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**BY HAND DELIVERY**

April 10, 1992

**ORIGINAL  
FILE COPY**

Mr. Steven C. Tribble, Director  
Division of Records and Reporting  
FLORIDA PUBLIC SERVICE COMMISSION  
101 East Gaines Street  
Tallahassee, Florida 32301

Re: Territorial Dispute Between Okefenoke Rural Electric  
Membership Corporation and the Jacksonville Electric  
Authority of the City of Jacksonville, in Duval County;  
FPSC Docket No. 911141-EU

Dear Mr. Tribble:

Enclosed for filing in the above-referenced docket on behalf of  
Okefenoke Rural Electric Membership Corporation are the original and  
fifteen (15) copies of the following:

- 03617-92 1. OREMC's Prehearing Statement, and
- 03618-92 2. OREMC's Request for Official Recognition.

ACK OREMC is submitting herewith a copy of its Prehearing Statement on  
diskette in work processing format. This document was prepared using  
AFA Word Perfect 5.1.

APP \_\_\_\_\_ Please acknowledge receipt and filing of the above by stamping the  
CAF duplicate copy of this letter and returning same to this writer.

CMU \_\_\_\_\_ Thank you for your assistance in connection with this matter.

CTR \_\_\_\_\_ Sincerely

  
J. JEFFREY WAHLEN

LES 1  
LIT 6

QUC JJW/bgs

RC4 Enclosures

WAS cc: All parties of record (w/enclosures)

OTH 2 filings

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Territorial Dispute Between )  
Okefenoke Rural Electrical Membership ) DOCKET NO. 911141-EU  
Corporation, and the Jacksonville ) Filed: April 10, 1992  
Electric Authority of the City of )  
Jacksonville, in Duval County )

OREMC'S PREHEARING STATEMENT

Okefenoke Rural Electric Membership Corporation ("OREMC" or "Okefenoke"), in accordance with Order No. 25506 and through its undersigned counsel, files this Prehearing Statement and says:

A. All Known Witnesses That May Be Called And The Subject Matter Of Their Testimony

OREMC intends to call the following witnesses to testify on the following subject matters:

<u>Type of Testimony</u>	<u>Witness</u>	<u>Subject Matter</u>
Direct	Robert Page	(1) Description of OREMC (2) OREMC's relationship with Holiday Inn (3) Description of disputed areas
Direct	Pete J. Gibson	(1) Historical background on OREMC and JEA (2) Efforts to enter into territorial agreements between JEA and OREMC
Direct	Emory Middleton	(1) Historical development of OREMC's system in Duval County (2) Power Sales Agreement between JEA and SECI
Direct	Robert Dew	Engineering aspects of the dispute between JEA and OREMC in Duval County
Direct	Glenn S. Wrightson	Economic aspects of the dispute between JEA and OREMC in Duval County

DOCUMENT NUMBER-DATE

03617 APR 10 1992

FPSC-RECORDS/REPORTING

B. All Known Exhibits, Their Contents, And Whether They May Be Identified On A Composite Basis And The Witness Sponsoring Each

OREMC intends to move the following exhibits into evidence as part of its direct case:

<u>Exhibit</u>	<u>Description</u>	<u>Witness</u>
___ (RP-1)	Map of OREMC's facilities as of 1/1/92	Robert Page
___ (RP-2)	OREMC's facilities in the State of Florida as of 1/1/92	Robert Page
___ (PJG-1)	Contract for electrical service between OREMC and Holiday Inn-Jacksonville Airport, dated July 3, 1968	Pete J. Gibson
___ (PJG-2)	Letter dated April 3, 1969, from Louis H. Winnard (JEA) to Pete J. Gibson (OREMC) regarding ordinance	Pete J. Gibson
___ (PJG-3)	Draft of 1977 proposed territorial agreement	Pete J. Gibson
___ (PJG-4)	Letter dated April 2, 1978, from W.M. Irving (JEA) to Pete J. Gibson (OREMC) transmitting 1978 Operating Guidelines	Pete J. Gibson
___ (PJG-5)	Letter dated April 17, 1978, from Pete J. Gibson (OREMC) to W.M. Irving (JEA) accepting 1978 Operating Guidelines	Pete J. Gibson
___ (EM-1)	Map showing location of "Victor" Project in Duval County	Emory Middleton
___ (EM-2)	Map of "K" Project	Emory Middleton
___ (EM-3)	OREMC system as of 12/19/67	Emory Middleton
___ (EM-4)	Circuit diagram of OREMC's facilities in Duval County as of 2/7/75	Emory Middleton
___ (EM-5)	Wholesale electric service contract between JEA and Seminole Electric Cooperative, Inc.	Emory Middleton

___ (RD-1)	Detail map of Northern Duval County with duplicate facilities	Robert Dew
___ (RD-2)	Detail map of duplicate facilities in and around Dinsmore	Robert Dew
___ (RD-3)	Detail map of duplicate facilities in and around Lannie Road	Robert Dew
___ (RD-4)	Detail map of duplicate facilities in and around Jacksonville International Airport	Robert Dew
___ (RD-5)	Detail map of duplicate facilities in and around Yellow Bluff Road	Robert Dew
___ (RD-6)	Detail map of duplicate facilities in and around Hammock Island	Robert Dew
___ (RD-7)	Photos of Holiday Inn	Robert Dew
___ (RD-8)	Photos of duplications	Robert Dew
___ (RD-9)	Photos of duplications	Robert Dew

OREMC intends to move the following exhibit into evidence as part of its rebuttal case:

___ (RD-10)	OREMC's facilities near Holiday Inn	Robert Dew
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While OREMC has not identified any such exhibits at this time, OREMC reserves the right to submit additional exhibits during the cross-examination of JEA's and Staff's witnesses.

C. Statement Of Basic Position In The Proceeding

Insofar as JEA claims the exclusive right to provide retail electrical service throughout Duval County, every location where OREMC presently provides service in Duval County and all undeveloped areas where OREMC could efficiently provide service in Duval County are in dispute or are areas of potential dispute.

Even though OREMC has been providing retail electric service in northern Duval County since the late 1940's, JEA has over the years encroached on the areas historically served by OREMC by systematically building duplicative facilities and serving new customers when it has been "practical and economical" for JEA to do so.

Although JEA claims an exclusive right to serve in Duval county, the JEA has never taken steps to acquire OREMC's facilities in Duval County through eminent domain, nor has it ever made a reasonable offer to purchase OREMC's Duval County facilities outside of a condemnation proceeding. Instead, JEA has chosen to pursue what it considers to be its "exclusive" right to serve in Duval County by building new facilities (which often duplicate OREMC's facilities) and serving new customers (when those customers could have been more efficiently served by OREMC) when it is "practical and economical" for JEA to do so. When it has not been "practical and economical" for JEA to do so, JEA has "allowed" OREMC to serve those customers.

The resulting duplication of facilities in Duval County has had an adverse economic impact on the customers and members of JEA and OREMC, both inside and outside of Duval County. Whenever duplication of facilities occur, the risk of safety hazards and other harms to the public increase. These adverse economic impacts and other harms are precisely what the Legislature intended to prevent when it passed the Grid Bill in 1974. Unless the FPSC acts to stop JEA's practice of duplicating OREMC's facilities in

northern Duval County, the harm JEA's policies have caused to the public inside and outside of Duval County will continue.

With this in mind, the FPSC should resolve this dispute by ordering the parties to enter into a territorial agreement dividing the territory in northern Duval County. Alternatively, the FPSC should resolve this dispute by (1) drawing a territorial boundary - perhaps the "magic line" established in the 1978 Operating Guidelines agreed to by JEA and OREMC - dividing the territory in northern Duval County between OREMC and JEA, and (2) establishing conditions to promote efficiency and avoidance of further uneconomic duplication of facilities on either side of the boundary. Since OREMC has had a contract with the Holiday Inn - Jacksonville Airport since before October 1, 1968, and since facilities have been installed which duplicate OREMC's existing facilities at this location, the JEA should be ordered to cease providing service to the Holiday Inn and OREMC should be allowed to resume providing service to the Holiday Inn - Jacksonville Airport.

D. Questions Of Fact

At the January 16, 1992, issue identification meeting, the parties identified 24 issues. At that time, the parties did not attempt to distinguish between factual, legal and policy issues. OREMC believes that the first four issues listed in Martha Carter Brown's January 16, 1992, memorandum to the parties ("Brown's Memo") are legal issues and has addressed those issues in Section E, below. Issues 23 and 24 in Brown's Memo are policy issues and are addressed below in Section F. The remainder of the issues in



Brown's Memo (Nos. 5 through 22) are factual issues. OREMC's position on these issues (renumbered by OREMC as Fact Issues 1 through 18) are set forth below:

**Issue 1:     What is the geographical description of the area in dispute?**

**OREMC's Position**

OREMC provides retail electric service to approximately 2200 members in northern Duval County. The area in northern Duval County where OREMC serves includes the Black Hammock Island Area, Yellow Bluff/Starrett Road Area, Airport Area, Lannie Road Area and West Dinsmore Area. Insofar as JEA claims the exclusive right to serve throughout Duval County, every location where OREMC provides retail electric service in Duval County and all undeveloped areas where OREMC could efficiently provide service are in dispute or are potential areas of dispute. One location in which the territorial dispute between JEA and OREMC is greatest is the Holiday Inn-Jacksonville Airport ("Holiday Inn"). JEA began serving the Holiday Inn on November 25, 1991, without OREMC's permission, even though OREMC has been providing service to that customer for over 20 years. The Holiday Inn was OREMC's largest customer. [Page]

**Issue 2:     Which utility has historically served the area in dispute?**

**OREMC's Position**

OREMC has been providing retail electric service to members in Duval County since the late 1940's. OREMC built facilities into

northern Duval County (the "Victor" and "K" projects) at that time to provide retail electric service to persons and businesses in northern Duval County who could not get electric service from a municipal electric system or an investor-owned utility. Since that time, OREMC has upgraded and expanded its facilities in northern Duval County to accommodate member growth, improve reliability and reflect changes in technology. OREMC had a significant investment and operating presence in Duval County at the time JEA and the Consolidated Government came into existence. OREMC signed a contract to provide electric service to the Holiday Inn before the Consolidated Government of Jacksonville came into existence and actually began providing service to the Holiday Inn shortly thereafter. [Gibson, Middleton]

**Issue 3: What is the location, purpose, type, and capacity of each utility's facilities existing as of the filing of the Petition in this case?**

**OREMC's Position**

Okefenoke provides service to its members in Duval County from three sources. One is a substation located in Callahan, Florida, another is the Yulee Metering Point located on Highway 17 just north of the Duval County line, and the third is the Oak Grove Metering Point located near the intersection of Cedar Point Road and New Berlin Road inside Duval County. The Callahan Substation was extensively rebuilt in 1990 and presently consists of 2-12/16/20 MVA 230-24.5 KV transformers and 3-14.4/24.5 KV distribution circuits. One of these circuits, known as the



Dinsmore Circuit, provides service into Duval County via a 4/OACSR primary line which has a capacity of 14.7 MVA. This line presently serves an electric demand of approximately 6.2 MW.

The Yulee Metering Point consists of 3-200A voltage regulators and interconnects with Florida Power & Light Company. The station has 2-14.4/24.5 KV circuits. The north circuit feeds 11 consumers in Nassau County. The south circuit serves into Duval County. The circuit has 4/OACSR as the primary conductor to the point where this circuit splits in two directions, each with a primary conductor of 1/OACSR. This station serves 5.8 MVA of load in Duval County and has a capacity of 8.6 MVA. It should be noted that this 5.8 MW includes load at the Holiday Inn on Airport Road.

The Oak Grove Metering Point consists of 3-200 amp voltage regulators which are served by JEA. This station has 2-14.4/24.9 KV distribution circuits, both of which serve a total demand of 2.7 MW within Duval County. The capacity of this station is 8.6 MVA.

OREMC is without knowledge as to specific details regarding the location, purpose, type and capacity of JEA's facilities throughout Duval County as of the filing of the Petition in this case; however, as discussed below in OREMC's response to Fact Issue No. 11, OREMC has identified numerous, specific instances in which JEA has duplicated OREMC's facilities in northern Duval County. Representative examples of such duplication and a description of JEA's duplicative facilities are outlined in OREMC's response to Fact Issue No. 11.

Insofar as the JEA's facilities at the Holiday Inn are concerned, JEA recently constructed four new spans of three-phase 2ACSR wire on concrete poles parallel to Airport Road to a riser pole located approximately 40 feet from the existing riser pole owned by OREMC. From that point, a two and one-half foot wide trench was cut for a length of about 600 feet through the parking lot of the Holiday Inn. One three-phase underground primary cable was installed in conduit in this trench. Two manholes were also installed to facilitate pulling of this cable. The trench ends at the Holiday Inn's electric switch yard, which contains one 1000 KVA transformer, one 1500 KVA transformer, a new 600 volt switch yard and bus arrangement feed permanently from JEA's transformers. All of this equipment duplicates equipment which OREMC has been using to provide service to the Holiday Inn over the years. [Dew]

**Issue 4: Are there other areas of potential conflict between the service areas of Okefenoke and JEA?**

**OREMC's Position**

Insofar as JEA claims the exclusive right to serve throughout Duval county, every location where OREMC presently provides retail electric service in Duval County and all undeveloped areas where OREMC could provide service in Duval County are in dispute or are potential areas of dispute. Otherwise, there are no other areas of potential conflict between OREMC and JEA. [Page]

**Issue 5: Is either utility presently serving in the area in dispute?**

### OREMC's Position

Even though OREMC was the first to provide retail electric service in northern Duval County in the late 1940's, and had a significant investment and operating presence in Duval County at the time JEA and the Consolidated Government came into existence, JEA has over the years encroached on the areas historically served by OREMC by systematically building duplicative facilities and serving customers when it was "practical and economical" for JEA to do so.

A particularly vivid example of this practice is the Holiday Inn episode wherein four new spans of three-phase 2ACSR wire on concrete poles, a new riser pole, 600 feet of three-phase underground primary cable, one 1000 KVA transformer, and one 1500 KVA transformer, were installed by JEA so JEA could provide service to the Holiday Inn. JEA began providing service to the Holiday Inn on November 25, 1991, without OREMC's permission, even though OREMC had been providing service to the Holiday Inn for over 20 years. The equipment installed to serve the Holiday Inn duplicated OREMC's existing facilities. [Dew]

**Issue 6:      What is the expected customer load and energy growth in the disputed area and surrounding areas?**

### OREMC's Position

Future growth in the disputed area is an important issue in this case. It is generally recognized that the growth in northern Duval County will increase now that the Dames Point Bridge has been completed. OREMC has plans and the ability to meet expected

customer load and energy growth in the disputed areas. However, OREMC suggests that the issue of specific load growth rates be dropped since neither party has placed it in issue. [Dew, Wrightson]

**Issue 7: What additional facilities would each party have to build to serve the disputed area?**

OREMC's Position

OREMC has the ability to build additional facilities if needed to meet expected customer load and energy growth in the disputed areas. Specific additional facilities each party would have to build to serve the disputed areas has not been placed in issue by the parties. [Dew, Wrightson]

**Issue 8: What is the ability of each utility to extend existing facilities to the area in question?**

OREMC's Position

OREMC has the ability to extend existing facilities throughout the disputed areas. In the past, OREMC's ability to do so has been restricted by JEA's policy of allowing OREMC to expand into new areas and serve new customers only when it is not "economical or practical" for JEA to do so itself. If OREMC is allowed to operate within a discrete area of Duval County without restriction by JEA, OREMC will be able to extend its facilities to meet future growth in that area. [Dew, Wrightson]

**Issue 9: How long would it take each utility to provide service to the disputed area?**

OREMC's Position

Since JEA has already begun providing service to the Holiday Inn and did so without OREMC's permission on November 25, 1991, how long it will take JEA to serve the Holiday Inn is not an issue in this case. Since OREMC had been serving the Holiday Inn for over 20 years before November 25, 1991, it would not be difficult or time-consuming for the OREMC to re-connect its equipment and begin serving the Holiday Inn again.

Over the years, OREMC has been providing timely connections to essentially all new services which JEA has "allowed" OREMC to serve. JEA, on the other hand, has only provided service to customers when it was "economical and practical" for JEA to do so. If OREMC is allowed to operate within a discrete area of Duval County without restriction by JEA, OREMC will continue to provide timely connections in that area. [Dew]

**Issue 10: Has unnecessary duplication of electric facilities occurred in the vicinity of the disputed area, or in other areas of potential dispute between the parties?**

OREMC's Position

Yes. Such duplication was not been caused by OREMC. Specific examples of duplication of facilities are listed in OREMC's Response to Fact Issue No. 11.

**Issue 11: Has uneconomical duplication of electric facilities occurred in the vicinity of the disputed area, or in other areas of potential dispute between the parties?**

OREMC's Position

Yes. However, it should be noted that OREMC did not caused the duplication. The cases of duplication of facilities (both unnecessary and uneconomical) caused by JEA's practice of encroaching on areas historically served by OREMC in Duval County are too exhaustive to list; however, a few representative examples include:

- A. Along Lannie Road east of the Jacksonville Penal Farm, OREMC has a primary line which has been in place since 1951 which serves numerous members near the end of Lannie Road. Based on pole brands (birthmarks) observed in the field on JEA's line, JEA constructed approximately 1.0 miles of primary line in 1974 to Chaddy Lane. This line serves three residential customers from two distribution transformers. These customers are located adjacent to existing OREMC lines.
- B. JEA's service to Eagle Bend Road off of Yellow Bluff Road duplicates a line OREMC has had in this area since 1955. Around 1970, JEA constructed 3,500 feet of primary line on the opposite side of Yellow Bluff Road from OREMC's line to Eagle Bend Road so they could serve the subdivision in Eagle Bend.
- C. On Moncrief-Dinsmore Road JEA constructed over 2,000 feet of three-phase primary line in 1987 along the west side of the road to serve a single consumer who required three-phase service. OREMC has a three-phase line on the east side of the road which has been in place since 1969.
- D. At 15033 Braddock Road, OREMC had been providing service to this address since 1981, and JEA had installed a transformer,



a secondary pole (branded 1991) and a secondary conductor which crosses Braddock Road and goes under OREMC's line to the secondary pole. JEA also has a length of service wire coiled up on the pole. The length of the service wire appears to be of sufficient length to extend to the weather head of the electric service at this address which is already served by OREMC.

- E. OREMC has been in the Utsey Road area since 1955. JEA constructed more than one mile of single-phase line to this road in order to serve approximately five customers. Based on the pole brands, JEA built this line in 1979.
- F. Cisco Garden Subdivision is served by both utilities. It appears that the services are equally divided between JEA and OREMC and that they both constructed within the subdivision in the early 1970's.

**Issue 12:** Do the parties have a formal territorial agreement that covers the area in dispute, or any other areas of potential dispute?

OREMC's Position

No. [Page]

**Issue 13:** Have the parties made any attempts to reach agreement on who should serve the disputed area, or any other areas of potential dispute?

OREMC's Position

Yes. During the mid-1970's, OREMC and JEA held discussions for the purpose of entering into a territorial agreement for Duval

County. The parties drafted an agreement, and even though OREMC was willing to do so, the parties did not execute the agreement because the general counsel of the Consolidated Government of Jacksonville advised JEA against signing the agreement. In addition, JEA and OREMC have considered whether a purchase/sale transaction would be in their mutual interests, but have never come close to consummating such a transaction.

JEA's position that it does not have the authority to enter into a territorial agreement dividing territory in Duval County is self serving. Moreover, since JEA does not have an exclusive right to serve in the disputed area, JEA's position may have no valid legal foundation. JEA's position that it has no authority to enter into a territorial agreement dividing territory in Duval County when it proposed and agreed to the 1978 Operating Guidelines places form over substance and is unreasonable. [Page, Gibson]

**Issue 14: Have the parties operated under any informal agreements of "understandings" regarding who should serve the disputed area?**

OREMC's Position

Yes. After JEA refused to sign a formal territorial agreement, JEA offered and OREMC agreed to abide by a series of guidelines in a document called the 1978 Operating Guidelines. The 1978 Operating Agreement established a boundary line between the utilities in Duval county known as the "magic line" and contained certain guidelines for cleaning up their respective territories on either side of the magic line. [Gibson]

**Issue 15: What would be the additional cost to each utility to provide electric service to the area in dispute?**

**OREMC's Position**

Since the JEA has now begun serving the Holiday Inn, whatever costs associated with JEA doing so have already been incurred. As noted in OREMC's position on Fact Issue No. 3, a substantial amount of cable, a 1000 KVA transformer, a 1500 KVA transformer, and other equipment has recently been installed so JEA can provide the service which OREMC had been providing for over 20 years. All of this equipment duplicates facilities which OREMC had been using to serve the Holiday Inn. Little or no additional costs would be incurred by OREMC to reconnect the Holiday Inn assuming that OREMC's transformers, which were removed by an unknown third party, are not damaged. No significant additional costs would be incurred by OREMC in the remaining areas in dispute since OREMC presently is connecting new services in the area and also maintaining their facilities in the area. Otherwise, the specific additional costs for each utility to provide electric service to other portions of the disputed area have not been placed in issue by the parties.

**Issue 16: What would be the cost to each utility if it were not permitted to serve the area in dispute?**

**OREMC's Position**

The Holiday Inn was OREMC's largest customer. The Holiday Inn's average usage represents the equivalent of 420 residential members. The loss of the Holiday Inn as a member means that some of OREMC's largest and most expensive transformation equipment is

not being used. It also means that related depreciation expense, interest expense and other carrying costs are not being recovered through revenues from the Holiday Inn.

If, for some reason, OREMC is not permitted to continue serving in other parts of the disputed area, OREMC's investment in facilities to serve in Duval County would be stranded. These facilities would include all the facilities in the county as well as some facilities outside the county which were constructed to support the load in Duval County. Specifically, the Callahan Substation was designed and constructed to serve load in Nassau, Baker and Duval Counties. Loss of the load in Duval County would result in lost investment in this substation which would be oversized relative to the remaining load. The specific costs to each utility if it were not permitted to serve these other areas in the disputed area would include the carrying costs associated with the stranded investment plus lost revenue net of the carrying cost of the stranded investment for present and future load in underdeveloped areas. [Wrightson]

**Issue 17: What would be the effect on each utility's ratepayers if it were not permitted to serve the disputed area?**

**OREMC's Position**

If OREMC is not permitted to continue serving the Holiday Inn in the future, OREMC will be required, all other things being equal, to collect increased revenues of approximately \$57,300 per year. If, for some reason, OREMC is not permitted to continue providing service to existing and new members in the areas it has

historically served in Duval County, all other things being equal, OREMC may lose as much as \$1 million in net revenue per year in the foreseeable future. [Wrightson]

**Issue 18: If all other things are equal, what is the customer preference for utility service in the disputed area?**

OREMC's Position

In this case, all other things may not be equal. At this time, the Holiday Inn prefers to be served by JEA. It has requested and is receiving service from JEA, even though OREMC has been providing retail electrical service to the Holiday Inn for over twenty years. In the past, when rate relationships were different, the Holiday Inn was content to be served by OREMC.

[Page, Gibson, Middleton]

E. Questions Of Law

1. Does the Commission have the jurisdictional authority to grant exclusive territorial rights to a rural electric cooperative within the municipal corporate limits of Jacksonville in the absence of an approved territorial agreement between the JEA and the rural electric cooperative?

OREMC's Position

Yes. The FPSC's jurisdiction to hear and resolve this territorial dispute is provided by the Grid Bill. The existence of a formal, signed territorial agreement between JEA and OREMC is not a jurisdictional prerequisite under the Grid Bill. The Legislature of the State of Florida has explicitly granted the FPSC jurisdiction to approve territorial agreements and resolve territorial disputes between all electric utilities throughout the state.

The JEA has suggested that the 1974 Clause in the Grid Bill prevents the FPSC from carrying out its responsibilities within Duval County. This position is inconsistent with the legislative intent and public purpose of the Grid Bill because it would prevent the FPSC from exercising its primary responsibilities under the Grid Bill. The 1974 Clause simply directs the Commission to apply its authority and carry out its responsibilities in a manner consistent with the municipality's right to serve customers within its 1974 corporate limits. For its part, a municipality may have a right to provide electric service to customers within its 1974 municipal boundaries, but that right is not inviolable. A municipality must exercise whatever rights it may have in a manner that is consistent with the other provisions, and the public policy purposes, of the Grid Bill. It is the Florida Public Service Commission's responsibility to see that it does so.

Stated another way, the 1974 Clause in the Grid Bill was not intended to create any new rights in favor of municipally owned electric utilities, but was intended only to preserve whatever rights to serve within its corporate boundaries a municipally owned electric utility may have had at the time the Grid Bill became effective. With this in mind, the issue becomes "what rights did JEA have to serve in Duval County as of July 1, 1974?"

The JEA claims the exclusive right to serve throughout Duval County by virtue of certain portions of the Charter of the Consolidated Government of Jacksonville (the "Charter"). In particular, JEA has identified three specific provisions of the



Charter from which its "exclusive" right allegedly flows. These three sections are set forth below:

1. **Section 21.04. Powers.** -- The authority shall have the following powers:

\* \* \*

(3) To furnish electricity to private persons, firms and corporations, the city, and any other public or private body, organization or unit, in any part of the city or in any adjacent county and for said purposes shall have the right to construct and maintain electric lines in and along all public highways and streets throughout the city and adjacent counties.

2. **Section 1.01. Consolidated Government.** --

\* \* \*

(b) The consolidated government has and shall have jurisdiction as a chartered county government and extend territorially throughout Duval county, and has and shall have jurisdiction as a municipality throughout Duval county except in the cities of Jacksonville Beach, Atlantic Beach and Neptune Beach and the town of Baldwin.

3. **Section 2.04. Services in the General Services District.** -- Throughout the entire general services district [Duval County] the consolidated government shall furnish the following governmental services: airports, agricultural agent, child care, courts, electricity, fire protection, health, hospitals, library, policy protection, recreation and parks, schools, streets and highways, traffic engineering, and welfare services. The foregoing enumeration is intended as a list of those governmental services which shall be performed by the consolidated government within the general services district and is not intended to limit the rights of the consolidated government to perform other governmental services within the general services district.

(Emphasis added.)

Notably, none of the sections cited above specifically grant the Consolidated Government or JEA an "exclusive" right to serve. If the Legislature had intended to grant an "exclusive" right to serve, the Legislature would have said so. Proof that the Legislature knows how to grant an exclusive right to provide electricity when it intends to can be seen in other special acts. For example, in the special act creating the City of Key West Utility Board, the Legislature granted "the full, complete and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the City of Key West, Florida, improve, finance and refinance the electric public utility now owned by the city, and to build, construct, and acquire other utilities by purchase." See Charter of City of Key West, § 21.01. In 1927, Section 113 of the Charter of the City of Tallahassee was amended by Chapter 13439, 1977 Laws of Florida, by inserting the following language:

. . . and shall have exclusive power and authority for the transmission and sale of electric energy in a zone three (3) miles wide, adjacent to and extending around and outside the corporate limits of said City  
. . .

(Emphasis added.)

The Consolidated Government's and/or JEA's attempt to claim an exclusive right to serve in Duval County clearly violates the prohibition against inserting words or phrases into a statute, see generally 49 Fla. Jur. 2d Statutes § 120 (1984), and is inconsistent with the public policy purposes behind the Grid Bill.

A careful analysis of Section 2.04 of the Consolidated

Government Charter highlights other infirmities in JEA's "exclusive right" argument and points to the true nature of JEA's right to serve in Duval County. Section 2.04 empowers the Consolidated Government to provide a laundry list of services in Duval County, including electricity, child care, health, hospitals, recreation and parks and welfare services. It tests the limits of reasonableness to suggest that the Consolidated Government has the "exclusive" right to provide for child care, health care, hospitals, recreation and parks and welfare services throughout Duval County. By analogy, it is also unreasonable to suggest that the Consolidated Government has an "exclusive" right to provide electric service in Duval County. Rather, Section 2.04 can be reasonably construed to allow the Consolidated Government to provide services from the laundry list of services.

Importantly, even if JEA did have the "exclusive" right to serve throughout Duval County as of October 1, 1968, or on July 1, 1974, the JEA has never enforced that right. OREMC was providing retail electric service in northern Duval County before October 1, 1968, and continues to do so today. JEA's failure to enforce whatever right it may have had, together with (1) the existence of the 1978 Operating Guidelines, and (2) the fact that JEA continues to release new customers to OREMC (but only when it is not "practical or economical" for JEA to serve those customers), strongly suggest that JEA has waived whatever right it may have had as of those dates. These same factors also suggest that JEA should be estopped to assert an "exclusive" right to serve throughout

Duval County. In a case involving the City of Tallahassee Electric System, a Leon County Circuit Judge on August 4, 1972, held that (1) the City was estopped to assert its legislatively granted exclusive right to serve within the corporate boundaries of the City of Tallahassee and a surrounding 3-mile-wide zone, and that (2) the City of Tallahassee had waived its right to serve by acquiescing in the Talquin Electric Corporation's provision of service within the 3-mile zone. This case, together with the Public Policy Purposes of the Grid Bill, compels the conclusion that the FPSC is free in this proceeding to (1) decide in favor of OREMC's right to serve within Duval County, and (2) order the JEA to refrain from providing retail electric service to certain customers located within certain areas of Duval County.

2. Does the Commission have the jurisdictional authority to order the JEA to refrain from providing at retail electric service to a customer located entirely within the municipal corporate limits of Jacksonville when there exists no approved territorial agreement regarding the customer's site?

OREMC's Position:

Yes. Please refer to OREMC's position on Legal Issue 1.

3. Does JEA have the exclusive right to serve in Duval County even where other utilities served prior to October 1, 1968?

OREMC's Position:

No. Please refer to OREMC's position on Legal Issue 1.

4. If the 1974 Clause preserved JEA's right to serve throughout Duval County, does JEA have an unconditional obligation to

serve throughout Duval County?

OREMC Position:

The rights and obligations to serve go hand in hand. If a utility has a right to serve a particular area, it must accept the responsibility to serve. Since JEA has failed to serve certain customers in certain areas, it has waived any rights it might have had. Further, JEA does not have the right under Chapter 366 to serve anywhere it wants if the FPSC decides there would be uneconomic duplication of facilities and an adverse impact on ratepayers.

F. Policy Issues

1. Which party should be permitted to serve the area in dispute?

OREMC's Position

OREMC offers the following suggestions for the resolution of the territorial disputes in this case:

1. The Holiday Inn service should be returned to Okefenoke.
2. The Commission should supervise the preparation of a territorial agreement between JEA and Okefenoke. This territorial agreement would contain identifiable boundaries within Duval County and would probably involve the exchange of facilities with the public interest being the most important factor. The Commission should re-examine the territorial boundaries as shown by the "magic line" that was developed in the

1978 Distribution Operations Guidelines between JEA and Okefenoke. The Commission should encourage Okefenoke and JEA to negotiate a territorial boundary within Duval County and allow for the exchange of facilities to establish this territorial boundary over a reasonable period of time.

3. If the JEA and OREMC are not able to agree within a reasonable period of time, the Commission should draw a territorial line based upon good utility practice and Florida Law and should make both parties abide by its decision.

2. **What conditions, if any, should accompany the Commission's decision regarding which party should be permitted to serve the disputed area?**

OREMC's Position

The specific conditions, if any, which should accompany the Commission's decision depend on the nature of the FPSC's decision. Any conditions imposed by the FPSC should be consistent with sound utility practice and Florida law. OREMC suggests that a joint use agreement between the two parties be a condition for the safety of the general public and the employees of JEA and OREMC. Nearly any decision reached by the Commission will still leave facilities of both utilities in close approximation due to the layout of facilities both inside and outside Duval County. A joint use agreement between the utilities will allow the utilities to more efficiently and effectively correct clearance problems between



their facilities.

G. Statement Of Position On Issues

OREMC's statements of position on each issue identified pursuant to paragraphs (d), (e) and (f) of Order No. 25506 are set forth above.

H. Statement Of Issues That Have Been Stipulated

None.

I. Statement Of Pending Motions Or Other Matters

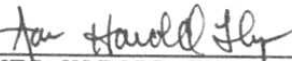
OREMC is not aware of any motions pending at this time. On this date, OREMC has filed and served a Request for Official Recognition which has not been ruled on by the FPSC.

J. Statement As To Any Requests Set Forth In Order No. 25506 That Cannot Be Complied With

None

DATED this 10<sup>th</sup> day of April, 1992.

Respectfully submitted,

  
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ATTORNEYS FOR OREMC


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of OREMC's Prehearing Statement have been furnished by U.S. Mail or Hand Delivery\* this 10<sup>th</sup> day of April, 1992 to the following:

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