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January 17, 1996

VIA FEDEX

Ms. Blanca Bayo
Florida Public Service Commission
Division of Records & Recording
2540 Shumard Oak Blvd. - Room 110
Tallahassee, FL 32399

Re: Docket No. 950307-EU

In Re: Petition of Jacksonville Electric Authority to Resolve
a Territorial Dispute with Florida Power & Light Company in
St. Johns County

Dear Ms. Bayo:

Enclosed herewith for filing is an original and 15 copies of
Florida Steel Corporation's Response to Florida Power & Light's
Memorandum in Opposition to Florida Steel Corporation's Petition to
Intervene. Should you have any questions, please do not hesitate
to contact me.

Very truly yours,

SALEM, SAXON & NIELSEN, P.A.

Marian B. Rush
Marian B. Rush

MBR/np

1 Enclosures

cc: Peter J.P. Brickfield, Esq.
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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)
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Docket No. 950307-EU
Filed: January 18, 1996

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Florida Steel Corporation's Response to
Florida Power & Light's Memorandum In Opposition
to Florida Steel Corporation's Petition to Intervene

On December 18, 1995, Florida Power & Light Company ("FPL") filed a Memorandum in Opposition to Florida Steel Corporation's ("Florida Steel") Motion to Intervene in this docket. Florida Steel requests the opportunity to respond to FPL's Memorandum.

BACKGROUND

1. In 1979, FPL and the Jacksonville Electric Authority ("JEA") reached a territorial agreement settling their boundary lines and agreeing not to alter those lines except by mutual consent for the next 15 years. In Order No. 9363, the Commission approved those boundary lines and, through that Order, directed the utilities to abide by the territorial arrangement. The JEA petition that initiated this docket asserted that FPL repeatedly crossed the territorial lines approved by the Commission by extending distribution facilities to and serving hundreds of electric customers in St. Johns County in areas expressly reserved to JEA. JEA maintained that it had accepted FPL's presence on a temporary basis, but eventually expected to provide service to those customers itself once it could economically do so. That time finally arrived, JEA asserted, due to load growth in the area. Thus, JEA wanted its customers back, and it wanted FPL to relocate its facilities (at JEA's expense) to FPL's side of the territorial boundary.

2. FPL responded that JEA had asked it to provide service to the customers in question and that JEA should be estopped from claiming that the customers still belonged to JEA. In FPL's view, JEA had abandoned that segment of its service area, and FPL never considered its extension of distribution facilities in the area to be temporary. FPL asked the Commission to redraw the boundary in St. Johns County to correspond with its "modified" service territory, *i.e.*, to legitimize its movement into JEA's service area.

3. The comprehensive settlement filed by FPL and JEA in October 1995 changed the actual operating boundaries between the utilities in St. Johns County. FPL effectively relinquished the areas it had unilaterally annexed and transferred 447 customer accounts to JEA. JEA compensated FPL for various facility related costs, and agreed to provide customer revenue compensation to FPL for the customers FPL was never authorized to serve.

4. In addition, at some unspecified point in their negotiations, JEA and FPL agreed to resolve issues related to their territorial boundaries in Duval, Clay, and Nassau Counties. Apparently, FPL had unilaterally redrawn the service lines in Duval County as well, and the settlement requires 57 current FPL customers in Duval County to be transferred to JEA. As described in Florida Steel's petition to intervene, no notice was given that this docket would address the territorial boundaries in Duval County or other areas.

5. At the separate requests of Florida Steel and the Mayor of Jacksonville, the Commission deferred consideration of the proposed "comprehensive settlement" on two occasions, and the Commission staff held a meeting on January 10, 1996 to discuss any issues regarding the proposed territorial agreement. In view of these actions, FPL argues that Florida Steel's objection to issuance of a Proposed Agency Action (PAA) in this docket is "moot". FPL asserts as well that Florida Steel must take the case "as it finds it," and "the only item left is for the Commission to consider approval of the proposed agreement" (FPL Memorandum, p.3). Finally, FPL claims, Florida Steel lacks a sufficient interest to establish standing to intervene as a party in this docket. As discussed below, Florida Steel has a significant interest in the outcome of this proceeding, and the proposed settlement is likely to have a significant effect on the economic well-being of Duval County. Florida Steel's request to intervene as a full party should be granted and Commission action should be deferred until several fundamental factual issues have been addressed.

DISCUSSION

I. Florida Steel Has A Substantial Interest In The Outcome Of this Proceeding

6. As described in the petition to intervene, Florida Steel cannot operate its Jacksonville mill on a competitive basis at the rate levels charged by FPL, and FPL has stated that it is not willing to discuss developing a competitive rate. As a result, Florida Steel's energy costs at its Jacksonville mill put it at a significant competitive disadvantage. This circumstance has placed continued operation of the Jacksonville mill in jeopardy. This mill has over 260 employees, with average annual compensation packages exceeding \$50,000. Closure of this facility will have a serious adverse effect on these individuals and the economic well-being of the rate payers of Duval County and the State of Florida in general.

7. The Commission needs to recognize that this situation is avoidable. Utilities that serve Florida Steel's other mills as well as its competitors' facilities are developing and implementing flexible market-based rates for large power users, but FPL remains locked in a non-competitive, rigid rate structure. Further, FPL has not been willing even to discuss competitive pricing for its largest users. FPL undoubtedly will change its rate, pricing and marketing policies in time, but the utility's intransigence already has affected Florida Steel production decisions.

8. FPL's policy is, in fact, at odds with actual practice in the industry today. The R.J. Rudden 1995 Survey of State Regulatory Commissions Regarding Electric Utility Competition released at the end of December 1995 shows that 100% of the 37 responding state regulatory commissions (including Florida) believed that market-flexible rates were needed to address competition in the industry.

9. The Commission's decision-making in all areas relating to electric service should come to grips with growing competitive pressures within the industry. This includes in particular its review of FPL's approach to rate structure as well as proposed territorial settlements that will effect economic development in the State of Florida.

10. While Florida Steel's Jacksonville facility is a customer of FPL, it is also situated within the Jacksonville City limits. As described in Florida Steel's Petition to Intervene, JEA is

responsible for providing electric service to all consumers in the City of Jacksonville. Pursuant to the City Charter adopted in 1968, and Section 718.103 of the Jacksonville Municipal Code, JEA may delegate this function to another electric utility when it is not practical or economical for JEA to provide the service. JEA's exercise of this delegation authority, for example, is the only explanation for JEA's "temporary" acceptance of FPL in its service area in St. Johns County.

11. When the 1968 Jacksonville City Charter was adopted, FPL already was serving part of Duval County pursuant to the 1963 territorial agreement. That territorial agreement does not prevent a municipally-owned system such as JEA from providing electric service within the corporate limits. Chapter 366.04 (2) (f), Florida statutes (1995). The City ordinance thus permitted FPL's continued presence in the City through a delegation from JEA.

12. JEA brought the instant petition because it had decided that it was now economic and practical to extend service to southern St. Johns County. When the parties included Duval County in their discussions, JEA similarly should have assessed, in accordance with its charge under Section 718.103 of the Jacksonville Municipal Code, whether it was practical and economic for JEA to serve additional portions of Duval County. Florida Steel believes that a reasoned analysis would conclude that JEA can economically extend service to additional areas in Duval County that includes Florida Steel's facility near Baldwin.

13. Also, under the 1979 Territorial Agreement, FPL and JEA agreed to fix their respective boundaries for a 15 year period unless they mutually agreed to an alternative arrangement. Neither utility made any commitment beyond that period, which expired in 1994. This docket thus provides a timely forum for reassessing the utilities' roles within the Jacksonville city limits and JEA's responsibilities under its enabling statutes.

14. Because FPL and JEA have included the territorial line drawn through the City of Jacksonville (Duval County) in their settlement, Florida Steel has a significant and direct interest in seeing that JEA's actions with respect to territorial boundaries satisfy the requirements of the City Charter and ordinances. This interest is enhanced by the highly competitive commodity markets in which Florida Steel operates and the array of pricing options that are being offered by utilities to

Florida Steel's competitors. Florida Steel, therefore, is adversely affected by the rates and corporate policies of FPL. It is a customer significantly affected by the proposed settlement, and, as a customer located within the Jacksonville municipal limits, it is entitled to demand service from JEA if JEA can economically provide that service. Florida Steel accordingly has more than adequate interest to establish standing in this proceeding, and Florida Steel must be permitted to participate as a party in this proceeding to ensure that its concerns are properly addressed.

**II. Several Fundamental Matters Must Be Addressed
Before The Commission Takes Preliminary
Action In This Docket**

15. The Commission is responsible for ensuring that the proposed territorial agreement "works no detriment to the public interest." *Utilities Commission of New Smyrna Beach v. Florida Pub. Serv. Comm'n.*, 469 So. 2d 731, 732 (Fla. 1985). In conducting its review, the Commission cannot confine itself to the effect of the agreement on customers that would be transferred, but must look at the impact on all customers of both utilities. *New Smyrna Beach*, 469 So. 2d at 732.

16. Traditional analysis in these cases has sought to ensure reliable delivery of service while avoiding uneconomic duplication of facilities, but the facts in this raise additional concerns. As noted above, FPL repeatedly crossed the territorial boundaries set by the Commission in Order No. 9363, and JEA filed the instant petition to reclaim its territorial areas in St. Johns County. As to the areas served outside the Jacksonville municipal limits, the relevant issues presented concern JEA's superior right to serve certain customers in St. Johns County and the reasonableness of the consideration given for the assets and customers transferred between the utilities. From Florida Steel's perspective, JEA is entitled to reclaim its territory in St. Johns County based on its determination that it is economic and practical to now serve the disputed areas. There is, however, no rational basis for JEA to provide customer revenue compensation to FPL. The Commission should discourage unauthorized extra-territorial actions by denying customer revenue compensation.

17. As to the proposed boundaries within municipal limits, the Commission needs to balance JEA's prerogatives as a municipal utility and its traditional analysis pursuant to the Grid Bill.

See Petition to Resolve Territorial Dispute between Okfenoke Rural Electric Membership Cooperative and Jacksonville Electric Authority, Docket No. 911141-EU, Order No. PSC-92-1213-FOF-EU. It also needs to consider that a customer within the city limits can compel service by the city authority.

Storey v. Mayo, 217 So. 2d 304, 308 (Fla. 1968). JEA's responsibility under the City Charter to provide service to customers where it is economic and practical for it to do so, and the threat to Duval County's economic well-being posed by FPL's corporate policies are issues that need to be addressed. Indeed, in light of the developments in the industry subsequent to enactment of the National Energy Policy Act in 1992, in order to adequately assess the proposed settlement under the "no detriment" rule, the economic development ramifications of the proposed boundary lines must be considered.

18. FPL relies upon *Storey v. Mayo* to support its claim that customers do not have a right to service by a particular utility. That case involved a territorial dispute between FPL and the municipal electric agency operated by the Town of Hempstead concerning non-municipal areas served by Hempstead. In its decision, the Court acknowledged that "Under Florida Law, municipally-owned electric utilities enjoy the privileges of legally protected monopolies within municipal limits." 217 So.2d at 307. The Court further recognized that a customer within the city limits can compel service by the city. 217 So.2d at 308. Thus, Florida Steel is entitled to demand service from JEA, and JEA can assign that function to another utility only if it is not practical or economic for JEA to provide the service itself.

III. The Commission Should Allow Florida Steel A Meaningful Opportunity To Participate Before Taking Preliminary Action

19. The purpose of this proceeding is to determine what is best for all electric consumers of both utilities. FPL's position, however, denies Florida Steel and other possible parties even the semblance of fair notice and a meaningful opportunity to participate that lie at the core of the Florida Administrative Code. If JEA's original petition had included actual or potential issues in Duval County, Florida Steel could have intervened at that time. FPL's standing questions, which, as discussed above, are meritless, would have been addressed long before settlement discussions began,

and Florida Steel should have been entitled to participate fully in the scheduled hearings and settlement discussions.

20. The Commission, in agreeing to defer consideration of this matter, recognized that procedural fairness is required. Florida Steel's objection to a PAA at this time is not rendered moot by the Commission's decision to defer consideration of the item. Indeed, a PAA should not be issued at all and a revised hearing schedule should be established to permit discovery and full participation by Florida Steel.

Accordingly, Florida Steel has established the level of interest necessary to obtain standing in this proceeding and it would provide a valuable perspective and information to the Commission's record in this docket which neither utility can offer. Florida Steel requests that it be granted leave to intervene and participate with full rights as a party in this proceeding. Further, Florida Steel asks that the Commission postpone issuing a Preliminary Agency Action and reestablish a hearing schedule for this proceeding on a time table that will allow Florida Steel an opportunity to conduct discovery and file testimony.

Respectfully submitted,

FLORIDA STEEL CORPORATION

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Dated: January 17, 1996

**CERTIFICATE OF SERVICE
DOCKET NO. 950307-EU**

I HEREBY CERTIFY that a true and correct copy of Florida Steel Corporation's Response to Florida Power & Light's Memorandum in Opposition has been furnished via FedEx on the 17th day of January 1996, to the following:

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