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June 23, 1997

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## VIA HAND DELIVERY

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: In re: Petition of St. Joe Natural Gas Company, Inc. for a Limited Proceeding to Restructure Its Rates, Docket No. 970115-GU

Dear Ms. Bayo:

Enclosed for filing in the docket referenced above are the original and 15 copies of St. Joe Natural Gas Company, Inc.'s Motion to Dismiss Florida Coast's Petition on Proposed Agency Action and Request for Amendment or Clarification and Supporting Memorandum of Law. For our records, please acknowledge your receipt of this filing on the enclosed copy of this letter.

Thank you for your consideration in this matter.

Sincerely,

HOLLAND & KNIGHT LLP



D. Bruce May

ACK  \_\_\_\_\_  
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 APP \_\_\_\_\_  
 CAF \_\_\_\_\_  
 CMU \_\_\_\_\_  
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 OTH \_\_\_\_\_

DBM/sms

cc: Mr. Cochran Keating  
Mr. Joseph McGlothlin  
Dr. Thomas Kisla  
Mr. Stuart Shoaf

TAL-110252

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DOCUMENT NUMBER DATE

06252 JUN 23 97

EPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In Re: Petition of St. Joe )  
Natural Gas Company, Inc. ) Docket No. 970115-GU  
for a Limited Proceeding to )  
Restructure Its Rates. ) Filed June 23, 1997  
/

**MOTION TO DISMISS FLORIDA COAST'S PETITION ON PROPOSED  
AGENCY ACTION AND REQUEST FOR AMENDMENT OR  
CLARIFICATION AND SUPPORTING MEMORANDUM OF LAW**

St. Joe Natural Gas Company, Inc. ("SJNG"), by and through undersigned counsel, pursuant to Rule 25-22.037, Florida Administrative Code, moves to dismiss the Petition on Proposed Agency Action and Request for Amendment or Clarification (the "Petition") filed by Florida Coast Paper Company, L.L.C. ("Florida Coast") in this docket. In support of its Motion, SJNG states:

1. SJNG filed a Petition for Limited Proceeding to Restructure Rates with the Florida Public Service Commission (the "Commission") on January 27, 1997. On May 7, 1997, the Commission issued Order No. PSC-97-0526-FOF-GU (the "Order") setting forth its Notice of Proposed Agency Action approving SJNG's requested rate restructuring.

2. On May 28, 1997, Florida Coast filed its Petition with the Commission protesting a portion the Order. Florida Coast's Petition expressly states that Florida Coast does not object to the portion of the Order granting SJNG's request to restructure its rates. Thus, Florida Coast has stipulated to the approval of SJNG's restructured rates. See § 120.80(13), Fla. Stat. (Supp. 1996) ("Issues in the proposed action which are not in dispute are deemed stipulated."). Rather, Florida Coast objects to background information contained in the Order describing the relationship between

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SJNG and Florida Coast.<sup>1</sup> Florida Coast submits that if the Commission will amend or clarify this background information in the Order, it will withdraw the Petition. The Order is properly phrased, speaks for itself, and needs no clarification. Moreover, Florida Coast lacks standing to protest any portion of the Order, or to request that the Commission amend or clarify the Order. Therefore, the Commission should dismiss Florida Coast's Petition.

### **Memorandum of Law**

#### **Florida Coast Does Not Have Standing to Protest the Order**

3. Florida Coast has failed to assert a sufficient interest to establish the requisite standing to initiate a formal proceeding under Sections 120.569 or 120.57, Florida Statutes, which are part of Florida's Administrative Procedure Act ("APA"). Rule 25-22.029(4), Florida Administrative Code, provides that "[o]ne whose substantial interests may or will be affected by the Commission's proposed action" may file a petition for a hearing pursuant to the APA. Thus, Florida Coast must demonstrate that it has substantial interests that may or will be adversely affected by the Order such that it has standing to initiate a formal administrative proceeding. Florida Coast has not, and cannot, make this showing.

4. It is settled under Florida law that in order for an entity to have standing to initiate a formal administrative proceeding, it must show: (1) that it will suffer injury in fact which is of sufficient immediacy to entitle it to a formal proceeding; and (2) that

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<sup>1</sup> Upon information and belief, this background information was included in the Order in part based on calls and conversations initiated by Florida Coast to Commission staff during the pendency of this proceeding.

the injury is of a type or nature which the proceeding is designed to protect. See Agrico Chem. Co. v. Department of Env'tl. Regulation, 406 So. 2d 478, 482 (Fla. 1st DCA 1981). For reasons set forth below, Florida Coast fails to meet the requirements of the Agrico test, and therefore, lacks standing to initiate a formal proceeding.

Florida Coast Will Not Suffer Injury  
In Fact of Sufficient Immediacy

5. Florida Coast cannot satisfy the first prong of the Agrico test because it has failed to allege that entry of the Order will subject it to any injury of sufficient immediacy that would entitle it to a formal administrative proceeding. In order to suffer injury in fact, a party must be exposed to injury or threat of injury that is both real and immediate, not conjectural or hypothetical. See Florida Dep't of Offender Rehabilitation v. Jerry, 353 So.2d 1230, 1235 (Fla. 1st DCA 1978). Florida Coast's Petition states that the portion of the Order describing the relationship between Florida Coast and SJNG could create "the potential that the [O]rder could be misconstrued[.]" and that it is "potentially prejudicial to Florida Coast[.]" (emphasis added). The Petition goes on to state that Florida Coast is concerned about the language in the Order "[i]n the event that it becomes necessary to present and develop issues and positions concerning a dispute related to Florida Coast's notice to the utility or related matters. . . ."

6. Further, Florida Coast does not allege that it will suffer injury in the form of increased rates,<sup>2</sup> but suggests that it could, at some future time based on

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<sup>2</sup> Indeed, Florida Coast's Petition expressly states that it does not object to SJNG's restructured rates. Thus, the fact that Florida Coast may be a SJNG ratepayer should

undetermined future circumstances, suffer some other economic injury. This is not an injury in fact of sufficient immediacy to entitle Florida Coast to a formal proceeding. See Ameristeel Corp. v. Clark, 691 So. 2d 473, 478 (Fla. 1997) (FPL customer could not establish injury in fact in challenge to territorial agreement); International Jai-Alai Players Ass'n v. Florida Pari-Mutuel Comm'n, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990) (potential economic detriment to players was too remote to establish standing); Florida Soc'y of Ophthalmology v. State Board of Optometry, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988) (loss due to economic competition is not of "sufficient immediacy" to establish standing); Village Park Mobile Home Ass'n Inc. v. State Dep't of Bus. Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987) (speculations on the possible occurrence of injurious events are too remote to allow inclusion in the administrative process).

The Alleged Injury Florida Coast May Suffer Is Not Of The  
Type That This Proceeding Is Designed To Protect

7. Florida Coast also cannot satisfy the second prong of the Agrico test because Florida Coast's claimed interest in this proceeding is not the kind designed to be protected by the Commission in a proceeding to restructure a utility's rates. This

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not have any bearing on Florida Coast's standing to file the Petition. See Ameristeel Corp. v. Clark, 691 So. 2d 473, 478 (Fla. 1997) (ratepayer not entitled to standing to compel service from a municipal utility based on speculative economic interests); see also In Re: Petition for limited proceeding to implement water conservation plan in Seminole County by SANLANDO UTILITIES CORPORATION, 94 F.P.S.C. 8:256, 260, Docket No. 930256-WS, Order No. PSC-94-0987-FOF-WS (August 15, 1994) (for ratepayer standing there must be a direct nexus between a Commission decision and the ratepayer's payment of increased rates).

proceeding was initiated by SJNG pursuant to Section 366.076, Florida Statutes, which authorizes the Commission, upon petition, to conduct a limited proceeding to consider any matter within its jurisdiction, including a request by a utility to adjust its rates. The Commission has the jurisdiction to adjust or restructure a utility's rates to ensure that the utility's rates are fair and reasonable. § 366.08, Fla. Stat. (1995). A proceeding to restructure a utility's rates is designed to protect the utility's interest in obtaining a fair rate of return and the ratepayers' interests in paying fair, just and reasonable rates. It is not designed to adjudicate or resolve contractual obligations or to ensure that language in a Commission order will not be misconstrued in any future contract dispute litigation that may arise between a utility and one of its industrial customers.

Florida Coast Does Not Have Standing To Request  
Amendment or Clarification of the Order

8. Florida Coast is attempting to use the Commission's proposed agency action process to cause the Commission to unnecessarily amend or clarify the Order. In fact, Florida Coast states that it will withdraw the Petition if the Commission grants Florida Coast's request to amend or clarify the Order. Because Florida Coast does not have standing to initiate a formal proceeding challenging the Order, it also does not have standing to request that the Commission amend or clarify the Order. If this were the case, any person, regardless of standing, could protest a Commission notice of proposed agency action as leverage to seek Commission amendment or clarification of a Commission order. To adopt this precedent would not only violate the fundamental

principles of standing, but would undoubtedly serve to frustrate the efficient use of the Commission's resources.

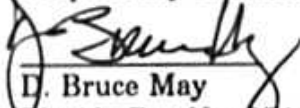
**Conclusion**

9. The speculative and conclusory allegations contained in Florida Coast's Petition are insufficient to establish Florida Coast's substantial interest in this docket. The Commission should not entertain Florida Coast's Petition based on the vague, unsubstantiated suggestions that the Order "may" have an undefined and indeterminate impact on matters over which the Commission does not have jurisdiction. The Commission should also refuse to allow Florida Coast to use its Petition as a forum to request that the Commission amend or clarify its Order when Florida Coast does not have standing to participate in this proceeding.

WHEREFORE, SJNG respectfully requests that the Commission:

- a. dismiss Florida Coast's Petition for lack of standing; and
- b. grant such other relief as the Commission deems appropriate.

Respectfully submitted,



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Florida Bar No. 354473

Karen D. Walker

Florida Bar No. 0982921

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**Attorneys for St. Joe Natural  
Gas Company, Inc.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss Florida Coast's Petition On Proposed Agency Action and Request for Amendment or Clarification and Supporting Memorandum of Law has been furnished by hand delivery (\*) or U.S. Mail to the following this 23rd day of June, 1997:

\*Cochran Keating  
Florida Public Service Commission  
Division of Legal Services  
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Tallahassee, FL 32399-0850

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D. Bruce May

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