IN THE SUPREME COURT
OF THE STATE OF FLORIDA

STATE OF FLORIDA, et al.,

Defendant/Appellant, **CASE NO.: SC-002183**

v.

JEA (formerly known as the Jacksonville Electric Authority), a body politic and corporate of the STATE OF FLORIDA,

Plaintiff/Appellee.

APPEAL OF FINAL JUDGMENT OF THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DUVAL COUNTY (CASE NO.: 00-05198-CA, DIVISION B)

PLAINTIFF/APPELLEE'S ANSWER BRIEF

RICHARD A. MULLANEY,
GENERAL COUNSEL
EDWARD C. TANNEN,
ASSISTANT GENERAL COUNSEL
Office of General Counsel of the
City of Jacksonville, Florida
Attorneys for Plaintiff/Appellee
117 West Duval Street
Suite 480
Jacksonville, Florida 32202
(904) 630-1700

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases:

[to come]

Other Citations:

[to come]

STATEMENT OF THE CASE

A. Nature of the Case; Course of the Proceedings; Disposition in Lower Tribunal

This proceeding is an appeal of a Final Judgment (the "Final Judgment") entered on September 5, 2000 in a bond validation proceeding brought by JEA (formerly known as the Jacksonville Electric Authority), Plaintiff/Appellee (hereinafter referred to as "Appellee" or "JEA"), in the Circuit Court of the Fourth Judicial Circuit of Florida, in and for Duval County (hereinafter referred to as the "Circuit Court"), Case No.: 00-05198-CA, Division: B. In its Final Judgment, the Circuit Court validated the issuance by Appellee of not to exceed Fifteen Million Dollars ($15,000,000) of its Electric System Subordinated Revenue Bonds (hereinafter referred to as the "Alliance Revenue Bonds") for the purpose of financing any amounts that Appellee may be obligated to pay under certain guarantees hereinafter described.

B. Statement of the Facts

On October 17, 2000, the State of Florida, acting by and through the State Attorney in and for the Fourth Judicial Circuit (hereinafter referred to as "Appellant"), filed its Initial Brief in this cause with this Court (hereinafter referred to as "Appellant's Initial Brief"). As was stated in Appellant's Initial Brief, the facts in this proceeding are not in dispute. *Appellant's Initial Brief* at 1. There follows a brief summary of certain of the pertinent facts in this cause, which summary is taken either from

Appellee's Complaint in this cause (the "Complaint") or the Trial Brief/Memorandum of Law filed by Appellee with the Circuit Court ("Appellee's Trial Brief"). As permitted by Fla. R. App. P. 9.210(c), the statement of the case and of the facts set forth under the caption "STATEMENT OF THE CASE" in Appellant's Initial Brief (including, without limitation, all terms defined therein) are incorporated herein by this reference, and reference is made thereto for a more complete discussion of such facts.

Appellee proposes to issue the Alliance Revenue Bonds for the purpose of financing amounts that it may be obligated to pay under certain guarantees (as more particularly described herein, the "TEA Guarantees") that it has executed and delivered in connection with a "strategic alliance" originally entered into in 1997 among it, the Municipal Electric Authority of Georgia, a public corporation and instrumentality of the State of Georgia ("MEAG") and the South Carolina Public Service Authority, a body corporate and politic created by the laws of the State of South Carolina ("Santee Cooper"). *See Complaint*, ¶ 18 at 12. Such strategic alliance is referred to herein sometimes as the "Alliance"; and Appellee, MEAG and Santee Cooper are referred to herein collectively sometimes as the "Original Members."

In order to implement their joint undertaking, the Original Members organized a Georgia nonprofit corporation named "The Energy Authority, Inc." ("TEA"). Under the provisions of the Georgia Nonprofit Corporation Code, Ga. Code

Ann. § 14-3-101, *et seq*., TEA constitutes a membership corporation. As a membership corporation, TEA does not issue capital stock. *Id.*, ¶ 8 at 5. *See also Appellee's Trial Brief* at 2.

In order to finance its initial capital contribution to TEA, Appellee authorized the issuance of a series of its Electric System Subordinated Revenue Bonds in an amount not to exceed $500,000 (the "Prior Alliance Revenue Bonds"), which Prior Alliance Revenue Bonds were validated by a Final Judgment of the Circuit Court rendered on July 24, 1997 in *Jacksonville Electric Authority v. State of Florida, et al.*, No. 97-3361-CA (Fla. 4th Cir. Ct., July 24, 1997) (hereinafter referred to as "*JEA v. State I*"), and which Final Judgment was not appealed.[1/] *Id.*

Since the time of the formation of TEA, three other utilities that are either municipally-owned or are themselves political subdivisions (hereinafter referred to collectively as "municipal utilities") have become members of TEA, and TEA contemplates that other utilities that are municipal utilities also may become members of TEA in the future. *Id.*, ¶ 13 at 9. The Original Members, together with all other

---

[1/] Because it had sufficient funds available to pay its initial capital contribution to TEA, Appellee did not issue the Prior Alliance Revenue Bonds. However, since Appellee is unable to predict whether it will have sufficient funds available to pay any amounts that may become due under its TEA Guarantees as and when the same may become due, Appellee is seeking the validation of the Alliance Revenue Bonds in this cause.

entities that are, or hereafter may become, members of TEA, are hereinafter referred to collectively as the "Members." It is contemplated that no utility that is not a municipal utility will be permitted to become a member of TEA. *Id.*

In addition, TEA has entered into "resource management arrangements" with other utilities that are municipal utilities, and TEA is exploring the possibility of entering into resource management arrangements with utilities other than municipal utilities (including generation and transmission cooperatives). *Id.* Each such utility with which TEA enters into a resource management arrangement is hereinafter referred to as a "resource management partner." Under these resource management arrangements, TEA generally acts as the exclusive party to purchase for the resource management partner needed capacity and energy from Members or third parties and to sell excess capacity and energy for the resource management partner to Members or third parties. *Id.* These services are rendered by TEA for a fee and are very similar to the services rendered by TEA for Members. *Id.* Resource management partners have a contractual relationship with TEA, but have no voting or other membership rights in TEA. *Id.*

Appellee believes that, in order to continue to take full advantage of its available generating resources, reduce its operating costs, increase its revenues and maintain the reliability of its Electric System, TEA must become larger in terms of the

amount of generation resources under management. *Id.*, ¶ 14 at 9-10. Increasing the scope of TEA will achieve further economies of scale, enable it to better compete in the wholesale markets and ensure access to a larger supply of energy and capacity. *Id.* Therefore, Appellee, along with the other Members of TEA, has determined that adding additional municipal utilities as Members and securing additional resource management arrangements with other utilities (whether or not municipal utilities) are both essential if TEA is to maximize the value that it can bring to its Members. *Id.* TEA anticipates that resource management arrangements with non-municipal utilities would represent a very limited portion of TEA's business, both in terms of the volume of energy and capacity purchased and sold and the dollar value of those transactions (no more than 20% of annual revenues). *Id.*

In order to provide financial support to TEA and/or to bolster TEA's reserves and thereby entice third parties to trade with TEA, each of the current Members of TEA (including Appellee) has executed and delivered certain trade guarantees and certain bank guarantees (collectively, the "TEA Guarantees"), pursuant to which each such Member is obligated, subject to the conditions and limits contained therein, to pay certain amounts owed by TEA to the extent not paid by TEA. *Id.*, ¶ 15 at 10. In the aggregate, Appellee's potential liability under its TEA Guarantees currently totals $15,000,000. *Id.* To date, no TEA Guarantee has been called upon.

Id. Since the TEA Guarantees apply to all of TEA's electric trading activities, and are not limited to transactions entered into only on behalf of TEA's Members, to the extent that non-municipal utilities become resource management partners, Appellee would be obligated under its TEA Guarantees to pay amounts owed by TEA in respect of transactions entered into on behalf of such non-municipal utilities to the extent not paid by TEA. *Id.*

C. Relief Sought By Appellee

In its Initial Brief, Appellant stated that it does not dispute the Circuit Court's finding in its Final Judgment in this cause that the proceedings taken in connection with the issuance of the Alliance Revenue Bonds were taken in conformity with all applicable legal requirements. In addition, Appellant stated that it does not dispute the conclusion of the Circuit Court in *JEA v. State I* that participation in the Alliance by Appellee in the manner described in the Complaint in *JEA v. State I* was valid and legal. However, insofar as the Circuit Court's Final Judgment in *JEA v. State I* did not address the issue of whether the guarantee by Appellee under its TEA Guarantees of amounts owed by TEA in respect of transactions entered into on behalf of non-municipal utilities violates the prohibition contained in Article VII, Section 10 of the Florida Constitution against Appellee "giv[ing], lend[ing] or us[ing] its taxing power or credit to aid any corporation, association, partnership or person," Appellant

challenges the Circuit Court's conclusion in the Final Judgment in this cause that the expenditure of the proceeds of the Alliance Revenue Bonds for the purpose of financing Appellee's obligations under its TEA Guarantees to guarantee TEA's obligations to third parties arising out of transactions entered into for non-municipal utilities to the extent amounts owed by TEA are not paid by TEA when due is lawful.

In addition, insofar as this Court has not had occasion to interpret the meaning of the phrase "joint ownership, construction and operation of electrical energy generating or transmission facilities" contained in the exception to Article VII, Section 10's prohibition set forth in clause (d) thereof, in its Initial Brief, Appellant asked this Court to determine whether the Alliance is a mechanism (effected through TEA) to provide for the joint operation of electrical energy generating or transmission facilities of TEA's Members within the meaning of clause (d) of Article VII, Section 10, such that Appellee's participation in the Alliance (and, specifically, Appellee's obligations under its TEA Guarantees to guarantee TEA's obligations to third parties arising out of transactions entered into for non-municipal utilities to the extent amounts owed by TEA are not paid by TEA when due) may be authorized by law.

Thus, the only issue in this cause is the question of whether the guarantee by Appellee under its TEA Guarantees of amounts owed by TEA in respect of transactions entered into on behalf of non-municipal utilities violates the prohibition

contained in Article VII, Section 10 of the Florida Constitution against Appellee "giv[ing], lend[ing] or us[ing] its taxing power or credit to aid any corporation, association, partnership or person." For the reasons described under the caption "ARGUMENT" below, Appellant respectfully asks this Court to determine that the guarantee by Appellee under its TEA Guarantees of amounts owed by TEA in respect of transactions entered into on behalf of non-municipal utilities does not violate the prohibition contained in Article VII, Section 10 and, accordingly, to affirm the order of the Circuit Court in its Final Judgment in this cause validating the issuance of the Alliance Revenue Bonds.

SCOPE OF REVIEW

It is well-settled that the scope of this Court's review in bond validation proceedings is limited to the following issues: (1) determining whether the public body has the authority to issue the bonds; (2) determining whether the purpose of the obligation is legal; and (3) determining whether the bond issuance complies with the requirements of law. *See State v. Osceola County*, 752 So. 2d 530, 533 (Fla. 1999); *Poe v. Hillsborough County, et al.*, 695 So. 2d 672, 675 (Fla. 1997).

Pursuant to Section 21.04(i) of the Charter, Appellee is empowered, by resolution of Appellee, to issue revenue bonds for the purpose of financing or refinancing Appellee's electric system (the "Electric System"), including without

limitation the financing of any one or more enlargements, expansions, developments, replacements or modernizations of the Electric System, any expenses of the Electric System, any reserves deemed necessary or desirable by Appellee and any other purpose not otherwise prohibited by law, and retiring any bond, note or revenue certificate issued under Article 21 of the Charter, subject only to approval by ordinance of the Council (the "Council") of the City of Jacksonville (the "City") of the total aggregate amount of such revenue bonds. *See Complaint*, ¶ 5 at 3.

Pursuant to a resolution adopted by Appellee on August 16, 1988 (such resolution, as heretofore amended, restated and supplemented, being referred to herein as the "Subordinated Bond Resolution"), Appellee has authorized the issuance of revenue bonds referred to as "Electric System Subordinated Revenue Bonds" (referred to herein as the "Subordinated Revenue Bonds") for the purposes of (a) providing a portion of the funds necessary for the construction or acquisition of additions, extensions and improvements to the Electric System, and purposes incidental thereto, (b) providing funds for the refunding of outstanding Senior Revenue Bonds (as defined in Appellant's Initial Brief) or outstanding Subordinated Revenue Bonds and (c) providing funds for any other lawful purpose of Appellee relating to the Electric System. *See Complaint*, ¶ 6 at 3.

Pursuant to Ordinance 1999-797-E of the City, enacted on August 24,

1999, the Council has authorized the issuance by Appellee of, among other things, Subordinated Revenue Bonds in the aggregate principal amount of not to exceed $750,000,000 to finance the construction or acquisition of additions, extensions and improvements to the Electric System, and purposes incidental thereto, and other lawful purposes of Appellee relating to the Electric System. *See Complaint*, ¶ 7 at 4.

By resolution adopted on June 20, 2000, Appellee authorized the issuance of the Alliance Revenue Bonds for the purpose of financing its obligations under its TEA Guarantees to guarantee TEA's obligations to third parties to the extent amounts owed by TEA are not paid by TEA when due. *See Complaint*, ¶ 23 at 13.

The foregoing four paragraphs show that Appellee has the legal authority to issue the Alliance Revenue Bonds, and all requirements of law incident to the authorization of such Bonds have been complied with. Based upon the foregoing, in its Final Judgment in this cause, the Circuit Court found and ordered, among other things, that:

(a) Appellee is fully authorized to issue revenue bonds for the purpose of financing or refinancing its Electric System, including without limitation the financing of any one or more enlargements, expansions, developments, replacements or modernizations of the Electric System, any expenses of the Electric System, any reserves deemed necessary or desirable by Appellee and

any other purpose not otherwise prohibited by law, and retiring any bond, note or revenue certificate issued under Article 21 of the Charter, subject only to approval by ordinance of the Council the total aggregate amount of such revenue bonds; and

(b) having been approved by the Council, the issuance by Appellee of the Alliance Revenue Bonds, in a principal amount not to exceed $15,000,000, is for a proper, legal and corporate public purpose and is fully authorized by law and, accordingly, the Alliance Revenue Bonds may be issued to finance Appellee's obligations under its TEA Guarantees to guarantee TEA's obligations to third parties to the extent amounts owed by TEA are not paid by TEA when due.

Final Judgment, ¶¶ C, D at 15-16.

Moreover, as was stated under the caption "STATEMENT OF THE CASE – Relief Sought by Appellee" above, in its Initial Brief, Appellant stated that it does not dispute the Circuit Court's finding in its Final Judgment in this cause that the proceedings taken in connection with the issuance of the Alliance Revenue Bonds were taken in conformity with all applicable legal requirements. Thus, the only issue in this cause is the question of whether the guarantee by Appellee under its TEA Guarantees of amounts owed by TEA in respect of transactions entered into on behalf of non-municipal utilities violates the prohibition contained in Article VII, Section 10 of the

Florida Constitution against Appellee "giv[ing], lend[ing] or us[ing] its taxing power or credit to aid any corporation, association, partnership or person."

SUMMARY OF ARGUMENT

A. Appellee's Obligations Under its TEA Guarantees Would Not Violate the Prohibition Against Lending of Credit Contained in Article VII, Section10 of the Florida Constitution if Non-Municipal Utilities Become Resource Management Partners

In the event that non-municipal utilities become resource management partners of TEA, Appellee's obligations under its TEA Guarantees to guarantee TEA's obligations to third parties arising out of transactions entered into for non-municipal utilities to the extent amounts owed by TEA are not paid by TEA when due would not violate the prohibition contained in Article VII, Section 10 of the Florida Constitution against the giving, lending or use of Appellee's taxing power or credit to aid any corporation, association, partnership or person.

So long as the Members continue to consist solely of municipal utilities, TEA should be viewed as an instrumentality of its Members. Accordingly, TEA should not be considered to be a "corporation, association, partnership or person" within the meaning of Article VII, Section 10.

In addition, the entry by TEA into resource management arrangements with non-municipal utilities is in furtherance of the purpose for which the Alliance was

formed. Moreover, any non-municipal utilities that become resource management partners of TEA would not share in the benefits being derived from the activities of TEA. Accordingly, in the event that TEA enters into resource management arrangements with non-municipal utilities, the benefits derived from the activities of TEA (including, without limitation, benefits derived from Appellee's obligations under its TEA Guarantees to guarantee TEA's obligations to third parties (including those arising out of transactions entered into for TEA's resource management partners) to the extent amounts owed by TEA are not paid by TEA when due) should not be considered to be violative of the prohibition contained in Article VII, Section 10.

Furthermore, to the extent that Appellee's obligations under its TEA Guarantees may be viewed as a "giv[ing], lend[ing] or use [of Appellee's] taxing power or credit," such giving, lending or use should be viewed as either (a) inuring to the benefit of, and aiding, TEA, which, as was stated above, should be viewed as an instrumentality of the Members and, therefore, is not a "corporation, association, partnership or person" within the meaning of Article VII, Section 10 or (b) inuring to the benefit of, and aiding, the other Members of TEA, all of which are municipal utilities and, therefore, also are not "corporation[s], association[s], partnership[s] or person[s]" within the meaning of Article VII, Section 10.

Moreover, the purpose for TEA entering into resource management

arrangements with other utilities (whether or not municipal utilities) is to increase the scope of TEA, thereby achieving further economies of scale, improving the reliability of the Members' electric systems and maximizing the value that TEA brings to its Members. Therefore, the entry by TEA into resource management arrangements with non-municipal utilities does not detract from the paramount public purpose of the Alliance, which is to provide benefits to TEA's Members, all of which are municipal utilities. Indeed, any benefits that may be derived by TEA's resource management partners from their respective resource management arrangements with TEA (including, without limitation, the benefits to be derived from TEA's creditworthiness being enhanced by the existence of Appellee's TEA Guarantees) should be viewed as being merely incidental to the paramount public purpose being served by the Alliance.

B. Appellee's Participation in the Alliance Constitutes "Joint Ownership, Construction and Operation of Electrical Energy Generating or Transmission Facilities" Within the Meaning of Article VII, Section 10(d)

The prohibition against the giving, lending or use of a public body's taxing power or credit contained in Article VII, Section 10 is subject to the exception thereto set forth in clause (d) thereof, which provides that such prohibition "shall not prohibit laws authorizing . . . a municipality . . . or agency . . . being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation,

association, partnership or person." Art. VII, § 10(d), Fla. Const.

As was stated under the caption "STATEMENT OF THE CASE" in Appellant's Initial Brief, the Members of TEA have entered into the Alliance for the purpose of coordinating and facilitating the operation of their electric generating facilities and the purchase and sale of electric capacity and energy. Thus, even though Appellee, through its participation in the Alliance, currently does not seek either to own or to construct any electrical energy generating or transmission facilities jointly with any other person, Appellee's participation in the Alliance should be viewed as the "joint . . . operation of electrical energy generating or transmission facilities" within the meaning of Article VII, Section 10(d) and, therefore, should be adjudged as satisfying the requirements of that exception.

ARGUMENT

A. Appellee's Obligations Under its TEA Guarantees Would Not Violate the Prohibition Against Lending of Credit Contained in Article VII, Section 10 of the Florida Constitution if Non-Municipal Utilities Become Resource Management Partners

1. Pertinent Provisions of Article VII, Section 10

Article VII, Section 10 of the Florida Constitution provides, in pertinent part:

10. Pledging Credit

> Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit laws authorizing:
>
> . . .
>
> (d) a municipality, county, special district, or agency or any of them, being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person.

As a body politic and corporate and an independent agency of the City, it is not disputed that Appellee constitutes an "agency" of a "municipality," as such terms are used in Article VII, Section 10. Thus, as the Circuit Court found in its Final Judgment in *JEA v. State I*, Appellee is, in general, subject to the prohibition contained in Article VII, Section 10 of the Florida Constitution. *See Complaint*, ¶ 11 at 6-8.

As was stated under the caption "STATEMENT OF THE CASE – Statement of the Facts" above, TEA is a nonprofit membership corporation organized under the laws of the State of Georgia, and each of the current Members is, and any future Members are expected to be, municipal utilities. Upon the basis of those facts, in its Final Judgment in this cause, the Circuit Court concluded that TEA may be

viewed as an instrumentality of its Members, and not as a private business organization. As more fully discussed below, political subdivisions of Florida and of other states are not "corporation[s], association[s], partnership[s] or person[s]" within the meaning of Article VII, Section 10 of the Florida Constitution. Thus, so long as the Members continue to consist solely of municipal utilities, TEA should be viewed as an instrumentality of its Members. Accordingly, TEA should not be considered to be a "corporation, association, partnership or person" within the meaning of Article VII, Section 10. Alternatively, the Alliance may be viewed as serving a paramount public purpose. In that event, Appellee's obligations under its TEA Guarantees may be viewed as inuring primarily to the benefit of the Members of TEA (including the Appellee), and any benefits inuring to any other persons with whom TEA enters into trading relationships (including any non-municipal resource management partners) may be viewed as being merely incidental to the paramount public purpose being served by the Alliance.

2. The Prohibition Contained in Article VII, Section 10 is Not Applicable to Appellee's Participation in the Alliance Since the Alliance is a Venture the Membership of Which Consists Entirely of Political Subdivisions

As was stated under the caption "STATEMENT OF THE CASE – Statement of the Facts" above, TEA is a nonprofit membership corporation organized

under the laws of the State of Georgia, and each of the current Members is, and any future Members are expected to be, municipal utilities. Thus, as the Circuit Court concluded in its Final Judgment in this cause, TEA may be viewed as an instrumentality of its Members, and not as a private business organization. As such, the prohibition contained in Article VII, Section 10 of the Florida Constitution would not preclude participation by Appellee in the Alliance, even if non-municipal utilities become resource management partners of TEA.

In Opinion of the Attorney General 072-382, October 31, 1972 (hereinafter referred to as "*OAG 072-382*"), the Secretary of State of the State of Florida asked whether "state offices, agencies, political subdivisions of the state including municipalities, federal agencies and political subdivisions thereof, and sister states and their political subdivisions, [are] included within the terms 'corporation, association, partnership or person' in Art. VII, § 10 of the State Const. 1968." The Attorney General, relying upon *State v. Town of North Miami*, 59 So. 2d 779 (Fla. 1952) and a prior Attorney General's opinion (Op. Att'y Gen. Fla. 058-9 (1958), concluded that:

> ***[N]either the State of Florida nor its agencies and political subdivisions, including municipalities, fall within the words "corporation, association, partnership or person" in Art. VII, § 10***, State Const. 1968. Also see Bannon v. Port of Palm Beach District, Fla. 1971, 246 So.2d 737; and O'Malley v. Florida Insurance Guaranty

> Association, Fla. 1971, 257 So.2d 9. ***It follows that the same would be true of*** federal agencies and political subdivisions thereof as well as ***sister states and their political subdivisions***. (emphasis added)

In *State v. Town of North Miami*, *supra*, this Court was faced with the question of whether the Town of North Miami could issue its certificates of indebtedness for the purpose of financing the purchase of land and the construction of a manufacturing plant thereon, which was to be leased to a private corporation under an agreement whereby the private corporation would carry on a manufacturing enterprise for private profit upon the premises. Under the lease agreement, the rentals to be paid by the private corporation would fully amortize the principal amount of the certificates and the interest thereon. 59 So. 2d at 779. The *Town of North Miami* Court held that the arrangement being contested violated Article IX, Section 10 of the 1885 Constitution, which was the predecessor to Article VII, Section 10 of the 1968 Constitution. 59 So. 2d at 787.

Article IX, Section 10 of the 1885 Constitution provided that:

> . . . The Legislature shall not authorize any county, city, borough, township or incorporated district to become a stock holder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual.

In *Town of North Miami*, this Court went to great lengths to discuss and distinguish the cases relied upon by the appellee therein, the Town of North Miami.

One of those cases, *State v. City of Tallahassee*, 142 Fla. 476, 195 So. 402 (1940), involved the issuance by the City of Tallahassee of certificates of indebtedness to finance the construction of an office building in which space would be rented to federal, state and county governments. Without specifically addressing Article IX, Section 10 of the 1885 Constitution, the *City of Tallahassee* Court upheld the issuance of the certificates of indebtedness and the rental to federal, state and county governments of space in the office building to be constructed from the proceeds thereof, and concluded that "[w]e find no constitutional objections to the certificates brought in question . . .." 195 So. at 404.

In discussing the meaning of *City of Tallahassee*, the *Town of North Miami* Court concluded that "[t]he State is not a corporation within the meaning of Sec. 10 of Article IX of the [1885] Constitution." 59 So. 2d at 783.

The Attorney General, in *OAG 072-382*, found that "[w]ith a slight modification in language [Article IX, Section 10 of the 1885 Constitution] became a part of Art. VII, § 10, State Const. 1968 . . .." Since the Attorney General found that "[t]he modification in language is not significant as far as your question is concerned," the Attorney General concluded that neither the State of Florida nor its agencies or political subdivisions, nor federal agencies and political subdivisions thereof nor sister states and their political subdivisions, came within the words "corporation, association,

partnership or person" in Article VII, Section 10 of the 1968 Constitution.

Opinion of the Attorney General 077-113, October 25, 1977 (hereinafter referred to as "*OAG 077-113*") also is instructive for the instant case. In that opinion, the Attorney General was asked whether participation by the City of Lakeland in the formation of a reciprocal insurance association composed entirely of Florida municipalities and organized under Chapter 629, Florida Statutes contravenes Article VII, Section 10 of the Florida Constitution. *OAG 077-113* at 1-2. The Attorney General noted that since membership in the proposed reciprocal association was to be limited to Florida municipalities, there was no violation of Article VII, Section 10. *OAG 077-113* at 3. Further, the Attorney General stated that:

> the fact that the cities will contribute to the required expendable surplus of the reciprocal insurance association and, in effect, become joint owners of an association which is not itself a municipality would not constitute a violation of s. 10, Art. VII, supra, under the facts presented in your inquiry. The proposed association would not constitute a private association, one having no official duties or concern with the affairs of government and organized primarily for the personal emolument of its members. See O'Malley v. Florida Ins. Guaranty Association, 257 So.2d 9 (Fla. 1971). Rather, the association would be in the nature of a public or quasi-public entity organized primarily to discharge duties to the public or to provide a governmental benefit. . . .

Id. at 4.

In the instant case, the fact that certain of TEA's existing Members are, and future Members of TEA may be, political subdivisions of states other than Florida

does not compel a different conclusion. Given the breadth of *OAG 077-113*, the fact that political subdivisions of several states are participating in the Alliance is not significant. Indeed, so long as the membership of TEA consists only of municipal utilities, TEA is analogous to the reciprocal insurance association at issue in *OAG 077-113*: it is, in effect, jointly owned solely by political subdivisions and was organized primarily "to discharge duties to the public or to provide a governmental benefit" (*i.e.*, to enable the Members to coordinate and facilitate the operation of their electric generating facilities and the purchase and sale of electric capacity and energy, so as to best serve their own customers). *Accord* Opinion of the Attorney General 079-25, March 20, 1979 (holding that the operation by the City of Port St. Lucie of a "contract post office" on city property and through the expenditure of city funds did not violate Article VII, Section 10, even though the operation of the contract post office aided the United States Postal Service, a federal agency). Moreover, since any utilities (whether or not municipal utilities) that become resource management partners of TEA will not become Members of TEA (and will not have any voting or other membership rights in TEA), the entry by TEA into such resource management arrangements does not change the essential nature of TEA (*i.e.*, TEA will remain jointly owned solely by political subdivisions and its purpose will remain primarily "to discharge duties to the public or to provide a governmental benefit"). Thus, under the reasoning of *OAG 077-113*,

Appellee's participation in the Alliance is not proscribed by Article VII, Section 10 of the Florida Constitution, even if non-municipal utilities become resource management partners of TEA. Furthermore, so long as the membership of TEA consists only of municipal utilities, TEA may be viewed as an instrumentality of its Members, such that TEA itself should not be considered to be a "corporation, association, partnership or person" within the meaning of Article VII, Section 10.

Moreover, the entry by TEA into resource management arrangements with non-municipal utilities should not change the analysis. As was stated under the caption "STATEMENT OF THE CASE – Statement of the Facts" above, resource management partners have a contractual relationship with TEA, but have no voting or other membership rights in TEA. Furthermore, as was stated above, Appellee, along with the other Members of TEA, has determined that securing additional resource management arrangements with other utilities (whether or not municipal utilities) is essential if TEA is to maximize the value that it can bring to its Members. Thus, the entry by TEA into resource management arrangements with non-municipal utilities is in furtherance of the purpose for which the Alliance was formed. In addition, any non-municipal utilities that become resource management partners of TEA would not share

in the benefits being derived from the activities of TEA.[2]/ Accordingly, in the event that TEA enters into resource management arrangements with non-municipal utilities, the benefits derived from the activities of TEA (including, without limitation, benefits derived from Appellee's obligations under its TEA Guarantees to guarantee TEA's obligations to third parties (including those arising out of transactions entered into for TEA's resource management partners) to the extent amounts owed by TEA are not paid by TEA when due) should not be considered to be violative of the prohibition contained in Article VII, Section 10.

3. Involvement of Non-Municipal Utilities in the Alliance Does Not Render Appellee's Obligations Under its TEA Guarantees an Impermissible Giving, Lending or Use of Appellee's Credit Within the Meaning of Article VII, Section 10

---

[2]/ As was stated under the caption "STATEMENT OF THE CASE – Statement of the Facts" above, the services rendered to resource management partners are very similar to the services rendered by TEA for Members, except that resource management partners are charged a fee for those services. In its Initial Brief, Appellant asserted that "it is reasonable to assume that non-municipal utilities would be willing to become resource management partners of TEA only if doing so results in an economic benefit to them." *Appellant's Initial Brief*, at 24, n.2. While Appellee concedes that entering into resource management arrangements with TEA should produce an economic benefit to resource management partners (whether or not municipal utilities). (*i.e.*, they should be able to operate their generating resources and purchase and sell electric capacity and energy at a lower cost than would be the case if they were not resource management partners), Appellee believes that the fees charged by TEA are "market-based." Moreover, any such benefit should be viewed as being merely incidental to the paramount public purpose being served by the Alliance. *See* the discussion under Section A(4) below.

As was stated above, Article VII, Section 10 prohibits the "***giv[ing], lend[ing] or use [of a public body's] taxing power or credit*** to aid any corporation, association, partnership or person" (emphasis added). It is well-settled under Article VII, Section 10 and its predecessor provisions that the constitutional prohibition against the lending or use of credit is to prevent government from becoming entangled in private enterprise. In *Nohrr v. Brevard County Educational Facilities Authority*, 247 So. 2d 304, 309 (Fla. 1971), this Court held that

> The word "credit," as used in Fla. Const., art. VII, § 10 (1968), implies the imposition of some new financial liability upon the State or a political subdivision ***which in effect results in the creation of a State or political subdivision debt for the benefit of private enterprises*** (emphasis added).

See State v. Inland Protection Financing Corp., 699 So. 2d 1352, 1356 (Fla. 1997) ("Nevertheless, this Court found that the proposed bonds did not pledge the public credit or taxing power since . . . the bondholders could not compel a levy of taxes to satisfy the bond obligations" (*citing State v. Development Finance Corp.*, 650 So. 2d 14, 18 (Fla. 1995)). *See also State v. Housing Finance Authority of Polk County*, 376 So. 2d 1158, 1160 (Fla. 1979) ("Of course, public bodies cannot appropriate public funds indiscriminately, or ***for the benefit of private parties***, where there is not a reasonable and adequate public interest." (emphasis added)); *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875, 886 (Fla. 1981) ("Under article VII, section

10, neither the state nor any of its subdivisions may expend public funds for or participate at all in a project that is not of ***some substantial benefit to the public***, even where there is no proposed exercise of the eminent domain power and no public indebtedness . . .." (emphasis added)); *Poe v. Hillsborough County, et al.*, *supra*, 695 So. 2d at 675 ("We have held that a bond issue does not violate article VII, section 10 so long as the project serves a 'paramount public purpose,' and ***any benefits to private parties from the project are incidental***." (emphasis added)) . *Accord* OAG 072-382, *supra* (Neither the State of Florida nor its agencies and political subdivisions including municipalities, nor federal agencies and political subdivisions thereof nor sister states and their political subdivisions are included within the terms "corporation, association, partnership, or person" in Article VII, Section 10.).

In the instant case, the purpose of the Alliance is to allow the Members (all of which are, or are expected to be, municipal utilities) to coordinate the operation of their generating facilities and the sale and purchase of electric capacity and/or energy, for the mutual benefit of each. Thus, for so long as membership in the Alliance consists solely of municipal utilities, participation by Appellee in the Alliance (a) does not involve Appellee in private enterprise, (b) is in furtherance of Appellee's public purposes, (c) does not result in the creation of debt of Appellee for the benefit of private enterprises and (d) does not result in the appropriation of public funds for the

benefit of private parties. Accordingly, as the Circuit Court held in its Final Judgment in *JEA v. State I*, although the prohibition contained in Article VII, Section 10 is, in general, applicable to Appellee, it does not act to preclude Appellee's participation in the Alliance since Appellee, through its participation in the Alliance, is not lending or using its taxing power or credit to aid any corporation, association, partnership or person within the meaning of Article VII, Section 10. Thus, to the extent that Appellee's obligations under its TEA Guarantees may be viewed as a "giv[ing], lend[ing] or use [of Appellee's] taxing power or credit," such giving, lending or use should be viewed as either (a) inuring to the benefit of, and aiding, TEA, which, as was stated under Section A(1), *supra*, should be viewed as an instrumentality of the Members and, therefore, is not a "corporation, association, partnership or person" within the meaning of Article VII, Section 10 or (b) inuring to the benefit of, and aiding, the other Members of TEA, all of which are municipal utilities and, therefore, also are not "corporation[s], association[s], partnership[s] or person[s]" within the meaning of Article VII, Section 10.

Moreover, this result does not change even though the TEA Guarantees apply to all of TEA's electric trading activities, and are not limited to transactions entered into only on behalf of TEA's Members. Thus, to the extent that non-municipal utilities become resource management partners of TEA, Appellee would be obligated

under its TEA Guarantees to pay amounts owed by TEA in respect of transactions entered into on behalf of such non-municipal utilities to the extent not paid by TEA. Even in that event, however, Appellee's obligations under its TEA Guarantees would not result in the creation of debt of Appellee for the benefit of private enterprises and, accordingly, should not be viewed as an impermissible "giv[ing], lend[ing] or use [of Appellee's] taxing power or credit" within the meaning of Article VII, Section 10, since, as described under Section A(4) below, any such giving, lending or use that inures to the benefit of those non-municipal utilities is merely incidental to the paramount public purpose being served by the Alliance.

4. Article VII, Section 10's Prohibition is Not Applicable Since the Purpose Served by Appellee's Participation in the Alliance is Paramountly a Public One

It is well-settled in Florida that an expenditure of public funds, or a lending of public credit, does not violate Article VII, Section 10 of the Constitution if the primary purpose of the expenditure or the loan is to further a public purpose, even if there is an incidental private benefit. In *Bannon v. Port of Palm Beach District*, 246 So. 2d 737 (Fla. 1971), this Court stated that the effect (and, presumably, the purpose) of Article VII, Section 10 of the Constitution is "to protect public funds and resources from being exploited in assisting or promoting private ventures when the public would be at most only incidentally benefitted." *Id.* at 741. *Cf. Town of North Miami*, *supra*

(interpreting Article IX, Section 10 of the 1885 Constitution to preclude the validation of certificates of indebtedness proposed to be issued to purchase land and erect a manufacturing plant for the sole use of a private corporation for private profit). Similarly, in *O'Neill v. Burns*, 198 So. 2d 1 (Fla. 1967), this Court stated that:

> It is only when there is some clearly identified and concrete public purpose as the primary objective and a reasonable expectation that such purpose will be substantially and effectively accomplished, that the state or its subdivisions may disburse, loan or pledge public funds or property to a non-governmental entity such as a non-profit corporation . . ..

198 So. 2d at 4.

In *Orange County Industrial Development Authority v. State*, 427 So. 2d 174 (Fla. 1983), following an exhaustive analysis of prior bond validation decisions relating to the requisite levels of public versus private benefit required under Article VII, Section 10, this Court stated that:

> Running throughout this Court's decisions . . . is a consistent theme. It is that there is required a paramount public purpose with only an incidental private benefit. If there is only an incidental benefit to a private party, then the bonds will be validated since the private benefits "are not so substantial as to tarnish the public character" of the project. . . . If, however, the benefits to a private party are themselves the paramount purpose of a project, then the bonds will not be validated even if the public gains something therefrom." . . . "Incidental benefits accruing to the public from the establishment of some private enterprise is [sic] not sufficient to make the establishment of such enterprise a public purpose." . . .

427 So. 2d at 179 (citations omitted). *See also Poe v. Hillsborough County, et al.*,

supra, 699 So. 2d at 675 ("We have held that a bond issue does not violate article VII, section 10 so long as the project serves a 'paramount public purpose,' and any benefits to private parties from the project are incidental." (citations omitted)).

In the instant case, the sole function of the Alliance is to allow the Members to coordinate the operation of their generating facilities and the sale and purchase of electric capacity and/or energy, in order to better serve their customers. Therefore, the paramount purpose of JEA's participation in the Alliance is in furtherance of Appellee's public purposes. Accordingly, although the prohibition contained in Article VII, Section 10 is, in general, applicable to Appellee, in the instant case, it does not act to preclude Appellee's participation in the Alliance since Appellee, through its participation in the Alliance, is furthering a paramount public purpose. Moreover, as was stated above, the purpose for TEA entering into resource management arrangements with other utilities (whether or not municipal utilities) is to increase the scope of TEA, thereby achieving further economies of scale, improving the reliability of the Members' electric systems and maximizing the value that TEA brings to its Members. Therefore, the entry by TEA into resource management arrangements with non-municipal utilities does not detract from the paramount public purpose of the Alliance, which is to provide benefits to TEA's Members, all of which are municipal utilities. Indeed, any benefits that may be derived by TEA's resource management

partners from their respective resource management arrangements with TEA (including, without limitation, the benefits to be derived from TEA's creditworthiness being enhanced by the existence of Appellee's TEA Guarantees) should be viewed as "not so substantial as to tarnish the public character" of the Alliance.

B. Appellee's Participation in the Alliance Constitutes "Joint Ownership, Construction and Operation of Electrical Energy Generating or Transmission Facilities" Within the Meaning of Article VII, Section 10(d)

In its Final Judgment in *JEA v. State I*, the Circuit Court held, assuming, *arguendo*, that the prohibition contained in Article VII, Section 10 of the Florida Constitution does apply to Appellee's participation in the Alliance, that the Alliance is a mechanism (effected through TEA) to provide for the joint operation of electrical energy generating or transmission facilities of the Members within the meaning of clause (d) of Article VII, Section 10. Accordingly, the Circuit Court found that participation by Appellee in the Alliance is subject to the exception to Article VII, Section 10's prohibition set forth in clause (d) thereof, such that such participation may be authorized by law. Moreover, the Circuit Court held that (i) Section 163.01, Florida Statutes (the "Interlocal Cooperation Act"), empowered Appellee to enter into the Alliance for the purpose of providing for the joint operation of the Original Members' electric generating facilities and the purchase and sale of electric capacity and energy and, accordingly, the Interlocal Cooperation Act constituted a law authorizing

Appellee's "being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person" within the meaning of Article VII, Section 10(d) of the Florida Constitution and (ii) Chapter 361, Part II, Florida Statutes (the "Joint Power Act"), provided additional authority for Appellee's participation in the Alliance, for the purpose of jointly operating electric generating facilities.

The fact that TEA may enter into resource management arrangements with non-municipal utilities does not detract from the foregoing conclusions. As was described under the caption "STATEMENT OF THE CASE – Statement of the Facts" above, (i) all of TEA's current Members are municipal utilities, (ii) no utility that is not a municipal utility will be permitted to become a Member of TEA and (iii) TEA's resource management partners (whether or not municipal utilities) do not have voting or other membership rights in TEA. Thus, the existence of such resource management arrangements (including any future resource management arrangements with non-municipal utilities) does not change the fundamental nature of TEA: it remains jointly owned solely by political subdivisions and its purpose remains primarily to provide a governmental benefit to its Members. Accordingly, the conclusion that Appellee's participation in the Alliance is authorized by the Interlocal Cooperation Act and the

Joint Power Act is unaffected by the existence of TEA's resource management arrangements with other utilities (including non-municipal utilities).

This Court has not had occasion to interpret the meaning of the phrase "joint ownership, construction and operation of electrical energy generating or transmission facilities" contained in the exception to Article VII, Section 10's prohibition set forth in clause (d) thereof. *State v. Florida Municipal Power Agency*, 428 So. 2d 1397 (Fla. 1983) (hereinafter referred to as "*State v. FMPA*"), is the only decision of this Court addressing the provisions of Article VII, Section 10(d) of the Constitution. In that case, this Court upheld the Interlocal Cooperation Act and the Joint Power Act as valid implementations of the exception to Article VII, Section 10's prohibition contained in clause (d) thereof. *Id.* at 1398.

In *State v. FMPA*, the Florida Municipal Power Agency, a legal entity organized pursuant to the provisions of the Interlocal Cooperation Act ("FMPA"), proposed to issue $375,000,000 in bonds to finance the purchase of an 8.8% ownership interest in a nuclear power plant (St. Lucie Unit 2) being constructed by Florida Power & Light Company ("FP&L"), through which it was to sell power to its members. *Id.* This Court affirmed the validation of those bonds for that purpose, but, in so doing, did not find the need to address the scope of the phrase "joint ownership, construction and operation of electrical energy generating or transmission facilities."

The facts of the instant case are such, however, that it is appropriate that this Court now address the scope of that provision.

In *State v. FMPA*, it was beyond argument that the acquisition by FMPA from FP&L of an undivided ownership interest in a nuclear generating unit would result in the "joint ownership, construction and operation of [an] electrical energy generating . . . facilit[y]" within the plain meaning of those words. In the instant case, however, Appellee, through its participation in the Alliance, currently does not seek either to own or to construct any electrical energy generating or transmission facilities jointly with any other person. However, for the reasons set forth below, Appellee respectfully suggests that "joint operation" of electrical energy generating or transmission facilities alone should be sufficient to implicate the provisions of Article VII, Section 10(d).

Section 10(d) was added to Article VII of the Constitution in 1974, and it provides that the prohibitions contained in Article VII, Section 10 do not prohibit laws authorizing "a municipality . . . or agency [thereof] being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person." Thus, Section 10(d) is an exception to the general prohibition against political subdivisions having joint ownership of property with private entities, and allows the use of municipal taxing power or credit for the benefit

of private parties in connection with the "joint ownership, construction and operation of electrical generating or transmission facilities."

Appellee respectfully suggests that Section 10(d) should not be narrowly construed so as to apply only to projects that result in both "joint" ownership and "joint" operation. Rather, Appellee believes that this provision should apply to projects in which there is joint participation, but not necessarily joint ownership, especially in light of this Court's acknowledgement that the interpretation of constitutional language must necessarily be flexible over time. In *Florida Soc. of Ophthalmology v. Florida Optometric Assoc.*, 489 So. 2d 1118 (Fla. 1986), this Court stated that "Constitutions are 'living documents,' not easily amended, which demand greater flexibility in interpretation than that required by legislatively enacted statutes. Consequently, courts are far less circumscribed in construing language in the area of constitutional interpretation than in the realm of statutory construction." *Id.* at 1119.

At the time that Section 10(d) was approved by the electorate, the dramatic changes that currently are occurring in the electric utility industry could not

have been envisioned,[3/] Thus, Appellee respectfully suggests that an unduly strict reading of Article VII, Section 10(d) would be unnecessarily constraining.

The construction of Article VII, Section 10(d) suggested above is supported by the legislative interpretation of that provision evidenced by Chapter 82-53, which was enacted by the Florida legislature in 1982 to implement that provision. While legislative history on this statute is nonexistent, the language of the statute itself reflects a clear legislative intent to broadly define "joint ownership, construction, and operation." The provisions of Chapter 82-53 (adding a new subsection 15 to Section 163.01, Florida Statutes) provide that any public agency that is an electric utility may "plan, finance, acquire, construct, reconstruct, own, lease, ***operate***, maintain, repair,

---

[3]/ In this regard, Appellee asks that this Court take judicial notice of the following facts: (a) over the past several years, the legislatures of various states (including California, Massachusetts, Montana, New Jersey, New York, Pennsylvania and Virginia) have endeavored to deregulate the electric utility industry, and have legislatively mandated so-called "retail competition" in the electric utility industry, so that certain electric consumers in those states now are able to choose their own electric suppliers; (b) during the current and several past sessions of the United States Congress, numerous bills have been introduced to restructure the electric utility industry, including bills that sought to mandate "retail competition"; and (c) on March 7, 2000, a bill was introduced in the Florida Senate for the purpose of establishing a study commission to, among other things, recommend appropriate energy policies for Florida which will promote competition in the electric utility industry; while this bill did not pass, on May 3, 2000, Governor Bush established a similar commission by executive order. Moreover, Appellee entered into the Alliance in 1997 in order to enable it to compete more effectively in the changing electric utility industry. *See Complaint*, ¶ 8 at 4. *See also Appellee's Trial Brief* at 2.

improve, extend, ***or otherwise participate jointly*** in one or more electric projects . . ." (emphasis added). In light of the broad array of activities specified in this language, and the use of the word "or," it appears from the foregoing that it is the view of the legislature that virtually any activity entered into according to a contract that otherwise complies with the provisions of the Interlocal Cooperation Act is authorized by Article VII, Section 10(d). Moreover, the use of the phrase "or otherwise participate jointly" in subsection 15 of Section 163.01 reasonably can be construed to refer to a broad range of interests in an electric project and not just to a transaction in which there is "joint ownership." Clearly, the language of subsection 15 of Section 163.01, implementing the exception to the constitutional prohibition on the lending of credit or taxing power of a municipality, was intended by the legislature to authorize public agencies to enter into a very broad range of transactions relating to electric projects, not just those involving joint ownership.

As was stated above, in *State v. FMPA*, this Court upheld Chapter 82-53 as a valid implementation of Article VII, Section 10(d). While the particular language of subsection 15 of Section 163.01 was not discussed in that opinion, several other decisions of this Court concerning statutory construction are instructive in interpreting the scope of Article VII, Section 10(d). In *Metropolitan Dade County v. Bridges*, 402 So. 2d 411 (Fla. 1981), this Court held that "[a] legislative enactment is presumed valid

and will not be declared unconstitutional unless it is demonstrated beyond a reasonable doubt that the statute conflicts with some designated provision of the constitution." *Id.* at 413. Given the legislature's clear expression of intent to implement the constitutional provisions of Article VII, Section 10(d), it appears that there is no such conflict beyond a reasonable doubt. In addition, in *Vinales v. State*, 394 So. 2d 993 (Fla. 1981), this Court held that "where a constitutional provision is susceptible to more than one meaning, the meaning adopted by the legislature is conclusive." *Id.* at 994 (citations omitted). *See also Florida Soc. of Ophthalmology*, *supra*, 489 So. 2d at 1120 (holding that constructions of constitutional provisions by officers or legislators affected thereby were "presumptively correct unless manifestly erroneous" (citing *Vinales*)). Thus, Appellee respectfully suggests that Article VII, Section 10(d) should be interpreted to apply to projects in which there is joint participation, but not necessarily joint ownership.

As was stated in the Complaint in this cause, the Alliance constitutes a "strategic alliance," the stated purpose of which is to "allow the Original Members to coordinate and facilitate . . . the operation of their electric generating facilities and the purchase and sale of electric capacity and energy." *Complaint*, ¶ 8 at 4. In order to effectuate that purpose, TEA "is granted sole and exclusive responsibility for . . . [s]cheduling the aggregate amount of capacity and energy provided by its members . . .

[and] [e]ntering into short- or long-term purchases or sales of electric capacity, energy and/or ancillary services between or among the parties, at least one of whom shall be TEA or one of its members . . .” and each of TEA’s Members “[a]grees to provide TEA the timely operational information required to effect commitment and purchase and sale decisions for TEA’s members; and . . . [a]grees to provide TEA the maximum flexibility in directing the use of the aggregate amount of capacity and energy provided by TEA’s members consistent with general industry or business practices and contractual obligations of TEA’s members . . ..” *Appellee’s Trial Brief* at 3-4. Thus, the arrangement evidenced by the Alliance constitutes a mechanism for the coordination of the operation of the electric generating facilities of the Members and TEA’s resource management partners, which should be viewed as constituting the “joint operation” of electrical generating or transmission facilities that is necessary in order to implicate the provisions of Article VII, Section 10(d). Accordingly, Appellant respectfully asks this Court to determine that Appellee’s participation in the Alliance is of the nature that entitles Appellee to avail itself of the protections afforded by the provisions of Article VII, Section 10(d).

CONCLUSION

Appellee seeks affirmation of the Circuit Court's Final Judgment in this cause for the following reasons:

First, insofar as TEA is jointly owned by political subdivisions and its purpose is primarily to discharge duties to the public or to provide a governmental benefit, TEA should be viewed as an instrumentality of its Members.

Second, in the event that non-municipal utilities become resource management partners of TEA, Appellee's obligations under its TEA Guarantees to guarantee TEA's obligations to third parties arising out of transactions entered into for non-municipal utilities to the extent amounts owed by TEA are not paid by TEA when due would not violate the prohibition contained in Article VII, Section 10 of the Florida Constitution against the giving, lending or use of Appellee's taxing power or credit to aid any corporation, association, partnership or person; and

Third, even though Appellee, through its participation in the Alliance, does not seek either to own or to construct any electrical energy generating or transmission facilities jointly with any other person, Appellee's participation in the Alliance is eligible for the protections afforded by the exception to Article VII, Section 10's prohibition against the lending or use of its taxing power or credit set forth in clause (d) thereof since joint operation of electrical energy generation or transmission

facilities itself is sufficient to fall within the purview of Article VII, Section 10(d), and the arrangement evidenced by the Alliance constitutes such "joint operation" within the meaning of Article VII, Section 10(d).

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Michelline R. Haynes, Assistant State Attorney, Fourth Judicial District, Duval County Courthouse, Room 600, Jacksonville, Florida 32202, Attorney for Defendant/Appellant, by hand delivery, on this 3rd day of November, 2000.

Edward C. Tannen
Assistant General Counsel,
Attorney for JEA,
Plaintiff/Appellee
117 West Duval Street
Suite 480
Jacksonville, Florida 32202
(904) 630-1700
Florida Bar No. 341568

C:\Supreme Court\04-12-01\00-2183_ans.wpd