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March 26, 1996

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Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 950307-EU

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of the Jacksonville Electric Authority ("JEA"), are the following documents:

1. Original and fifteen copies of JEA's Motion to Dismiss Florida Steel Corporation's Petition and Protest on Proposed Agency Action to Approve A Territorial Agreement; and
2. A disk in Word Perfect 6.0 containing a copy of the document entitled "Dismiss.Mo."

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,


Kenneth A. Hoffman

ACK

AFA _____

APP _____

CAF _____

CMU _____

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EAG

LEG 1 _____

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SEC 1 _____

WAS _____

OTH _____

cc: All Parties of Record
Trib. 3

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Petition of Jacksonville)
Electric Authority to Resolve a)
Territorial Dispute with Florida)
Power & Light Company in St. Johns)
County)
_____)

Docket No. 950307-EU

Filed: March 26, 1996

**JACKSONVILLE ELECTRIC AUTHORITY'S MOTION TO DISMISS
FLORIDA STEEL CORPORATION'S PETITION AND PROTEST ON
PROPOSED AGENCY ACTION TO APPROVE A TERRITORIAL AGREEMENT**

Jacksonville Electric Authority ("JEA"), by and through its undersigned attorneys, and pursuant to Rule 25-22.037(2), Florida Administrative Code, hereby moves to dismiss Florida Steel Corporation's ("Florida Steel") Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement. In support of its motion, JEA states as follows:

1. On March 20, 1995, JEA petitioned the Commission to resolve a territorial dispute with the Florida Power and Light Company ("FPL") in St. Johns County. JEA's Petition requested the Florida Public Service Commission ("Commission") to enforce Order No. 9363, which is the Order approving the existing 1979 territorial agreement between JEA and FPL.

2. FPL and JEA entered into extensive negotiations to resolve the dispute in St. Johns County. The parties agreed upon a new territorial agreement, essentially reaffirming the territorial boundary that has been in effect since 1963. On October 6, 1995, JEA and FPL filed a joint motion for approval of the new territorial agreement. The customers of JEA and FPL that would be subject to transfer pursuant to the proposed agreement were notified of the proposed transfer. No such customer has filed

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an objection to any aspect of the new territorial agreement.

3. Staff for the Commission reviewed the proposed territorial agreement and issued a favorable recommendation on November 8, 1995.

4. On December 4, 1995, the day before the proposed agreement was to be considered by the Commission at its agenda conference, Florida Steel filed its Motion to Intervene and Objection to Preliminary Agency Action.

5. At the December 5, 1995 agenda conference, the Commission heard oral argument from Florida Steel's legal counsel requesting a deferral of consideration of the proposed territorial agreement. The Commission agreed to defer its review of the agreement. All interested persons met with the Commission Staff on January 10, 1996, for further consideration of the issues raised by Florida Steel. The meeting had no impact on the support for the proposed agreement previously expressed by JEA, FPL and the Commission Staff.

6. On February 5, 1996, the Prehearing Officer issued an Order finding that Florida Steel is without standing to intervene in this docket. The Prehearing Officer specifically found that "the alleged injury claimed by Florida Steel is not of a type designed to be protected by proceedings to approve a territorial agreement."¹

7. At the February 6, 1996 agenda conference, the Commission considered the joint motion to approve the proposed territorial

¹Order No. PSC-96-0158-PCO-EU.

agreement. Following oral argument, the Commission voted to approve the proposed agreement. On February 14, 1996, the Commission issued its Notice of Proposed Agency Action Order Approving Territorial Agreement ("PAA Order"), preliminarily approving the agreement. The PAA Order contains the standard language advising that "[a]ny person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding" pursuant to Rules 25-22.029(4) and 25-22.036(7)(a) and (f), Florida Administrative Code.²

8. On March 6, 1996, Florida Steel filed its Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement (the "Petition"). The Petition requests a formal hearing to address specific factual questions concerning the proposed territorial agreement.

9. It is undisputed that Florida Steel's facility in Duval County historically has received service from FPL, and will continue to receive service from FPL pursuant to the new territorial agreement. The Commission previously has determined that customers that will not be transferred pursuant to a proposed territorial agreement are without standing to challenge such agreement.³ The Prehearing Officer's Order denying intervention to Florida Steel is consistent with prior Commission decisions.

²Order No. PSC-96-0212-FOF-EU, at 6.

³In re: Petition of Florida Power and Light Company for resolution of a territorial dispute with Fort Pierce Utilities Authority, 94 F.P.S.C. 7:340 (1994).

10. Florida Steel's Petition acknowledges that its "interest in the proposed territorial agreement previously has been described at length in its Motion to Intervene. . . ." ⁴ Those allegations were previously found to be insufficient to confer standing on Florida Steel to participate in this proceeding for the purpose of challenging the proposed territorial agreement. ⁵ Having failed to raise any new allegations that demonstrate that its interests are substantially affected by the proposed territorial agreement, Florida Steel's Petition must be dismissed.

11. The proposed territorial agreement simply has no factual or legal impact on Florida Steel.

a. Florida Steel remains an FPL customer in the FPL territory under both the existing agreement and the proposed agreement.

b. The legal arguments offered by Florida Steel which purport to support its claim that JEA is obligated to serve Florida Steel are not affected by the proposed agreement.

c. Moreover, the right of either utility to file a petition with the Commission seeking modification of the territorial boundary lines between the two utilities is the same under the existing agreement and the proposed agreement. ⁶

⁴Florida Steel's Petition, at 4.

⁵Order No. PSC-96-0158-PCO-EU.

⁶Under Section 1.1 of the 1979 Agreement, either FPL or JEA could unilaterally seek modification or cancellation of the agreement 15 years after April 13, 1979 (the date of the agreement), i.e., after April 13, 1994. This right is immediately available to FPL or JEA under Section 7.1 of the

12. Florida Steel relies on Storey v. Mayo, 217 So.2d 304 (Fla. 1968), cert. denied, 395 U.S. 909, 89 S.Ct. 1751, 23 L.Ed.2d 222 (1969), for the proposition that any customer located within the municipal limits of the City of Jacksonville may compel service from JEA.⁷ In Storey v. Mayo, the Court specifically determined that a customer does not have an "organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself."⁸ Further, application of the Florida Supreme Court's decision in Storey v. Mayo must be consistent with the statutory authority subsequently granted to the Commission in 1974 pursuant to the "Grid Bill." Any doubt as to this proposition was laid to rest by the Commission in JEA's territorial dispute with Okefenokee Rural Electric Membership Corporation ("OREMC"), where the Commission recognized the superseding effect of the 1974 "Grid Bill"⁹ and held:

For its part, a municipality may have a right to provide electric service within its 1974 municipal boundaries, but that right is not inviolable. A municipality must exercise it in a manner that is consistent with the other provisions, and the public policy purposes, of the Grid Bill. It is the Florida Public Service Commission's responsibility to see that it does so.¹⁰

proposed agreement.

⁷Florida Steel Petition, at 6.

⁸Storey v. Mayo, 217 So.2d 307-308.

⁹Ch. 74-196, Laws of Florida.

¹⁰In Re: Petition to resolve territorial dispute between Okefenokee Rural Electric Membership Corporation and Jacksonville Electric Authority, 92 F.P.S.C. 3:234, 238 (1992).

13. Florida Steel also relies upon Utilities Commission of New Smyrna Beach v. Florida Public Service Commission, 469 So.2d 731 (Fla. 1985), in support of its position that the proposed agreement should not be approved because JEA's lower rates would support the economic viability of the Florida Steel facility in Duval County.¹¹ In New Symrna Beach, the Court rejected the Commission's determination that a territorial agreement must bring substantial benefits to affected customers and held that the Commission's only responsibility is to ensure that the proposed territorial agreement works no detriment to the public interest.¹² Florida Steel's desire for lower rates does not equate to a substantial interest necessary to challenge the proposed agreement. Moreover, Florida Steel's desire to secure lower rates from JEA is nothing more than a request for the Commission to return to the "substantial benefits" test rejected by the Court in New Smyrna Beach.

14. Florida Steel's final argument is that the payment from JEA to FPL for the transfer of customers from FPL to JEA is not justified. However, this claim is irrelevant to the Commission's review of the proposed agreement and such a review is beyond the Commission's jurisdiction. JEA has determined that the revenue compensation under the proposed agreement is fair to JEA, and this decision is not subject to the Commission's review. The Commission

¹¹Florida Steel Petition, at 5.

¹²469 So.2d at 732.

is without authority to establish rates for JEA¹³, and JEA's expenditures are not subject to a prudency review by the Commission. In addition, since Florida Steel is not a JEA customer, Florida Steel's interest in this issue cannot possibly be affected by JEA's alleged overpayment of revenue compensation. Ironically, if Florida Steel's allegation has merit, FPL will be overcompensated for its lost revenues, which may result in lower rates to its customers, including Florida Steel.

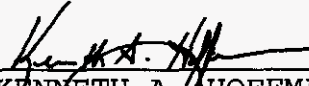
15. The proposed agreement will prevent further uneconomic duplication of facilities by JEA and FPL in St. Johns County and will bring enhanced service reliability for the customers of both utilities. Under the transfer provisions of the agreement, all customers in JEA's territory will be served by JEA and all customers in FPL's territory will be served by FPL. The construction of facilities necessary to bring enhanced safety and reliability will be completed. Florida Steel's actions in this docket already have served to delay the implementation of the proposed agreement for several months, and a formal hearing designed to address the rates of JEA and FPL, the economic impact on Florida Steel and other issues not material to the proposed agreement would only bring further delay to implementation of the agreement. The Commission should reject Florida Steel's plea to continue to hold JEA, FPL and their respective customers hostage to its unsupported challenge to the proposed agreement by dismissing

¹³City of Tallahassee v. Mann, 411 So.2d 162 (Fla. 1982);
citing Amerson v. Jacksonville Electric Authority, 362 So.2d 433
(Fla. 1st DCA 1978).

Florida Steel's Petition.

WHEREFORE, JEA requests that the Commission dismiss Florida Steel's Petition with prejudice.

Respectfully submitted,



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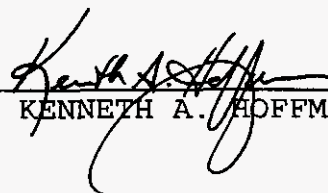
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following by hand delivery (*) and U. S. Mail this 26th day of March, 1996:

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