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REPLY TO:

May 20, 1992

Mr. Steve Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

HAND DELIVERY

ORIGINAL  
FILE COPY

Re: Docket No. 911141-EU

Dear Mr. Tribble:

Enclosed herewith for filing in the above-referenced docket are the original and fifteen copies of the JEA's Second Revisions to Draft Prehearing Order.

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 yours,

*Kenneth A. Hoffman*  
Kenneth A. Hoffman

- ACK
- AFK  KAH/rl
- APP  Enclosures
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DOCUMENT NUMBER-DATE  
05141 MAY 20 1992  
FPC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Territorial Dispute Between )  
Okefenokee Rural Electric Membership ) DOCKET NO. 911141-EU  
Corporation and the Jacksonville ) Filed: May 20, 1992  
Electric Authority of the City of )  
Jacksonville, in Duval County. )  
\_\_\_\_\_ )

JEA'S SECOND REVISIONS TO DRAFT PREHEARING ORDER

The JACKSONVILLE ELECTRIC AUTHORITY ("JEA"), by and through its undersigned counsel, and pursuant to its request granted by the Prehearing Officer at the Prehearing Conference on May 18, 1992, hereby submits the following revised positions and statements to the Draft Prehearing Order dated May 15, 1992. The positions of JEA set forth below should be substituted for positions previously set forth in JEA's Prehearing Statement dated April 10, 1992 and incorporated in the Final Prehearing Order:

ISSUE 1: See Draft Prehearing Order dated May 15, 1992.

JEA: Please insert the following prior to the last two paragraphs of JEA's position in response to Issue No. 1 as such position is set forth in the May 15, 1992 Draft of the Prehearing Order:

In 1968, the Florida Supreme Court in discussing the law applicable to the furnishing of retail electric service within the corporate limits of a municipality, stated the following:

Under Florida law, municipally-owned electric utilities enjoy the privileges of legally protected monopolies within municipal limits. The monopoly is totally effective because the government of the City, which owns the utility, has the power to preclude even the slightest threat of competition within the city limits.

DOCUMENT NUMBER-DATE

05141 MAY 20 1992

F-PSC-RECORDS/REPORTING

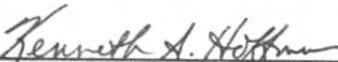
An individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself. If he lives within the limits of a city which operates its own system, he can compel service by the city. [Emphasis added.]

Storey v. Mayo, 217 So.2d 304, 307-308 (Fla. 1968). The enactment of the Grid Bill in 1974 preserved and codified that principle of law pursuant to the 1974 municipality provision. The Florida Supreme Court's pronouncement in Storey v. Mayo as codified by the 1974 municipality provision remains the law today. Since JEA was in a position to provide service to the Holiday Inn at its request, and JEA and OREMC were not parties to a Commission-approved territorial agreement, JEA is clearly under a legal obligation to provide such service.

Further, absent a Commission approved territorial agreement, there is no lawful basis upon which JEA may refuse to provide service to the Holiday Inn without subjecting itself to the clear risk of violating federal anti-trust laws. OREMC relies on the 1978 operating guidelines between the parties in support of its position that it should be awarded the right to provide service to the Holiday Inn. The 1978 operating guidelines arrangement is not a Commission-approved territorial agreement. It is not a territorial agreement entered into between the two utilities and approved by the Commission pursuant to the clearly articulated and affirmatively expressed policy of the State of Florida to displace competition through Commission-approved territorial agreements. See Section 366.04(2)(d), Florida Statutes. Hence, the 1978

JEA: Yes, as discussed in JEA's position under Issue 1, incorporated herein by reference. Except for the exclusions addressed above, an individual or citizen of Jacksonville can compel service by the JEA.

Respectfully submitted,

  
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and

BRUCE PAGE, ESQ.  
Assistant General Counsel  
1300 City Hall  
Jacksonville, Florida 32202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JEA's Second Revisions to Draft Prehearing Order was furnished by hand delivery this 20th day of May, 1992 to the following:

Martha Carter Brown, Esq.  
Florida Public Service Commission  
Division of Legal Services  
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Tallahassee, Florida 32399

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\_\_\_\_\_  
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