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May 1, 1997

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. 970410-EI
Proposal to Extend Plan for the Recording of Certain Expenses for the Years
1998 and 1999 for Florida Power & Light Company

Dear Ms. Bayo:

Enclosed please find for filing with the Public Service Commission the original and fifteen copies of AmeriSteel Corporation's Request for the Florida Public Service Commission to Take Judicial Notice of its Former Ruling on AmeriSteel Corporation's Petition to Intervene.

Thank you for your assistance in filing the above. Should you have any questions, please do not hesitate to contact the undersigned. With kindest personal regards, I am

Very truly yours,

ACK _____
AFA SALEM, SAXON & NIELSEN, P.A.
APP _____
CAF Marian B. Rush
CMT _____
CTR Marian B. Rush

ENC MBR/cb3
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DOCUMENT NUMBER - DATE
04387 MAY-25
FPSC-RECORDS/REPORTING

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

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

DOCKET NO. 970410-EI

**REQUEST FOR THE FLORIDA PUBLIC SERVICE COMMISSION
TO TAKE JUDICIAL NOTICE OF ITS FORMER RULING
ON AMERISTEEL CORPORATION'S PETITION TO INTERVENE**

AmeriSteel Corporation ("AmeriSteel") hereby requests the Florida Public Service Commission (the "Commission") take judicial notice of a prior Commission Order granting its Motion to Intervene in Docket No.950359-EI ("Prior Docket"), Order No. PSC-95-1035-PCO-EI, issued August 21, 1995 (the "Prior Order"). A copy of the Prior Order is attached hereto as Exhibit "A."

In the Prior Order, the Commission granted Florida Steel Corporation's (now AmeriSteel) Petition to Intervene in a docket involving substantially similar issues as are involved in the instant docket. The Prior Order was issued by the Commission notwithstanding the Motion in Opposition to Petition for Leave to Intervene filed by Florida Power & Light Corporation ("FPL"), a copy of which is attached hereto as Exhibit "B." FPL's objections to AmeriSteel intervening in the Prior Docket are substantially the same as its objections to AmeriSteel intervening in this docket as set forth in FPL's Response to Petition of AmeriSteel Corporation for Leave to Intervene. In fact, the Commission Staff recommendation filed in this docket states:

In the instant case, FPL, the Office of Public Counsel, and the Staff met to discuss **a continuation of the plan approved in Docket No. 950359-EI.** AmeriSteel, Inc., an FPL customer, also participated in the review of the plan **as an interested person.** The current proposal (Attachment A) would extend and modify the plan through 1998 and 1999.¹

¹See, Memorandum dated April 2, 1997 from the Division of Auditing and Financial Analysis (Slemkewicz); Division of Electric & Gas (Jenkins); and Division of Legal Services (Elias) to Director, Division of Records and Reporting, filed in Docket No. 970410-EI. (emphasis added).

DOCUMENT NUMBER-DATE
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Inasmuch as the instant docket is a *continuation* of the plan approved in the Prior Docket where the Commission determined AmeriSteel could intervene, AmeriSteel, likewise, is entitled to intervene in this docket. Pursuant to Chapter 25-22, Florida Administrative Code, Rules Governing Practice and Procedure, and under the doctrine of stare decisis, the Prior Order acts as precedent which should be recognized by the Commission in ruling on AmeriSteel's pending Petition to Intervene and Objection to Proposed Agency Action.

Therefore, AmeriSteel respectfully requests that the Commission take judicial notice of the Prior Order in the instant docket.

Respectfully submitted,

AMERISTEEL CORPORATION

By: Marian B. Rush for

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Marian B. Rush
Florida Bar No. 373583
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Phone: (202) 342-0800
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Dated: May 1, 1997

F:\CL\F1STEEL\PLDG.7\FPL\REQUEST.NOT

**CERTIFICATE OF SERVICE
(PSC DOCKET NO. 970410-EI)**

I HEREBY CERTIFY that a true and correct copy of AmeriSteel Corporation's Request for the Florida Public Service Commission to Take Judicial Notice of its Former Ruling on AmeriSteel Corporation's Petition to Intervene has been furnished via U.S. Mail on the 1st day of May, 1997, to the following:

Robert Elias, Esq.
Florida Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Blvd.
Room 301
Tallahassee, FL 32399-0850
Facsimile: 904-413-6250

Matthew M. Childs, Esq.
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215 South Monroe
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Tallahassee, FL 32301-1804
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William Feaster
Florida Power & Light Company
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Facsimile: 904-224-7197

Jack Shreve, Esq.
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111 West Madison Street
Room 812
Tallahassee, FL 32399
Facsimile: 904-488-4491

Maxim B. Rush for
RICHARD J. SALEM

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to establish amortization schedule for nuclear generating units to address potential for stranded investment by Florida Power & Light Company.)
DOCKET NO. 950359-EI)
ORDER NO. PSC-95-1035-PCO E1)
ISSUED: August 21, 1995)

ORDER GRANTING FLORIDA STEEL CORPORATION'S PETITION TO INTERVENE

On July 10, 1995, Florida Steel Corporation filed a petition for leave to intervene in this proceeding and request for a hearing. This proceeding was initiated when Florida Power & Light Company (FPL) filed a petition for authorization to record accelerated depreciation for its nuclear generating units to address the potential for that investment being stranded.

On July 21, 1995, FPL filed its motion in opposition to Florida Steel's petition to intervene. Although not contemplated by Commission rules, Florida Steel filed a reply to FPL's motion on August 1, 1995.

In support of its petition, Florida Steel asserts it has a substantial interest in this proceeding because a ruling which has an adverse impact on its electric costs could impair its ability to compete. If FPL's petition is granted, Florida Steel argues, it would reduce the level of what otherwise would be excess earnings. Florida Steel contends that permitting FPL to amortize additional depreciation, without scrutinizing all of FPL's revenues, expenses and earnings, will result in rates which are unreasonable and unjust.

FPL argues that impairment to Florida Steel's ability to compete is an economic harm and that any prospective impact on its rates is speculative. FPL also argues that this proceeding, which was initiated pursuant to section 366.05(1), Florida Statutes, will not result in a change of its rates.

Upon consideration, the Prehearing Officer finds that Florida Steel has shown its substantial interests will be affected and thus, is entitled to intervene in this proceeding. Further, Florida Steel's intervention in this docket is consistent with the Commission's ruling in Order No. 21651, issued August 1, 1989, in Docket No. 890256-TL, granting Florida Cable Television Association's (FCTA) request to intervene. In that docket,

EXHIBIT

A

Southern Bell requested authority to charge accelerated depreciation in order to finance its plans to place fiber in the homes of its customers. FCTA had alleged that "as customers of Southern Bell who would be called on to pay rates and provide revenues designed to fund the depreciation represcription sought by Southern Bell, FCTA's members have an interest in assuring that the utility does not impose unfair and unreasonable charges and burdens on ratepayers beyond those rates and rate-related practices required to fairly compensate Southern Bell for telephone service they receive." The interests asserted by Florida Steel in this docket are similar to those asserted by FCTA in Docket No. 890256-TL.

The Commission would benefit from full exploration of the policy issues to be addressed in this docket. FPL has asked the Commission to change its traditional approach to depreciation policy and practice because of the company's concern about the adverse consequences of stranded investment to its customers. Florida Steel's participation will provide a balance to the concerns of FPL. Having this information will permit the Commission to better assess how the public interest will be served in this docket.

For the above reasons, Florida Steel's petition for leave to intervene and request for hearing is granted. Pursuant to Rule 25-22.039, Florida Administrative Code, Florida Steel takes the case as it finds it. In its petition to intervene, Florida Steel has proposed issues to be considered in this docket. The appropriate time to propose issues is in Florida Steel's prehearing statement.

Based on the foregoing, it is,

ORDERED by Chairman Susan F. Clark, as Prehearing Officer, that Florida Steel Corporation's petition for leave to intervene and request for hearing is hereby granted. It is further

ORDER NO. PSC-95-1035-PCO-EI
DOCKET NO. 950359-EI
PAGE 3

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding, to:

Richard J. Salem Florida Bar No. 152524 Marian B. Rush Florida Bar No. 373583 Salem, Saxon & Nielsen, P.A. 101 East Kennedy Boulevard Suite 3200, One Barnett Plaza P. O. Box 3399 Tampa, FL 33601	Peter J. P. Brickfield Michael E. Kaufmann Brickfield, Burchette & Ritte, P.C. 1025 Thomas Jefferson Street, N.W. Eighth Floor, West Tower Washington, D. C. 20007
--	---

Stephen R. Yurek
Dahlen, Berg, & Co.
2150 Dain Bosworth Plaza
60 South Sixth Street
Minneapolis, MN 55402

By ORDER of Chairman Susan F. Clark, as Prehearing Officer,
this 21st day of August, 1995.

/s/ Susan F. Clark
SUSAN F. CLARK, Chairman and
Prehearing Officer

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

(S E A L)

VDJ

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.

ORDER NO. PSC-95-1035-PCO-EI
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PAGE 4

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 25-22.038(2), 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition to Establish)
an Amortization Schedule for)
Florida Power & Light)
Company's Nuclear Generating)
Units to Address the Potential)
For Stranded Investment)

DOCKET NO. 950359-EI

FILED: JULY 21, 1995

MOTION IN OPPOSITION TO
PETITION FOR LEAVE TO INTERVENE

Florida Power & Light Company ("FPL") hereby files this its Motion in Opposition to the Petition for Leave to Intervene of Florida Steel Corporation.

1. This Motion is filed pursuant to Rule 25-22.037(2), Fla. Admin. Code with respect to the Petition of Florida Steel Corporation of July 10, 1995.

2. Florida Steel has not pled legal authority which entitles it to intervention in this proceeding. The Commission's intervention rule, Fla. Admin. Code Rule 25-22.039, requires that a petition to intervene "must conform with Commission Rule 25-22.036(7)(a)." One of the requirements of Rule 25-22.036(7)(a) is that the petition state "the rules and statutes which entitle the petitioner to relief." Florida Steel's Petition fails to meet this requirement. The only statute referred to in Florida Steel's Petition to Intervene is Section 366.06, Florida Statutes. This is a proceeding initiated under Section 366.05(1), Florida Statutes. The simple fact is that if the relief requested by FPL is granted, FPL's rates will be unaffected. Florida Steel has failed to state

EXHIBIT

B

any statute or rule which entitles it to the relief it seeks.

3. Florida Steel has failed to demonstrate it has standing to participate. Both Rule 25-22.037(9), the Commission's rule on intervention, and Rule 25-22.036(7)(a) require pleading facts designed to show standing. Florida Steel's Petition fails to allege facts sufficient to demonstrate that it will have a substantial interest that will be affected by the Commission's determination in this proceeding.

4. To demonstrate standing, Florida Steel must allege either (a) that it is entitled to participate as a matter of Constitutional or statutory right or pursuant to a Commission rule, (b) that its substantial interests are subject to determination in the proceeding, or (c) its substantial interests will be affected through the proceeding. Rule 25-22.039, F.A.C. Florida Steel makes no attempt to show that it is entitled to participate as a matter of law in this proceeding. Moreover, Florida Steel makes no effort to plead that it has a substantial interest which will be determined in this proceeding. Consequently, Florida Steel attempts to show that it has a substantial interest that will be affected in the proceeding; however, its allegations do not satisfy the standard.

5. To have standing to participate in a Section 120.57 proceeding on the basis that the person's substantial interests will be affected, the person must show: 1) that he will suffer an injury-in-fact of a sufficient immediacy to entitle him to a Section 120.57 hearing; and 2) that his injury must be of the type

or nature the proceeding is designed to protect." 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 interests alleged by Florida Steel in this case do not satisfy either prong of the Agrico test.

6. Florida Steel simply asserts the conclusion that it has a direct and substantial interest, that its interests will be affected, and then that any ruling "which has a significant adverse impact on Florida Steel's electric costs could further impair Florida Steel's ability to compete...." (Petition at paragraph 4). These conclusory allegations are insufficient. If conclusions suffice to demonstrate standing, then Florida Steel could simply allege "Florida Steel has standing" and meet the standard. Clearly, what is required is not conclusions but allegations of facts which support the conclusions.

7. Florida Steel's alleged interest is that the ruling in this Docket will have an adverse impact on Florida Steel's electric costs (i.e., raise Florida Steel's rates), impairing its ability to compete.¹ These bare economic allegations pass neither Agrico standard.

8. In regard to whether Florida Steel has an immediate injury-in-fact, this can be demonstrated by a petitioner

¹ Florida Steel's ability to compete has nothing to do with intervention in this or any other Commission proceeding. Florida Steel's ability to compete is irrelevant to Commission determinations. Irrelevant allegations do not satisfy the Agrico test. International Jai-Alai Players Ass'n v. Florida Pari-Mutual Commission, 561 So. 2d 1224,1226 (Fla. 3d DCA 1990).

demonstrating in his petition either: * (1) that he has sustained actual injury-in-fact at the time of filing his petition; or (2) that he is immediately in danger of sustaining some direct injury as a result of a challenged agency's action.* Village Park Mobile Home Ass'n v. Dept. of Business Regulation, 506 So. 2d 426 (Fla. 1st DCA 1987), rev. denied, 513 So. 2d 1063 (Fla. 1987). Florida Steel has not alleged and has not suffered any actual injury at the time of the filing of its petition. Moreover, Florida Steel is not immediately in danger of a rate increase (increased electrical cost) as a result of the requested Commission action. This Docket does not involve the setting of rates and charges for Florida Power & Light. Instead, as acknowledged in Florida Steel's Petition to Intervene, this Docket involves FPL's request to implement a revised amortization schedule to address the potential for stranded investment.¹ FPL's rates will remain unchanged as a result of Commission action. Any prospective impact on rates is purely speculative and conjectural as well as being dependent upon a whole host of intervening factors. As the Court noted in the Village Park case: *abstract injury is not enough. The injury or threat of injury must be both real and immediate, not conjectural or

¹ Florida Steel suggests that the amount of revenues which will be used to quantify the amortization for stranded investment might be considered excess earnings and would have to be returned to ratepayers. Even if this speculative and inaccurate conjecture were assumed to be true (that these revenues would constitute excess earnings), there is no statutory requirement that such revenues would have to be returned to ratepayers. FPL is entitled to earn more than its authorized rate of return without incurring a refund obligation. So the legal premise underlying the factual assertion in its Petition is, once again, erroneous.

hypothetical." Village Park, 506 So. 2d at 432. Speculative economic injuries that may or may not happen as a result of intervening actions are not sufficient to meet the injury-in-fact standard. Id. The Commission should conclude here as the Court did in Village Park:

Attempting to anticipate whether and when these events will transpire takes us into the area of speculation and conjecture. The threat of injury alleged by appellants is not of sufficient immediacy to warrant invocation of the administrative review process.

Village Park, 506 So. 2d at 434.

9. In regard to the second Agrico standard, the so-called zone of interest standard, reducing Florida Steel's electric cost at its plant to allow it to be more competitive is not an interest these proceedings are designed to protect. This proceeding involves solely FPL's request to implement a revised amortization schedule. The Commission has not been asked to and will not be establishing rates in this proceeding. This proceeding is not intended to protect or enhance Florida Steel's ability to compete. The interest which Florida Steel seeks to protect falls outside this proper scope of this proceeding. Consequently, Florida Steel's allegations also fail to meet the second Agrico standing test.

WHEREFORE, FPL moves the Commission to deny or in the alternative dismiss Florida Steel's Petition for Leave to Intervene. The Petition is premised upon an erroneous legal theory, and the Petitioner has failed to demonstrate its standing.

Either basis is sufficient to deny the Petition.

DATED this 21st day of July, 1995.

Respectfully submitted,

STEEL HECTOR & DAVIS
215 South Monroe Street
Suite 601
Tallahassee, FL 32301
Attorneys for Florida Power
& Light Company

By: 
Matthew M. Childs, P.A.

CERTIFICATE OF SERVICE
DOCKET NO. 950359-EI

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Motion in Opposition to Petition for Leave to Intervene has been furnished by Hand Delivery (when indicated with **), facsimile transmission (when indicated with *) or U.S. Mail this 21st day of July, 1995, to the following:

Vicki D. Johnson, Esq.**
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