ORIGINAL

IN THE SUPREME COURT OF FLORIDA

AmeriSteel Corporation f/k/a Florida Steel Corporation Appellant, v. Susan F. Clark, et. al., Appellee.	)	Case No. 88,427 Appeal from Florida Public Service Commission Docket No. 950307-EU

ANSWER BRIEF OF APPELLEE FLORIDA POWER & LIGHT COMPANY TO INITIAL BRIEF ON THE MERITS OF AMERISTEEL CORPORATION

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STATEMENT OF THE CASE AND FACTS

AmeriSteel appeals the Florida Public Service Commission's ("Commission's") determination that AmeriSteel had no standing to challenge the approval of a territorial agreement between Florida Power and Light Company ("FPL") and Jacksonville Electric Authority ("JEA"). AmeriSteel also challenges the Commission's notice of its activities prior to the issuance of proposed agency action relative to approving the agreement. AmeriSteel's citations to the record concerning its steel making activities, rates for electricity, plant closings, and future corporate contingencies are all pure allegations made by AmeriSteel in its attempts to garner standing before the Commission. While the Court is required to view these allegations favorably when reviewing a Commission order on a Motion to Dismiss, the allegations remain only allegations. The relevant facts pertaining to the issues before this Court are as follows.

FPL is an investor-owned utility regulated by the Commission. (R. 2). JEA is a municipally-owned utility owned by the City of Jacksonville. Id. FPL and JEA have operated within Duval County throughout their respective histories. (R. 161). The two utilities have jointly operated under either electric interchange agreements or territorial agreements since 1959. (R. 13).

The territorial boundary defining the two utility's operating areas was established in 1963 and approved by the predecessor to the Commission, the Florida Public Utilities Commission, on April 28, 1965. Order No. 3799 (R. 34). The boundary agreed to by the utilities included portions of Duval, St. Johns, Clay and Nassau

counties. (R. 30). That territorial line was reaffirmed in a subsequent agreement between FPL and JEA executed on April 13, 1979. The 1979 agreement was approved by the Commission on May 9, 1980. Order No. 9363. (R. 46).

The genesis of the territorial agreement at issue in this appeal was a petition filed by JEA against FPL to resolve a territorial dispute in St. Johns County and a counter-petition filed by FPL against JEA. (R. 1, 71). FPL and JEA each asserted certain rights to new and "grandfathered" customers served by each utility on the other side of the territorial boundary.[1] (R. 11, 75). On October 6, 1995, after considerable settlement negotiations, FPL and JEA filed a Joint Motion to Approve a Territorial Agreement. (R. 160). The new agreement between JEA and FPL: resolved the territorial dispute in St. Johns County; substantially re-affirmed and re-established the existing territorial boundary between the utilities in St. Johns, Duval, Clay and Nassau counties; eliminated all grandfathered customers throughout the territorial area; and provided for the notification of all customers scheduled for transfer from one utility to the other. (R. 161, 162-163). Of the 463 customers transferred pursuant to the agreement, 73 customers were located in Duval County.

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[1] Grandfathered customers are customers served by FPL or JEA in the other's territory at the time of the 1979 agreement. See Sections 3.2 and 3.3 of the 1979 agreement. (R. 41).

Commission staff reviewed and recommended approval of the proposed agreement on November 8, 1995. (R. 360). Pursuant to Fla. Admin. Code R. 25-22.029, the agreement was properly noticed and scheduled for Commission vote as a proposed agency action on November 21, 1995 (R. 360). The day before the agenda conference, representatives of AmeriSteel requested a deferral of the item due to an alleged lack of notice that the Commission was scheduled to consider proposed agency action on a territorial agreement covering more than St. Johns county. (R 361). AmeriSteel operates a steel mill located in Duval county. FPL has provided electricity to the facility throughout its operating history as the facility has always been located within FPL's Commission-approved service territory. The Commission deferred consideration of the item until its next regularly scheduled agenda conference on December 5, 1995. Id.

On December 4, 1995, AmeriSteel filed a Motion to Intervene and Objection to Preliminary Agency Action. (R 353). The Motion requested an opportunity for all parties to meet prior to the Commission's consideration of the proposed territorial agreement. (R. 353). At the December 5, 1995 Commission agenda conference, the Commission heard oral argument from AmeriSteel requesting another deferment as well as a written request from the mayor of the City of Jacksonville. (R 358). The Commission again deferred consideration of the proposed agreement until February 6, 1996. Commission staff also held a meeting with AmeriSteel, FPL and JEA

on January 10, 1996 to discuss AmeriSteel's concerns with the proposed agreement. (R 360).

On February 5, 1996, the Commission's prehearing officer issued an order denying Florida Steel's Motion to Intervene due to a lack of standing. Order No. PSC-96-0158-PCO-EU. (R. 380). The prehearing officer found that AmeriSteel had not suffered any injury that would give rise to a Section 120.57, Fla. Sta. (1995) hearing and, assuming AmeirSteel suffered an injury, that the injury was not of a type the Commission's proceeding was designed to protect. Id. On February 6, 1996, after again hearing argument from AmeriSteel pursuant to Fla. Admin. Code R. 25-6.0442(1), the Commission voted unanimously to approve the territorial agreement between FPL and JEA as a proposed agency action. Notice of the proposed agency action was issued by the Commission on February 14, 1996. Order No. PSC-96-0212-FOF-EU. (R. 386).

On March 6, 1996, AmeriSteel filed a protest of the issuance of the proposed agency action approving the territorial agreement and requested a hearing pursuant to Section 120.57, Fla. Stat. (1995). (R. 414). On March 26, 1996, FPL and JEA filed motions to dismiss the protest due to a lack of standing. (R. 426, 442). The Commission granted FPL and JEA's motions to dismiss on June 10, 1996 finding again that AmeriSteel had no substantial interest affected by the Commission's proceeding. Order No. 96-0755-FOF-EU. (R. 498A). On July 2, 1996, AmeriSteel filed a Notice of Appeal with the Commission and this Court appealing the Commission's determination that AmeriSteel lacked standing to protest the

proposed agency action approving the territorial agreement as well as the non-final order denying AmeriSteel's Motion to Intervene prior to the issuance of the proposed agency action. (R. 499).

SUMMARY OF ARGUMENT

AmeriSteel has consistently failed to demonstrate that its substantial interests were subject to determination by the Commission in its consideration, formulation of proposed agency action and issuance of that action concerning the territorial agreement between FPL and JEA. AmeriSteel's allegation that it will potentially suffer economic harm from the lawful rates charged by FPL does not constitute an injury in fact. Additionally, any future threat of economic damage due to those lawful rates is too speculative to constitute an injury in fact. Even if, arguendo, AmeriSteel suffered an injury, the injury is not of the type that a Commission proceeding involving the approval of a territorial agreement is designed to protect. Thus, AmeriSteel had no standing to intervene in the Commission's formulation of its proposed agency action and has no standing to request a Section 120.57, Fla. Stat. (1995) hearing on the actual issuance of that agency action.

Section 718.103 of the Jacksonville City Charter and Municipal Code does not act to confer standing upon AmeriSteel. AmeriSteel must still demonstrate that it has a substantial interest subject to determination by the Commission. Having failed to do so, the Commission was correct in denying AmeriSteel's Motion to Intervene and granting FPL and JEA's Motion to Dismiss. Moreover, AmeriSteel does not challenge JEA's authority to enter into an agreement with FPL. Therefore AmeriSteel cannot complain to the Commission that it should have required JEA to serve all of Duval county when FPL and JEA sought approval of a territorial agreement.

AmeriSteel was provided lawful notice of the Commission's proposed agency action in this proceeding. AmeriSteel has offered no authority nor alleged any failure on the part of the Commission to adhere to its rules governing notice of Commission activities. Given AmeriSteel's multiple opportunities to present argument before the Commission and to attempt to intervene, AmeriSteel cannot complain that it did not have full and adequate notice of the Commission's intended action.

The Commission met its statutory duty in considering and approving the territorial agreement between FPL and JEA. The agreement is in the public interest as it eliminates all grandfathered customers previously served by one utility in the other's service area and sets a clearly distinct boundary between the two utilities in a four county region. The agreement will prevent the future unnecessary duplication of facilities. The agreement therefore benefits all customers of both utilities as those customers will not be burdened by the costs associated with unnecessary duplication or future uncertainty as to service areas of either utility.

AmeriSteel is not entitled to a ruling from this Court with respect to any prospective activities it may undertake in an attempt to secure electric service from JEA. This is not an issue which was raised before the Commission or protested by AmeriSteel once the Commission issued its proposed agency action. Furthermore, the Court does not have jurisdiction in its appellate capacity to issue such a ruling.

ARGUMENT

I.

THE COMMISSION CORRECTLY FOUND THAT AMERISTEEL LACKED STANDING TO INTERVENE IN THE COMMISSION'S DOCKET FORMULATING PROPOSED AGENCY ACTION AND TO PROTEST THE COMMISSION'S ORDER APPROVING THE TERRITORIAL AGREEMENT AS AMERISTEEL'S SUBSTANTIAL INTERESTS WERE NOT SUBJECT TO DETERMINATION BY THE COMMISSION IN THOSE PROCEEDINGS.

The principal issue before this Court is whether AmeriSteel had standing to intervene in this docket prior to the issuance of the Commission's proposed agency action and whether AmeriSteel had standing to request a 120.57, Fla. Stat. (1995) hearing once the Commission issued that proposed agency action. In both instances the Commission correctly found that AmeriSteel had no standing. Chapter 120, Fla. Stat. (1995), known as the Administrative Procedure Act ("APA"), governs the conduct of agencies, including the Commission, when determining the substantial interests of a party. Section 120.57, Fla. Stat. (1995). The APA does not automatically confer standing upon any entity merely because it professes an interest in an agency action; the interest must be substantial. Id. The APA clearly distinguishes between those entities with a substantial interest subject to determination by an agency and those of the general public. Parties with a substantial interest are afforded a clear and distinct right to a full evidentiary hearing with the right to: present evidence and argument on all issues involved; cross examine witnesses; submit rebuttal evidence; submit proposed findings of fact and recommended orders; file exceptions to any order or recommended

order; and to be represented by counsel. Section 120.57(1)(b)4., Fla. Stat. (1995). Entities without a substantial interest subject to determination by an agency are limited to the agency's discretion to grant an opportunity to present oral and written communications. Id. If discretionary participation by the public is allowed, however, parties have the statutory right to cross-examine, challenge and rebut presentations by the public. Id. The Commission has adopted rules that echo and further the mandates of the APA. Fla. Admin. Code R. 25-22.039 allows for intervention by any person other than a party in any matter where that entity's substantial interests are subject to determination. Fla. Admin Code R. 25-22.029(4) extends the right to a Section 120.57 hearing to any person whose substantial interests will be affected by a proposed agency action of the Commission.

Since the enactment of Section 120.57 in 1974, the applicability of the "substantial interests" distinction between a party and a non-party for purposes of implementing the statute has been thoroughly formulated and tested by the courts. The seminal case defining the threshold requirement for standing is Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 479 (Fla. 1st DCA 1978), rev. denied 415 So. 2d 1359 (Fla. 1982). Agrico requires that a party must establish: (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 type hearing, and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Id. at 482. The first prong deals with the degree of the

injury, the second the nature. Id. AmeriSteel has failed to establish that it can meet either prong of the Agrico substantial interest test.

A. AmeriSteel Has Not Suffered An Injury.

AmeriSteel's brief recognizes and cites the Agrico test as dispositive in determining whether it has standing in this docket. AmeriSteel, then muddles the first prong of the standing test by claiming it has a "clearly identified" interest; namely, its "entitlement under the Jacksonville City Charter to seek service from JEA if it is economic and practical to provide it."[2] This, of course, is not the injury in fact requirement of Agrico. Agrico requires an injury in fact, not the identification of a "clearly identified" interest.

The only injury actually alluded to by AmeriSteel is its allegation that it suffers from high rates charged by FPL that threaten the Jacksonville facility's economic viability. The injury requirement of Agrico necessitates that the injury have a degree of immediacy. Speculation as to the future impact on AmeriSteel's Jacksonville facility does not demonstrate immediacy of a degree to establish the right to a Section 120.57 hearing. International Jai-Alai Players Association v. Florida Pari-Mutual Commission, 561 So. 2d 1224 (Fla. 3rd DCA 1990)(future economic detriment too remote to establish standing). Injury under Agrico

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[2] As discussed in detail in subsection C. of Argument I, the entire issue of the application of the Jacksonville Municipal Code to the Commission's determination in this docket is irrelevant.

must be real and immediate, not conjectural or hypothetical. Village Park Mobile Home Association, Inc. v. State Department of Business Regulation, 506 So. 2d 426 (Fla. 1st DCA 1987); 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.) Moreover, AmeriSteel's Petition and Protest and brief admit that the rate it pays for electricity is only one factor contributing to the alleged injury it suffers.[3] (R. 415). The existence of other intervening factors furthers the speculative nature of AmeriSteel's alleged injury. Such speculation does not satisfy Agrico. See Order No. 95-0348-FOF-EU.

B. AmeriSteel's Alleged Injuries Are Not Of The Type Or Nature Which This Proceeding Is Designed To Protect.

In order to meet its burden to establish standing in the Commission proceeding, AmeriSteel must also demonstrate that the injuries allegedly suffered are of a type that this proceeding is designed to protect. Agrico at 482. The Commission's actions involved the approval of a territorial agreement between two utilities. Territorial agreements are authorized and encouraged by the Commission in order to ensure the reliability of Florida's energy grid and to prevent uneconomic duplication of facilities. Section 366.04, Fla. Stat. (1995). It is well established that in determining the appropriateness of territorial agreements, a

[3] All of FPL's rates have been determined by the Commission to be fair, just and reasonable. Section 366.06, Fla. Stat. (1995).

customer has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself. Storey v. Mayo, 217 So. 2d 304, 307-08 (Fla. 1968); cert. denied, 395 U.S. 909, 89 S. Ct. 1751, 23 L. Ed.2d 222 (1969); Lee County Electric Cooperative v. Marks, 501 So. 2d 585 (Fla. 1987).

AmeriSteel suggests it is better served by redrawing the territorial boundary proposed by FPL and JEA to include AmeriSteel in JEA territory. Since a territorial agreement is not a proceeding in which the personal preference of a customer is at issue, the alleged injury suffered, even if real and direct, is not within the zone of interest of the law. See Order No. 19140.

A close examination of AmeriSteel's petition and protest suggests that the company is actually indifferent to which utility provides it with electricity. AmeriSteel admits that both FPL and JEA are capable of offering competitive rates. (R. 417). Thus, AmeriSteel's only interest is obtaining cheaper electricity, not where the territorial boundary between FPL and JEA is set. Approval of a territorial agreement is simply not the type of proceeding designed to protect this interest. See Order No. PSC-94-0909-PCO-EU. Accordingly, AmeriSteel has no standing to petition the Commission for a Section 120.57 hearing in this proceeding.

C. Section 718.103 Of The Jacksonville Municipal Code Is Irrelevant In Determining Whether AmeriSteel Had Standing To Intervene In The Formulation Of The Commission's Proposed Agency Action Or To Protest The Approval Of The Territorial Agreement Between FPL and JEA.

AmeriSteel offers the proposition that it has a right to compel service from the JEA solely due to the existence of Section

718.103 of the Jacksonville City Charter and Municipal Code which provides that JEA may grant permission to other electric utilities to serve city residents when it is not practical or economical to furnish the service. AmeriSteel now asks this Court to force the Commission to force JEA to vitiate a territorial agreement it entered into with FPL based upon JEA's implementation of that provision. However, AmeriSteel has not and does not contest JEA's authority to enter into the agreement. Even if AmeriSteel had contested JEA's authority under Section 718.103, the Commission would not be the appropriate forum for that challenge. Therefore AmeriSteel cannot contest, on appeal, JEA's decision to enter into the agreement with FPL. Thus, the issue of the application of Section 718.103 to the Commission's approval of the territorial agreement between FPL and JEA and its application to the question of AmeriSteel's standing to intervene or request a hearing in that proceeding is completely irrelevant. As such, it cannot be used as a prop to support a claim of standing.

Even if the application of the Jacksonville ordinance were relevant, AmeriSteel's assertion that Section 718.103 conveys a right of any citizen situated within Duval County to require JEA to serve it is deficient. AmeriSteel cites Storey v. Mayo as extending such an entitlement to any municipal resident. Storey involved a territorial dispute between FPL and the City of Homestead ("Homestead"). Homestead and FPL executed a territorial agreement which resulted in customer transfers between the utilities. Certain transferred customers objected to being

transferred from FPL to the Homestead. These customers were located within the City of Homestead. The Court found that the customers, located within the City, could not compel service from FPL, but could compel service from Homestead. The Court stated that an individual has no organic, economic or political right to service by a particular entity merely because he deems it advantageous to himself. Id. at 307,308. The defining factor in Storey was not that the customer could demand service because the utility was a municipal entity, but that the customer could only demand service from the utility serving the area where he was located. Thus Storey actually precludes AmeriSteel from the assertion it has a right to compel service from JEA.

Storey has been consistently interpreted by both the Commission and this Court since 1968. Since then, the Florida legislature has also enacted the "Grid bill."[4] The Commission has stated while a municipality may have a right to provide electric service to customers within the boundaries existing at the time of the grid bill (1974), that right is not inviolable. Order No. PSC-92-0058-FOF-EU. Furthermore a municipality must exercise its rights in a manner consistent with the other provisions, and the public policy purposes of the Grid Bill. Id. This Court in Lee County reiterated the need to promote the Grid Bill's mandate of avoiding the further uneconomic duplication of generation, transmission and distribution facilities by stating that "Larger

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[4] Section 366.04, Fla. Stat. (1995); Chapter 74-196, Laws of Florida.

policies are at stake than one customer's self-interest, and those policies must be safeguarded by the PSC." Id. at 587. AmeriSteel has only articulated its singular need for cheaper power. The broadest interpretation of Jacksonville's City ordinance in light of the Grid Bill, Storey and Lee County simply does not confer a unilateral right for AmeriSteel to compel service. Furthermore the ordinance does not automatically confer standing upon AmeriSteel to challenge the territorial agreement between FPL and JEA.

II.

THE COMMISSION PROVIDED SUFFICIENT NOTICE WITH RESPECT TO THE PROPOSED APPROVAL OF THE TERRITORIAL AGREEMENT BETWEEN FPL AND JEA.

AmeriSteel has had the benefit of abundant notice of the Commission's consideration of the territorial agreement between FPL and JEA. AmeriSteel first participated in the Commission proceeding on November 20, 1995. Since that first participation, the Commission has deferred final consideration of the territorial agreement, has heard oral argument from AmeriSteel, has met with AmeriSteel and has considered AmeriSteel's Motion to Intervene and Protest of Proposed Agency Action. AmeriSteel's lack of standing does not give rise to a claim of a lack of notice when AmeriSteel has had every opportunity to participate in the formulation of the Commission's proposed agency action.

AmeriSteel has also failed to cite any authority or raise any issue that the Commission has failed to meet its notice requirements under the APA or its own rules. That is because the Commission met those requirements. Commission rules require it to

provide notice of meetings or workshops as well as a copy of the agenda for those meetings Fla. Admin. Code R. 25-22.001; 25-22.002. The Commission is also required to publish notice of any proposed agency action after that action has been taken. Fla. Admin. Code R. 25-22.029. See also Section 120.53, Fla. Stat. (1995). Notice was provided to AmeriSteel of the proposed agency action in this docket and notice was provided of the Commission's meetings to consider the proposed territorial agreement.[5] Thus there is no basis for AmeriSteel's argument on appeal.

Adopting AmeriSteel's argument would require the Commission to notify every citizen in FPL's and JEA's respective territories anytime the two entities decided to negotiate all or part of a territorial agreement. Such a standard is not required by the APA or Commission rules. Moreover, such a standard would discourage utilities from entering into new territorial agreements. This Court has encouraged the resolution of territorial disputes by

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[5] AmeriSteel erroneously cites Fla. Admin. Code R. 25-22.025(2) as providing for a mandatory notice of substantially interested parties in the event their interests are subject to determination in a Commission docket. Fla. Admin. Code R. 25-22.025 pertains to the scope and title of rules affecting the substantial interests of parties. Fla. Admin. Code R. 25-22.026(2) provides: "If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may, upon motion of a party, or upon his or her own initiative enter an order requiring that the absent person be notified of the proceeding and be given an opportunity to be joined as a party of record." The rule still only applies to notice for persons with a substantial interest subject to determination by the Commission. Notice is not required, or even encouraged, for other entities not demonstrating a substantial interest at stake in a Commission proceeding.

territorial agreements. Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985). Since AmeriSteel has failed to meet its burden of showing some faulty notice at odds with the statutory requirements or Commission rules, AmeriSteel's argument must fail.

III.

THE COMMISSION MET ITS STATUTORY DUTY IN CONSIDERING AND APPROVING THE TERRITORIAL AGREEMENT BETWEEN FPL AND JEA.

The Florida Legislature has specifically authorized the Commission to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. Section 366.04(2)(e), Fla. Stat. (1995). The Commission's own rules set three standards which the Commission may examine in considering a proposed territorial agreement. Fla. Admin. Code R. 25-26.0440(2). The Commission may examine the reasonableness of the purchase price of the facilities being transferred; the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of any utility party to the agreement; and the reasonable likelihood that the agreement will eliminate existing or potential uneconomic duplication of facilities. Id.

The Commission found that the proposed agreement between FPL and JEA was reasonable, appropriate and benefitted the public interest. Order No. PSC-96-0212-FOF-EU. This was based upon the fact that the agreement completely eliminated all existing

customers served by one utility in the other utility's service area and effectively separated the two utilities throughout their four-county contiguous operating areas. Id.

The only allegation AmeriSteel raises with respect to the approval of the agreement on appeal is that the Commission failed to consider the interests of all customers in approving the agreement. This allegation emanates from the Court's decision in New Smyrna where the Court stated that the Commission should base its approval decision on the effect the territorial agreement will have on all affected customers not just whether transferred customers will benefit. Id. at 732. AmeriSteel's claim ignores the findings of the Commission that the agreement benefits the public as a whole. A distinct boundary line between two utilities benefits all customers. The elimination of grandfathered customers benefits all customers. Both of these factors promote the minimization of unnecessary duplication of facilities. Id. at 732. The actual standard articulated by this Court in New Smyrna is that the agreement must work no detriment to the public. Id. at 733. Clearly the FPL-JEA agreement meets that standard.

New Smyrna also does not represent a new or different test for standing in territorial agreement proceedings by the Commission as AmeriSteel would urge. The customers who intervened in that case met the standing requirements of Agrico and thus were allowed to participate in a Section 120.57 hearing. AmeriSteel does not meet the Agrico test and New Smyrna does not change the fact that AmeriSteel's singular interest in achieving lower electricity rates

does not merit participation as a party before the Commission in this proceeding.

IV.

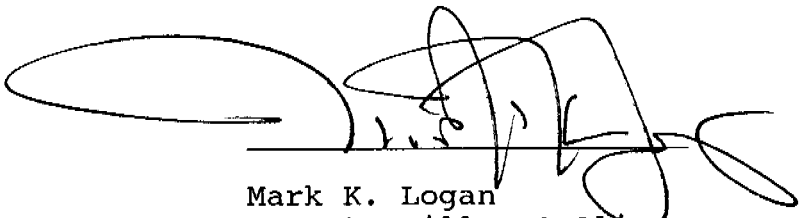
AMERISTEEL IS NOT ENTITLED TO A RULING FROM THE COURT STATING THAT AMERISTEEL IS NOT PRECLUDED FROM PURSUING REMEDIES IN THE COURTS TO PROTECT ITS INTERESTS IN RECEIVING ELECTRIC SERVICE FROM JEA.

AmeriSteel, in a cryptic single sentence contained in the conclusion of its brief, asks this Court for an alternate ruling stating that it is not precluded from pursuing remedies in the courts to protect its interests in receiving electric service from JEA. No argument is made in support of this proposition. No citation of authority is given providing a basis for the Court to in fact enter such an order. No reference is made to any Commission action which AmeriSteel now appeals. Clearly the request asks this Court to provide a prospective ruling on unknown future activity AmeriSteel may or may not engage in. Such an order could potentially impair FPL's rights in the future. Accordingly, this request should be summarily denied as this Court lacks jurisdiction to issue such an order when reviewing the action of the Commission in approving the territorial agreement between FPL and JEA. Art. V, §3(b)(2), Fla. Const.

CONCLUSION

The Commission has acted consistently with the requirements previously approved by this Court in determining when an entity may participate in an agency proceeding. The Commission has further adhered to the standards previously articulated by this Court for approval of a territorial agreement. Finally, the Commission has provided adequate notice of all of its activities leading up to and including the issuance of its proposed agency action approving the territorial agreement between FPL and JEA. AmeriSteel does not have a cognizable substantial interest in this Commission proceeding. Therefore AmeriSteel's appeal of the Commission's action should be denied.

Respectfully submitted,



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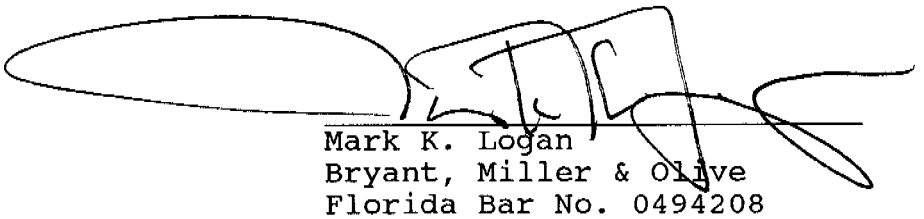
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the parties listed below on this 7th day of October, 1996.



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