 For some time before the Holiday Inn was built, OREMC had an
2 overhead distribution line running through the land now
3 occupied by the Holiday Inn. This line was built to serve a
4 "downline" member who could not get service from the city
5 electric system. This line was in place well before the
6 Jacksonville Airport was built and before I-95 was
7 constructed.

8
9 Sometime in late 1967 or early 1968, Okefenoke was contacted
10 by a real estate agent on behalf of an unnamed client who
11 wanted to purchase the land where the Holiday Inn is now
12 located. Since we already had a line running through that
13 location, the real estate agent asked us to bury the line and
14 provide service to his client. We gladly agreed to do so, and
15 ultimately signed the above-mentioned contract with the
16 Holiday Inn.

17
18 Q. How would you characterize the area surrounding the Holiday
19 Inn when OREMC began providing service to the Holiday Inn in
20 1968?

21
22 A. I would describe the area as rural. At the time, the airport
23 was just being built, and the area was covered with trees.
24 With the exception of the Holiday Inn and the airport, there
25 was little commercial development in the area.

1 Q. Please describe the growth and development of OREMC's system
2 in Duval County from 1968 to 1974.
3

4 A. During this time period, Okefenoke continued to expand and
5 improve its system in Duval County with a series of small
6 distribution expansion projects. As of 1974, Okefenoke served
7 approximately 1,007 members, had approximately 140 miles of
8 distribution line, and a total investment of approximately \$1
9 million in Duval County. Facilities growth in this time
10 period was somewhat slower than in the 1940s and 1950s because
11 by this time, we had already established a significant
12 operating presence in northern Duval county.
13

14 Exhibit __ (EM-4) is a map showing the location of OREMC's
15 facilities in Duval County, dated February 7, 1975, and was
16 taken from the records of Southern Engineering Company. To
17 the best of my recollection, this map reflects the
18 configuration of our system in Duval County around that time.
19 Even though this map is dated some eight months after the Grid
20 Bill was passed, it reflects with reasonable accuracy the
21 location of our facilities around the time the Grid Bill
22 became law.
23

24 Q. Please describe the growth and development of OREMC's system
25 in Duval County from 1974 to the time of your retirement.

1 A. From 1974 to the time of my retirement, OREMC's system in
2 Duval County continued to grow and improve. During this time
3 period, we had a net gain of approximately 1,242 members in
4 Duval County for a total of approximately 2,249 members in
5 Duval County in 1990. Based on our 1974 and 1990 Duval County
6 tax return, our investment in Duval County increased from
7 approximately \$1 million in 1974 to approximately \$3.2 million
8 in 1990. From an operating perspective, the most significant
9 addition to our system during this time period was the Oak
10 Grove metering point, which I will discuss in more detail
11 later in my testimony.

12
13 Power Sales Agreement
14

15 Q. Please describe OREMC's Oak Grove metering point.
16

17 A. Okefenoke receives the power it uses in Duval County at three
18 locations, one of which is located in Duval County. The
19 location in Duval County is known as the Cedar Point/Oak Grove
20 delivery point. This delivery point has come to be known to
21 OREMC as "Oak Grove". The Oak Grove delivery point is located
22 near the intersection of Cedar Point Road and New Berlin Road.
23 OREMC invested in three single phase 200 amp voltage
24 regulators and two distribution circuits with over current
25 protective devices at this location. The metering point

1 provides power for OREMC's customers in the Black Hammock
2 Island area described in Mr. Robert Page's testimony and shown
3 on Exhibit ____ (RD-6).
4

5 Q. What arrangements have been made so that OREMC can receive
6 power at the Oak Grove metering point?
7

8 A. As discussed by Mr. Robert Page, OREMC has an "all power
9 requirements" contract with the Seminole Electric Cooperative,
10 Inc. ("Seminole") for the OREMC's power purchases in Florida.
11 Accordingly, we have a direct contractual relationship with
12 Seminole for our power purchases in Duval County.
13

14 We are also the beneficiary of a wholesale electric service
15 contract between Seminole and JEA relating to the Oak Grove
16 metering point.
17

18 Q. Were you involved in the negotiations of the wholesale
19 electric service contract between JEA and Seminole referred to
20 above?
21

22 A. Yes, I was. Exhibit ____ (EM-5) is a true and correct copy of
23 the contract between JEA and Seminole referred to above.
24

25 Q. Please describe the contract.

1 A. Under the terms of the contract, JEA agrees to provide
2 wholesale power to Seminole at the Oak Grove metering point
3 for a period of ten years, beginning February 17, 1987. After
4 the ten-year period expires, the contract continues from year
5 to year until terminated by either party upon one year's prior
6 written notice. Since we are Seminole's only member in
7 northern Duval County, it is clear that the contract was
8 intended to benefit OREMC and its members.

9

10 Q. What role did OREMC play in the negotiation of this contract?

11

12 A. Okefenoke was initially involved in the negotiation of this
13 contract. In fact, Okefenoke was the driving force behind
14 this contract.

15

16 Q. Why was OREMC interested in this contract?

17

18 A. For several reasons. First, and most important, from a
19 system-integrity and reliability standpoint, OREMC needed a
20 source of energy in the Cedar Point area. As early as 1984,
21 we began negotiating with Oglethorpe Power Corporation, JEA,
22 and other power suppliers for the purpose of obtaining a power
23 source in the Cedar Point area. A variety of factors, not the
24 least of which was our "all power requirements" contract with
25 Seminole, led us to believe that a contract between JEA and

1 Seminole would be the best solution to our needs.

2

3 Second, since 1978, we had been operating under the 1978
4 Operations Guidelines discussed in Mr. Gibson's testimony, but
5 without any other territorial agreement with JEA. We thought,
6 and I believe JEA recognized at the time, that a contract
7 between JEA and Seminole would be a step toward resolving our
8 ongoing territorial disagreement with JEA.

9

10 For these reasons, we were very much in favor of the contract
11 between JEA and Seminole.

12

13 Conclusion

14

15 Q. Please summarize your testimony.

16

17 A. Okefenoke has been providing retail electric service in
18 portions of northern Duval County since the late 1940s.
19 During the early 1950s, Okefenoke had a major system expansion
20 in north central and northeast Duval County called the "K"
21 project. Since that time, the OREMC has continued to steadily
22 develop and upgrade its system and has continued to serve new
23 members in the areas in which it has historically served.
24 Okefenoke had a substantial operating presence in Duval County
25 at the time the consolidated government and JEA came into

1 existence and at the time the Grid Bill was enacted.

2

3 Q. Does this conclude your prepared direct testimony?

4

5 A. Yes it does.

6

7

8

9 jjw\pld\middle.tst

1 BY MR. THOMPSON:

2 Q. Mr. Middleton, attached to your prefiled direct
3 testimony were exhibits identified as EM-1, 2, 3 and 4, is
4 that correct?

5 A. That is correct.

6 MR. THOMPSON: Could we have those exhibits
7 marked?

8 COMMISSIONER DEASON: Those will be marked as
9 Composite Exhibit No. 7.

10 (Composite Exhibit No. 7 marked for
11 identification.)

12 BY MR. THOMPSON:

13 Q. Were these exhibits prepared by you or under your
14 direction and supervision, Mr. Middleton?

15 A. Yes, sir.

16 Q. Do you have any corrections or changes to those
17 exhibits?

18 A. No.

19 MR. THOMPSON: Mr. Gibson, I want to ask you to
20 give a brief summary of what your prepared testimony
21 was, and then Commissioners, would you like to question
22 him first, or counsel, would you like to question him
23 first, or would you like Mr. Middleton to go ahead? My
24 preference is to let both of them summarize and then
25 y'all ask the questions as a panel. Is that okay?

1 COMMISSIONER DEASON: That will be fine.

2 (Reporter's Note: The following questions were
3 responded to by Mr. Gibson:)

4 BY MR. THOMPSON:

5 Q. Mr. Gibson, would you summarize your testimony and
6 then we'll ask Mr. Middleton to do so?

7 A. Yes, sir. Okefenoke has a long history of
8 providing electric service, central station electric service
9 in Duval County. We first began serving there in the late
10 1940's, long before the consolidated City of Jacksonville
11 was organized, or the JEA was created or the Grid Bill was
12 passed. Over the years we negotiated with the JEA's
13 predecessor, the old Jacksonville Electric System, but with
14 little success. And then over the years we have negotiated
15 or discussed with JEA the possibility of the mutual interest
16 of purchase and sale in some of our equipment down there.
17 That has never materialized into anything significant.

18 In the 1970s, Mr. Ervin was managing director, and
19 he and I and our staffs worked pretty hard for a good while
20 to give a territorial agreement for Duval County. We both
21 recognized the terrible waste of the public's, or our
22 members' money, to build duplicate facilities all over that
23 county. We worked up such an agreement that I say was
24 totally workable, and Mr. Ervin thought it was too. And we
25 were ready to execute it with a number of changes we made

1 along the way to make it practical as an operating live
2 document. But then the general counsel of -- Mr. Ervin
3 tells us his general counsel advised him against executing
4 the contract, so therefore it was not executed.

5 Following that, Mr. Ervin and I agreed that we
6 still ought to recognize the importance of that document and
7 what it intended to do. So we agreed to form an informal
8 document, which is based on exactly -- almost exactly the
9 same terms and conditions as the original formal contract
10 carried. And we entered into that and we -- the two of us
11 together, with our staffs, drew a line across Duval County,
12 and we gerrymandered dickens out of it because we tried to
13 leave as many JEAs on the south side and most of the Co-op's
14 on the north side. We tried to do a practical job of it.
15 And we established this line. We completely agreed on it,
16 and that was what's known and been referred to here as the
17 magic line.

18 But that has not worked too well. We have never
19 violated that original agreement as Mr. Ervin and us agreed
20 to, but JEA has continued to come north of that line and
21 build duplicate facilities for -- well, ever since right
22 soon after the document was agreed to by us and Mr. Ervin.
23 So that is basically the gist of my testimony,
24 Mr. Thompson.

25 MR. THOMPSON: Thank you. Mr. Middleton?

1 WITNESS MIDDLETON: The basis of my testimony is
2 partly the same as Mr. Gibson's, in that to establish
3 Okefenoke's presence in the state of Florida and
4 particularly in the northern part of Duval County, the
5 Cooperative began service on a limited basis some ten
6 miles of then line in the late 1940's in northwest
7 Duval County, known as the Dinsmore area, across the
8 line from the south line of Nassau County's border.

9 In a period of time during 1949, '50 and '51,
10 which preceded my employment with the Cooperative -- I
11 was on the board of directors at that time -- the
12 people in northern Duval County petitioned for electric
13 service. In order to finance projects of these -- of
14 this nature, of course, we had to borrow money from the
15 Rural Electrification Administration. So therefore
16 there was a period of time when there was a sign-up
17 period, a period of time when there was an engineering
18 study made, and an actual construction work plan made,
19 and the basis of this plan was the basis of a loan for
20 capital improvements. This took quite some time. So
21 that actual construction began early in 1952. And in
22 that association I began with the Cooperative in
23 January, 1952 as an employee.

24 The major emphasis, of course, was to serve the
25 most people who did not have service as quick as

1 possible. And this was carried out. These people in
2 northern Duval County who did not have service, who
3 were under the Rural Electrification Administration's
4 guidelines, were within the service area of the
5 Okefenoke Rural Electric.

6 In attempting to live by these guidelines, both
7 ethically, legally and morally, the citizens of
8 northern Duval County should not be discriminated
9 against to the betterment of the living conditions in
10 Nassau or Baker County where the Cooperative was
11 serving.

12 It's basically all rural area. The geography of
13 northeast Florida and southeast Georgia is the same.
14 If the river were not there, you couldn't tell where
15 the state line was unless you pulled out a map or read
16 a sign. The Cooperative attempted very vigorously to
17 treat those citizens who did not have service. And I
18 must say that if it had been looked at on a purely
19 economic basis, a lot of rural people would have never
20 gotten service, and certainly these folks in northeast
21 Duval County, because it was a long time before the
22 Cooperative in northern Duval County even reached the
23 density of three, which is sort of rule of thumb that
24 the Rural Electrification Administration said that you
25 must have at least three members per mile in order to

1 justify construction. But in the cooperative spirit of
2 serving those who were without, the other Cooperative
3 members sometimes have to pay a little more for power
4 in order to help someone get service who is in a pocket
5 or an area --

6 MR. THOMPSON: Mr. Middleton, if I can interrupt
7 you, I think that you're probably dwelling on your
8 prefiled testimony a little more than you need to at
9 this point. They have access to that at this point and
10 so forth. What we're asking for here, and I'm sorry I
11 didn't really explain that to you well enough, is just
12 a short summary of your testimony, which I think you've
13 probably done now.

14 WITNESS MIDDLETON: I think I've basically covered
15 their point.

16 MR. THOMPSON: If there's anything else you need
17 to say, I'm sure the Commissioners would like to hear
18 it, but they'll ask you anything they haven't heard.

19 COMMISSIONER DEASON: Thank you. Are these
20 witnesses now tendered for cross examination?

21 MR. THOMPSON: Yes, sir.

22 COMMISSIONER DEASON: That being the case we're
23 going to take take a lunch recess. I'm a little
24 concerned about the timeframe in which we have to
25 operate. So I'm going to suggest we take a short lunch

1 and reconvene at 12:45.

2 (Lunch recess from 12:15 until 12:50 p.m.)

3 COMMISSIONER DEASON: Go back on the record. I
4 believe the witnesses have been tendered for cross
5 examination.

6 (Reporter's note: The following questions were
7 responded to by Mr. Gibson:)

8 CROSS EXAMINATION

9 BY MR. PAGE:

10 Q. I have a question directed to Mr. Gibson.
11 Mr. Gibson, we have not met. My name is Bruce Page. I
12 represent the Jacksonville Electric Authority. There were
13 customers on both sides of that working agreement line that
14 belong to both Okenfenoke and Jacksonville Electric
15 Authority, were there not?

16 A. Yes, sir.

17 Q. So the situation was before the line there were
18 customers of both utilities on both sides of the line?

19 A. Yes, sir.

20 Q. As it is today?

21 A. Yes, sir.

22 Q. To your recollection, did the Co-op ever submit a
23 written letter of protest regarding Jacksonville Electric
24 Authority's service to any customer north of that line?

25 A. I can't recall specifically that we did. We may

1 have. That's a long time ago.

2 Q. Did you ever file with the Public Service
3 Commission any territorial dispute or any --

4 A. Not during my tenure as manager.

5 Q. I'm going to show you a copy of a letter and ask
6 you -- I'll identify this letter as being on Jacksonville
7 Electric Authority letterhead stationery dated July 12th,
8 1982 and addressed to you. Do you remember receiving that
9 letter, sir?

10 A. Not specifically, but I assume that I did.

11 Q. Okay, I'm going to read you portions of that
12 letter and ask if you recall these subjects being
13 discussed:

14 "Dear Mr. Gibson:" it says.

15 "On August 6th, 1981, the Florida Public Service
16 Commission requested that all of Florida's Electric
17 Utilities submit standardized county maps containing each
18 utilities territorial boundaries and service areas. I
19 recently received the composite map of Duval County, which
20 indicates that your utility has designated certain areas in
21 Duval County as your service area, while JEA had designated
22 the same area as its service area."

23 My first question is do you recall sending to the
24 Florida Public Service Commission maps claiming that service
25 area?

1 A. Yes, sir.

2 Q. Thank you. The letter goes on: "I am fearful
3 that by doing so, you have interpreted our April 1978
4 Distribution Operations Guidelines as granting territorial
5 boundary or service area rights to your utility as opposed
6 to the working agreement for the minimization of duplicate
7 facilities for which it was intended." The letter goes on
8 to explain the law by which Jacksonville Electric Authority
9 operates, and it says in the middle of the next paragraph
10 "The Distribution Operations Guidelines were developed to
11 provide an easy measure by which the practical or economical
12 tests could be determined. They are not, nor were they ever
13 intended, to grant to your utility a franchise territorial
14 boundary, or service area rights. The City of Jacksonville
15 through its agent, JEA, will continue to hold sole
16 responsibility and authority for providing electric service
17 to the City of Jacksonville and that our guidelines are
18 simply that, guidelines, which are useful in making the
19 decision whether JEA should serve a given customer or
20 release it to your utility."

21 The letter then goes on to invite your response.
22 Did you ever respond to that later?

23 A. I can't recall that I did. I disagree with it
24 strongly, parts of it, certainly.

25 Q. But have I accurately read what's in this letter?

1 A. Yes, you have read it correctly.

2 Q. Yes, sir, and to your recollection, you did not
3 respond?

4 A. I don't remember responding, no, sir.

5 Q. Thank you.

6 A. I disagreed with it, of course.

7 MR. PAGE: No further questions.

8 COMMISSIONER DEASON: Staff?

9 CROSS EXAMINATION

10 BY MS. BROWN:

11 Q. Mr. Gibson, on Page 11, Line 7 of your direct
12 testimony, do you have that with you, your direct
13 testimony? Page 11?

14 A. Yes, ma'am.

15 Q. You state that on or about April 10th, 1969,
16 Mr. Louis Winnard indicated JEA's intent to purchase
17 Okefenoke's system in a letter to you, is that correct?

18 A. Yes, ma'am.

19 Q. Did that letter contain specific information
20 regarding the purchase, such as dollar amount offered and
21 which facilities JEA wanted to purchase?

22 A. No. As I recall, it does not, to the best of my
23 memory.

24 Q. All right, were any discussions held between JEA
25 and Okefenoke regarding this offer?

1 A. I don't think there was ever any discussion where
2 money was involved. We hadn't reached that point.

3 Q. During your tenure at Okefenoke, was this the only
4 contact you had with JEA regarding the possible sale of
5 Okefenoke's facilities to JEA?

6 A. I think perhaps it's the only one in writing that
7 I recall. We had other, from time to time, in conferences
8 because we had pretty good communications with JEA and it
9 had been discussed in other meetings which were not in
10 writing necessarily.

11 Q. So the subject of the possible sale or purchase by
12 JEA of Okefenoke's facilities was something that was often
13 considered and often discussed over the years between the
14 two utilities?

15 A. No, ma'am, not often. I wouldn't use the term
16 often. It was a few times, just a very few.

17 Q. Okay. Now you discussed in your testimony, and in
18 response just a minute ago to Mr. Page's questions, the 1978
19 operating guidelines. At the time those guidelines were
20 developed, did you believe that both JEA and Okefenoke would
21 abide by them?

22 A. I'm sorry, ask the last question please.

23 Q. At the time the operating guidelines were
24 developed, did you believe that both JEA and Okefenoke would
25 abide by them?

1 A. Yes, ma'am. And if that same administration had
2 stayed in office, we would have, I feel sure.

3 Q. During your tenure with Okefenoke, did Okefenoke
4 conduct its business in accordance with those guidelines at
5 all times?

6 A. Yes, we did.

7 Q. Thank you, Mr. Gibson, I have no further
8 questions.

9 MR. WAHLEN: We would move Exhibits 6 and 7.

10 COMMISSIONER DEASON: Without objection, Exhibits
11 6 and 7 will be entered into the record.

12 MS. BROWN: Commissioner, I do have a few
13 questions for Mr. Middleton.

14 COMMISSIONER DEASON: Sorry. We'll wait on
15 exhibits then.

16 MS. BROWN: All right, I think I may have gotten
17 lost in the shuffle. Mr. Page has nothing for
18 Mr. Middleton?

19 MR. PAGE: No.

20 MS. BROWN: All right, excuse me.

21 (Reporter's note: The following questions were
22 responded to by Mr. Middleton:)

23 BY MS. BROWN:

24 Q. Mr. Middleton, were you involved in the
25 discussions with the Holiday Inn which resulted in the

1 agreement for purchase of power, the contract?

2 A. Somewhat, yes, ma'am.

3 Q. Then you are somewhat familiar with this
4 agreement?

5 A. Yes, I'm familiar with it.

6 Q. Mr. Gibson submitted a copy of that agreement in
7 its -- his exhibits that accompanied his direct testimony.
8 That's Exhibit PJG-1 in what's been identified here as
9 Composite Exhibit 6, is that correct?

10 A. Yes, ma'am.

11 Q. Do you have a copy of that agreement at your
12 disposal there?

13 A. Yes, ma'am.

14 Q. Would you read Section 2-C?

15 A. "The consumer agrees that if at anytime the rate
16 under which the solar purchase of electric energy at
17 wholesale is modified, the seller may make a corresponding
18 modification in the rate for service hereunder.

19 "If the rate is increased thereby, the consumer
20 shall then have the option of canceling this agreement and
21 discontinuing service."

22 Q. Do you agree that that Section 2-C gives the
23 Holiday Inn the option on cancel the agreement and
24 discontinue service with Okefenoke?

25 A. No. And my answer is qualified by the fact that

1 they're still requiring the same type of service that they
2 discontinued from one utility. If they had changed their
3 method of operation, gone out of business, dismantled the
4 facilities, yes.

5 Q. All right. Section 5 of that agreement entitled
6 "Term," would you read that section please?

7 A. "This agreement shall become effective on the date
8 service is first delivered hereunder by the seller to the
9 consumer and shall remain in effect for a period of five
10 years, and thereafter, until terminated by either party,
11 giving to the other three months notice in writing."

12 Q. Do you agree that that paragraph gives the Holiday
13 Inn the option to terminate the agreement?

14 A. It gives them the option to terminate the
15 agreement if they are discontinuing service, period.

16 Q. Well, then would you please describe for me under
17 what circumstances you do believe this agreement could have
18 been legitimately terminated?

19 A. By official release by management of the board of
20 directors letting the Holiday Inn, or actually physically
21 agreeing to disconnect the service for the Holiday Inn and
22 agreeing to their transfer to another utility. The contract
23 was fulfilled as far as its minimum monthly billing under
24 the rate attached to the contract and any related cost of
25 serving this -- if there were any special costs in serving

1 this consumer as -- or member as opposed to serving another
2 member. It is calculated that those costs would be
3 recovered during the five-year period or whatever the term
4 of the contract normally is set for.

5 It is expected that as long as this type of
6 service is required at this location by the same party, or
7 succeeding parties, that the service would remain in place.

8 Q. During your tenure as manager of Okefenoke, did
9 the utility operate in accordance with the 1978 operating
10 guidelines?

11 A. Yes.

12 Q. Was it your experience during your tenure that JEA
13 also acted in accordance with these guidelines?

14 A. As far as we know.

15 Q. As manager of Okefenoke from 1985 until 1990, what
16 significance did you place on the guidelines?

17 A. Even though unsigned, it was a gentleman's
18 agreement. It had been honored for years and we had no
19 intention of changing it.

20 MS. BROWN: Thank you. I have no questions.

21 MR. WAHLEN: We have no redirect and would like to
22 move Exhibit 7.

23 COMMISSIONER DEASON: Without objection, Exhibit 7
24 will be entered into the record. Thank you, gentlemen,
25 you're excused. Call your next witness please.

1 (Composite Exhibit Nos. 6 and 7 received into
2 evidence.)

3 MR. WAHLEN: Co-op calls Mr. Robert Duke.

4 MR. THOMPSON: Commissioners, if you would,
5 Mr. Gibson and his wife are over here, got a long drive
6 home, and if it's all right with counsel, would anybody
7 object to us letting him go on, and Mr. Middleton if
8 that's okay?

9 COMMISSIONER DEASON: I take it there's no
10 objection and we appreciate them coming and being with
11 us today.

12 (Witnesses Gibson and Middleton excused.)
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CERTIFICATE

State of Florida)
County of Leon)


I, LISA GIROD JONES, Registered Professional
Reporter, and Notary Public in and for the State of Florida
at Large, at Tallahassee, Florida, do hereby certify as follows:

THAT I correctly reported in shorthand the
foregoing proceedings at the time and place stated in the
caption thereof;

THAT my shorthand notes were reduced to
typewriting with the use of computer-aided transcription,
and that the foregoing pages, 1 through 159, both inclusive,
contain a full, true and correct transcript of the
proceedings on said occasion;

THAT I am not a relative or employee or attorney
or counsel of any of the parties or attorneys connected with
the action, nor am I financially interested in the action.

DATED THIS 24th DAY OF June, 1992.


LISA GIROD JONES, RPR, CM
Notary Public, State of Florida
at Large.

My commission expires: 5-11-93