BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to resolve a territorial dispute with Florida Power & Light Company in St. Johns County, by Jacksonville Electric Authority	DOCKET NO. 950307-EU ORDER NO. PSC-96-0755-FOF-EU ISSUED: June 10, 1996

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

FINAL ORDER
GRANTING MOTIONS TO DISMISS AND
FINALIZING ORDER NO. PSC-96-0212-FOF-EU

BY THE COMMISSION:

CASE BACKGROUND

On March 20, 1995, Jacksonville Electric Authority (JEA) petitioned the Commission to resolve a territorial dispute with Florida Power & Light Company (FPL). On August 28, 1995, JEA and FPL filed a Joint Motion to Suspend Remaining Filing and Hearing Dates. In that motion, the parties stated that they had reached a settlement of the dispute and intended to file the appropriate documentation at a future date. By Order No. PSC-95-1086-PCO-EU, issued on August 31, 1995, the remaining filing and hearing deadlines were suspended and held in abeyance pending resolution of matters concerning the settlement agreement.

On October 6, 1995, JEA and FPL filed a Joint Motion to Approve a Territorial Agreement. The agreement was intended to replace the previous agreement between the two utilities in Clay, Duval, Nassau, and St. Johns Counties. The previous agreement was approved by Order No. 9363, issued May 9, 1980, in Docket No. 790886-EU.

On December 5, 1995, Florida Steel Corporation, now known as Ameristeel Corporation, (Florida Steel) filed a Motion to Intervene in this docket and Objection to Preliminary Agency Action. On

December 18, 1995, FPL filed a Memorandum in Opposition to Florida Steel's motion and objection. On January 18, 1996, Florida Steel filed a Response to Florida Power & Light's Memorandum in Opposition to Florida Steel Corporation's Motion to Intervene. On February 5, 1996, the prehearing officer issued Order No. PSC-96-0158-PCO-EU, denying Florida Steel's motion to intervene. Florida Steel filed an appeal of the ruling in Order No. PSC-96-0158-PCO-EU with the Florida Supreme Court on March 6, 1996. The Court dismissed the appeal on May 15, 1996.

On February 14, 1996, we issued PAA Order No. PSC-96-0212-FOF-EU approving FPL's and JEA's proposed territorial agreement. On March 6, 1996, Florida Steel protested the order approving the territorial agreement and requested a Section 120.57, Florida Statutes, hearing. On March 26, 1996, JEA and FPL both filed separate motions to dismiss Florida Steel's protest.

DECISION

In its protest, Florida Steel states that it has been a FPL customer since 1974 and that it will remain a FPL customer under the proposed territorial agreement. As a customer of FPL, Florida Steel asserts that it pays significantly higher rates for electric service than its major competitors. Florida Steel also asserts that if it is required to remain a FPL customer, these higher rates could be a factor in decisions concerning the continued operation of its Jacksonville mill.

Florida Steel further argues that, pursuant to the Jacksonville City Charter and the Jacksonville Municipal Code, JEA should have assessed whether it would be practical or economical for it to serve all of Duval County before entering into the new agreement with FPL. Florida Steel asserts that this docket contains no evidence that JEA made that determination. Florida Steel argues that an examination of this issue would demonstrate that JEA could economically serve all of Duval County. Citing Storey v. Mayo, 217 So. 2d 304 (Fla. 1968), Florida Steel also argues that since it is located within the Jacksonville city limits, it can compel service by JEA. Because energy costs have a significant bearing on the continued viability of its Jacksonville facility, Florida Steel asserts that it has a substantial interest in ensuring that this issue is addressed.

In addition, Florida Steel argues that the revenue compensation payments by JEA to FPL included in the agreement are not justified. Florida Steel asserts that the prior territorial agreements did not provide for similar payments. In this instance,

Florida Steel argues it can find no reason why FPL should continue to be compensated for the loss of revenue streams provided by serving customers outside FPL's service territory.[1]

We have examined the facts set forth in Florida Steel's petition in the light most favorable to Florida Steel, in order to determine whether Florida Steel's claim is cognizable under the provisions of Section 366.04, Florida Statutes. We find that Florida Steel has not sufficiently alleged that it has standing to maintain its protest in this docket.

According to Section 120.57, Florida Statutes, and Rule 25-22.029, Florida Administrative Code, only one whose substantial interests may or will be affected by our action may file a petition for a 120.57 hearing. When a petitioner's standing in an action is contested, the burden is upon the petitioner to demonstrate that he does, in fact, have standing to participate in the case. Department of Health and Rehabilitative Services v. Alice P., 367 So. 2d 1045, 1052 (Fla. 1st DCA 1979). To prove standing, the petitioner must demonstrate:

> 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect.

Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2nd DCA 1981).

We have applied the two-pronged test for "substantial interest" set forth in Agrico, and find that Florida Steel's allegations are not sufficient to establish standing in this docket.

1. Florida Steel will not suffer injury in fact of sufficient immediacy

Florida Steel's allegations do not pass the first prong of the Agrico test. Florida Steel's allegations fail to demonstrate that it will suffer an injury in fact which is of sufficient immediacy to warrant a Section 120.57 hearing. Florida Steel's assertion that paying FPL's higher rates will harm its ability to compete with other steel producers is purely speculative, as is its assertion that relocation of its Jacksonville mill will cause

[1] Florida Steel has not asserted that these payments give it standing to protest the proposed agency action. We, therefore, do not address this argument, as it is not relevant.

economic detriment to the City of Jacksonville. Florida Steel even notes that electric rates will be only one factor in its decision to relocate the Jacksonville mill. Such conjecture about possible future economic detriment is too remote to establish standing. See International Jai-Alai Players Assoc. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, at 1225-1226 (Fla. 3rd DCA 1990)(fact that change in playing dates might affect labor dispute, resulting in economic detriment to players was too remote to establish standing). See also Village Park Mobile Home Association, Inc. v. State, Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. denied, 513 So. 2d 1063 (Fla. 1987)(speculations on the possible occurrence of injurious events are too remote to warrant inclusion in the administrative review process). Cf. Florida Soc. of Ophthalmology v. State Board of Optometry, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988)(some degree of loss due to economic competition is not of sufficient "immediacy" to establish standing).

2. The alleged injury is not of a type or nature this proceeding is designed to protect

In addition, Florida Steel's allegations are not of a type designed to be protected by proceedings to approve a territorial agreement. Thus, Florida Steel fails the second prong of the Agrico test. Sections 366.04(2) and (5), Florida Statutes, "the Grid Bill," authorize us to approve territorial agreements and resolve territorial disputes in order to ensure the reliability of Florida's energy grid and to prevent further uneconomic duplication of electric facilities. The Grid Bill does not authorize us to set territorial boundaries in response to one customer's desire for lower rates. As stated in Order PSC-96-0158-PCO-EU issued in this docket:

> The Commission has consistently adhered to the principle set forth in Storey v. Mayo, 217 So. 2d 304, 307-308 (Fla. 1968), and reaffirmed in Lee County Electric Cooperative v. Marks, 501 So. 2d 585 (Fla. 1987), that no person has a right to compel service from a particular utility simply because he believes it to be to his advantage. The Court went on to say in Lee County that 'larger policies are at stake than one customer's self-interest, and those policies must be enforced and safeguarded by the Florida Public Service Commission.' Lee County Electric Cooperative, at 587.

Order Denying Intervention, Order PSC-96-0158-PCO-EU, February 5, 1996, at p. 3.

In Docket No. 870816-EU, Joint Petition for Approval of Territorial Agreement Between Florida Power & Light Company and Peace River Electric Cooperative, Inc., Order No. 19140, we determined that based upon Storey and Lee County Electric Cooperative:

> . . . the court has firmly established the general rule that a territorial agreement is not one in which the personal preference of a customer is an issue. Therefore, the alleged injury, even if real and direct, is not within the zone of interest of the law.

Order Dismissing Petition and Finalizing Order No. 18332, Order No. 19140, April 13, 1988.

Even if the injuries that Florida Steel has alleged do occur as a result of this agreement, such contingencies are not of the nature or type that this proceeding was designed to protect. Florida Steel has, therefore, failed to demonstrate standing and the motions to dismiss are granted.

Conclusion

Both FPL and JEA's motions to dismiss clearly demonstrate that Florida Steel has not presented a sufficient basis to maintain its protest in this docket. We, therefore, grant both FPL's and JEA's motions to dismiss.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the petition on proposed agency action filed by Florida Steel Corporation is, hereby, dismissed with prejudice. It is further

ORDERED that Order No. PSC-96-0212-FOF-EU is, hereby, determined to be final and effective, and Docket 950307-EU is closed.

By ORDER of the Florida Public Service Commission, this 10th day of June, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: _____
Chief, Bureau of Records

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.