

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

TELEPHONE (904) 681-6788
TELECOPIER (904) 681-6515

April 10, 1996

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

**ORIGINAL
FILE COPY**

Re: Docket No. 950307-EU

Dear Ms. Bayo:

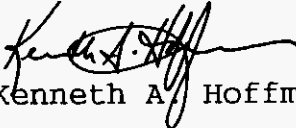
Enclosed herewith for filing in the above-referenced docket on behalf of the Jacksonville Electric Authority ("JEA"), are the original and fifteen copies of Jacksonville Electric Authority's Response in Opposition to Florida Steel Corporation's Motion to Strike.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

ACK _____
AFA _____
APP _____
DPP _____
EJ _____
ET _____
ETP _____

Thank you for your assistance with this filing.

Sincerely,


Kenneth A. Hoffman

5 KAH/rl

cc: All Parties of Record
Tr1b.3

CCP _____
CCL _____
CCL 1 _____
CCL _____
CCL _____

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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: April 10, 1996

**JACKSONVILLE ELECTRIC AUTHORITY'S
RESPONSE IN OPPOSITION TO
FLORIDA STEEL CORPORATION'S
MOTION TO STRIKE**

The Jacksonville Electric Authority ("JEA"), by and through its undersigned counsel, and pursuant to Rule 25-22.037(2)(b), Florida Administrative Code, hereby files its Response in Opposition to Florida Steel Corporation's Motion to Strike JEA's Motion to Dismiss Florida Steel Corporation's Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement. In support of this Response, JEA states as follows:

1. A brief review of the facts and **applicable rules** clearly demonstrate that Florida Steel Corporation's Motion to Strike must be denied.

2. On February 14, 1996, the Commission issued Order No. PSC-96-0212-FOF-EU, a Notice of Proposed Agency Action Order Approving Territorial Agreement ("PAA Order"). The PAA Order preliminarily approved a new territorial agreement between JEA and Florida Power & Light Company ("FPL"). The PAA Order states, in pertinent part:

Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding This petition must be received ... by the

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close of business on March 6, 1996.¹

The petition authorized by the PAA Order is considered by the Commission to be an initial pleading.²

3. In response to the PAA Order, on March 6, 1996, Florida Steel Corporation filed its Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement ("Petition"). Under Rule 25-22.037, Florida Administrative Code, JEA, as a respondent to the Petition, had twenty days to file an answer³ or a motion in opposition to the Petition including a motion to dismiss.⁴

4. JEA timely filed its Motion to Dismiss on March 26, 1996, twenty days after the filing of Florida Steel Corporation's Petition.⁵

5. Florida Steel Corporation offers two arguments in support of its position that JEA's Motion to Dismiss was not timely filed.

¹PAA Order, at 6. (Emphasis added).

²See Fla. Admin. Code R. 25-22.036(10).

³See Fla. Admin. Code R. 25-22.037(1). ("A respondent or intervenor may file an answer within twenty (20) days of service of the petition.").

⁴See Fla. Admin. Code R. 25-22.037(2)(a) ("Motions in opposition to an order, notice, complaint or petition, which may be filed by any party, include motions to dismiss, to strike, and for a more definite statement. Such motions shall be filed within the time provided for filing an answer.")

⁵In fact, JEA filed its Motion to Dismiss five days early. Under the pertinent sections of Rule 25-22.037 discussed above, a respondent must file a motion to dismiss within twenty days after service of the petition. Under Rule 25-22.028(4), Florida Administrative Code, a party is permitted an additional five days to file a document after it is served. Accordingly, JEA had until April 1, 1996 (March 31, 1996 was a Sunday) to file its Motion to Dismiss.

Neither argument has any merit.

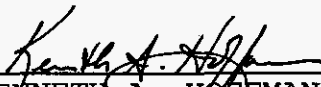
a. First, Florida Steel Corporation erroneously points the Commission to that portion of Rule 25-22.037 which requires that a response to a written **motion** be filed within seven days after service of the motion. With the additional five days for mailing, Florida Steel concludes that JEA had twelve days to file its Motion to Dismiss, i.e., JEA's Motion to Dismiss had to be filed by March 18, 1996. The defect, of course, in Florida Steel Corporation's argument is that Florida Steel Corporation filed a Petition, not a motion. As discussed above, in accordance with Commission rules, JEA timely filed its Motion to Dismiss in response to Florida Steel Corporation's **Petition**.

b. Second, Florida Steel Corporation suggests that if the Commission does not accept its March 18th argument, then the last day the Motion to Dismiss could have been filed was March 20, 1996, the date set forth in the Fifth Revised Case Assignment and Scheduling Record ("CASR") for filing a responsive pleading. Again, there is no merit to Florida Steel's argument. The dates and deadlines for the filing of responses in opposition to petitions are established by Commission rule as set forth above. An erroneous date inserted in a CASR must, at minimum, accede to the time frames established pursuant to Rule 25-22.037, Florida Administrative Code. Second, to the extent any weight is given to the March 20, 1996 date in the CASR, and none should, then one must also consider the fact that the CASR was not served on the parties until on or after March 26, 1996. To the extent the date in the

CASR for the filing of a responsive pleading is of any significance, and again, it is not, then certainly JEA should not be penalized for being advised of an unauthorized March 20th filing deadline on or after March 26, 1996.

WHEREFORE, for the foregoing reasons, JEA respectfully requests that Florida Steel Corporation's Motion to Strike JEA's Motion to Dismiss Florida Steel Corporation's Petition be denied.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQUIRE
WILLIAM B. WILLINGHAM, ESQUIRE
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, Florida 32302-0551
(904) 681-6788

CERTIFICATE OF SERVICE

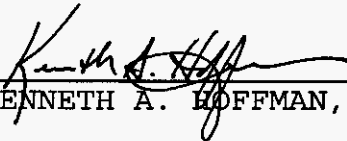
I HEREBY CERTIFY that a copy of the foregoing was furnished to the following by U. S. Mail this 10th day of April, 1996:

Mark A. Logan, Esq.
Bryant, Miller & Olive
201 South Monroe Street
Suite 500
Tallahassee, Florida 32301

Beth Culpepper, Esq.
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370, Gerald L. Gunter Building
Tallahassee, Florida 32399-0850

Richard Salem, Esq.
Marian B. Rush, Esq.
Salem, Saxon & Nielsen, P.A.
P. O. Box 3399
Tampa, Florida 33602

James W. Brew, Esq.
Brickfield, Burchette & Ritts, P.C.
1025 Thomas Jefferson St., N.W.
Eighth Floor - West Tower
Washington, DC 20007



KENNETH A. HOFFMAN, ESQUIRE

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