BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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 ORDER NO. PSC-96-0158-PCO-EU ISSUED: February 5, 1996

ORDER DENYING INTERVENTION

On March 20, 1995, Jacksonville Electric Authority (JEA) petitioned the Commission to resolve a territorial dispute with Florida Power and 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, I suspended and held in abeyance the remaining filing and hearing deadlines scheduled for this docket 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 proposed agreement is intended to replace the previous agreement between the two utilities in Clay, Duval, Nassau and St. Johns Counties. The previous agreement was approved by the Commission in Order No. 9363, issued May 9, 1980, in Docket No. 790886-EU.

On December 5, 1995, Florida Steel Corporation (Florida Steel) filed a Motion to Intervene in this proceeding and Objection to Preliminary Agency Action. On Monday, December 18, 1995, FPL filed a Memorandum in Opposition to Florida Steel's Motion to Intervene and Objection to Preliminary Agency Action. On January 18, 1996, Florida Steel filed a Response to Florida Power and Light's Memorandum in Opposition to Florida Steel Corporation's Petition to Intervene. Florida Steel's Objection to Preliminary Agency Action, filed prior to the issuance of a proposed agency action in this docket, is not contemplated by Commission rules. Florida Steel's Response to FPL's Memorandum in Opposition to Florida Steel's Petition to Intervene was not timely filed in accordance with the provisions for responding to motions, Rule 25-22.037(2)(b), Florida Administrative Code. I have, therefore, addressed only Florida Steel's request for leave to intervene.

In its Motion to Intervene, 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 do its major competitors. Florida

Steel believes 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.

FPL asserts that Florida Steel claims only that it is dissatisfied with the rate charged by FPL. FPL also notes that Florida Steel does not claim that approval of the agreement will change its circumstances. FPL, therefore, asserts that Florida Steel's allegations of potential economic harm to Florida Steel and the City of Jacksonville are too speculative, indirect, and remote to support standing in this matter.

Pursuant to Rule 25-22.039, Florida Administrative Code, persons seeking to become parties in a proceeding must demonstrate that they are entitled to participate as a matter of constitutional or statutory right or pursuant to Commission rule, or that their substantial interests are subject to determination or will be affected through the proceeding. Florida Steel has not alleged that it is entitled to intervene as a matter of right or pursuant to Commission rule. It is appropriate, therefore, to apply the two-pronged test for "substantial interest" set forth in Agrico Chemical Co. v. Dept. of Environmental Regulation, 406 So.2d 478, 482 (Fla. 2nd DCA 1981), rev. denied 415 So. 2d 1359 (Fla. 1982). According to the Agrico test, a party must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing, and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Id. at 482.

With respect to the first prong of the test, Florida Steel's petition contains a number of allegations concerning its failed attempts to negotiate a lower rate with FPL and the resulting threat to the survival of its Jacksonville mill. Florida Steel asserts that if it is not allowed to negotiate a lower rate with JEA, it will consider relocating the Jacksonville mill. Florida Steel claims that the City of Jacksonville's economic well-being will suffer should the mill be relocated.

After consideration, I find that Florida Steel has not shown that it will suffer an injury in fact which is of sufficient immediacy to warrant a Section 120.57 hearing. Florida Steel admits in its petition that FPL's rates will not be the sole determinant in whether the company decides to relocate the Jacksonville mill. Also, Florida Steel can only speculate as to the effect that such a loss might have on the City. As explained in Order No. PSC-95-0348-FOF-GU, the Commission has already determined that such conjecture as to future economic detriment is too remote to establish standing. Citing International Jai-Alai

Players Assoc. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, at 1225-1226 (Fla. 3rd DCA 1990). 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).

With respect to the second prong of the Agrico test, Florida Steel asserts that the public interest as a whole, as well as the economic interests of the City of Jacksonville, would be better served if the territorial boundary was modified to allow JEA to serve the area currently served by FPL in Duval County. In support of this assertion, Florida Steel states only that if it is required to remain in FPL's territory and is not allowed to negotiate with JEA for service at lower rate, then it will consider relocating its Jacksonville mill.

I find that the alleged injury claimed by Florida Steel is not of a type designed to be protected by proceedings to approve a territorial agreement. Sections 366.04(2) and (5), Florida Statutes, commonly called the "Grid Bill," authorize the Commission 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 the Commission to set territorial boundaries in response to one customer's desire for lower rates. This 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.

In Docket No. 870816-EU, Joint Petition for Approval of Territorial Agreement Between Florida Power and Light Company and Peace River Electric Cooperative, Inc., Order No. 19140, the Commission cited Storey and Lee County Electric Cooperative in concluding that the petitioner, Schroeder-Manatee, Inc., lacked standing to intervene in the proceedings. The Commission stated that

> . . . 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.

In Docket No. 891245-EU, Petition of Florida Power and Light Company for Resolution of a Territorial Dispute with Fort Pierce Utilities Authority, the prehearing officer invoked a similar rationale in denying a petition to intervene filed by Harbor Branch Oceanographic Institution, Inc. (Harbor Branch), a Fort Pierce Utilities Authority (FPUA) customer. The prehearing officer noted that

> Harbor Branch has not alleged that it is located in an area that is subject to dispute or that is subject to any duplication of facilities by the two utilities. Harbor Branch has not alleged that either approval or disapproval of the territorial agreement will cause any change in its circumstances. Harbor Branch simply alleges that it is unhappy with the quality of service that is provided by FPUA and that FPUA charges a higher rate than FPL. Neither of these allegations are sufficient to show that Harbor Branch's substantial interests will be affected by the outcome of this proceeding.

Order Denying Intervention, Order No. PSC-94-0909-PCO-EU, July 25, 1994.

I find that Florida Steel's position is quite similar to that presented by Harbor Branch in Docket No. 891245-EU. Florida Steel acknowledges that it has been and will remain a FPL customer under the proposed territorial agreement. Florida Steel claims only that FPL's rates could be a factor in decisions concerning the continued operation of its Jacksonville mill and that the those decisions may have some bearing on the economy of the area. This allegation is not sufficient to support standing in this docket. Based on the foregoing, Florida Steel Corporation's Petition to Intervene in these proceedings is denied.

Although Florida Steel shall not be granted intervenor status, it has ample opportunity to participate at the February 6, 1996, Commission Agenda Conference at which the proposed territorial agreement is scheduled to be addressed, pursuant to Section 366.04(4), Florida Statutes, and Rules 25-6.0442(1) and 25-22.0021(1), Florida Administrative Code. In addition, Florida Steel's right to due process is protected by our Rule 25-22.0376, Florida Administrative Code, whereby an adversely affected party

may petition for reconsideration of an order of a prehearing officer within 10 days after the issuance of the order.

Based on the foregoing, it is therefore

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the Motion to Intervene filed by Florida Steel Corporation is hereby denied.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 5th day of February, 1996.

JULIA L. JOHNSON, Commissioner and Prehearing Officer

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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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.