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Matthew M. Childs, P.A.

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April 25, 1997

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
4075 Esplanade Way, Room 110
Tallahassee, FL 32399

RE: DOCKET NO. 970410-EI

Dear Ms. Bayó:

Enclosed for filing please find the original and ten (10) copies of Florida Power & Light Company's Response to Petition of AmeriSteel Corporation for Leave to Intervene.

Very truly yours,

Matthew M. Childs, P.A.

MMC:ml

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- APP _____
- CAF _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Proposal to Extend Plan for)
the Recording of Certain Expenses)
for the Years 1998 and 1999 for)
Florida Power & Light Company)

DOCKET NO. 970410-E1
FILED: APRIL 25, 1997

RESPONSE TO PETITION OF AMERISTEEL CORPORATION
FOR LEAVE TO INTERVENE

Florida Power & Light Company ("FPL") hereby files this Response to the Petition of AmeriSteel for Leave to Intervene. The Petition for Leave to Intervene fails to allege a valid basis for intervention under Section 120.52(12), F.S. and Commission Rule 25-22.039, Fla. Admin. Code and should be denied. In support of this position, FPL states:

1. AmeriSteel does not seek to base its intervention on two of the three alternative means of demonstrating standing. Thus, the Petition contains no allegations attempting to demonstrate either: 1) a right to participate pursuant to constitution, statute or rule or, 2) that AmeriSteel is a specifically named person whose substantial interests are being determined.¹ Instead, AmeriSteel seeks to establish standing by showing that its substantial

¹Consistent with the APA definition of a "party" in Section 120.52(12), Rule 25-22.039 requires that a Petition to Intervene contain allegations sufficient to demonstrate that the intervenor is entitled to participate...as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding.

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interests will be affected through the proceeding.

2. To establish standing to intervene on the basis of there being a substantial interest that will be affected requires passing the two-prong test set forth in Agrico Chemical Company v. The Dept. of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359, 1361 (Fla. 1982). The two prong test was framed by the Agrico Court as follows:

...before one can be considered to have a substantial interest in the outcome of the proceeding he must show 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.

3. AmeriSteel's Petition to Intervene, however, makes little effort to address how its alleged interests satisfy the Agrico two prong test. Instead, AmeriSteel merely identifies the "interests" and asserts that intervention should be granted. AmeriSteel uses two scenarios to establish its "substantial interest." The first may be summarized as it has been by AmeriSteel:

"In a nutshell, AmeriSteel requires competitively priced electricity from FPL in order for the Jacksonville mill to be able to compete with AmeriSteel's regional, national and international rivals."

Petition at paragraph 7. The second "interest" asserted to exist is not an interest at all---instead, it is a fiction. To support the presence of this fiction, AmeriSteel erroneously asserts that a "return on equity cap [has been] established for FPL by the Commission." Next, AmeriSteel asserts that the fictional "equity

cap" has conferred a "vested interest" upon customers in profits above the specified "cap." Finally, by adding an inference to the fiction, AmeriSteel asserts that it should expect a refund as FPL exceeds the "return on equity cap" but for the charges to expense addressed in this Docket. Petition at paragraph 8.

4. Neither "interest" identified by AmeriSteel satisfies the first prong of the Agrico test by being "an injury in fact" and of such immediacy as to entitle AmeriSteel to a 120.57 hearing.

5. This current proceeding is not one to change rates and charges for FPL and even were it to be, the action taken can have only a speculative and indirect impact on rates and charges, if any, and thus only a speculative and indirect impact on AmeriSteel's "competitive interests". As was noted in Village Park Mobile Home Ass'n, Inc. v. State Dept. of Business Regulation, 506 So. 2d 426,434 (Fla. 1st DCA 1987) and cited with approval by the Florida Supreme Court in its recent unpublished opinion in AmeriSteel Corporation v. Clark issued April 10, 1997:

Speculations on the possible occurrence of injurious events are too remote to warrant inclusion in the administrative review process.

6. The second "interest" alleged by AmeriSteel can neither satisfy the first prong of the Agrico test nor serve to make AmeriSteel's first alleged "interest" certain and immediate so that it might satisfy that test. The second "interest" alleged fails in this regard because there is no "return on equity cap." There is no "vested interest" in profits, if any, above the non-existent

"equity cap." There is thus no basis to expect refunds.

7. Both alleged "interests" of AmeriSteel likewise fail the second prong of the Agrico test which would require that AmeriSteel's injury be "of a type or nature which the proceeding is designed to protect." AmeriSteel made no allegations to demonstrate its passing of this second prong. Instead, and to the contrary, AmeriSteel's position seems to be that there is some general non-specific basis for action by it to protect AmeriSteel's interest and the interests of other customers. Thus it asserts:

As FPL's largest customer, AmeriSteel has significant interest in ensuring that FPL does not take unnecessary or unwarranted charges that would serve to prevent FPL from reaching the earnings sharing threshold and providing refunds to existing customers.

Petition at paragraph 8. AmeriSteel simply cannot arrogate to itself this general regulatory power or unilaterally choose to exercise such power in this proceeding. In addition, the so-called "earnings sharing threshold" to which AmeriSteel refers is just another of its terms for the fictional "return on equity cap."

8. This proceeding is simply not for the purpose of protecting AmeriSteel's "competitive interests" or for the purpose of applying the fictional "return on equity cap" or "earnings sharing threshold." Thus, AmeriSteel cannot be found to have satisfied the second prong of the Agrico test.


WHEREFORE, because the sole basis on which AmeriSteel seeks to intervene is that it has a substantial interest that will be affected by this proceeding while the Petition to Intervene fails

to establish that the two prong test for intervention on this basis has been met, the requested intervention should be denied.

Respectfully submitted,

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Attorneys for Florida Power
& Light Company

By:


Matthew M. Childs, P.A.

**CERTIFICATE OF SERVICE
DOCKET NO. 970410-EI**

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Response to Petition of AmeriSteel Corporation for Leave to Intervene has been furnished by Hand Delivery (*), or U.S. Mail this 25th day of April, 1997, to the following:

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