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June 30, 1997

HAND DELIVERED

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32301

Re: In re: Petition of St. Joe Natural Gas Company,
Inc. for a Limited Proceeding to Restructure its
Rates -- Docket No. **970115-GU**

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and
fifteen copies of Florida Coast's Response to St. Joe Natural Gas'
Motion to Dismiss the above docket.

Please acknowledge receipt of the above on the extra copy
enclosed herein and return it to me. Thank you for your
assistance.

Yours truly,

Joe McGlothlin
Joseph A. McGlothlin

- ACK 7
- AFA 2
- APP _____
- CNF _____
- CMU _____ JAM/jc
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EPSC RECORDS REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In Re: Petition of St. Joe Natural Gas
Company, Inc. for a Limited Proceeding
to Restructure its Rates.)

) Docket No. 970115-GU

) Filed: June 30, 1997
)

**FLORIDA COAST'S RESPONSE TO
ST. JOE NATURAL GAS' MOTION TO DISMISS**

Florida Coast Paper Company, L.L.C. ("Florida Coast"), through its undersigned counsel, responds to the Motion to Dismiss filed by St. Joe Natural Gas Company, Inc. ("SJNG"), and states:

BACKGROUND

1. By the petition that initiated this docket, SJNG requested authority to restructure its rates. The Staff recommended approval of the proposed rate restructuring in a recommendation dated April 2, 1997. In the recommendation, as a complete aside, Staff referred to and characterized a contract dispute between SJNG and Florida Coast that is unrelated to SJNG's petition and was not before the Commission. Understandably, the Staff's brief characterization -- arrived at from a distance -- contained inaccuracies.

2. In Order No. PSC-97-0526-FOF-GU, the Commission proposed to grant SJNG's petition to restructure rates. The order incorporated the passage in the recommendation relating to the separate contract dispute.

3. On May 28, 1997, Florida Coast filed a Petition on Proposed Agency Action and Request for Amendment or Clarification directed to the PAA. In its

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petition, Florida Coast stated clearly that it did not object to the granting of SJNG's petition for rate restructuring. Florida Coast's petition was designed to draw the Commission's attention to the need to amend or clarify the order to avoid possible, unintended prejudice which the order's extraneous verbiage could cause if presented to another forum as indicative of the Commission's considered findings or views on the controversy. On June 23, 1997, SJNG filed a motion to dismiss Florida Coast's petition/request.

ARGUMENT

4. Incredibly, SJNG challenges Florida Coast's standing to object to the extra language. However, SJNG has it exactly backwards. SJNG acknowledges that Florida Coast did not object to the portion of the order that granted SJNG's petition to restructure its rates. (Motion, pp. 1-2). Because Florida Coast did not object to any portion of the order dealing with anything SJNG sought in its petition to restructure rates, and because SJNG has received everything it asked for and is entitled to receive from the Commission as a result of its petition, it is SJNG who is without standing to object to Florida Coast's petition. The only motivation SJNG could possibly have in trying to prevent the amendment or clarification sought in Florida Coast's petition is the hope of realizing some undeserved advantage from the extraneous language of the PAA in matters that have nothing to do with Docket No. 970115-GU. By attempting to prevent the Commission from considering Florida Coast's limited petition/request, SJNG has proven Florida Coast's point.

5. In its motion SJNG cites several "standing" cases, and argues that the interest asserted by Florida Coast is not the type of interest a rate restructuring is designed to protect. Again, SJNG has it backwards. The idea that a party who has standing to participate in all of the issues properly before the Commission in a docket is prohibited from complaining about a portion of the PAA that affects the party but is unrelated to the docket or the decision is simply ludicrous.¹ No one could deny that, as one of SJNG's industrial customers, Florida Coast has an interest in the restructuring of the rates it pays, and thus has an interest in the legitimate purpose of the docket. No one could deny that, for instance, Florida Coast could protest the PAA if it wanted to assert that the restructuring did not go far enough or fast enough. Therefore, for SJNG to say that the subject of Florida Coast's petition is not within the "zone" the proceeding is designed to protect is simply another way of saying that in its order the Commission momentarily strayed from the only matter before it. Because, as SJNG says, a rate restructuring docket is designed to protect the interests of the utility and its customers in setting fair, just, and reasonable rates; and because, as SJNG says, the purpose of the restructuring docket is not to adjudicate or resolve contractual disputes not before it, the Commission should clarify that its references to the dispute indicated nothing with respect to findings or views on the merits.

6. To illustrate, assume hypothetically that the order in this case said:

¹For this reason, the cases cited by SJNG are not on point. Those cases did not involve a situation in which the petitioner had a clear interest in the avowed purpose of the proceeding and the agency's order exceeded the boundaries of the proceeding.

We hereby grant the petition, and observe that SJNG's gross negligence and horrendous service has caused its largest customer to incur millions of dollars in damages.

As in this case, such an order would have given SJNG all to which it would be entitled with respect to its petition and the subject matter of the docket. As in this case, the order would refer to matters unrelated to the petition or the decision on the petition. One wonders whether SJNG would feel in that circumstance that SJNG would be without "standing", and that it would be inappropriate for the Commission to amend the order.

7. In its motion, SJNG says Florida Coast's concern is "speculative" and lacking in "immediacy." SJNG neglected to mention that, some two weeks before it filed its motion to dismiss Florida Coast's petition, SJNG filed a lawsuit in circuit court (Duval County) in which it alleges that Florida Coast breached a contract that it assumed from the prior owner of the Port St. Joe mill. The allegations of SJNG's complaint treat demand charges and gas volumes -- the very subjects to which the Commission alluded in its order.²

8. In an attempt to portray the language of the PAA as somehow connected to the decision on restructuring, SJNG describes the portion of the order to which Florida Coast's petition/request refers as "background information . . . describing the relationship between SJNG and Florida Coast." This is false. The limited portion of

² The complaint was filed against the prior owner of the mill. The prior owner has notified Florida Coast that, if it is adjudicated to be liable for damages as a result of Florida Coast's interpretation of the contract, it intends to seek indemnification from Florida Coast.

the order that is the subject of Florida Coast's petition is not "background" to either the SJNG petition or the Commission's consideration of the petition. The language to which Florida Coast directed its petition instead refers to a controversy that is unrelated to the docket and that arose after SJNG filed its petition for rate restructuring.

9. SJNG says the order "speaks for itself." (Motion, p. 2). Again, SJNG has made Florida Coast's point in its motion. This is precisely what the Commission can expect SJNG to assert elsewhere in response to Florida Coast's explanation that the contract matter was never before the Commission and that the Commission intended to express no findings or views, unless the Commission either amends or clarifies the order.

10. SJNG's logic fails again when it says it is not a purpose of the docket to ensure the Commission's order will be construed properly. The Commission's purpose always should be to see that its orders receive the proper import. Where there is a possibility that may not happen, there must be a procedural vehicle for correcting the situation -- in the interest of the Commission, as well as of the affected party. The PAA procedure was designed to simplify and expedite a potentially non-controversial proceeding, not to impinge on parties' rights and interests. Under SJNG's flawed theory, it would instead become a potential loose cannon; any material inadvertently or mistakenly included in a PAA would be out of the reach of the affected party or the Commission. According to SJNG, the Commission shouldn't care.

11. Florida Coast's petition is not "leverage" applied to seek clarification, as

SJNG claims. In its motion, SJNG acknowledges that Florida Coast did not protest the portion of the order that relates to rate restructuring. Because of the nature of a PAA, which takes effect unless protested, the petition was a necessary component of any procedure available to Florida Coast. Florida Coast's petition was intended to serve as the required vehicle for the request for amendment or clarification. Florida Coast freely acknowledges it regards a "formal proceeding" as unnecessary, because the proposition of its petition -- that the order alluded to matters that were not before the Commission, and the comments regarding the dispute were determinative of nothing -- is uncontrovertible. Where shown to be warranted and needed, a request for clarification does not "frustrate the efficient use of the Commission's resources;" it is a mechanism that enables the Commission to ensure its orders precisely carry out only the action it intended. Florida Coast can think of no better example of resources employed to serve the Commission and affected parties well.

CONCLUSION

12. In its zeal to forestall the Commission from addressing the amendment or clarification sought by Florida Coast, SJNG has offered faulty reasoning, poor policy, and inapplicable law. The Commission should deny the motion to dismiss, treat Florida Coast's petition as one enabling the Commission to amend or clarify its

order, and enter an order stating that its comments that are the subject of Florida Coast's petition did not determine any findings or indicate any views regarding the contract dispute that is unrelated to this docket.


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Attorneys for Florida Coast Paper
Company, L.L.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Coast's Response to St. Joe Natural Gas' Motion to Dismiss has been furnished by hand delivery(*) or U.S. Mail to the following parties of record this 30th day of June, 1997:

*Cochran Keating
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

D. Bruce May
Karen D. Walker
Holland & Knight
P. O. Drawer 810
Tallahassee, FL 32302



Joseph A. McGlothlin