

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILE COPY

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

FLORIDA POWER AND LIGHT COMPANY'S
MEMORANDUM IN OPPOSITION TO
FLORIDA STEEL CORPORATION'S MOTION TO STRIKE

Florida Power and Light Company ("FPL"), pursuant to Rule 25-22.037(2)(b), Fla. Admin. Code, files this Memorandum in Opposition to Florida Steel Corporation's Motion to Strike FPL's Motion to Dismiss Florida Steel Corporation's Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement and states:

1. On February 14, 1996 the Florida Public Service Commission issued a Notice of Proposed Agency Action Order Approving Territorial Agreement concerning an agreement between FPL and the Jacksonville Electric Authority ("JEA").
2. On March 6, 1996, Florida Steel filed a Petition and Protest on Proposed Agency Action to Approve a Territorial Agreement. A copy of the Petition was delivered to counsel for FPL on that same day via Federal Express.
3. On March 26, 1996, exactly twenty days after Florida Steel's Petition and Protest was filed with the Commission, FPL and Jacksonville Electric Authority ("JEA") filed separate Motions to Dismiss.
4. Florida Steel asserts that FPL's and JEA's motions are untimely as they were not filed within seven days of the filing of

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the Petition and Protest. Florida Steel's application of Commission rules to the dates in question is fallacious.

5. Rule 25-22.037(2), Fla. Admin. Code governs motions filed with the Commission. Subsection (a) of section (2) provides, in pertinent part:

"(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*." (emphasis supplied)

Section (1) of that same rule provides, again in pertinent part:

"(1) Answer. A respondent or intervenor may file an answer within *twenty days* (20) days of service of the petition." (emphasis supplied)

6. Florida Steel admits that FPL and JEA's motions to dismiss were filed on March 26, 1996, exactly twenty days from the date the protest was filed. Thus, pursuant to Rule 25-22.037, Fla. Admin. Code the motions were timely filed and Florida Steel's Motion to Strike should be denied.

7. Florida Steel relies upon language contained in section (2)(b) of the same rule which imposes a seven day response period for parties to file a memorandum in opposition to a *motion*. But, as the caption on Florida Steel's Petition and Protest clearly indicates, that pleading is a *petition* not a *motion*. This is because the Commission's rules require the filing of a *petition* when a proposed agency action is challenged by a substantially affected party. Rule 25-22.029(4), Fla. Admin. Code. A petition and a motion are distinctly different pleadings which are accorded

different treatment under Commission rules. A response to a petition is required within twenty days and a memorandum in opposition to a motion is required within seven days. Thus, FPL and JEA's motions were timely and Florida Steel's motion to strike should be denied.

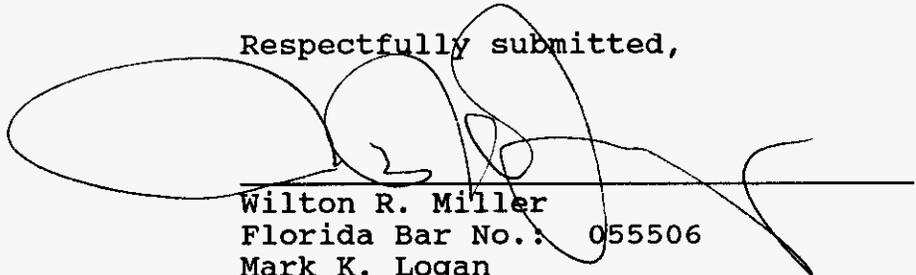
8. Florida Steel also attempts to rely upon a Case Assignment and Scheduling Record ("CASR") which listed March 20, 1996 as a response date to the Florida Steel Petition and Protest. Florida Steel offers no citation of a Commission rule or other authority which suggests that the PSC's internal administrative CASR is binding upon parties with respect to deadlines expressly listed in the Commission's own rules. However, Part IV of Title 25, which includes the rules already discussed in detail, is specifically applicable to all proceedings where the substantial interests of a party are determined by the Commission. Rule 25-22.025, Fla. Admin. Code. Thus the March 20, 1996 date listed in the CASR cannot alter the plainly applicable twenty day response time allotted FPL and JEA to file their respective motions to dismiss.

9. Even if Florida Steel's construction of the Commission's rules were applicable to FPL and JEA's motions to dismiss, the motion to strike must still fail as it was untimely filed under the same seven day rule. The FPL and JEA motions were both filed on March 26, 1996. Copies were served by mail upon Florida Steel. Thus, Florida Steel had seven days (Rule 25-22.037) plus an additional five days (Rule 25-22.028) for a total of twelve days

within which to file a memorandum in opposition. Florida Steel's response was due on April 8, 1996. Florida Steel's own Motion to Strike shows a filing date of April 9, 1996, one day after the due date for a responsive pleading. Therefore, Florida Steel's Motion should not be considered by the Commission.

WHEREFORE, FPL respectfully requests this Commission deny Florida Steel's Motion to Strike.

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 10th day of April, 1996

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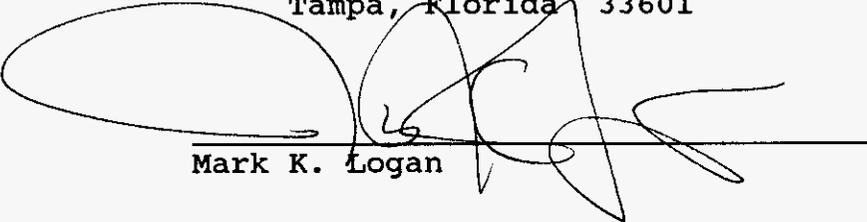
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