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July 1, 1996

VIA FEDERAL EXPRESS

Blanca S. Bayo, Director
Florida Public Service Commission
Division of Records & Recording
2540 Shumard Oak Blvd. - Room 110
Tallahassee, FL 32399

Re: Docket No. 950307-EU
Notice of Administrative Appeal

Dear Ms. Bayo:

Enclosed for filing please find an original and fifteen copies of Florida Steel Corporation's Notice of Administrative Appeal. A copy of this Notice along with this firm's check in the amount of \$250 for the filing fee has been provided to the Florida Supreme Court in connection with this appeal.

With kindest personal regards, I am

Very truly yours,

SALEM, SAXON & NIELSEN, P.A.

Marian B. Rush
Marian B. Rush
MBR/cb3

5 Enclosures
5 *Col Paper*
cc: Honorable Sid J. White, Clerk
Supreme Court of Florida
All Parties of Record

*Includes
Directions to Clerk*

Direct Clerk
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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
ORDER NO. PSC-96-0755-FOF-EU
ISSUED: June 10, 1996

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NOTICE OF ADMINISTRATIVE APPEAL

NOTICE IS GIVEN pursuant to 9.030(a)(1)(B)(ii) and 9.110 of the Florida Rules of Appellate Procedure governing appeals of statewide agencies relating to the service of electric utilities that AmeriSteel Corporation, formerly known as Florida Steel Corporation ("AmeriSteel"), Appellant, appeals to the Supreme Court of Florida, the order of the Public Service Commission rendered on June 10, 1996, a copy of which is attached hereto as Exhibit "A". The nature of the order is a final order granting Motions to Dismiss the Protest filed by AmeriSteel in the above-referenced docket and finalizing PSC Order No. PSC-96-0212-FOF-EU which was a Notice of Proposed Agency Action and Order Approving Territorial Agreement. AmeriSteel also appeals PSC Order No. 950307-EU, a copy of which is attached as Exhibit "B". The nature of the order is a non-final order denying AmeriSteel's intervention in the above-referenced docket.

By:

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Dated: 7-1-96
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to resolve a) DOCKET NO. 950307-EU
territorial dispute with Florida) ORDER NO. PSC-96-0755-FOF-EU
Power & Light Company in St.) ISSUED: June 10, 1996
Johns County, by Jacksonville)
Electric Authority)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

FINAL ORDER
GRANTING MOTIONS TO DISMISS AND
FINALIZING ORDER NO. PSC-96-0212-FOF-EU

BY THE COMMISSION:

CASE BACKGROUND

On March 20, 1995, Jacksonville Electric Authority (JEA) petitioned the Commission to resolve a territorial dispute with Florida Power & 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 Order No. 9363, issued May 9, 1980, in Docket No. 790886-EU.

On December 5, 1995, Florida Steel Corporation, now known as Ameristeel 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. Florida Steel filed an appeal of the ruling in Order No. PSC-96-0158-PCO-EU with the Florida Supreme Court on March 6, 1996. The Court dismissed the appeal on May 15, 1996.

On February 14, 1996, we 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.

DECISION

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 also asserts ~~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 further argues 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. Citing Storey v. Mayo, 217 So. 2d 304 (Fla. 1968), Florida Steel also argues that since it is located within the Jacksonville city limits, it can compel service by JEA. 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.

In addition, 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.¹

We have examined 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. We find that Florida Steel has not sufficiently alleged that it has standing to maintain its protest in this docket.

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 our 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).

We have applied the two-pronged test for "substantial interest" set forth in Agrico, and find that Florida Steel's allegations are not sufficient to establish standing in this docket.

1. Florida Steel will not suffer injury in fact of sufficient immediacy

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. Florida Steel's assertion that paying FPL's higher rates will harm its ability to compete with other steel producers is purely speculative, as is its assertion that relocation of its Jacksonville mill will cause

¹ Florida Steel has not asserted that these payments give it standing to protest the proposed agency action. We, therefore, do not address this argument, as it is not relevant.

economic detriment to the City of Jacksonville. Florida Steel even notes that electric rates will be only one factor in its decision to relocate the Jacksonville mill. Such conjecture about possible future economic detriment is too remote to establish standing. See International Jai-Alai Players Assoc. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, at 1225-1226 (Fla. 3rd DCA 1990) (fact that change in playing dates might affect labor dispute, resulting in economic detriment to players was too remote to establish standing). 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). Cf. Florida Soc. of Ophthalmology v. State Board of Optometry, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988) (some degree of loss due to economic competition is not of sufficient "immediacy" to establish standing).

2. The alleged injury is not of a type or nature this proceeding is designed to protect

In addition, Florida Steel's allegations are not 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 us 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 us 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 & Light Company and Peace River Electric Cooperative, Inc., Order No. 19140, we 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, such contingencies are not of the nature or type that this proceeding was designed to protect. Florida Steel has, therefore, failed to demonstrate standing and the motions to dismiss are granted.

Conclusion

Both FPL and JEA's motions to dismiss clearly demonstrate that Florida Steel has not presented a sufficient basis to maintain its protest in this docket. We, therefore, grant both FPL's and JEA's motions to dismiss.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the petition on proposed agency action filed by Florida Steel Corporation is, hereby, dismissed with prejudice. It is further

ORDERED that Order No. PSC-96-0212-FOF-EU is, hereby, determined to be final and effective, and Docket 950307-EU is closed.

ORDER NO. PSC-96-0755-FOF-EU
DOCKET NO. 950307-EU
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By ORDER of the Florida Public Service Commission, this 10th
day of June, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: /s/ Kay Flynn
Chief, Bureau of Records

This is a facsimile copy. A signed
copy of the order may be obtained by
calling 1-904-413-6770.

(S E A L)

BC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that ~~is~~ available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Jacksonville) DOCKET NO. 950307-EU
 Electric Authority to Resolve a) ORDER NO. PSC-96-0158-PCO-EU
 Territorial Dispute with Florida) ISSUED: February 5, 1996
 Power & Light Company in St.)
 Johns County.)

ORDER DENYING INTERVENTION

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, I suspended and held in abeyance the remaining filing and hearing deadlines scheduled for this docket 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 proposed agreement is 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 proceeding and Objection to Preliminary Agency Action. On Monday, December 18, 1995, FPL filed a Memorandum in Opposition to Florida Steel's Motion to Intervene and Objection to Preliminary Agency Action. On January 18, 1996, Florida Steel filed a Response to Florida Power and Light's Memorandum in Opposition to Florida Steel Corporation's Petition to Intervene. Florida Steel's Objection to Preliminary Agency Action, filed prior to the issuance of a proposed agency action in this docket, is not contemplated by Commission rules. Florida Steel's Response to FPL's Memorandum in Opposition to Florida Steel's Petition to Intervene was not timely filed in accordance with the provisions for responding to motions, Rule 25-22.037(2)(b), Florida Administrative Code. I have, therefore, addressed only Florida Steel's request for leave to intervene.

In its Motion to Intervene, 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 do its major competitors. Florida

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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.

FPL asserts that Florida Steel claims only that it is dissatisfied with the rate charged by FPL. FPL also notes that Florida Steel does not claim that approval of the agreement will change its circumstances. FPL, therefore, asserts that Florida Steel's allegations of potential economic harm to Florida Steel and the City of Jacksonville are too speculative, indirect, and remote to support standing in this matter.

Pursuant to Rule 25-22.039, Florida Administrative Code, persons seeking to become parties in a proceeding must demonstrate that they are entitled to participate as a matter of constitutional or statutory right or pursuant to Commission rule, or that their substantial interests are subject to determination or will be affected through the proceeding. Florida Steel has not alleged that it is entitled to intervene as a matter of right or pursuant to Commission rule. It is appropriate, therefore, 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). According to 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.

With respect to the first prong of the test, Florida Steel's petition contains a number of allegations concerning its failed attempts to negotiate a lower rate with FPL and the resulting threat to the survival of its Jacksonville mill. Florida Steel asserts that if it is not allowed to negotiate a lower rate with JEA, it will consider relocating the Jacksonville mill. Florida Steel claims that the City of Jacksonville's economic well-being will suffer should the mill be relocated.

After consideration, I find that Florida Steel has not shown that it will suffer an injury in fact which is of sufficient immediacy to warrant a Section 120.57 hearing. Florida Steel admits in its petition that FPL's rates will not be the sole determinant in whether the company decides to relocate the Jacksonville mill. Also, Florida Steel can only speculate as to the effect that such a loss might have on the City. As explained in Order No. PSC-95-0348-FOF-GU, the Commission has already determined that such conjecture as to future economic detriment is too remote to establish standing. Citing International Jai-Alai

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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).

With respect to the second prong of the Agrico test, Florida Steel asserts that the public interest as a whole, as well as the economic interests of the City of Jacksonville, would be better served if the territorial boundary was modified to allow JEA to serve the area currently served by FPL in Duval County. In support of this assertion, Florida Steel states only that if it is required to remain in FPL's territory and is not allowed to negotiate with JEA for service at lower rate, then it will consider relocating its Jacksonville mill.

I find that the alleged injury claimed by Florida Steel is not of a type designed to be protected by proceedings to approve a territorial agreement. Sections 366.04(2) and (5), Florida Statutes, commonly called 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. This 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.

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 cited Storey and Lee County Electric Cooperative in concluding that the petitioner, Schroeder-Manatee, Inc., lacked standing to intervene in the proceedings. The Commission stated that

. . . 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.

ORDER NO. PSC-96-0158-PCO-EU
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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.

In Docket No. 891245-EU, Petition of Florida Power and Light Company for Resolution of a Territorial Dispute with Fort Pierce Utilities Authority, the prehearing officer invoked a similar rationale in denying a petition to intervene filed by Harbor Branch Oceanographic Institution, Inc. (Harbor Branch), a Fort Pierce Utilities Authority (FPUA) customer. The prehearing officer noted that

Harbor Branch has not alleged that it is located in an area that is subject to dispute or that is subject to any duplication of facilities by the two utilities. Harbor Branch has not alleged that either approval or disapproval of the territorial agreement will cause any change in its circumstances. Harbor Branch simply alleges that it is unhappy with the quality of service that is provided by FPUA and that FPUA charges a higher rate than FPL. Neither of these allegations are sufficient to show that Harbor Branch's substantial interests will be affected by the outcome of this proceeding.

Order Denying Intervention, Order No. PSC-94-0909-PCO-EU, July 25, 1994.

I find that Florida Steel's position is quite similar to that presented by Harbor Branch in Docket No. 891245-EU. Florida Steel acknowledges that it has been and will remain a FPL customer under the proposed territorial agreement. Florida Steel claims only that FPL's rates could be a factor in decisions concerning the continued operation of its Jacksonville mill and that those decisions may have some bearing on the economy of the area. This allegation is not sufficient to support standing in this docket. Based on the foregoing, Florida Steel Corporation's Petition to Intervene in these proceedings is denied.

Although Florida Steel shall not be granted intervenor status, it has ample opportunity to participate at the February 6, 1996, Commission Agenda Conference at which the proposed territorial agreement is scheduled to be addressed, pursuant to Section 366.04(4), Florida Statutes, and Rules 25-6.0442(1) and 25-22.0021(1), Florida Administrative Code. In addition, Florida Steel's right to due process is protected by our Rule 25-22.0376, Florida Administrative Code, whereby an adversely affected party

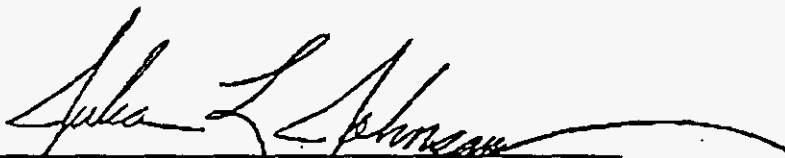
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DOCKET NO. 950307-EU
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may petition for reconsideration of an order of a prehearing officer within 10 days after the issuance of the order.

Based on the foregoing, it is therefore

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the Motion to Intervene filed by Florida Steel Corporation is hereby denied.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 5th day of February, 1996.



JULIA L. JOHNSON, Commissioner and
Prehearing Officer

(S E A L)

BC

ORDER NO. PSC-96-0158-PCO-EU
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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

(PSC DOCKET NO. 950307-EU)

I **HEREBY CERTIFY** that a true and correct copy of AmeriSteel Corporation's Notice of Administrative Appeal has been furnished via U.S. Mail on the 1st day of July 1996, to the following:

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