

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In The Matter of	:	DOCKET NO. 911141-EI
Petition to resolve	:	
territorial dispute between	:	
OKEFENOKE RURAL ELECTRIC	:	
MEMBERSHIP CORPORATION and	:	
JACKSONVILLE ELECTRIC	:	
AUTHORITY.	:	

PROCEEDING:	PREHEARING CONFERENCE
BEFORE:	COMMISSIONER J. TERRY DEASON Prehearing Officer
DATE:	Monday, May 18, 1992
TIME:	Commenced at 1:00 p.m. Concluded at 1:45 p.m.
LOCATION:	FPSC Hearing Room 106 Fletcher Building 101 East Gaines Street Tallahassee, Florida
REPORTED BY:	SYDNEY C. SILVA, CSR, RPR Official Commission Reporter

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P R O C E E D I N G S

(Hearing convened at 1:00 p.m.)

COMMISSIONER DEASON: Call this Prehearing Conference to order. Counselor, please read the notice.

MS. BROWN: By notice issued March 26, 1992, this time and place was set for a Prehearing Conference in Docket No. 911141-EU, entitled Territorial dispute between Okefenoke Rural Electric Membership Corporation and the Jacksonville Electric Authority of the City of Jacksonville in Duval County. The purpose of the Prehearing Conference is more fully set out in the notice.

COMMISSIONER DEASON: Thank you. Take appearances, please.

MR. THOMPSON: James Harold Thompson, for OREMC.

MR. HOFFMAN: I'm Kenneth A. Hoffman. With me is Elliott Messer, we are both of the Messer Vickers law firm, P. O. Box 1876 in Tallahassee, Florida. With us also is Shel Ferdman of the Jacksonville Electric Authority, all here on behalf of the Jacksonville Electric Authority.

MS. BROWN: Martha Carter Brown and Donna Canzano on behalf of the Florida Public Service

1 Commission Staff. Our address is 101 East Gaines
2 Street, Tallahassee, Florida, 32399.

3 MR. PRUITT: And I'm Prentice P. Pruitt, same
4 address, Counsel to the Commissioners.

5 COMMISSIONER DEASON: Thank you. Ms. Brown,
6 are there any preliminary matters?

7 MS. BROWN: There are no preliminary matters,
8 Commissioner. There are some outstanding motions; I
9 didn't know whether you would like to address those
10 first before we got into dealing with the issues.

11 COMMISSIONER DEASON: Well, I have reviewed
12 those motions, I'm not so sure -- we can discuss those
13 here, but I believe it may be better to have those
14 ruled on by the full panel. Do you have any thoughts
15 along those lines?

16 MS. BROWN: I do; and I agree with you,
17 Commissioner. Also, we have not received a response
18 from Okefenokee to those motions.

19 Your choices for having the panel review
20 those motions would be to come to an Agenda Conference
21 before the hearing or to hear those motions the morning
22 of the hearing. The Staff has no objection to hearing
23 them the morning of the hearing, and providing the
24 Commissioner with an oral recommendation on them.
25 They're fairly familiar to us. If you would prefer to

1 do it that way, whichever you like.

2 COMMISSIONER DEASON: Well, explain to me
3 what time frame is involved. When does Okefenoke have
4 to respond and then when is the hearing scheduled?

5 MS. BROWN: The motion was filed the 15th, on
6 Friday, so you have ten days to respond. So that would
7 be the 25th of May. The hearing is scheduled for the
8 17th of June. And I didn't bring my Agenda calendar
9 with me, but I was looking over it on Friday and there
10 is -- I think there are two Agenda Conferences
11 scheduled before the hearing. We could probably do the
12 later one, if you would like.

13 COMMISSIONER DEASON: Okay. Do the parties
14 have any preference as to how this is handled
15 procedurally?

16 MR. THOMPSON: Ken, if I may? We just received
17 these motions. And I guess when I say "motions," I'm
18 saying a Motion to Dismiss or, in the alternative, Motion
19 to Strike. So I'm calling them motions but they really go
20 to the same issue. We received them Friday; and so with
21 such a short time, we can only give you are our
22 impressions. Number one, there's very similar to the
23 motion that's already been disposed of.

24 In addition, I think the evidence that's been
25 developed up until this point, from the point of view

1 of JEA, it's basically the testimony of one witness;
2 and it basically analyzes their law and their authority
3 to do what they're doing, which is the crux of the case
4 from their point of view, I believe. Therefore, we
5 recommend that you take this up at the hearing. As a
6 matter of fact, my recommendation is that you just have
7 the hearing; and when you make your ruling, you rule on
8 the motion and everything that goes with it.

9 COMMISSIONER DEASON: Mr. Hoffman?

10 MR. HOFFMAN: Commissioner, the motion was
11 served on Friday. It was hand-delivered. So at least
12 strictly speaking, there are seven days afforded to the
13 Co-op to file a response, file and serve a response, so
14 I think that would be on the 22nd. Am I wrong or
15 right?

16 MS. BROWN: You're right, Mr. Hoffman. It's
17 seven days for motions.

18 MR. HOFFMAN: Okay. In terms of the timing
19 of the whole thing, we disagree about whether or not
20 what we have just filed, the Motion to Dismiss and
21 Motion to Strike, is similar to the previously filed
22 Motion to Dismiss.

23 And if I may only for 10 or 15 seconds, I
24 don't want to get into the merits at this point, but I
25 will just tell that you the previous motion, which the

1 Commission denied, was centered on the application of a
2 certain provision under Section 366.04. And that was a
3 question of whether the Commission had jurisdiction to
4 resolve territorial disputes when they focused on
5 service within here, the City of Jacksonville's
6 municipal limits as such existed on July 1, 1974. You
7 answered that question by saying that the Commission
8 had jurisdiction to move forward and said that, you
9 know, that's our ruling with respect to that statute.

10 The motion we filed Friday is a different
11 motion. It's a motion which essentially says that in
12 terms of subject matter jurisdiction, we don't believe
13 that the Commission, one, can order two electric
14 utilities, including the two in this case, order them
15 to enter into a territorial agreement; secondly, we do
16 not believe that there is a territorial dispute
17 reflected by the pleadings in this docket in northern
18 Duval County, and that the only territorial dispute
19 which has been raised in this docket is the one
20 involving the Holiday Inn.

21 So what we're saying is, one, from the subject
22 matter jurisdiction standpoint, we don't think the
23 Commission can go so far as to order electric utilities to
24 enter into a territorial agreement; and with respect to
25 this docket, we think the only territorial dispute is the

1 one involving the Holiday Inn.

2 And I guess the only thing I would say is if
3 we're right -- and we're not here today to decide that
4 -- but if we are right, that would take what you have
5 before you and significantly diminish what we need to
6 look at in terms of the hearing. In other words,
7 rather than going into Holiday Inn and many parts of
8 northern Duval County, if the Commission were to grant
9 JEA's motion, then the final hearing and the final
10 order would be limited to the Holiday Inn. So we think
11 in terms of economies of the parties and of the
12 Commission, it kind of makes sense to decide our
13 motion before the final hearing.

14 COMMISSIONER DEASON: Let me ask you this: is
15 it your position that oral argument is to be held on
16 these motions?

17 MR. HOFFMAN: We requested it and we requested
18 it because we thought it would be helpful to you.

19 COMMISSIONER DEASON: Mr. Thompson.

20 MR. THOMPSON: Let me read to you from the
21 motion so we can all figure out how different it is.
22 On the first page at the end of the first paragraph, it
23 says, "The central grounds for this motion is that the
24 Commission lacks statutory authority and subject matter
25 jurisdiction to grant such relief to OREMC."

1 That's the heart of the motion that's been
2 previously disposed of in this matter.

3 As far as the issue of what's in dispute, you
4 will have in your file a letter from Mr. Bruce Page
5 dated April 9, 1992, with the original and 15 copies of
6 JEA's Prehearing Statement Recommendation. Within
7 that, you will have Issue No. 5, asking this question:
8 "What is the geographical description of the area in
9 dispute?" JEA: "The area in dispute includes the
10 portions of the city where OREMC has distribution
11 facilities.

12 In other words, until that date, April 9th,
13 1992, they were putting contention everywhere that we
14 distribute electricity in Duval County. Now, granted,
15 their revised version that was also received Friday, I
16 think, changes their position on No. 5 and says that
17 the only area in dispute is the Holiday Inn
18 Jacksonville Airport.

19 I guess what I'm saying is that the case has
20 built up to this point with all that in it anyway, so
21 there's no harm in continuing this case with all that
22 information in it. If this case had been restricted
23 months ago, before all the testimony was developed,
24 prefiled testimony, depositions, interrogatories, and
25 so forth, there might be some merit to the argument.

1 But I think it's clear that JEA's position all along
2 has been that everywhere that we serve in Duval County
3 is contested.

4 So we think that the prudent thing is to just
5 go forward with the hearing. Within the context of the
6 hearing, they will have plenty of time to argue their
7 motion, and then you all will make your decision based
8 on the facts and law at that time.

9 COMMISSIONER DEASON: What does the calendar
10 permit as far as addressing this in Agenda Conference
11 prior to the hearing?

12 MS. BROWN: I'll have to send someone up to
13 get the Agenda. I didn't bring the Commission calendar
14 with me, but there is the opportunity for Staff to
15 bring a recommendation to the panel at Agenda before
16 the hearing. There is one -- I think there are
17 actually two possible Agenda Conferences, and I -- will
18 you go?

19 If you want to table that, I can tell you
20 exactly when we get back with the calendar which Agenda
21 is available.

22 COMMISSIONER DEASON: Okay.

23 MS. BROWN: But I think there is one a week
24 or two weeks before the hearing.

25 COMMISSIONER DEASON: Does Staff see any

1 merit to the argument that if the motion were to be
2 granted, that it would limit the scope of the hearing
3 and may be more efficient, assuming that scenario
4 develops?

5 MS. BROWN: No. Staff doesn't see any merit
6 to that argument.

7 COMMISSIONER DEASON: Could you explain that.

8 MS. BROWN: And the reason why Staff doesn't
9 see any merit to that argument is we would probably
10 recommend, if we were to recommend that the motion be
11 granted, that Okefenoke be given leave to amend its
12 petition to correct the failings that JEA has
13 mentioned. In other words, it would be without
14 prejudice, and Okefenoke would have the opportunity
15 then to correct the deficiencies in their petition.
16 And we would end up dealing with the case as it exists
17 now anyway. So I don't think that disposing of this
18 early would tend to provide us with any increased
19 economy for the hearing.

20 COMMISSIONER DEASON: Let me ask you this
21 question. If we were to address this motion at the
22 beginning of the hearing on the 17th of June and if the
23 Commission were to decide that that motion has merit
24 and that the issue is the Holiday Inn situation and not
25 the whole of northern Duval County, would it be your

1 recommendation that we go forward with the Holiday Inn
2 dispute, or that we give Okefenoke time to amend their
3 petition and then address the whole matter at one time?

4 MS. BROWN: I think it would be my
5 recommendation that Okefenoke be given the opportunity
6 to amend its petition.

7 COMMISSIONER DEASON: Would that necessitate
8 a change of hearing dates then?

9 MS. BROWN: I'm not certain about that,
10 Commissioner. Mr. Pruitt, do you have any thoughts on
11 that?

12 MR. PRUITT: Well, not being familiar with
13 the motions, I haven't seen them yet, I'm not, as far
14 as the timing situation is concerned, I'm not of any --

15 MS. BROWN: I would say, Commissioner, that
16 it probably would necessitate a change in the hearing
17 because we would have to then give Okefenoke an
18 opportunity to amend its petition, and then JEA an
19 opportunity to respond to the amended petition, and
20 then we'd be past our hearing date at that time.

21 COMMISSIONER DEASON: Mr. Hoffman, do you
22 have any thoughts on whether if that motion were
23 granted that Okefenoke should be given time to amend
24 their petition and change the hearing date?

25 MR. HOFFMAN: Seems to me, Commissioner, that

1 in most cases where a complaint is dismissed, normally
2 a petitioner or a plaintiff is given an opportunity to
3 amend.

4 I can't say what Okefenoke would put in an
5 amended petition. It's our position that, even if they
6 try to amend it, it's still a question of law. There
7 is no legal authority, at least in our opinion, for the
8 Commission to order these two utilities to enter into a
9 territorial agreement, nor do we believe there to be a
10 territorial dispute going on in Duval County between
11 these two utilities apart from the Holiday Inn.

12 Now, I have been involved in situations over
13 the last few months in other proceedings where the
14 Commission has dismissed a complaint and has not
15 allowed an opportunity to amend because it was Staff's
16 opinion, and the Commission affirmed that opinion, that
17 there was simply nothing that the particular utility
18 could plead which would provide a claim.

19 So I think -- I guess my answer is in most
20 cases, Court decisions have held that it is appropriate
21 to allow at least one opportunity to amend your
22 complaint. And if so, then I think clearly there would
23 be a need to reschedule the hearing.

24 COMMISSIONER DEASON: Do you think, though,
25 depending on the Commission's ruling as to what our

1 jurisdiction is and to the extent we exercise that
2 jurisdiction that would have a bearing as to whether the
3 petition should be allowed to be amended or not?

4 My question is that somewhere along the line
5 we've got to address the issue as to whether there is a
6 territorial dispute which this Commission has
7 jurisdiction over involving the whole of northern Duval
8 County, or is it an isolated incident here of one
9 customer, that being the Holiday Inn? Somewhere we
10 have got to address that issue, do you agree?

11 MR. HOFFMAN: Yes.

12 COMMISSIONER DEASON: Okay. Mr. Thompson, I
13 assume you agree with that, too. We've got to --
14 somewhere we've got to determine that issue.

15 MR. THOMPSON: Correct.

16 MS. BROWN: Commissioner, may I suggest that
17 the place to determine that is in the hearing? I think
18 that's a question of fact that the Commission can
19 determine after it hears the evidence.

20 COMMISSIONER DEASON: Have you found the --
21 what are the options available if the Commission wanted
22 to entertain the motion before the hearing?

23 MS. BROWN: There is an Agenda Conference
24 scheduled for the 2nd of June. Recommendation would be
25 due this Thursday. There is another Agenda Conference

1 the day before the hearing, June 16th.

2 COMMISSIONER DEASON: If we were to entertain
3 this at an Agenda Conference, would it be your
4 intention to allow parties oral argument at the Agenda
5 Conference?

6 MS. BROWN: Commissioner, I haven't had a lot of
7 time to review these motions, either. I would -- from my
8 initial purview of them, I would, in this circumstance,
9 probably recommend that oral argument would not be
10 necessary to assist the Commission in making a decision,
11 because it is my initial impression of this motion that
12 it's very similar to the one the Commission has already
13 dealt with with respect to the subject matter jurisdiction
14 issue, as well as the issue of the Commission's
15 jurisdiction over the relief requested by the parties.

16 COMMISSIONER DEASON: Okay. Well, obviously,
17 the motion is one that needs to be dealt with by the
18 full panel. It's not something the Prehearing Officer --

19 MS. BROWN: Yes.

20 COMMISSIONER DEASON: -- should dispose of
21 today.

22 MS. BROWN: No. I don't think so.

23 COMMISSIONER DEASON: Okay. Well, let's go
24 on into the Draft Prehearing Order itself and --

25 MS. BROWN: Commissioner, may I stop you

1 here?

2 COMMISSIONER DEASON: Sure.

3 MS. BROWN: There is one more motion that I
4 think we can take care of today.

5 COMMISSIONER DEASON: Okay.

6 MS. BROWN: And that is Okefenoke's Request
7 for Official Recognition of the Leon County Circuit
8 Court Case Nos. 70-895, entitled "City of Tallahassee
9 versus Talquin Electric Cooperative, Incorporated."

10 Okefenoke has asked the Commission to take
11 official notice of that decision in that case. It was
12 an unpublished decision, and they have attached it to
13 their motion. It is Staff's recommendation that that
14 request be granted, and no parties have objected.

15 COMMISSIONER DEASON: Okay. Has the time
16 already expired for there to be an objection?

17 MS. BROWN: Yes.

18 COMMISSIONER DEASON: Okay. Well, then, let
19 the record reflect then that that motion is granted and
20 that the official recognition will be given to that
21 case which you just cited.

22 MS. BROWN: Okay. That's all, I won't
23 interrupt you again.

24 COMMISSIONER DEASON: Okay. What I would
25 like to propose to do at this point is to proceed

1 through the Draft Prehearing Order, and we'll go ahead
2 and begin that at this time.

3 The case background, I assume, is
4 satisfactory to all parties. If it's not, I would
5 entertain any suggestions for modification. Hearing
6 none, it is assumed to be correct.

7 MS. BROWN: Commissioner, there is one typo
8 at the very end of that section. We put in that the
9 case would be heard on the "16th" of June, it should be
10 the "17th."

11 COMMISSIONER DEASON: Very well. Proceeding
12 along, Section 2 of the Draft Prehearing Order
13 addresses confidential information. Correct me if I'm
14 wrong, Ms. Brown, this is pretty well standard language
15 which we are including in all Commission prehearing
16 orders, is that correct?

17 MS. BROWN: Yes, Commissioner.

18 COMMISSIONER DEASON: All right. In that
19 standard language, there is a provision which states
20 that parties wishing to use confidential information
21 has to notify the Prehearing Officer and all parties
22 preferably by the time of the Prehearing Conference.
23 Do you know if there has been any indication as to
24 whether any confidential information is to be utilized?

25 MS. BROWN: I have had no indication that

1 there is any being requested.

2 COMMISSIONER DEASON: Is it correct
3 understanding then is that confidential information is
4 not to be utilized at the hearing?

5 MR. HOFFMAN: That's my understanding at this
6 point.

7 MR. THOMPSON: My understanding.

8 COMMISSIONER DEASON: Okay. Section III
9 addresses prefiled testimony and exhibits. Here, again,
10 this is pretty standard language. I would like to
11 reiterate that the parties advise their witnesses that
12 they are requested to answer questions yes or no, those
13 calling for such answers, and then to expand on their
14 answers if they feel the need to.

15 Section IV addresses the order of witnesses.
16 And, Staff, is this the order which has been suggested
17 by the parties?

18 MS. BROWN: Yes, Commissioner.

19 COMMISSIONER DEASON: Are there any changes
20 to the suggested order as contained in the draft? Very
21 well.

22 I notice that the direct witnesses for
23 Okefenoke do not address Issues 1, 2, 3 and 4. Is that
24 because those are primarily legal issues?

25 MS. BROWN: I think that that's correct, but

1 I --

2 COMMISSIONER DEASON: Mr. Thompson?

3 MR. THOMPSON: I think that's right. Let me
4 look at my -- No. 1, 2, 3, yes, that's correct.

5 COMMISSIONER DEASON: Okay. Well, when we
6 get to these issues, I guess we'll discuss how we're
7 going to proceed with those particular issues.

8 Section V addresses basic positions. Is
9 there any need for correction or change or modification
10 to basic positions? Very well.

11 Section VI is the section addressing the
12 issues and positions. I guess I'll ask my question now
13 which I raised earlier, and that is, the first few
14 issues, which I believe are Issues 1 through 4, appear
15 to be essentially legal issues. How are we going to --
16 if we leave those issues in, how are we going to
17 address those, in briefs or in oral argument or --

18 MS. BROWN: Yes. Yes. In briefs after the
19 hearing, Commissioner. We can put them at the back of
20 the Prehearing Order, as we often do. We can put
21 factual issues first and identify these as legal
22 issues, if you would like. Because there were not too
23 terribly many issues in the case, we just put them
24 down. As JEA submitted the first two issues, legal
25 issues, and Okefenoke submitted the second two, those

1 were the only issues that the parties submitted in the
2 case and we just put them first.

3 COMMISSIONER DEASON: Let me explain what my
4 concern is, and that is that the Prehearing Order be
5 clear that if these are legal issues that they are,
6 indeed, that, and that they are not going to be
7 addressed by evidence, direct testimony, and that it is
8 going to be briefed. And however you want to designate
9 that, if you want to separate these issues or if you
10 just want to give an indication and leave these issues
11 numbered as they are, I don't particularly have a
12 preference. I just would like for it to be identified
13 so that the panel which is hearing this case will know
14 what to expect at the hearing.

15 MS. BROWN: I will do that. I will identify
16 these as legal issues underneath the number.

17 COMMISSIONER DEASON: I understand that for
18 Issue 1 there is a question as to whether this is a
19 restatement of an issue which has already been dealt
20 with on the prior Motion to Dismiss, is that correct?

21 MS. BROWN: That's correct, that's Staff's
22 position that the Commission has already ruled on both
23 Issues 1 and 2 in its denial of JEA's initial Motion to
24 Dismiss.

25 COMMISSIONER DEASON: Mr. Thompson, is that

1 your view also?

2 MR. THOMPSON: Yes.

3 COMMISSIONER DEASON: Mr. Hoffman?

4 MR. HOFFMAN: Yes.

5 COMMISSIONER DEASON: So is this then not an
6 issue which needs to be addressed or the issue needs to
7 be preserved for briefing purposes or appellate
8 purposes or --

9 MR. HOFFMAN: Absolutely. We believe that
10 the issue needs to be preserved and we intend to
11 address it in our post-hearing brief.

12 COMMISSIONER DEASON: Okay.

13 MS. BROWN: That would be an adequate way to
14 preserve it. It's a subject matter jurisdiction
15 question, it's never really lost, anyway, for the
16 parties to bring up again.

17 COMMISSIONER DEASON: Very well. But it
18 certainly would not harm anything to have this issue
19 included in the Prehearing Order, is that correct?

20 MS. BROWN: No. No.

21 COMMISSIONER DEASON: Very well. Does that
22 also apply for Issue 2?

23 MS. BROWN: Yes. They're really slightly
24 different twists on the same question.

25 COMMISSIONER DEASON: Very well.

1 And is it the same for Issues 3 and 4? All
2 Issues 1 through 4 will be basically legal issues and
3 addressed through briefs. Is that the understanding of
4 the parties?

5 MR. HOFFMAN: Yes. Yes.

6 COMMISSIONER DEASON: Very well.

7 MR. THOMPSON: Yes.

8 COMMISSIONER DEASON: We're not going to have
9 witnesses, then, speaking to these issues, is that
10 correct?

11 MR. HOFFMAN: I believe, Commissioner, that
12 JEA's witness, Mr. Ferdman, does speak in part to these
13 issues, but that does not mean that they are factual
14 issues. They are legal issues.

15 COMMISSIONER DEASON: Okay. Do any of the
16 parties have any changes or modifications to the
17 positions stated on Issues 1 through 4? Very well.

18 What I would like to do at this point is just
19 proceed through the remaining Issues one-by-one. If
20 there are any modifications or changes or questions
21 concerning the issues or the positions, I request that
22 the parties just speak up. Not hearing anything, I'll
23 assume that the parties are in agreement that that the
24 Prehearing Order correctly reflects both the issue and
25 the position.

1 Issue 5? Issue 6? Issue 7?

2 I notice on Issue 7 that JEA's position is
3 that this is not disputed. Staff, is this a position
4 which needs to be included, or is it still somehow in
5 contention? Is this a factual situation that can be
6 stipulated to? I guess is my question.

7 MS. BROWN: I think it can be stipulated. We
8 would like to see it remain in the case.

9 COMMISSIONER DEASON: Okay. And at the
10 hearing we can address whether there needs to be some
11 type of stipulation, if the parties can agree to one?

12 MS. BROWN: Yes. In fact, perhaps we can get
13 to that point. When I put out the Prehearing Order, I
14 can run a draft by everyone, and we can identify it as
15 a stipulated issue.

16 COMMISSIONER DEASON: Very well. Issue 8?
17 Issue 9? Issue 10?

18 Here, again, it appears that Issue 10 may be
19 something that either can be stipulated to or is,
20 perhaps, a question which is not being contested.

21 Ms. Brown, if you could pursue that further
22 with the parties and just handle that in the Prehearing
23 Order as the situation calls for.

24 MS. BROWN: All right.

25 COMMISSIONER DEASON: Issue 11? Here, again,

1 on Issue 11, Okefenoke states that additional
2 facilities that would have to be built has not been
3 placed in issue by the parties.

4 MS. BROWN: Well, part of JEA's position, I
5 think, is JEA's position with respect to this issue
6 addresses its position with respect to the disputed
7 area. And I think JEA may be addressing whether there
8 are any new facilities required to serve the Holiday
9 Inn. I think all parties would agree that that is not
10 in dispute.

11 COMMISSIONER DEASON: Facilities are already
12 currently in place by both parties at the Holiday Inn,
13 is that correct?

14 MS. BROWN: Yes. Yes,. But in some areas of
15 the county there may be some need for additional --

16 MR. THOMPSON: Our position is in the other
17 places in the county, they dispute anywhere we serve.
18 So we, obviously, are in place to serve in those
19 places, and then new loads would just be served by
20 existing facilities with the extensions that you might
21 anticipate. So, I mean, beyond that it's all
22 speculative.

23 But, basically, we're in place in the
24 northern part of Duval County, just as we have always
25 been, to serve and meet the needs. And I think that's

1 outlined in the previous issue that says, "Describe the
2 nature and extent of your facilities in the disputed
3 area." I can't remember which one it was. Let me
4 see. How about No. 7, Issue No. 7 describes our
5 resources in Duval County from substations on through.

6 COMMISSIONER DEASON: So it's your position
7 that Okefenoke is in a position to serve the customers
8 because it is already serving those customers and
9 whatever growth occurs in the area would just be a
10 natural extension of your facilities.

11 MR. THOMPSON: Exactly. And we've outlined
12 those in No. 7. As a response to Issue No. 7, we've
13 outlined our facilities in the county.

14 COMMISSIONER DEASON: Mr. Hoffman, is JEA's
15 position on this issue in reference specifically to the
16 Holiday Inn and to no other area outside that?

17 MR. HOFFMAN: Yes, Commissioner.

18 COMMISSIONER DEASON: So, depending on the
19 extent that the Commission rules upon your motion, then
20 your position may change; if the Commission determines
21 that the entire area served by Okefenoke is in dispute,
22 well, then your position may change on this issue, is
23 that correct?

24 MR. HOFFMAN: I think so, yes.

25 COMMISSIONER DEASON: Very well.

1 Issue 12? Issue 13? Issue 14?

2 I understand Staff believes Issues 14 and 15
3 should be combined?

4 MS. BROWN: Yes, Commissioner, we do.

5 COMMISSIONER DEASON: Do the parties object
6 to combining these issues?

7 COMMISSIONER DEASON: Not hearing an
8 objection --

9 MR. HOFFMAN: No.

10 MR. THOMPSON: No.

11 COMMISSIONER DEASON: -- I assume it would be
12 fine to combine the issues.

13 MS. BROWN: All right. And we would use the
14 language that Staff has proposed as the substitute
15 issue, which is, "Has unnecessary and uneconomical
16 duplication of electric facilities occurred in the
17 vicinity of the disputed area or in other areas of
18 potential dispute between the parties?"

19 COMMISSIONER DEASON: I have no problem with
20 the wording.

21 MS. BROWN: Okay.

22 MR. THOMPSON: That's just fine. I guess we
23 use the same answers that we used on 14 and 15. We'll
24 just combine them.

25 MS. BROWN: All right, I'll do that.

1 COMMISSIONER DEASON: Issue 16 is identified
2 as a stipulated issue, is that correct?

3 MS. BROWN: That's correct, Commissioner.

4 COMMISSIONER DEASON: Issue 17? Issue 18?
5 Issue 19? Issue 20? Issue 21? Issue 22? Issue 23?
6 And, finally, Issue 24?

7 Are there any other issues which the parties
8 need to identify at this time which are not in the
9 Draft Prehearing Order? Hearing none, do you have
10 enough guidance now to --

11 MR. HOFFMAN: Excuse me, Commissioner?

12 COMMISSIONER DEASON: Yes.

13 MR. HOFFMAN: I'm sorry, I didn't mean to
14 interrupt you.

15 With respect to Issue 22, and possibly one or
16 more of Issues 1 through 4, we will probably wish to
17 amend what we have said up to this point to add and at
18 least preserve our position that there is some weight,
19 or legal effect, or both, to be given to customer
20 preference within a municipality's July 1, 1974,
21 corporate limits. That's a position we think we could
22 state briefly and provide to Staff counsel and to
23 counsel for Okefenoke by tomorrow, if not later this
24 afternoon, for incorporation here and into the final
25 Prehearing Order.

1 COMMISSIONER DEASON: Ms. Brown, when do you
2 anticipate issuing this Order? Is there a time
3 constraint we're faced with?

4 MS. BROWN: The Prehearing Order is scheduled
5 to be issued the 29th of this month. So we have a
6 little bit of time.

7 COMMISSIONER DEASON: Is there any objection
8 to JEA furnishing language addressing their position on
9 this issue by tomorrow afternoon?

10 MR. THOMPSON: No objection.

11 COMMISSIONER DEASON: Very well.

12 MS. BROWN: No.

13 COMMISSIONER DEASON: Is that sufficient
14 time, Mr. Hoffman?

15 MR. HOFFMAN: Yes, sir. Thank you.

16 COMMISSIONER DEASON: I think that concludes
17 the issues?

18 MS. BROWN: Yes.

19 COMMISSIONER DEASON: Okay.

20 MS. BROWN: We still have the exhibits to
21 look at, Commissioner.

22 COMMISSIONER DEASON: Okay. Is there a
23 particular problem?

24 MS. BROWN: I see no problem with the
25 parties' positions. I would just like to inform the

1 Commissioner that we have just finished taking a round
2 of depositions in this case, Staff has, and Staff has
3 asked for several late-filed exhibits. So we would
4 like to reserve the opportunity to submit exhibits up
5 to the time that the Prehearing Order is issued. We
6 haven't had a chance to review some of those documents
7 we've asked for.

8 COMMISSIONER DEASON: I assume there's no
9 objection to Staff doing that?

10 MR. HOFFMAN: No objection.

11 MR. THOMPSON: No objection.

12 COMMISSIONER DEASON: Very well. Section
13 VIII, Proposed Stipulations. I assume there are no
14 proposed stipulations but there is one issue which has
15 been identified as a stipulation, is that correct?

16 MS. BROWN: Yes.

17 COMMISSIONER DEASON: And then the pending
18 motions, we've already discussed that, is that correct?

19 MS. BROWN: Yes.

20 COMMISSIONER DEASON: Okay. Now, the
21 question I suppose which I need to address is really a
22 procedural one as to how the motion is to be handled,
23 whether we're going to address it at an Agenda
24 Conference prior to the hearing or whether it's going
25 to be delayed until the hearing, is that correct?

1 MS. BROWN: Yes. And it is not necessary for
2 you to make that decision here.

3 COMMISSIONER DEASON: Are there any other
4 matters which need to be brought up at this time?

5 MR. HOFFMAN: Commissioner, may I make a
6 brief comment or two about the motion? I don't want to
7 argue the merits, but I think we've heard this
8 afternoon at least some discussion by Staff that they
9 believe that what we have filed on Friday is
10 substantially similar to what the Commission ruled on.
11 And I think Mr. Thompson has also stated his position
12 that that is the case.

13 And I just wanted to say to you before we
14 leave today that what you ruled on last time in
15 response to JEA's Motion to Dismiss involved a statute
16 which states, "No provision of this chapter shall be
17 construed or applied to impede, prevent or prohibit any
18 municipally-owned electric utility system from
19 distributing at retail electrical energy within its
20 corporate limits as such corporate limits exist on July
21 1, 1974."

22 That statute addresses jurisdiction. That
23 statute is not mentioned in the motion that was filed
24 on Friday.

25 What's at issue pursuant to the motion filed

1 on Friday are two very simple questions, and those
2 questions are whether the Commission has the authority
3 to force electric utilities to enter into territorial
4 agreements; and, two, whether in this case the
5 Commission has the jurisdiction to get into northern
6 Duval County, to go beyond Holiday Inn, when, in fact,
7 there is no territorial dispute beyond the Holiday Inn.
8 And I just wanted to bring that out. Thank you.

9 COMMISSIONER DEASON: Very well. Mr. Thompson,
10 do you care to respond?

11 MR. THOMPSON: No, sir.

12 COMMISSIONER DEASON: Very well. I believe I
13 understand and if there are no other matters which need
14 to be brought up, this Prehearing Conference is
15 adjourned, thank you.

16 MS. BROWN: Thank you.

17 (Thereupon, prehearing concluded at 1:45 p.m.)
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1 F L O R I D A)
2 :
3 COUNTY OF LEON)

CERTIFICATE OF REPORTER


4 I, SYDNEY C. SILVA, CSR, RPR, Official
5 Commission Reporter,

6 DO HEREBY CERTIFY that the Prehearing Conference
7 in the captioned matter, Docket No. 911141-EI, was heard
8 by the Florida Public Service Commission Prehearing
9 Officer at the time and place herein stated; it is further

10 CERTIFIED that I reported in shorthand the
11 proceedings held at such time and place; that the same has
12 been transcribed under my direct supervision, and that
13 this transcript, consisting of 32 pages, inclusive,
14 constitutes a true and accurate transcription of my notes
15 of said proceedings; it is further

16 CERTIFIED that I am neither of counsel nor
17 related to the parties in said cause and have no interest,
18 financial or otherwise, in the outcome of this docket.

19 IN WITNESS WHEREOF, I have hereunto set my hand
20 at Tallahassee, Leon County, Florida, this 28th day of
21 May, A.D., 1992.

22 
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