FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

May 9, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CULPEPPER) bc RVE
DIVISION OF ELECTRIC AND GAS (BASS, TEW) KJ RAT

RE: DOCKET NO. - 950307-EU - PETITION OF JACKSONVILLE ELECTRIC AUTHORITY TO RESOLVE A TERRITORIAL DISPUTE WITH FLORIDA POWER & LIGHT COMPANY IN ST. JOHNS COUNTY

AGENDA: 05-21-96 - REGULAR AGENDA - DECISION PRIOR TO HEARING MOTION TO DISMISS - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\950307SD.RCM

CASE BACKGROUND

On March 20, 1995, Jacksonville Electric Authority (JEA) petitioned the Commission to resolve a territorial dispute with Florida Power and Light Company (FPL). On August 28, 1995, JEA and FPL filed a Joint Motion to Suspend Remaining Filing and Hearing Dates. In that motion, the parties stated that they had reached a settlement of the dispute and intended to file the appropriate documentation at a future date. By Order No. PSC-95-1086-PCO-EU, issued on August 31, 1995, the remaining filing and hearing deadlines were suspended and held in abeyance pending resolution of matters concerning the settlement agreement.

On October 6, 1995, JEA and FPL filed a Joint Motion to Approve a Territorial Agreement. The agreement was intended to replace the previous agreement between the two utilities in Clay, Duval, Nassau, and St. Johns Counties. The previous agreement was approved by the Commission in Order No. 9363, issued May 9, 1980, in Docket No. 790886-EU.

On December 5, 1995, Florida Steel Corporation (Florida Steel) filed a Motion to Intervene in this docket and Objection to Preliminary Agency Action. On December 18, 1995, FPL filed a Memorandum in Opposition to Florida Steel's motion and objection. On January 18, 1996, Florida Steel filed a Response to Florida

Power & Light's Memorandum in Opposition to Florida Steel Corporation's Motion to Intervene. On February 5, 1996, the prehearing officer issued Order No. PSC-96-0158-PCO-EU, denying Florida Steel's motion to intervene.

On February 14, 1996, the Commission issued PAA Order No. PSC-96-0212-FOF-EU approving FPL's and JEA's proposed territorial agreement. On March 6, 1996, Florida Steel protested the order approving the territorial agreement and requested a Section 120.57, Florida Statutes, hearing. On March 26, 1996, JEA and FPL both filed separate motions to dismiss Florida Steel's protest. This recommendation addresses the protest and the motions to dismiss.

DISCUSSION OF ISSUES

ISSUE: Should the Commission grant FPL's and JEA's Motions to Dismiss Florida Steel Corporation's protest of PAA Order No. PSC-96-0212-FOF-EU?

RECOMMENDATION: Yes. FPL and JEA's motions should be granted. Florida Steel has failed to sufficiently allege standing to protest the approval of the territorial agreement.

Positions

Florida Steel

In its protest, Florida Steel states that it has been a FPL customer since 1974 and that it will remain a FPL customer under the proposed territorial agreement. As a customer of FPL, Florida Steel asserts that it pays significantly higher rates for electric service than its major competitors. Florida Steel believes that if it is required to remain a FPL customer, these higher rates could be a factor in decisions concerning the continued operation of its Jacksonville mill.

Florida Steel asserts that, pursuant to the Jacksonville City Charter and the Jacksonville Municipal Code, JEA should have assessed whether it would be practical or economical for it to serve all of Duval County before entering into the new agreement with FPL. Florida Steel asserts that this docket contains no evidence that JEA made that determination. Florida Steel argues that an examination of this issue would demonstrate that JEA could economically serve all of Duval County. Because energy costs have a significant bearing on the continued viability of its Jacksonville facility, Florida Steel asserts that it has a substantial interest in ensuring that this issue is addressed.

Florida Steel also argues that the Commission must look beyond the effect the agreement will have on the two utilities. Florida Steel argues that under Utilities Commission of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731, (Fla. 1985), the Commission must determine the impact the agreement will have on both utilities' ratepayers as a whole. Using this rationale, Florida Steel argues that the Commission should determine whether a shift in the territorial boundary and transfer of Florida Steel to JEA's territory would allow Florida Steel to continue or even expand its operations in Jacksonville. Florida Steel also asserts that the Commission should examine the effect such a transfer would have on the rest of FPL's ratepayers and upon the economic development of Duval County.

Florida Steel, citing Storey v. Mayo, 217 So. 2d 304 (Fla. 1968), argues that since it is located within the Jacksonville city limits, it can compel service by JEA. Florida Steel argues that, pursuant to Jacksonville's City Charter, JEA must serve customers within the city limits where it is economical to do so. Florida Steel argues, therefore, that JEA can only assign the responsibility to serve Florida Steel to FPL if it is impractical or uneconomical for JEA to provide service. Thus, Florida Steel asserts that it has a significant, direct interest in this docket and in ensuring that the agreement satisfies the requirements of the Jacksonville City Charter and city ordinances.

Finally, Florida Steel argues that the revenue compensation payments by JEA to FPL included in the agreement are not justified. Florida Steel asserts that the prior territorial agreements did not provide for similar payments. In this instance, Florida Steel argues it can find no reason why FPL should continue to be compensated for the loss of revenue streams provided by serving customers outside FPL's service territory. Florida Steel argues, therefore, that the Commission should examine the basis for the inclusion of these payments in the territorial agreement.

Florida Power and Light

In its motion to dismiss, FPL asserts that Florida Steel lacks standing to request a Section 120.57 hearing. Citing Department of Health and Rehabilitative Services v. Alice P., 367 So. 2d 1045 (Fla. 1st DCA 1979), FPL asserts that Florida Steel bears the burden of demonstrating standing. FPL contends that Florida Steel must, therefore, demonstrate that its substantial interests will be affected by the Commission's approval of the territorial agreement. In order to determine whether Florida Steel has met that burden, FPL asserts that it is appropriate to apply the two-pronged test for a "substantial interest" set forth in Agrico Chemical Co. v. Dept. of Environmental Regulation, 406 So.2d 478, 482 (Fla. 2nd DCA

1981), rev. denied 415 So. 2d 1359 (Fla. 1982). Under the Agrico test, a party must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing, and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Id. at 482. FPL argues that Florida Steel fails to satisfy either prong of the Agrico test; thus, Florida Steel's protest should be dismissed.

Applying the first prong of the Agrico test, FPL asserts that Florida Steel's allegations of economic detriment are speculative and too remote to establish standing. Citing International Jai-Alai Players Association v. Florida Pari-Mutuel Commission, 561 So. 2d 1224 (Fla. 3rd DCA 1990). FPL notes Florida Steel's acknowledgement that factors unrelated to the territorial agreement are contributing to its alleged injury. Citing Order Denying Intervention and Approving Load Profile Enhancement Rider, Order No. PSC-95-0348-FOF-EU, March 13, 1995, at p. 4, FPL asserts that these other intervening factors render Florida Steel's alleged injury too far removed from the alleged cause, the territorial agreement, to establish standing. Thus, FPL argues that Florida Steel fails the first prong of the Agrico test.

FPL also asserts that Florida Steel's allegations do not fall within the zone of interest of the law governing Commission approval of utility territorial agreements. Citing Storey v. Mayo, 217 So. 2d 304, 307-308 (Fla. 1968) and Lee County Electric Cooperative v. Marks, 501 So. 2d 585 (Fla. 1987), FPL argues that Florida Steel does not have any organic, economic or political right to compel service by a particular utility simply because it believes such service would benefit Florida Steel's business. Using the rationale set forth in In re: Joint Petition for Approval of Territorial Agreement Between Florida Power and Light Company and Peace River Electric Cooperative, Order No. 19140, April 13, 1988, FPL asserts that personal preference is not at issue in a territorial agreement; therefore, any alleged injury related to such interest is not within the purview of the law pertaining to territorial agreements. As such, Florida Steel's interest does not meet the second prong of the Agrico test.

Jacksonville Electric Authority

JEA also asserts that Florida Steel lacks standing to protest PAA Order PSC-96-0212-FOF-EU. JEA states that the Prehearing Officer's rationale for previously denying Florida Steel's motion to intervene in this docket is consistent with prior Commission decisions. See Order PSC-96-0158-PCO-EU, February 5, 1996. JEA further states that the proposed territorial agreement will have no factual or legal impact on Florida Steel. JEA notes that Florida

Steel has been a FPL customer and will remain with FPL under the new agreement. Because Florida Steel has not raised any additional allegations that demonstrate it has standing in this docket, JEA maintains that Florida Steel's petition should be dismissed based upon similar rationale.

In addition, JEA disagrees with Florida Steel's interpretation of Storey v. Mayo. JEA argues that Storey v. Mayo must be interpreted in a manner consistent with the authority subsequently granted to the Commission in the 1974 "Grid Bill." JEA argues that the Commission has already made such an interpretation in In re: Petition to Resolve Territorial Dispute Between Okefenokee Rural Electric Membership Corporation and Jacksonville Electric Authority, Order No. PSC-92-0058-FOF-EU, March 12, 1992. In that order, the Commission stated that although a municipality may have the right to serve within its 1974 boundaries, the exercise of that right must be consistent with the public policy purposes of the Grid Bill.

JEA also argues that Florida Steel's interpretation of New Smyrna Beach v. Fla. Public Service Commission is incorrect. JEA states that Florida Steel uses New Smyrna Beach to argue that the agreement should not be approved because Florida Steel's facility would be more economically viable if it received service from JEA. JEA asserts that the Court in New Smyrna Beach found that the Commission should not determine whether territorial agreements produce substantial benefits for affected customers, but should, instead, examine whether the agreement "works no detriment to the public interest." New Smyrna Beach, 469 So. 2d at 732. JEA argues that Florida Steel's position amounts to a request to return to the substantial benefits test.

JEA adds that Florida Steel's allegation that the payment from JEA to FPL for transferred customers is too high is irrelevant. JEA asserts that it has determined the payment is fair to JEA, and that the decision is not subject to Commission review. Also, since Florida Steel is not a customer of the JEA, any alleged overpayment could not have any detrimental affect on Florida Steel.

STAFF ANALYSIS: Pursuant to Rule 1.420(b), Florida Rules of Civil Procedure, a party may move to dismiss another party's request for relief on the ground that, on the facts and the law, the party seeking relief has not shown a right to relief.

The standard that should be used to consider FPL's and JEA's motions to dismiss is to view the facts set forth in Florida Steel's petition in the light most favorable to Florida Steel, in order to determine whether Florida Steel's claim is cognizable under the provisions of Section 366.04, Florida Statutes. As

stated by the Court in Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993), "[t]he function of a motion to dismiss is to raise as a question of law the sufficiency of facts alleged to state a cause of action."

Applying the standard set forth above, staff is persuaded that FPL's and JEA's motions to dismiss clearly show that Florida Steel does not have a right, under the law or the facts, to the relief requested in its petition.

According to Section 120.57, Florida Statutes, and Rule 25-22.029, Florida Administrative Code, only one whose substantial interests may or will be affected by the Commission's action may file a petition for a 120.57 hearing. When a petitioner's standing in an action is contested, the burden is upon the petitioner to demonstrate that he does, in fact, have standing to participate in the case. Department of Health and Rehabilitative Services v. Alice P., 367 So. 2d 1045, 1052 (Fla. 1st DCA 1979). To prove standing, the petitioner must demonstrate:

> 1) that he will suffer injury in 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.

Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2nd DCA 1981).

Florida Steel has not demonstrated it has standing to request a Section 120.57 hearing in this docket. Therefore, FPL's and JEA's motions to dismiss should be granted. Staff has reached this conclusion for the following reasons: 1. Florida Steel's interests do not rise to the level of substantial interests under the test set forth in Agrico; 2. Florida Steel's interpretations of both Storey v. Mayo and New Smyrna Beach are incorrect; and 3. the payment from JEA to FPL for the transfer of customers is justified and does not give Florida Steel standing to protest.

1. Florida Steel does not meet the Agrico test

Staff agrees that it is appropriate to apply the two-pronged test for "substantial interest" set forth in Agrico Chemical Co. v. Dept. of Environmental Regulation, 406 So.2d 478, 482 (Fla. 2nd DCA 1981), rev. denied 415 So. 2d 1359 (Fla. 1982).

In its petition, Florida Steel alleges that it has failed to negotiate a lower rate with FPL and that FPL's high rates threaten the continued survival of Florida Steel's Jacksonville mill. Florida Steel states that it is considering relocating the Jacksonville mill in order to receive lower energy rates, which

would allow Florida Steel to better compete with other steel manufacturers. If the mill is relocated, Florida Steel states that the City of Jacksonville's economic well-being will suffer.

Staff agrees that Florida Steel's allegations do not pass the first prong of the Agrico test. Florida Steel's allegations fail to demonstrate that it will suffer an injury in fact which is of sufficient immediacy to warrant a Section 120.57 hearing. Speculation as to the effect that relocation of Florida Steel's mill might have on the City amounts to conjecture about future economic detriment. Such conjecture is too remote to establish standing. See Order No. PSC-95-0348-FOF-GU, March 13, 1995; citing International Jai-Alai Players Assoc. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, at 1225-1226 (Fla. 3rd DCA 1990). See also Village Park Mobile Home Association, Inc. v. State, Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. denied, 513 So. 2d 1063 (Fla. 1987)(speculations on the possible occurrence of injurious events are too remote to warrant inclusion in the administrative review process).

Florida Steel also argues that the economic interests of the City of Jacksonville and Duval County, would be better served if the territorial boundary was modified to allow JEA to serve the area currently served by FPL in Duval County. Florida Steel states that it believes that JEA could serve the Jacksonville mill more economically than can FPL. Thus, Florida Steel believes that it could negotiate a lower rate with JEA than it currently pays as an FPL customer. Florida Steel states that if it is allowed to negotiate with JEA for service at a lower rate, then the probability that the Jacksonville mill will remain in its current location will greatly increase.

Staff does not believe that these allegations are of a type designed to be protected by proceedings to approve a territorial agreement. Thus, Florida Steel fails the second prong of the Agrico test. Sections 366.04(2) and (5), Florida Statutes, "the Grid Bill," authorize the Commission to approve territorial agreements and resolve territorial disputes in order to ensure the reliability of Florida's energy grid and to prevent further uneconomic duplication of electric facilities. The Grid Bill does not authorize the Commission to set territorial boundaries in response to one customer's desire for lower rates. As stated in Order PSC-96-0158-PCO-EU issued in this docket:

> The Commission has consistently adhered to the principle set forth in Storey v. Mayo, 217 So. 2d 304, 307-308 (Fla. 1968), and reaffirmed in Lee County Electric Cooperative v. Marks, 501 So. 2d 585 (Fla. 1987), that no person has a right to compel service from a particular

> utility simply because he believes it to be to his advantage. The Court went on to say in Lee County that 'larger policies are at stake than one customer's self-interest, and those policies must be enforced and safeguarded by the Florida Public Service Commission.' Lee County Electric Cooperative, at 587.

Order Denying Intervention, Order PSC-96-0158-PCO-EU, February 5, 1996, at p. 3.

In Docket No. 870816-EU, Joint Petition for Approval of Territorial Agreement Between Florida Power and Light Company and Peace River Electric Cooperative, Inc., Order No. 19140, the Commission determined that based upon Storey and Lee County Electric Cooperative:

> . . . the court has firmly established the general rule that a territorial agreement is not one in which the personal preference of a customer is an issue. Therefore, the alleged injury, even if real and direct, is not within the zone of interest of the law.

Order Dismissing Petition and Finalizing Order No. 18332, Order No. 19140, April 13, 1988.

Even if the injuries that Florida Steel has alleged do occur as a result of this agreement, staff believes that such contingencies are not of the nature or type that this proceeding was designed to protect. Staff, therefore, believes Florida Steel has failed to demonstrate standing and the motions to dismiss should be granted.

2. Florida Steel's interpretations of New Smyrna Beach and Storey v. Mayo are incorrect

A. New Smyrna Beach v. Florida Public Service Commission

Even though staff's analysis with regard to Florida Steel's lack of standing is sufficient to recommend granting the motions to dismiss, staff would like to briefly address Florida Steel's interpretations of Storey v. Mayo and New Smyrna Beach.

Florida Steel argues that New Smyrna Beach stands for the proposition that the Commission must look beyond the signatories to the agreement to the customers of both utilities in order to determine whether the agreement "works no detriment to the public interest." Petition and Protest at p. 5. Citing New Smyrna Beach v. Florida Pub. Serv. Comm'n, 469 So. 2d at 732. Florida Steel asserts, therefore, that the Commission must examine the potential economic impact that the agreement will have on it, as a FPL

customer, and the ancillary effects that the economic impact might have on the economy of Duval County.

Staff agrees that New Smyrna Beach requires that, in approving a territorial agreement, the Commission must determine that the agreement "works no detriment to the public interest." Staff disagrees, however, with Florida Steel's application of that case to the circumstances in this docket.

In New Smyrna Beach, the City of New Smyrna Beach and FPL entered into a territorial agreement which was presented to the Commission for approval. The Commission issued a PAA order approving that agreement as being in the public's best interests. A protest was filed by a group of customers being transferred under the agreement and the matter was set for hearing. The Commission then denied approval of the agreement because the agreement did not provide substantial benefits to the transferred customers. Id. at 732.

On appeal, the Court determined that the Commission had applied an improper test for approving territorial agreements. The court stated that our legal system favors settlement of disputes and that the preference for settlement also applies to utility disputes. The Court stated that utility territorial agreements are generally approved because they prevent or minimize uneconomic duplication of facilities and promote the interests of the public and the utilities involved. Id. at 732. Because the agreement must serve all of these interests, the Court determined that the Commission's substantial benefit test "r[a]n directly counter to the principle favoring settlement of utilities' territorial disputes." Id. In applying the substantial benefits test, the Court found that the Commission was focusing on the needs of the few, rather than upon the agreement's ability to meet the various needs for which it was designed. For this reason, the Court determined that the Commission should, instead, base its approval on whether the agreement "works no detriment to the public interest." Id.

Staff believes that Florida Steel's application of New Smyrna Beach is actually an attempt to return to the substantial benefits test rejected in that case. Although Florida Steel argues that the Commission must look at the economic effect this agreement will have on both Florida Steel and Duval County, Florida Steel's assertions pertain mainly to the effects the agreement will have on its Jacksonville mill. Any economic development impacts on Duval County will not be a direct result of the territorial agreement, but the result of Florida Steel's inability to maintain the economic viability of its Jacksonville mill. The cost of energy may, indeed, have a significant impact on Florida Steel's ability

to continue operating the Jacksonville mill. However, if the Commission considered that factor alone, it would, in effect, represent a return to the substantial benefits test.

Staff has examined all aspects of the FPL and JEA territorial agreement. The agreement minimizes or prevents uneconomic duplication of services and facilities, brings a resolution to the dispute between JEA and FPL, and, as a whole, serves the interests of both utilities' ratepayers. Staff, therefore, believes that this agreement works no detriment to the public interest.

B. Storey v. Mayo

Florida Steel argues that, according to Storey v. Mayo, a customer within a city's limits may compel service by the city utility. Petition at 6; citing Storey v. Mayo 217 So. 2d at 308. Based on this assertion and upon the Jacksonville City Charter, Florida Steel asserts that JEA is obligated to serve Florida Steel if it is economically feasible. Florida Steel, therefore, argues that the Commission must determine whether JEA can economically serve Florida Steel. If the Commission finds that JEA could provide service economically, Florida Steel argues that the Commission should deny approval of the agreement, then require JEA and FPL to shift the boundaries so that JEA can serve the pocket of Duval County currently served by FPL.

Staff disagrees. The Storey decision must be interpreted consistently with the subsequent 1974 Grid Bill.

In Storey, the City of Homestead (City) and FPL were involved in an ongoing territorial dispute for customers in the unincorporated areas surrounding Homestead. In order to resolve the dispute, the City and FPL executed a territorial agreement. The agreement provided for the transfer of 78 City customers to FPL and 398 FPL customers to the City. The agreement was approved by the Commission, and several customers appealed. The petitioners objected to their transfer from FPL to the City. Petitioners argued that FPL's rates and service were superior to the City's and that to force them to take service from the City was contrary to the public interest. The Court recognized the "importance of the regulatory function as a substitute for unrestrained competition in the public utility field" and the fact that competition does not promote efficient utility regulation. Storey at 307. The Court then stated that "[a]n individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself." Id. at 307, 308. The Court further explained that a customer living within city limits could compel service from the city utility, but that the customer could not compel service by the privately-owned utility operating just

outside the city's boundaries. Id. at 308. Noting the existence of competent, substantial evidence in the record supporting the Commission's approval of the agreement, the Court denied the petition.

Staff agrees with JEA that the Commission has already set forth a clear interpretation of the Grid Bill's effect on the Storey decision. In Re: Petition to Resolve Territorial Dispute Between Okefenokee Rural Electric Membership Corporation and Jacksonville Electric Authority, the Commission stated:

> 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 it 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.

Order No. PSC-92-0058-FOF-EU.

Staff believes that this interpretation still holds. The Commission's statutory responsibility to approve territorial agreements, resolve territorial disputes, and avoid uneconomic duplication of facilities supersedes JEA's right or obligation to serve within its boundaries. Section 366.04, Florida Statutes (1995). See Florida Power Corporation v. Seminole County and City of Lake Mary, 579 So. 2d 105 (Fla. 1991)(finding that jurisdiction expressly conferred by statute to the Commission preempts authority granted to city and county by charter.) See also Williams v. City of Mount Dora, 452 So. 2d 1143, 1146 (Fla. 5th DCA 1984)(explaining that a municipal utility's ability to enact rules and regulations as ordinances does not mean it can confer upon itself rights beyond those of private utilities.) Thus, because of Commission authority pursuant to the Grid Bill, Florida Steel cannot compel service from JEA.

3. JEA's payment to FPL for transferred customers is justified and does not give Florida Steel standing to protest

Florida Steel argues that the Commission should initiate formal proceedings in order to "closely assess the basis for customer revenue payments in this case." Petition and Protest at p. 8. Florida Steel asserts that FPL never had a right to continue to serve beyond the boundaries set in the previous territorial agreement; therefore, FPL had no reasonable expectation that it would continue to receive revenue from such service. Thus, Florida

Steel argues that payments from JEA to FPL as compensation for future customer revenue are not justified.

JEA and FPL submitted this territorial agreement subsequent to extensive negotiations that were undertaken in an effort to resolve a territorial dispute. The dispute had revolved, essentially, around the interpretation of portions of Article III of the parties' 1979 territorial agreement. FPL and JEA disagreed over portions of the 1979 agreement that allowed either party to provide extraterritorial service at the request of the other party. Under the agreement, the parties had to assent to such arrangements on a case by case basis. See Section 3.4 of the 1979 Territorial Agreement. JEA felt that this provision was intended to be a temporary or interim service provision. FPL disagreed because words to that effect were not contained in the 1979 agreement. See FPL's Answers to JEA's First Set of Interrogatories, No. 6, June 16, 1995.

Without concluding which parties' interpretation of the 1979 agreement was correct, staff believes that both interpretations were reasonable. Also, FPL has invested substantial amounts for transmission and distribution facilities, system improvements, and customer metering in order to serve the customers that are now being transferred to JEA. Thus, staff surmises that FPL has a reasonable expectation of compensation not only for the investment in facilities to serve, but, also, for lost revenues. Staff, therefore, believes that the payment from JEA to FPL is justified.

Staff does not believe the payment from JEA to FPL is a basis to deny the motions to dismiss. Florida Steel has not asserted that these payments give it standing to protest the proposed agency action. Florida Steel, as a customer of FPL, could not possibly be harmed by payments from JEA to FPL. Thus, staff believes both motions to dismiss should be granted.

Conclusion

Staff believes that both FPL and JEA's motions to dismiss have clearly demonstrated that Florida Steel has not presented a sufficient basis to maintain its protest in this docket. Staff believes that both FPL's and JEA's motions to dismiss should be granted.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff recommendation in Issue 1, no other matters remain to be addressed in this docket.

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1 and grants the motions to dismiss, there will be no other issues to be addressed in this docket. This docket should, therefore, be closed.