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March 26, 1996

**BY HAND DELIVERY**

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Petition of Jacksonville Electric Authority  
to Resolve a Territorial Dispute with  
Florida Power & Light Company in St. Johns  
County  
Docket No. 950307-EU

ACK

AFA \_\_\_\_\_

APP ~~Dear~~ Ms. Bayo:

CAF \_\_\_\_\_

CMU ~~original~~ Enclosed for filing in the above-styled docket are the  
CTR Memorandum In Support of Florida Power's Motion to Dismiss.

EAG Please acknowledge receipt and filing of the above by stamping  
LEG / the duplicate copy of this letter and returning the same to this  
LH writer.

OSD Thank you for your assistance in this matter.

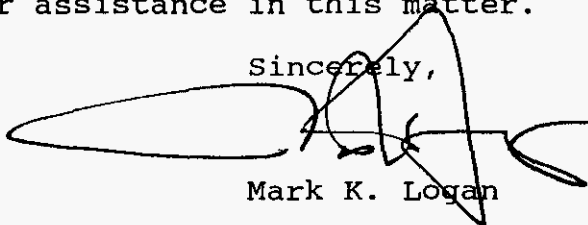
ROH \_\_\_\_\_

SEC / \_\_\_\_\_

WAS \_\_\_\_\_

YTH \_\_\_\_\_

Sincerely,



Mark K. Logan

MKL/ddj

Enclosures

cc: All parties of record

RECEIVED 4/1/96

RECORDED & INDEXED

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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IN RE: Petition of Jacksonville )  
Electric Authority to Resolve a )  
Territorial Dispute with Florida )  
Power & Light Company in St. Johns )  
County )  
\_\_\_\_\_ )

DOCKET NO. 950307-EU

Filed: March 26, 1996

MEMORANDUM IN SUPPORT OF  
FLORIDA POWER AND LIGHT'S MOTION TO DISMISS

Florida Power and Light Company ("FPL"), pursuant to Rule 25-22.037, Fla. Admin. Code, files this Memorandum in Support of its Motion to Dismiss Florida Steel Corporation's ("Florida Steel's" or "Petitioner's") Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement and states:

**I. Introduction**

The threshold issue before the Commission is whether Florida Steel's substantial interests are affected by the approval of a territorial agreement between FPL and Jacksonville Electric Authority ("JEA"). If Florida Steel's substantial interests are not at issue, then the Petitioner has no standing, and, therefore, absolutely no right to a hearing under section 120.57, Florida Statutes and Rule 25-22.029, Fla. Admin. Code. FPL submits that a review of Florida Steel's petition can lead to no other conclusion than that the petitioner lacks standing.

**II. The Commission has Already Determined that Florida Steel has no Standing in this Docket**

Although Florida Steel previously claimed it had a substantial interest in the Commission's proposed approval of the FPL-JEA territorial agreement the Commission considered those allegations and determined that Florida Steel had no standing to intervene in

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FPSC-RECORDS/REPORTING

this docket. Order Denying Intervention, Florida Public Service Commission Order No. PSC-96-0158-PCO-EU, February 5, 1996. The standard applied by the prehearing officer in denying Florida Steel's petition to intervene is identical to the standard applicable to its petition for a Section 120.57 hearing here. Florida Steel originally sought intervention pursuant to Rule 25-22.039, Fla. Admin. Code which allows participation in the formulation of agency action by any party whose substantial interests are subject to determination or will be affected by the proceeding. Here, Florida Steel seeks a hearing pursuant to Rule 25-22.029, Fla. Admin. Code<sup>1</sup> and Section 120.57 which grant that right only to those parties whose substantial interests are subject to determination by an agency.

The prehearing officer was correct in her decision to deny Florida Steel intervenor status in Order PSC-96-0158-PCO-EU. Florida Steel's petition for a Section 120.57 hearing is devoid of any additional allegations that would suggest a different result in determining whether Florida Steel's substantial interests are somehow now at issue when they weren't in February. Accordingly, this Commission should dismiss Florida Steel's petition for the same sound reasons set forth by the prehearing officer in Order PSC-96-0158-PCO-EU.

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<sup>1</sup> The Commission rule provides a point of entry for a Section 120.57 hearing to any party whose interests has or will be affected by the Commission's proposed action.

### III. Florida Steels Substantial Interests are not Subject to Determination in this Docket

Even ignoring the direct applicability of the Commission's previous ruling on Florida Steel's lack of standing, applying the standing test developed by Florida's administrative and judicial tribunals over more than two decades can lead to no conclusion but that Florida Steel lacks standing to initiate a Section 120.57 review of the Commission's proposed agency action.

#### A. The Standard for Standing

The Florida Legislature, in enacting Chapter 120, could have elected to allow any party to challenge any agency action in the administrative tribunals of the State. However, the Legislature elected to limit the number of potential plaintiffs in administrative actions to those with a real interest in the outcome of the proceeding. Thus, Section 120.57 only confers a right to a de novo review, via hearing, of any agency's proposed action to those parties whose substantial interests are subject to determination by the agency.

Since the enactment of Section 120.57 in 1974<sup>2</sup>, the applicability of the "substantial interests" test as a threshold standing requirement has been thoroughly formulated and reviewed. The seminal case defining the substantial interest test is Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 1st DCA 1978), rev. denied 415 So. 2d 1359 (Fla. 1982). Under Agrico a party must show: (1) that he will suffer injury in

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<sup>2</sup> Ch. 74-310, Laws of Florida

fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Id. at 482. The first prong of the Agrico test deals with the degree of the injury, the second the nature. Id.

The burden to affirmatively demonstrate standing falls clearly on Florida Steel. Department of Health and Rehabilitative Services v. Alice P., 367 So. 2d 1045 (Fla. 1st DCA 1979) As discussed below, Florida Steel has failed this burden as it has not demonstrated that the it satisfies either prong of the Agrico test. Therefore, Florida Steel's petition must be dismissed.

**B. Florida Steel has Not Suffered an Injury**

In order to satisfy the first prong of the Agrico test the injury suffered must be an injury-in-fact which is real and immediate, not conjectural or hypothetical. Village Park Mobile Home Association, Inc. v. State Department of Business Regulation, 506 So. 2d 426 (Fla. 1st DCA 1987). Here, Florida Steel attempts to allege economic detriment. But those allegations are at best speculative. This level of speculation is too remote for inclusion in the administrative review process. Id. at 434. See also, International Jai-Alai Players Association v. Florida Pari-Mutuel Commission, 561 So. 2d 1224 (Fla. 3rd DCA 1990) (future economic detriment too remote to establish standing). Furthermore, Florida Steel's petition admits that there are other unrelated factors contributing to its alleged injury. The existence of other unknown and intervening factors again renders the claim of injury too

remote to establish standing. Order Denying Intervention and Approving Load Profile Enhancement Rider, Florida Public Service Commission, Order No. 95-0348-FOF-EU, March 13, 1995, at p. 4.

The Agrico standing test requires that Florida Steel affirmatively establish that it has suffered a real and immediate injury. Having failed to meet that burden, Florida Steel has no standing to petition this Commission for a Section 120.57 hearing.

**C. Florida Steel's Alleged Injuries are not of the Type or Nature Which this Proceeding is Designed to Protect**

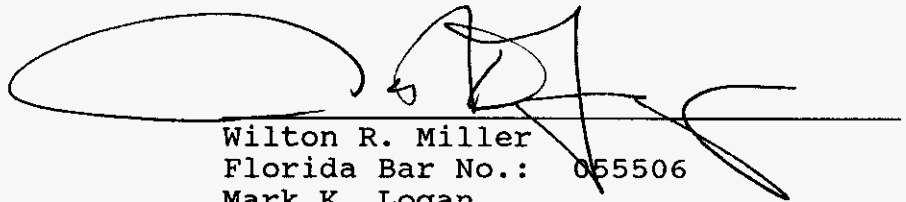
In order to meet its burden to establish standing in this docket, Florida Steel must also demonstrate that the injuries allegedly suffered are of a type that this proceeding is designed to protect. Agrico at 482. This docket involves the approval of a territorial agreement between two utilities. Territorial agreements are authorized and encouraged by the Commission in order to ensure the reliability of Florida's energy grid and to prevent uneconomic duplication of facilities. Section 366.04, Florida Statutes (1995). It is well established that in determining the appropriateness of territorial agreements, a customer has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself. Storey v. Mayo, 217 So. 2d 304, 307-08 (Fla. 1968); Lee County Electric Cooperative v. Marks, 501 So. 2d 585 (Fla. 1987).

Florida Steel suggests it is better served by redrawing the territorial boundary proposed by FPL and JEA to include Florida Steel in JEA territory. Since a territorial agreement is not a proceeding in which the personal preference of a customer is at

issue, the alleged injury suffered, even if real and direct, is not within the zone of interest of the law. In re: Joint Petition for Approval of Territorial Agreement Between Florida Power and Light Company and Peace River Electric Cooperative, Florida Public Service Commission Order No. 19140, April 13, 1988.

WHEREFORE, FPL respectfully requests this Commission dismiss Florida Steel's Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Wilton R. Miller', is written over a horizontal line. The signature is highly cursive and loops around the line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the parties listed below on this 26th day of March, 1996

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