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**BY HAND DELIVERY**

March 16, 1993

Mr. Steven C. Tribble, Director  
Division of Records and Reporting  
FLORIDA PUBLIC SERVICE COMMISSION  
101 East Gaines Street  
Tallahassee, Florida 32301

Re: Territorial Dispute Between Okefenoke Rural Electric  
Membership Corporation and the Jacksonville Electric  
Authority of the City of Jacksonville, in Duval County;  
FPSC Docket No. 911141-EU

Dear Mr. Tribble:

Enclosed for filing in the above styled docket is the original and fifteen (15) copies of OREMC's Response to JEA's Plan to Eliminate Duplicative Electric Facilities with Attachments.

In addition, in accordance with recently amended Rule 25-22.028, OREMC is submitting herewith a copy of its afore-mentioned Memorandum on diskette in work processing format. This document was prepared using Word Perfect 5.1.

ACK

AFA  Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

APP

CAF  Thank you for your assistance in connection with this matter.

CMU

CTR

EAG

LEG

JHT/bgs

LIN

Sincerely,

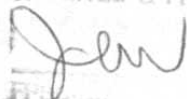
  
JAMES HAROLD THOMPSON

Enclosures

cc: Martha Carter Brown, w/encl., via Hand Delivery  
SE / Bruce Page, Esquire, w/encl.  
W S Kenneth A. Hoffman, Esquire, w/encl.

JHT  
012836-11263

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to resolve )  
territorial dispute between )  
Okefenoke Rural Electric )  
Membership Corporation and )  
Jacksonville Electric Authority )  
\_\_\_\_\_ )

DOCKET NO. 911141-EU  
Filed: March 16, 1993

**OREMC'S RESPONSE TO JEA'S PLAN  
TO ELIMINATE DUPLICATIVE ELECTRIC FACILITIES**

Okefenoke Rural Electric Membership Corporation ("OREMC" or "Okefenoke"), by and through its undersigned counsel, submits this response to JEA's plan to eliminate duplicative electric facilities, and says:

**I. Introduction**

1. On November 19, 1991, OREMC filed a petition to resolve the territorial dispute between Jacksonville Electric Authority ("JEA") and OREMC. A hearing was held on June 17, 1992.

2. The Commission issued Order No. PSC-92-1213-FOF-EU ("Order No. 92-1213" or "Order Resolving Territorial Dispute") on October 27, 1992. Therein, the Commission found that JEA systematically duplicated OREMC's facilities in northern Duval County over a period of many years and demanded that the duplication stop:

We will not allow JEA to continue its "cream skimming" approach to the provision of electric service. The practice has harmed JEA's and Okefenoke's ratepayers and led to widespread duplication of facilities, adverse to the public interest and contrary to the intent of the Grid Bill and the policies and purposes of this Commission.

Order No. 92-1213 at 8.

3. In conjunction with demanding that JEA's duplicative practices stop, the Commission's Order Resolving Territorial

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Dispute did two things. First, it established OREMC's right to serve in Duval County:

Okefenoke Rural Electric Membership Corporation shall continue to serve all of its present customers in Duval County. Service to the Airport Holiday Inn shall be returned to Okefenoke. Okefenoke shall serve all new customers JEA requests it to serve in the future. Once a customer is released to Okefenoke, all new customers in the surrounding area shall be served by Okefenoke, and Jacksonville Electric Authority shall be prohibited from serving Okefenoke's customers, unless and until JEA exercises its right to provide electric service in the county by lawful means. Those lawful means include a territorial agreement or franchise, the purchase of Okefenoke's customers and facilities at fair and reasonable prices, or the acquisition of those customers and facilities by the exercise of JEA's eminent domain powers. JEA shall not serve customers who have disconnected Okefenoke's facilities. JEA shall not duplicate the facilities of Okefenoke in northern Duval county to serve new customers or under any circumstances.

Order No. 92-1213 at 8 (emphasis added). Thus, Order No. 92-1213 defined in general terms OREMC's service territory within Duval County.

4. Second, Order No. 92-1213 imposed on JEA the responsibility to correct the existing uneconomic duplication of facilities JEA created in northern Duval County:

JEA bears the responsibility to correct the uneconomic duplication of facilities that it has created in northern Duval County. To that end we shall retain jurisdiction of this case and require JEA to submit, within 120 days of the date of issuance of our final order in this case, a specific, detailed proposal for the elimination of duplicate facilities in northern Duval County. Okefenoke shall cooperate with JEA in the creation of this proposal.

Order No. 92-1213 at 8. (emphasis added). Thus, JEA had 120 days to submit a specific, detailed proposal for the elimination of duplicate facilities in northern Duval County.

3. On February 22, 1993, JEA submitted a 1½ page proposal entitled "Jacksonville Electric Authority's Plan to Eliminate Duplicative Electric Facilities" (hereinafter "JEA's proposal"). The FPSC should reject JEA's proposal and further define OREMC's exclusive service territory in Duval County for the reasons set forth below.

**II. JEA's Proposal is not a Specific, Detailed Proposal as Required by the Order**

Order No. 92-1213 required JEA to submit a specific, detailed proposal for the elimination of duplicative facilities in northern Duval County. JEA submitted a 1½ page, general, undetailed proposal wherein JEA announced its intent to purchase or condemn OREMC's facilities and right to serve in northern Duval County. JEA's proposal does not meet the requirements of the order and should be rejected.

Order No. 92-1213 required more than a 1½ page notice of intent to condemn or purchase. OREMC made itself available to help JEA put together a specific, detailed proposal as early as November 4, 1992. (See Exhibit "A" attached hereto.) JEA held its first meeting with OREMC on December 21, 1992 and has taken 120 days to prepare a proposal which contains no maps, no list of facilities, and no meaningful information with which the FPSC can determine whether the proposal is in the public interest. The FPSC expected a specific, detailed plan for eliminating the existing duplication in northern Duval County and did not get it.

JEA's proposal does not address whether a sale or condemnation of OREMC's facilities and right to serve is in the public interest

and does not give the FPSC any information with which to evaluate the effect of JEA's proposal on consumers/customers within and without Duval County.

As shown in Section III below, JEA continues to be confused about OREMC's right to serve in northern Duval County. This confusion has resulted in additional duplication and customer inconvenience. As shown in Section IV below, JEA's proposal to purchase may be unsuccessful. Its proposal to exercise whatever right of eminent domain it may have could take many years and may also be unsuccessful. Even if a consensual or forced sale of OREMC's facilities and right to service in Duval County is possible, OREMC notes that JEA's proposal does not address the elimination of existing facilities and prevention of future duplication of facilities in the interim period between now and whenever JEA's proposal either fails or succeeds. For this reason, the FPSC should reject JEA's proposal and further define OREMC's territorial rights until such time as JEA's plan to purchase/condemn either succeed or fail.

### III. JEA Continues to Duplicate OREMC's Facilities in Duval County

Order No. 92-1213 correctly identified the source of the duplicative facilities in northern Duval County:

The duplication of facilities that exists in northern Duval County stems from JEA's belief that it has the exclusive right to serve anywhere in Duval County. Pursuant to Section 718.103 of Jacksonville's Ordinance Code, JEA has been "delegated the authority to grant permission to other electric utility companies to furnish electric service to additional premises and to extend their lines when it is not practical or economical for the Authority to furnish this service." (Emphasis added) Thus, when JEA determines that it is not practical or



economical to serve a customer in northern Duval County, it releases that customer to Okefenoke. According to Okefenoke, JEA serves approximately 1,000 customers in northern Duval County that could have easily and economically been served by Okefenoke. System planning is problematic for Okefenoke because under the current system, JEA has the sole discretion to determine which new customers Okefenoke will serve. As one witness stated at the hearing, "It is very difficult, if not impossible, to serve an area which is absolutely unpredictable."

Order No. 92-1213 at 6 (emphasis in original).

JEA has continued to operate as it did before Order No. 92-1213 was issued. JEA's case-by-case determination of which utility should service a customer has been wrong at least twice. See Affidavit of W. D. Holland (attached hereto as Exhibit "B"). To avoid the confusion JEA seems to be experiencing, the FPSC should now further define the locations where the FPSC has decided that OREMC has the right to serve in Duval County. Those areas were generally identified in Order No. 92-1213 as follows:

- A. OREMC shall continue to service all of its present locations in Duval County.
- B. Service to the Airport Holiday Inn shall be returned to Okefenoke.
- C. Okefenoke shall serve all new customers JEA requests it to service in the future.
- D. Once a customer is released to Okefenoke, all new customers in the surrounding area shall be served by Okefenoke.
- E. JEA shall not serve customers who have disconnected Okefenoke's facilities.
- F. JEA shall not duplicate the facilities of Okefenoke in northern Duval County to serve new customers.

See Order No. 92-1213 at 8. More specifically identifying the locations referred to above will help reduce the confusion JEA has

been experiencing and will promote the efficiency goals inherent in the Grid Bill.

IV. The FPSC Should Not Rely on JEA's Proposal to Condemn

JEA has threatened to propose a consensual sale/purchase for many years and has not done so. JEA has threatened to exercise whatever right of eminent domain it may have for many years and has not done so. As the Commission noted in Order No. 92-1213. The result has been extensive duplication of facilities in north Duval County to the detriment of ratepayers both within and without Duval County. The Commission should not rely on JEA's threats to purchase or condemn as means to eliminate the duplication of facilities in northern Duval County, since neither of these are actions which the FPSC, or the courts, can enforce, and either alternative can be pursued by JEA at any time.

While JEA has indicated its desire to purchase OREMC's facilities and right to serve in Duval County, it is unclear whether JEA will be able to do so. OREMC has indicated to JEA that it does not consider itself to be "for sale," but that OREMC will consider any offer that JEA cares to make. State law provisions, By-Law provisions and Federal limitations may restrict or prohibit these alternatives.

Whether one electric utility can condemn the facilities and service rights of another electric utility is an open question in Florida. While JEA claims that it has the power to condemn OREMC's facilities and rights in Duval County, OREMC notes that it has never done so. The apparent lack of a public necessity (a

prerequisite to condemnation) and the fact that the Rural Electrification Administration (REA) could intervene would make it very expensive and time consuming for JEA to attempt to exercise its power of eminent domain over OREMC. Motions to dismiss, trial by jury and appeals could take many years. In the meantime, the existing duplication and the potential for further duplication will both remain. In light of these actions, the FPSC should not rely on alternatives over which it has no control as a means to eliminate the duplication the FPSC has ordered to be remedied.

V. OREMC Proposes That Territories Be Further Defined

Of the options which may be available to it, JEA has selected the ones which are the most drastic and the ones which hold the greatest potential for customer disruption. JEA's proposal also presents a substantial risk that one utility will be harmed at the expense of the other. JEA's proposal is also one over which the FPSC has no control.

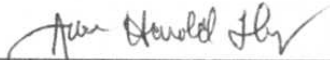
The FPSC did not retain jurisdiction over this cause to merely "rubber stamp" whatever proposal JEA might make. The FPSC retained jurisdiction to ensure that JEA's proposal is consistent with (1) the public interest, (2) the intent of the Grid Bill, and (3) the policies and purpose of the FPSC. The proposal submitted by JEA is not consistent with these factors and does not address what will happen between now and the time JEA's efforts to buy/condemn either succeed or fail.

In light of the continuing duplication of facilities in northern Duval County and the uncertainty surrounding JEA's ability to purchase or condemn, OREMC respectfully requests that the FPSC



reject JEA's proposal and further define the territorial rights already granted in Order No. 92-1213. Attached hereto as Exhibit "C" is a proposal which OREMC believes will eliminate the existing duplication with a minimum of disruption to customers. Adopting this proposal will eliminate the existing duplication and prevent future duplication while JEA pursues, in whole or in part, and in whatever other forum has jurisdiction, the time consuming means of resolution which JEA alleges it now has and alleges it has had at its disposal for many years.

DATED this 16th day of March, 1993.

  
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ATTORNEYS FOR OREMC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been furnished by U.S. Mail or Hand Delivery\* this 16th day of March, 1993, to the following:

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