

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

September 18, 1992

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING [TRIBBLE]

FROM : DIVISION OF ELECTRIC AND GAS [COLSON, BASS] *Bob*
DIVISION OF LEGAL SERVICES [BROWN, BIRCHFIELD] *MP*
MCB *Mars* *RET*

RE : DOCKET NO. 911141-EU, PETITION TO RESOLVE TERRITORIAL
DISPUTE BETWEEN OKEFENOKE RURAL ELECTRIC MEMBERSHIP
CORPORATION AND JACKSONVILLE ELECTRIC AUTHORITY.

AGENDA: 9/15/92 - CONTROVERSIAL AGENDA - PARTIES MAY NOT
PARTICIPATE

CRITICAL DATES: NONE

PANEL: DEASON, CLARK

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\911141.REC

CASE BACKGROUND

On November 19, 1991, Okefenoke Rural Electric Membership Corporation (Okefenoke) filed a petition to resolve its territorial dispute with Jacksonville Electric Association (JEA). The dispute arose over the question of who should serve the Holiday Inn - Jacksonville Airport in Duval County. The petition alleged that Okefenoke had been serving the Holiday Inn until JEA constructed electric facilities and lines to provide service to the Inn, thereby displacing Okefenoke's existing facilities.

On December 31, 1991, JEA filed a Motion to Dismiss the Petition, which the Commission denied in Order No. PSC-92-0058-FOF-EU, issued March 12, 1992. In that order the Commission held that it had exclusive jurisdiction to resolve the dispute pursuant to the specific authority granted to it under the "Grid Bill", sections 366.04 and 366.05, Florida Statutes, to approve territorial agreements and resolve territorial disputes between all electric utilities in the state.

The prehearing conference in this case was held on May 18, 1992. The hearing was held by the Commission on June 17, 1992. Before testimony was taken in the hearing the Commission heard oral

DOCUMENT NUMBER-DATE

10851 SEP 18 1992

FPSC-RECORDS/REPORTING

DOCKET NO. 911141-EU
September 18, 1992

argument on a second motion to dismiss filed by JEA. The Commission denied the second motion to dismiss.

DISCUSSION OF ISSUES

Introduction

In this docket the Commission is called upon to resolve a territorial dispute between a rural electric cooperative and a municipal electric utility that has arisen within the municipality's 1974 political boundaries. Okefenoke Rural Electric Membership Corporation (Okefenoke) has asked the Commission to resolve its territorial conflict with Jacksonville Electric Authority (JEA) in northern Duval County, where Okefenoke has been providing electric service to customers since the 1940's. The case is one of first impression because it requires the interpretation and application of the last paragraph of section 366.04 (2)(f), Florida Statutes. That paragraph states:

No provision of the chapter [Chapter 366, Florida Statutes] shall be construed or applied to impede, prevent, or prohibit any municipally owned electric utility system from distributing at retail electrical energy within its corporate limits, as such corporate limits exist on July 1, 1974. . . .

The Commission has already decided that this paragraph does not provide municipalities an exclusion from the Commission's authority under the Grid Bill to resolve territorial disputes within their 1974 political boundaries. In Order No. PSC-92-0058-FOF-EU denying JEA's first motion to dismiss in this case, the Commission said:

We believe that the provision of section 366.04(2)(f), Florida Statutes, at issue here does not exempt municipal electric systems from the Commission's jurisdiction, and thus it does not prevent the Commission from resolving territorial disputes, preventing uneconomic duplication of facilities, or ensuring the reliability of the energy grid - in municipalities, as well as elsewhere in the state. The provision simply directs the Commission to apply its authority, and carry out its responsibilities, in a manner consistent with a municipality's right to serve

customers within its 1974 corporate limits. For its part, a municipality may have a right to provide electric service to customers within its 1974 municipal boundaries, but that right is not inviolable. A municipality must exercise it in a manner that is consistent with the other provisions, and the public policy purposes, of the Grid Bill. . . .

The Commission's decision resolving this dispute must promote the public policy purposes of "The Grid Bill" (section 366.04(2) and (4), Florida Statutes) and acknowledge the municipality's right to serve customers within its 1974 municipal boundaries. On the evidence provided in this case, that decision will not be easy to make. The recommendation on the issues below attempts to achieve that balance by respecting the city's right to serve but insisting on the lawful exercise of that right.

LEGAL ISSUE

ISSUE 1: Does the Commission have the jurisdictional authority to grant exclusive territorial rights to a rural electric cooperative within the municipal corporate limits of Jacksonville in the absence of an approved territorial agreement between the JEA and the rural electric cooperative?

RECOMMENDATION: The Florida Public Service Commission has the authority to grant territorial rights to a rural electric cooperative within the municipal corporate limits of Jacksonville, where the evidence shows that the city has abused its right to serve, exercised its right in an unlawful manner, or is not ready, willing and able to serve. That grant of territorial rights, however, does not completely extinguish the municipality's right to serve customers within its 1974 municipal boundaries. The city remains free to exercise its proprietary right to provide utility service if it does so in a manner that is always consistent with the law and public policy of the state.

POSITION OF PARTIES

OREMC: Yes. The FPSC's jurisdiction to hear and resolve this territorial dispute is provided by the Grid Bill. The existence of a formal, signed territorial agreement between JEA and OREMC is not a jurisdictional prerequisite under the Grid Bill. The Legislature of the State of Florida has explicitly granted the FPSC juris-

diction to approve territorial agreements and resolve territorial disputes between all electric utilities throughout the state. The facts clearly demonstrate that a territorial dispute exists in northern Duval County. The JEA does not have an exclusive right to serve in Duval County and never has. Even if JEA did have the "exclusive" right to serve throughout Duval County as of October 1, 1968, or on July 1, 1974, the JEA has never enforced and, therefore, has waived that right.

JEA: No. The central question raised by this issue has not yet been answered. The Commission's staff position expressed in the prehearing order states that the issue has been resolved by the Commission's ruling on JEA's Motion to Dismiss. That order (No. PSC-92-0423-PHO-EU) declared that the Commission has the responsibility to ensure that municipalities exercise their right to provide electric service within their 1974 boundaries in a manner consistent with all relevant provisions of the Grid Bill. The order did not declare, however, that the Commission has the power to grant OREMC's request of an exclusive service territory within the City of Jacksonville. Only the City Council may do that.

The Commission may have the authority to devise and order a proper remedy to this dispute. As stated in the order, the Commission's authority must be applied in a manner consistent with a municipality's right to serve customers within its 1974 corporate limits. Encircling some of the City of Jacksonville with a line and granting a rural electric cooperative the exclusive right to serve the defined area is not consistent with the City's legal right to serve recognized by the Commission.

STAFF ANALYSIS: In Order No. PSC-92-0058-FOF-EU, denying JEA's motion to dismiss, the Commission determined that it had the authority to resolve the dispute between Okefenoke and JEA in northern Duval County. The Commission interpreted the last paragraph of section 366.04(2)(f), Florida Statutes, as a requirement that it resolve this dispute in a manner consistent with the city's right to provide electric service to customers within 1974 municipal boundaries.

The hearing has been held in this matter, and the evidence presented shows the problems that have developed between Okefenoke and JEA over the years. Both utilities presently serve in northern Duval County. JEA has permitted, encouraged and assisted Okefenoke in serving the area when it was not "economical and practical" for JEA. When it was "economical and practical" for JEA to serve, JEA

duplicated Okefenoke's facilities to do so. JEA has "cream-skimmed" the most lucrative services in northern Duval County, leaving Okefenoke to serve the rest. JEA takes over service previously provided by Okefenoke if a customer disconnects Okefenoke's facilities, and when that occurs JEA provides no compensation to Okefenoke for the loss of facilities or customer revenues. Extensive duplication of facilities now exists in northern Duval County to the detriment of Okefenoke's and JEA's ratepayers, the citizens of Duval county, and the public interest.

The relationship between these utilities has caused considerable harm to all concerned, and the harm must be corrected. The question now becomes; how shall the Commission resolve this problem in a way that protects the public interest and respects the municipality's right to provide electric service? We believe this can be done by insisting on the lawful exercise of the city's right to serve. Staff's recommendation is based on the established legal principle that a municipality's right to provide utility service is a proprietary right. In the exercise of that right a municipality is held to the same standards and laws as all other utility providers. Hamler v. City of Jacksonville, 122 So. 220 (Fla. 1922); City of Lakeland v. Amos, 143 So. 744 (Fla. 1932); Edris v. Sebring Utilities Commission, 237 So.2d 585 (Fla. 2d DCA 1970). See also, Williams v. The City of Mount Dora, 452 So. 2d 1143, 1145-1146 (Fla. 5th DCA 1984), where the court explained:

The providing of utility services by a municipality is a private or proprietary function in the exercise of which the municipality is subject to the same legal rules applicable to private corporations. The fact that a municipal utility may enact its rules and regulations as ordinances does not itself give it rights or duties with respect to users any different than those possessed by private utility companies.

The central question to ask in this case is not whether JEA has the right to serve in Duval County to the exclusion of all other utilities, but whether JEA has exercised the right it does have in a manner that is consistent with the standards and laws that apply to the provision of electric utility service in the state. JEA has a legal duty to provide adequate and reliable electric service to its customers at reasonable and non-discriminatory rates. It has the obligation to avoid uneconomic and unnecessary duplication of facilities. It has the obligation

to deal reasonably and fairly with other electric utilities. The facts of this case show that JEA has not adhered to the standards and laws that apply to the provision of electric utility service in the state. Therefore, under the authority granted to it in Chapter 366, Florida Statutes, the Commission has the responsibility to correct the harm caused by JEA's failure to exercise its right to serve in a lawful manner, and to ensure that JEA will exercise its right to serve lawfully in the future. The Commission may use all reasonable means to fulfill that responsibility, including the grant of territorial rights to another utility within Duval County.

LEGAL ISSUE

ISSUE 2: Does the Commission have the jurisdictional authority to order the JEA to refrain from providing at retail electric service to a customer located entirely within the municipal corporate limits of Jacksonville when there exists no approved territorial agreement regarding the customer's site?

RECOMMENDATION: Yes, the Commission has the authority to order JEA to refrain from providing electric service to a customer within the city of Jacksonville if that customer is served by another electric utility, or if service by JEA would duplicate the existing electric facilities of another electric utility, and if JEA has not attempted to serve that customer by the means available to it under the law.

POSITION OF PARTIES

OREMC: Yes. Please refer to Okefenoke's position on Issue 1.

JEA: No. Same position as set forth under Issue 1 which is incorporated herein by reference.

STAFF ANALYSIS: As indicated in Issue 1, the Commission's responsibility under the facts of this case is to correct, to the extent possible, the harm caused by JEA's actions in northern Duval County and to ensure that JEA will only provide service to utility customers in Duval county in a lawful manner that does not duplicate the existing facilities of other utility providers. To fulfill its responsibility, the Commission has the authority to order JEA to refrain from providing electric service to a customer within the city of Jacksonville.

The law has provided JEA with several tools to exercise its right to serve in Duval County: JEA may enter into territorial agreements or franchise agreements with other utilities; JEA may purchase the facilities of other utilities presently providing service in Duval County; and, as JEA points out in its brief at page 20, it may exercise its right of eminent domain to condemn property of another electric facility for just compensation. JEA may not duplicate facilities to provide electric service in Duval County. JEA may not permit another utility to provide service at its pleasure and then displace that utility's service with its own without compensating the utility for the loss. The public interest is not served by such actions.

LEGAL ISSUE

ISSUE 3: Does JEA have the exclusive right to serve in Duval County even where other utilities served prior to October 1, 1968?

RECOMMENDATION: JEA only has the exclusive right to serve in Duval County if it exercises that right in a lawful manner.

POSITION OF PARTIES

OREMC: No. Please refer to Okefenoke's position on Issue 1.

JEA: Yes. Under Article VIII, Section 2(b), Florida Constitution, the provisions of Chapter 166, Florida Statutes, the 1974 municipality provision in Section 366.04(2), Florida Statutes, and the Supreme Court's decision in Storey v. Mayo, the JEA has the exclusive right and obligation to serve the citizens of Jacksonville. This power and responsibility can be exercised by the JEA or by allowing some other utility (Okefenoke) to serve within the city limits by grant of franchise, license, or by territorial agreement. JEA believes that these options remain local government decisions of the sovereign. The city's grant of permission to Okefenoke to serve Jacksonville citizens does not waive the municipal power nor does it relieve the city of its responsibility to render service in the City of Jacksonville as defined by the City Charter. It is only through the exercise of these powers and responsibilities by the city that Okefenoke serves Jacksonville citizens. The JEA has an exclusive right to serve in the city if the city so chooses. Any other utility's right to serve the City of Jacksonville must be granted by the City through the JEA.

STAFF ANALYSIS: As stated in the analysis of Issue 1, JEA's right to provide electric service in Duval County is a proprietary right that may only be exercised in a manner consistent with the standards and laws that apply to the provision of electric service by any electric utility. JEA's right to serve in Duval County does not include the right to duplicate existing electric facilities. As stated in the analysis of Issue 2, the law has provided JEA certain tools to exercise its right to serve. JEA only has the right to serve in Duval County if it uses the lawful tools available to it.

LEGAL ISSUE

ISSUE 4: If the 1974 Clause preserved JEA's right to serve throughout Duval County, does JEA have an unconditional obligation to serve throughout Duval County?

RECOMMENDATION: The parties have basically agreed that JEA has an obligation to serve throughout Duval County commensurate with its right to serve.

POSITION OF PARTIES

OREMC: The rights and obligations to serve go hand in hand. If a utility has a right to serve a particular area, it must accept the responsibility to serve. Since JEA has failed to serve certain customers in certain areas and has delegated that right to Okefenoke by "releasing" members (Tr. 298, Ferdman), it has permanently waived any rights it may have had. Moreover, to the extent that JEA must duplicate Okefenoke's facilities to serve new customers located near customers previously released to Okefenoke, the Commission should hold that JEA has waived the right to serve those new customers as well. JEA does not have the right under Chapter 366 to serve anywhere it wants if the FPSC decides there would be uneconomic duplication of facilities and an adverse impact on ratepayers inside and outside of Duval County. See also Okefenoke's position on Issue No. 1.

JEA: Yes. As discussed above and as stated by the Florida Supreme Court, a citizen of a city which operates its own electric system can compel service by the city. Storey v. Mayo, 217 So.2d 304, 308 (Fla. 1968). The city may elect one of many options to provide the service, but it must provide service. No rural electric cooperative has this obligation to serve a resident of a municipality.

STAFF ANALYSIS: It is well settled that a public utility that has a right to provide electric service to an area also has the obligation to provide that service adequately and reliably at reasonable, nondiscriminatory rates. If JEA claims the right to serve throughout Duval County, JEA has the obligation to serve. The right must be exercised and the obligation fulfilled in a lawful manner that does not include the uneconomic duplication of facilities.

ISSUE 5: What is the geographical description of the area in dispute?

RECOMMENDATION: Staff recommends that the Commission find that the area in dispute is all of northern Duval County.

POSITION OF PARTIES

OREMC: Okefenoke provides retail electric service to approximately 2300 members in northern Duval County. (Tr. 80, Page). The area in northern Duval County where Okefenoke serves includes the Black Hammock Island Area, Yellow Bluff/Starrett Road Area, Airport Area, Lannie Road Area and West Dinsmore Area. (Tr. 54-55, Page). Insofar as JEA has claimed and now claims the exclusive right to serve throughout Duval County (Tr. 281-282, Ferdman), every location where Okefenoke provides retail electric service in Duval County and all undeveloped areas where Okefenoke could efficiently provide service are in dispute or are potential areas of dispute. (Tr. 60, Page). One location in which the territorial dispute between JEA and Okefenoke is greatest is the Holiday Inn. JEA began serving the Holiday Inn on November 25, 1991 (Tr. 280, Ferdman), without Okefenoke's permission (Tr. 58, Page), even though Okefenoke has been providing service to that customer for over 20 years. (Tr. 137, Middleton). The Holiday Inn was Okefenoke's largest customer. (Tr. 244-245, Wrightson).

JEA: As stated in JEA's Motion to Dismiss or in the Alternative, Motion to Strike, the only area in dispute under the pleadings is the Airport Holiday Inn. No allegation has been made that JEA is attempting to improperly provide service to other Okefenoke customers in the city. As shown throughout the hearing, JEA's attempts to purchase Okefenoke's facilities have been rebuffed for years.

STAFF ANALYSIS: Although JEA contends that the only area in dispute is the Jacksonville Airport Holiday Inn, the record shows that northern Duval County's service area is in dispute. (TR 60, 80)

Uneconomic and unnecessary duplication of facilities abounds in northern Duval County. (See Issue 14) JEA has attempted to argue that this duplication does not automatically make a territorial dispute. Staff disagrees. While Okefenoke may have filed its petition to resolve who should serve the Holiday Inn - Jacksonville Airport (TR 60-61), the Commission can not ignore the many other areas in northern Duval County where a similar situation may arise. Thus, the portions of northern Duval County where Okefenoke currently serves, and those portions of northern Duval county where Okefenoke could efficiently and economically provide electric service, are the areas in dispute in this proceeding.

ISSUE 6: Which utility has historically served the area in dispute?

RECOMMENDATION: Staff recommends that the Commission find that while both utilities have historically served the area in dispute, it appears that there are areas where Okefenoke was the first to provide electric service.

POSITION OF PARTIES

OREMC: Okefenoke has been providing retail electric service to members in Duval County since the late 1940's. (Tr. 113-114, Gibson). Okefenoke built facilities into northern Duval County (the "Victor" and "K" projects) at that time to provide retail electric service to persons and businesses in northern Duval County who could not get electric service from a municipal electric system or an investor-owned utility. (Tr. 132-135, Middleton; Tr. 114, Gibson). Since that time, Okefenoke has upgraded and expanded its facilities in northern Duval County to accommodate member growth, improve reliability and reflect changes in technology. (Tr. 135, Middleton). Okefenoke had a significant investment and operating presence in Duval County at the time JEA and the Consolidated Government came into existence. (Tr. 136, Middleton). Okefenoke signed a contract to provide electric service to the Holiday Inn before the Consolidated Government of Jacksonville came into existence and actually began providing service to the Holiday Inn shortly thereafter. (Tr. 136-137, Middleton).

JEA: Both JEA and Okefenoke have a long history of service in the consolidated corporate limits of the City of Jacksonville which, apart from the Airport Holiday Inn, are not the subject of a territorial dispute. JEA began serving the Airport Holiday Inn on or about November 25, 1991. Prior to that time, the Airport Holiday Inn was served by Okefenoke. Before consolidation in 1968 both utilities served the area north of the pre-1968 city limits.

STAFF ANALYSIS: JEA's predecessor, the City of Jacksonville's department of electric utilities, first served downtown Jacksonville in 1895. (TR 274-275) Okefenoke first served customers in Duval County in 1947. (TR 114) Okefenoke built lines in northern Duval County "to provide retail electric service to persons and businesses who could not get electric service from a municipal electric system or an investor-owned utility." (TR 114)

When the Consolidated Government of Jacksonville and the JEA were formed in 1968, Okefenoke had approximately 622 members in Duval County, and had invested approximately \$500,000 to provide service to those members. (TR 115-116) As of about July 1, 1974, the date the grid bill became effective, Okefenoke had approximately 1,007 members in Duval County, and had invested approximately \$1 million. (TR 121) In 1990, Okefenoke had approximately 2,249 members in Duval County, and had invested approximately \$3.2 million. (TR 139) JEA presently serves more than 300,000 retail customers in Duval, Clay, and St. Johns Counties. (TR 275)

There are five general areas where Okefenoke serves in Duval County. They are Black Hammock Island, the Yellow Bluff/Starrett Road Area, the Airport Area, the Lannie Road Area, and the West Dinsmore Area. (TR 54-55) Within these areas, there are numerous cases of duplication of facilities. (TR 180) Based on Witness Dew's observations in the field, in most of the areas of conflict, Okefenoke had its lines in place before JEA. (TR 187) For instance, Okefenoke constructed its primary lines along Lem Turner, Lannie, Yellow Bluff, and Starrett Roads in 1951. (TR 233, Exhibit 4) Witness Ferdman testified that JEA's distribution lines built along these same roads were constructed after 1951. (TR 311) In fact, it appears JEA constructed its primary lines on Lannie and Yellow Bluff Roads at least 20 years after the Okefenoke lines were constructed. (TR 180-181)

While the evidence shows that both utilities have historically served in northern Duval County, it also shows that there are some areas where Okefenoke served before JEA or JEA's

predecessors. Even JEA's Witness Ferdman admits that Okefenoke has historically served in some areas of northern Duval County. (TR 311)

ISSUE 7: What is the location, purpose, type, and capacity of each utility's facilities existing as of the filing of the petition in this case?

RECOMMENDATION: Staff recommends that the Commission find that both utilities operate electric facilities in northern Duval County.

POSITION OF PARTIES

OREMC: Okefenoke provides service to its members in Duval County from three sources. (Tr. 176, Dew). One is a substation located in Callahan, Florida, another is the Yulee Metering Point located on Highway 17 just north of the Duval County line, and the third is the Oak Grove Metering Point located near the intersection of Cedar Point Road and New Berlin Road inside Duval County. (Id.) The Callahan Substation was extensively rebuilt in 1990 and presently consists of 2-12/16/20 MVA 230-24.5 KV transformers and 3-14.4/24.5 KV distribution circuits. (Id.) One of these circuits, known as the Dinsmore Circuit, provides service into Duval County via a 4/OACSR primary line which has a capacity of 14.7 MVA. This line presently serves an electric demand of approximately 6.2 MW. (Id.)

The Yulee Metering Point consists of 3-200A voltage regulators and interconnects with Florida Power & Light Company. (Id.) The station has 2-14.4/24.5 KV circuits. (Id.) The north circuit feeds 11 consumers in Nassau County. (Id.) The south circuit serves into Duval County. (Id.) The circuit has 4/OACSR as the primary conductor to the point where this circuit splits in two directions, each with a primary conductor of 1/OACSR. (Tr. 176-177, Dew). This station serves 5.8 MVA of load in Duval County and has a capacity of 8.6 MVA. (Tr. 177, Dew). It should be noted that this 5.8 MW includes load at the Holiday Inn on Airport Road. (Id.)

The Oak Grove Metering Point consists of 3-200 amp voltage regulators which are served by JEA. (Id.) This station has 2-14.4/24.9 KV distribution circuits, both of which serve a total demand of 2.7 MW within Duval County. (Id.) The capacity of this station is 8.6 MVA.

Okefenoke is without knowledge as to specific details regarding the location, purpose, type and capacity of JEA's facilities throughout Duval County as of the filing of the Petition in this case; however, as discussed below in Okefenoke's position to Issue No. 15, Okefenoke has identified numerous, specific instances in which JEA has duplicated Okefenoke's facilities in northern Duval County. Representative examples of such duplication and a description of JEA's duplicative facilities are outlined in Okefenoke's position to Issue No. 15.

Insofar as the JEA's facilities at the Holiday Inn are concerned, JEA recently constructed four new spans of three-phase 2ACSR wire on concrete poles parallel to Airport Road to a riser pole located approximately 40 feet from the existing riser pole owned by Okefenoke. (Tr. 189, Dew). From that point, a two and one-half foot wide trench was cut for a length of about 600 feet through the parking lot of the Holiday Inn. (*Id.*) One three-phase underground primary cable was installed in conduit in this trench. (*Id.*) Two manholes were also installed to facilitate pulling of this cable. (*Id.*) The trench ends at the Holiday Inn's electric switch yard, which contains one 1000 KVA transformer, one 1500 KVA transformer, a new 600 volt switch yard and bus arrangement feed permanently from JEA's transformers. (Tr. 190, Dew). All of this equipment duplicates equipment which Okefenoke has been using to provide service to the Holiday Inn over the years. (*Id.*) JEA spent \$53,000 to duplicate Okefenoke's existing facilities. (Tr. 303, Ferdman).

JEA: As the petitioner seeking affirmative relief from the Commission, Okefenoke bears the burden of proof in this proceeding. See, e.g., Florida Power Corp. v. Cresce, 413 So.2d 1187 (Fla. 1982); Citizens v. Florida Public Service Commission, 440 So.2d 371 (Fla. 1st DCA 1983); South Florida Natural Gas v. Florida Public Service Commission, 534 So.2d 695 (Fla. 1988). The Commission's own rule, Rule 25-6.0441(1), F.A.C., requires a utility to submit, inter alia, data pertaining to the location, purpose, type and capacity of its existing facilities as a predicate to resolution of a territorial dispute. It is difficult to conceive how the Commission may reach an informed decision determining territorial rights throughout northern Jacksonville without such data and other data (additional cost of facilities, reliability of facilities, existing and planned load) required by Rule 25-6.0441(1), F.A.C.

DOCKET NO. 911141-EU
September 18, 1992

Okefenoke failed to present evidence addressing such information required by Rule 25-6.0441(1), F.A.C., and consequently, the Commission should dismiss Okefenoke's petition as Okefenoke has clearly failed to meet its burden of proof as defined by Commission rule.

STAFF ANALYSIS: Okefenoke has three sources of power from which it serves customers in northern Duval County. (TR 176) They are the Callahan Substation, the Yulee Metering Point, and the Oak Grove Metering Point. (TR 176)

In northern Duval County, JEA has extended distribution lines along Lem Turner, Lannie, Yellow Bluff, Starrett and Airport Roads (TR 180-181, 311-313) JEA presented no evidence concerning the size and capacity of its distribution lines.

Because the adequacy of facilities was not at issue, there was no evidence presented at the hearing which questioned the sufficiency of JEA's or Okefenoke's facilities in northern Duval County. Instead, the evidence focused on the duplication of facilities throughout northern Duval County.

ISSUE 8: Are there other areas of potential conflict between the service areas of Okefenoke and JEA?

RECOMMENDATION: Staff recommends that the Commission find that the only areas of conflict between JEA and Okefenoke are in northern Duval County.

POSITION OF PARTIES

OREMC: Insofar as JEA claims the exclusive right to serve throughout Duval County (Tr. 281-282, Ferdman), every location where Okefenoke presently provides retail electric service in northern Duval County and all undeveloped areas where Okefenoke could provide service in Duval County are in dispute or are potential areas of dispute. (Tr. 59-60, Page). JEA's position that there is no territorial dispute in northern Duval County, other than the Holiday Inn, is inconsistent with the evidence in this case and the positions JEA took at earlier times in this proceeding. (Tr. 289, 291, 293, Ferdman). Otherwise, there are no other areas of potential conflict between Okefenoke and JEA.

JEA: No.

STAFF ANALYSIS: There was no evidence presented at the hearing that would show the area of dispute extends outside of northern Duval County.

ISSUE 9: Is either utility presently serving the area in dispute?

RECOMMENDATION: Staff recommends that the Commission find that both JEA and Okefenoke are presently serving the area in dispute.

POSITION OF PARTIES

OREMC: Even though Okefenoke was the first to provide retail electric service in northern Duval County in the late 1940's, (Tr. 113-114, Gibson) and had a significant investment and operating presence in Duval County at the time JEA and the Consolidated Government came into existence (Tr. 130, Middleton) and in 1974 (Tr. 138, Middleton), JEA has over the years encroached on the areas historically served by Okefenoke by systematically building duplicative facilities and serving customers when it was "practical and economical" for JEA to do so. (Tr. 308, Ferdman).

A particularly vivid example of this practice is the Holiday Inn episode wherein four new spans of three-phase 2ACSR wire on concrete poles, a new riser pole, 600 feet of three-phase underground primary cable, one 1000 KVA transformer, and one 1500 KVA transformer, were installed by JEA so JEA could provide service to the Holiday Inn. (Tr. 189-190, Dew). JEA began providing service to the Holiday Inn on November 25, 1991, (Tr. 280, Ferdman) without Okefenoke's permission (Tr. 58, Page), even though Okefenoke had been providing service to the Holiday Inn for over 20 years. (Tr. 137, Middleton). The equipment installed to serve the Holiday Inn duplicated Okefenoke's existing facilities. The cost of these duplicative facilities to JEA was approximately \$53,000 (Tr. 303, Ferdman).

JEA: JEA is presently serving the Airport Holiday Inn.

STAFF ANALYSIS: The record shows that both utilities are presently serving customers in northern Duval County. (See Issues 5, 6, 7) This practice has resulted in uneconomic and unnecessary duplication of facilities in the disputed area. (See Issue 14).

ISSUE 10: What is the expected customer load and energy growth in the disputed area and surrounding areas?

DOCKET NO. 911141-EU
September 18, 1992

RECOMMENDATION: Staff recommends that the Commission find that northern Duval County will experience growth in the future.

POSITION OF PARTIES

OREMC: The issue of specific load growth rates is not an issue in this case; however, future growth in the disputed area is an important issue in this case. (Tr. 220, Dew). It is generally recognized that the growth in northern Duval County will increase now that the Dames Point Bridge has been completed. (Tr. 260, Wrightson). Okefenoke has plans and the ability to meet expected customer load and energy growth in the disputed areas. (Tr. 193-194, 197, Dew). Providing territorial integrity for Okefenoke and JEA will allow both the plan more efficiently and with more certainty. (Tr. 200-201, Dew).

JEA: JEA incorporates by reference its response to Issue 7. Further, city growth involves more than just additional electric service. Jacksonville, like other municipalities, is responsible for planning and zoning, public safety, roads, schools, and the many other governmental functions within its boundaries. Okefenoke has only a financial interest in Jacksonville's future growth. JEA is an agency of municipal government which has an interest in and responsibility for all aspects of growth.

STAFF ANALYSIS: When Okefenoke built its first lines in Duval County, the northern part of the county was sparsely populated and rural. However, the demographic make-up of northern Duval County is changing. Both utilities agree that the disputed area will experience growth in the future. (TR 251)

Both utilities plan to serve new customers in the disputed area. (TR 252, 297) JEA's system plan includes serving all customers it determines would be "economically" served by the municipality, and releasing the "uneconomical customers" to Okefenoke. (TR 307). Thus, 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 Witness Dew stated, "it is very difficult, if not impossible, to serve an area which is absolutely unpredictable." (TR 200).

ISSUE 11: What additional facilities would each party have to build to serve the disputed area?

DOCKET NO. 911141-EU
September 18, 1992

RECOMMENDATION: Staff recommends that the Commission find that both utilities have facilities in place to serve the disputed area.

POSITION OF PARTIES

OREMC: The specific additional facilities each party would have to build to serve the disputed area was not developed as an issue by the parties. Okefenoke has the ability to build additional facilities if needed to meet expected customer load and energy growth in the disputed areas. (Tr. 197, Dew).

JEA: No facilities are required in the immediate future. Building new facilities would be an unnecessary duplication.

STAFF ANALYSIS: This issue is not really relevant to the case at hand. The facts of this case present a policy issue, not a specific question of who should serve a particular subdivision. Both parties have a presence in northern Duval County. Thus the issue is not what additional facilities need to be constructed, but the uneconomic duplication which is already present in the disputed area.

ISSUE 12: What is the ability of each utility to extend existing facilities to the area in question?

RECOMMENDATION: Staff recommends that the Commission find that both utilities are capable of serving the disputed area.

POSITION OF PARTIES

OREMC: Okefenoke has the ability to extend existing facilities throughout the disputed areas. (Tr. 197, Dew). In the past, Okefenoke's ability to do so has been restricted by JEA's policy of allowing Okefenoke to expand into new areas and serve new customers only when it is not "economical or practical" for JEA to do so itself. (Tr. 194-197, Dew). If Okefenoke is allowed to operate within a discrete area of Duval County without restriction by JEA, Okefenoke will be able to efficiently extend its facilities to meet future growth in that area. (Tr. 194-197, Dew).

JEA: An extension of facilities by either party is unnecessary at this time. The issue involves service to existing customers rather than future customers.

STAFF ANALYSIS: Again, the focus of this case is not the facilities that must be constructed to serve an area, but the duplication of the facilities that have already been constructed. No evidence was presented at hearing to question the technical ability of either utility to serve the disputed area.

ISSUE 13: How long would it take each utility to provide service to the disputed area?

RECOMMENDATION: Staff recommends that the Commission find that both utilities presently provide service to the disputed area.

POSITION OF PARTIES

OREMC: Since JEA has already begun providing service to the Holiday Inn, and did so without Okefenoke's permission on November 25, 1991 (Tr. 280, Ferdman), how long it will take JEA to serve the Holiday Inn is not an issue in this case. Since Okefenoke had been serving the Holiday Inn for over 20 years before November 25, 1991 (Tr. 137, Middleton), it would not be difficult or time-consuming for the Okefenoke to re-connect its equipment and begin serving the Holiday Inn again.

Over the years, Okefenoke has been providing timely connections to essentially all new services which JEA has "allowed" Okefenoke to serve. (Tr. 119-120, Gibson). JEA, on the other hand, has only provided service to customers when it was "economical and practical" for JEA to do so. (Tr. 305-306, Ferdman). This policy is inconsistent with the public policy purposes of the Grid Bill and has prevented Okefenoke from serving at least 1,000 consumers over the years. (Tr. 183, Dew). Okefenoke has not waived its right to complain about this policy because one cannot waive the right to complain about something which is contrary to public policy. Estoppel & Waiver at § 87, n. 74. If Okefenoke is allowed to operate within a discrete area of Duval County without restriction by JEA, Okefenoke will continue to provide good service and timely connections in that area. (Tr. 201, Dew).

JEA: JEA is presently serving the Airport Holiday Inn. The other areas within the consolidated corporate limits of the City of Jacksonville are not the subject of a territorial dispute. These areas are already being served.

STAFF ANALYSIS: Because both utilities presently provide service to the disputed area, this issue is not relevant to the outcome of this proceeding.

ISSUE 14: Has unnecessary and uneconomical duplication of electric facilities occurred in the vicinity of the disputed area or in other areas of potential dispute between the parties?

RECOMMENDATION: Staff recommends that the Commission find that unnecessary and uneconomical duplication of electric facilities has occurred throughout northern Duval County.

POSITION OF PARTIES:

OREMC: Yes. Rather than condemning or buying Okefenoke's facilities, JEA has pursued a policy of duplicating Okefenoke's facilities when it was reasonable and practical for JEA to do so, without regard to the impact on anyone else. (Tr. 297-298, Ferdman). Specific examples of duplication of facilities are listed in Okefenoke's Response to Fact Issue No. 15.

The cases of duplication of facilities (both unnecessary and uneconomical) caused by JEA's practice of encroaching on areas historically served by Okefenoke in Duval County are too exhaustive to list. (Tr. 180, Dew). One estimate in the record suggests that 50-60% of Okefenoke's lines in Duval County have been duplicated by JEA. (Tr. 234, Dew). A few representative examples of the duplication caused by JEA include:

- A. Along Lannie Road east of the Jacksonville Penal Farm, Okefenoke has a primary line which has been in place since 1951 which serves numerous members near the end of Lannie Road. (Tr. 180, Dew). Based on pole brands (birthmarks) observed in the field on JEA's line, JEA constructed approximately 1.0 miles of primary line in 1974 to Chaddy Lane. (Id.) This line serves three residential customers from two distribution transformers. (Tr. 181, Dew). These customers are located adjacent to existing Okefenoke lines.

- B. JEA's service to Eagle Bend Road off of Yellow Bluff Road duplicates a line Okefenoke has had in this area since 1955. (Id.) Around 1970, JEA constructed 3,500 feet of primary line on the opposite side of Yellow Bluff Road from Okefenoke's line to Eagle Bend Road so they could serve the subdivision in Eagle Bend. (Id.)
- C. On Moncrief-Dinsmore Road JEA constructed over 2,000 feet of three-phase primary line in 1987 along the west side of the road to serve a single consumer who required three-phase service. (Id.) Okefenoke has a three-phase line on the east side of the road which has been in place since 1969. (Id.)
- D. At 15033 Braddock Road, Okefenoke had been providing service to this address since 1981, and JEA had installed a transformer, a secondary pole (branded 1991) and a secondary conductor which crosses Braddock Road and goes under Okefenoke's line to the secondary pole. (Id.) JEA also has a length of service wire coiled up on the pole. (Tr. 181-182, Dew). The length of the service wire appears to be of sufficient length to extend to the weather head of the electric service at this address which is already served by Okefenoke. (Tr. 182, Dew).
- E. Okefenoke has been in the Utsey Road area since 1955. (Id.) JEA constructed more than one mile of single-phase line to this road in order to serve approximately five customers. (Id.) Based on the pole brands, JEA built this line in 1979. (Id.)
- F. Cisco Garden Subdivision is served by both utilities. It appears that the services are equally divided between JEA and Okefenoke and that they both constructed within the subdivision in the early 1970's. (Id.)

JEA: Duplication of facilities has occurred in Jacksonville. The questions of necessity and economics depend on the different points of view. If all facilities that now exist were owned by one utility, virtually all of the facilities including the lines would remain in use. The key to avoiding future duplication is unitary ownership.

STAFF ANALYSIS: In the case at hand, there are numerous instances of duplication of facilities. (TR 180) As discussed in Issue 6, in most cases where there is unnecessary and uneconomic duplication of facilities, Okefenoke's lines were there first. Even JEA's

witness Ferdman admitted that JEA has duplicated Okefenoke's lines.
(TR 311-312)

This duplication stems from JEA's belief that it has the exclusive right to serve anywhere in Duval County. (TR 290) 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 internally determines that it is not practical or economical to serve a customer in northern Duval County, it releases that customer to Okefenoke. (TR 290)

According to Okefenoke, JEA serves approximately 1,000 customers in northern Duval County that could have easily and economically been served by Okefenoke. (TR 183, 255) At present, duplication exists along the following roads and areas: Lannie Road, Eagle Bend Road, Yellow Bluff Road, Starrett Road, Moncrief-Dinsmore Road, Braddock Road, Utsey Road, Lem Turner Road, Cisco Garden Subdivision, Carver Manor Subdivision, as well as the Jacksonville Airport area. (TR 181-183, 311-312) While these areas have varying amounts of duplication (TR 86), even JEA's Witness Ferdman admits that there are some areas in northern Duval County where the lines are terribly commingled. (TR 313)

Duplication is uneconomic and wasteful. (TR 313) Duplication creates safety risks. (TR 314) There are also other problems associated with duplication of electric facilities, such as: availability of right-of-way, compliance with the National Electrical Safety Code, coordination of construction between the utilities, trouble shooting outages, and increased line losses. (TR 183-184)

A blatant example of the duplication in northern Duval County is the duplication that surrounds the Holiday Inn - Jacksonville Airport. The Holiday Inn is located at the intersection of I-95 and Airport Road. Both Okefenoke and JEA have facilities on Airport Road. The Holiday Inn had received service from Okefenoke for over 20 years when it partially disconnected its service from Okefenoke in November of 1991. (TR 57) In early 1991, the Holiday Inn manager contacted JEA expressing a desire to become a customer of the municipality. The manager was told that "if he could make arrangements to have his electric service disconnected from Okefenoke, JEA would serve the Holiday Inn." (TR 280) While the Holiday Inn hired a contractor to make the necessary changes to

DOCKET NO. 911141-EU
September 18, 1992

switch to JEA (TR 280), JEA also installed facilities in order to serve the hotel. (TR 190) In fact, JEA spent approximately \$53,000 to serve the Airport Holiday Inn. (TR 303)

Although the bulk of the load related to the Holiday Inn is now served by JEA, Okefenoke continues to serve the Holiday Inn's sign located next to I-95. (TR 189) In addition, Okefenoke serves a sewer treatment plant adjacent to the Holiday Inn from a padmounted transformer located on the Holiday Inn's property. (TR 189) The Holiday Inn was Okefenoke's largest customer (TR 259), yet the JEA expanded its facilities to serve the Holiday Inn without even consulting Okefenoke. (TR 59) JEA did not compensate Okefenoke for this loss. While JEA duplicated facilities to serve the Holiday Inn, the municipality states that to return the Holiday Inn to Okefenoke would "perpetuate duplication of facilities." (TR 281)

When the utilities developed Operating Guidelines in 1978, they did attempt to eliminate duplication of facilities in the disputed area. (See Issue 18) However, the record shows that very little progress has been made toward eliminating the duplication of facilities in northern Duval County. JEA has continued to expand its system into the area that Okefenoke has traditionally served. (TR 123)

ISSUE 16: (STIPULATED) Do the parties have a formal territorial agreement that covers the area in dispute, or any other areas of potential dispute?

RECOMMENDATION: Staff recommends that the Commission find that the parties have not entered into any formal territorial agreements.

POSITION OF PARTIES

OREMC: No. (Stipulated Issue)

JEA: No.

STAFF ANALYSIS: The parties stipulated that they have not entered into any formal territorial agreements.

ISSUE 17: Have the parties made any attempts to reach agreement on who should serve the disputed area, or any other areas of potential dispute?

RECOMMENDATION: Staff recommends that the Commission find that although the parties have never entered into a formal territorial agreement, they have made attempts to do so.

POSITION OF PARTIES:

OREMC: Yes. During the mid-1970's, Okefenoke and JEA held discussions for the purpose of entering into a territorial agreement for Duval County. (Tr. 121, Gibson). The parties drafted an agreement, (Tr. 121, Gibson; Ex. 6) and even though Okefenoke was willing to do so, the parties did not execute the agreement because the general counsel of the Consolidated Government of Jacksonville advised JEA against signing the agreement. (Tr. 121-122, Gibson). In addition, JEA and Okefenoke have considered whether a purchase/sale transaction would be in their mutual interests, but have never come close to consummating such a transaction. (Tr. 120, Gibson). Even though JEA claims it wants to buy Okefenoke's facilities in Duval County (Tr. 285, Ferdman), JEA has never made a reasonable offer to purchase these facilities.

JEA's position that it does not have the authority to enter into a territorial agreement dividing territory in Duval County is self serving. JEA has admitted that they have the right and power to release individual customers to Okefenoke in Duval County in perpetuity (Tr. 298, Ferdman), but refuses to admit that it can grant territorial rights when those customers add up to a whole territory. (Id.) JEA's position that it has no authority to enter into a territorial agreement dividing territory in Duval County when it proposed and agreed to the 1978 Operating Guidelines places form over substance and is unreasonable. This is especially true in light of the fact that JEA does not have an exclusive right to same in Duval County. See Okefenoke's position on Issue No. 1.

JEA: Yes. JEA has offered to compensate Okefenoke to acquire their interests. Okefenoke has refused to discuss the matter unless JEA will grant Okefenoke some exclusive territory in the city. JEA does not have the power nor the desire to make such an offer.

STAFF ANALYSIS: There have been several discussions concerning the sale of Okefenoke's facilities in Duval County to JEA. (TR 64-65, 120, 154, 357) However, Okefenoke has rejected any offers made by JEA. According to JEA, Okefenoke has refused to negotiate. (TR 361) According to Okefenoke, JEA has never made a reasonable offer. (TR 64-65) A hindrance to these negotiations may have been

that Okefenoke does not know the value of its facilities in Duval County. (TR 70)

In addition, the parties have discussed entering a territorial agreement in the mid-1970's. (TR 121-122) While Okefenoke was willing to enter a territorial agreement, it was never executed because Jacksonville's General Counsel recommended that JEA not sign it. (TR 121-122) However, during the last two years, JEA has made attempts to reach a territorial agreement with Okefenoke. (TR 279) This last attempt has failed because Okefenoke insisted that any agreement grant Okefenoke a continuing right to serve customers and territory within Duval County. According to the JEA, it does not have the authority to meet this requirement. (TR 278, 279)

ISSUE 18: Have the parties operated under any informal agreements or "understandings" regarding who should serve the disputed area?

RECOMMENDATION: Staff recommends that the Commission find that the parties have operated under an informal agreement or "understanding" regarding who should serve the disputed area.

POSITION OF PARTIES

OREMC: Yes. After JEA refused to sign a formal territorial agreement, JEA offered and Okefenoke agreed to abide by a series of guidelines in a document called the 1978 Operating Guidelines. (Tr. 122-123, Gibson). The 1978 Operating Agreement established a boundary line between the utilities in Duval County known as the "magic line" and contained certain guidelines for cleaning up their respective territories on either side of the magic line. (Id.) The purpose of the 1978 operating agreement was to minimize the duplication of facilities in northern Duval County. (Tr. 315, Ferdman). At the time the operating guidelines were developed, Okefenoke believed that both JEA and Okefenoke would abide by them. (Tr. 154-155, Gibson). Okefenoke has conducted its business affairs in accordance with those guidelines. (Tr. 155, Gibson; Tr. 158, Middleton; Tr. 82, Page). However, JEA has continued to duplicate Okefenoke's facilities despite the agreement. (Tr. 82, Page). The Commission should consider whether these guidelines would serve as a good foundation upon which to resolve this dispute (Tr. 207, Dew).

JEA: Yes. Both parties have operated under the Municipal Code and a working agreement.

STAFF ANALYSIS: As discussed in Issue 17, the parties attempted to reach a territorial agreement during the mid-1970's. During the course of these negotiations, an operating agreement was formulated (the 1978 Operating Guidelines) and an operating line was drawn through northern Duval County (the "magic line"). (TR 81) Along with establishing the magic line, the guidelines also made an attempt to clean up the utilities' boundaries over time. (TR 122) At JEA's request, Okefenoke agreed to adopt these guidelines. (TR 122)

This informal agreement was developed to prevent uneconomic duplication of facilities between the utilities. (TR 81, 123) While the parties realized the agreement would not totally eliminate duplication, it could substantially decrease the duplication problem. (TR 82) However, while Okefenoke attempted to abide by the guidelines, the JEA has continued to duplicate electric facilities in northern Duval County above the magic line. (TR 123)

ISSUE 19: What would be the additional cost to each utility to provide electric service to the area in dispute?

RECOMMENDATION: Both parties can serve the Holiday Inn at minimal additional cost, but this is not relevant to the resolution of the major issue in this case, which is the significant uneconomic duplication of facilities in northern Duval County. The record does not contain sufficient information to determine the costs to either utility if uneconomic duplication is eliminated in northern Duval County.

POSITION OF PARTIES

OREMC: JEA spent \$53,000 to serve Okefenoke's facilities at the Holiday Inn (Tr. 303, Ferdman), even though Okefenoke has been providing service to the Holiday Inn for over 20 years. (Tr. 137, Middleton). Okefenoke could re-establish service at the Holiday Inn at a minimal cost. Okefenoke has sufficient substation capacity and distribution facilities in close proximity to the disputed areas. (Tr. 201, Dew). Okefenoke is providing adequate and reliable service to those areas and has been doing so for quite some time. (Id.) With this in mind, there are no significant incremental costs for Okefenoke to continue serving in the disputed areas. However, Okefenoke will be forced to bear significant costs if it for some reason is not allowed to continue serving in northern Duval County. See Okefenoke's position on Issue No. 20.

JEA: JEA currently provides service to the Airport Holiday Inn. No additional cost is necessary to continue service. With respect to the other areas which are not the subject of a territorial dispute, JEA would incur the cost to acquire Okefenoke facilities to provide service.

STAFF ANALYSIS: With regard to the Holiday Inn which is currently served by JEA, Okefenoke could re-establish service at minimal cost. Okefenoke has sufficient capacity and distribution facilities to serve the area surrounding the Holiday Inn. (TR 201) There would be no additional charges to JEA to serve the Holiday Inn since they currently provide service.

The record does not indicate the amount of additional costs either party would incur if uneconomic duplication were eliminated in northern Duval county. Okefenoke has between \$7.5 and \$8.0 million of replacement cost in the area. (TR 91) The value of Okefenoke's customers is not known. The value of JEA's facilities is not known. Mr. Page suggested that a formula for compensation of lost territory facilities should be the reproduction cost of new facilities less depreciation on existing facilities, plus severance damage, plus reintegration costs, plus two and one half times the annual revenue lost. (TR 231, 235) There is no evidence in the record to calculate costs using this method.

ISSUE 20: What would be the cost to each utility if it were not permitted to serve the area in dispute?

RECOMMENDATION: The record does not contain sufficient information to establish the economic impact to either utility if uneconomic duplication is eliminated in northern Duval County. With regard to the Holiday Inn, the party not granted the right to serve will lose annual revenues of approximately \$400,000.

OREMC: The Holiday Inn was Okefenoke's largest customer. (Tr. 244-245, Wrightson). The Holiday Inn's average usage represents the equivalent of 420 of Okefenoke's average residential members. (Tr. 246, Wrightson). The loss of the Holiday Inn as a member means that some of Okefenoke's largest and most expensive transformation equipment is not being used. (Tr. 245, Wrightson). It also means that related depreciation expense, interest expense and other carrying costs are not being recovered through revenues from the Holiday Inn. (*Id.*) If, for some reason, Okefenoke is not permitted to continue serving in other parts of the disputed area, Okefenoke's investment in facilities to serve in Duval County would

be stranded and Okefenoke would lose as much as \$1 million in net revenue per year for the foreseeable future. (Tr. 254, Wrightson).

JEA: The cost to a utility if it were not permitted to serve the area where it now serves is impossible to determine. Each utility can and should be made whole if its assets are acquired by the other utility.

STAFF ANALYSIS: The record does not indicate the costs to either utility if uneconomic duplication were to be eliminated throughout northern Duval County. The record does indicate that Okefenoke's service territory in Duval County is the utility's most dense area and the loss of this area would hurt Okefenoke the most. (TR 52) Mr. Page stated that there would be a negative impact on Okefenoke if it were to lose a year's worth of revenues associated with its facilities in northern Duval County. Such loss would affect Okefenoke's entire system. (TR 92) Mr. Wrightson testified that Okefenoke's 1991 revenues in northern Duval County were \$3.3 million dollars. The record does not contain a comparable figure for JEA.

With regard to the Holiday Inn, both parties agree that annual revenues from the Holiday Inn would be approximately \$400,000. (TR 242, 304) This represents the equivalent of 420 residential customers. The Holiday Inn was Okefenoke's largest customer. (TR 64) Mr. Dew testified that if Okefenoke loses the Holiday Inn as a customer, the fixed cost of operations would have to be spread over fewer customers which would result in higher rates for the remaining customers. (TR 197)

ISSUE 21: What would be the effect on each utility's ratepayers if it were not permitted to serve the disputed area?

RECOMMENDATION: The record does not contain sufficient information to establish the economic impact to either utility if uneconomic duplication is eliminated in northern Duval County. With regard to the Holiday Inn, the party not granted the right to serve will lose annual revenues of approximately \$400,000.

POSITION OF PARTIES

OREMC: If Okefenoke is not permitted to continue serving the Holiday Inn in the future, Okefenoke will be required, all other things being equal, to collect additional non-fuel revenues of approximately \$57,300 per year from its remaining customers. (Tr.

241-242, Wrightson). If, for some reason, Okefenoke is not permitted to continue providing service to existing and new members in the areas it has historically served in Duval County, all other things being equal, Okefenoke may lose as much as \$1 million in net revenue per year in the foreseeable future. (Tr. 254, Wrightson). JEA's policy of serving only when it is economical and practical for JEA to do so has already had an adverse impact on Okefenoke and its members, both within and without Duval County. (Tr. 256-257, Wrightson). Okefenoke's rates are higher than they would have been otherwise. (Tr. 256-257, Wrightson).

JEA: The immediate effect on a utility's ratepayers would be minimal if the utility were made whole or compensated for its lost assets. The long term effect on ratepayers is impossible to predict because of the uncertainty in value of deferred capacity versus the cost of constructing or purchasing new generation.

STAFF ANALYSIS: See Issue 20.

ISSUE 22: If all other things are equal, what is the customer preference for utility service in the disputed area?

RECOMMENDATION: Staff recommends that the Commission find that because all other things are not equal, this issue is moot.

POSITION OF PARTIES

OREMC: In this case, all other things are not equal. The Holiday Inn has requested and is receiving service from JEA, even though Okefenoke has been providing retail electrical service to the Holiday Inn for over twenty years. This is the only record evidence which addresses customer preference in Duval County. While JEA has made off-hand comments about customer petitions (Tr. 329-330, Ferdman), JEA did not attempt to introduce any such petitions into the record. If JEA had, they would have been inadmissible as uncorroborated hearsay evidence. While customers may prefer to take service from a utility with lower rates, relative rate levels are subject to change (Tr. 330, Ferdman), and should not be a determining factor in the Commission's decision making process in this case. (Tr. 202, Dew).

JEA: The Airport Holiday Inn prefers to be served by JEA. With respect to the other areas in the northern part of the consolidated corporate limits of the City of Jacksonville the unsolicited

signatures of Jacksonville citizens and letters from elected representatives suggest a strong preference for JEA service.

STAFF ANALYSIS: Because all other things are not equal, this issue is moot.

ISSUE 23: Which party should be permitted to serve the area in dispute?

RECOMMENDATION: Staff recommends that Okefenoke should continue to serve all of its present customers in Duval County, including the Airport Holiday Inn, as well as all new customers JEA requests it to serve in the future. JEA must exercise lawful means in order to provide service to Okefenoke's customers in the disputed area.

POSITION OF PARTIES

OREMC: Okefenoke offers the following suggestions for the resolution of the territorial disputes in this case:

1. The Holiday Inn service should be returned to Okefenoke. (Tr. 207, Dew).
2. The Commission should supervise the preparation of a territorial agreement between JEA and Okefenoke. This territorial agreement would contain identifiable boundaries within Duval County and should involve the exchange of facilities with the public interest being the most important factor. The Commission should re-examine the territorial boundaries as shown by the "magic line" that was developed in the 1978 Distribution Operations Guidelines between JEA and Okefenoke. The Commission should encourage Okefenoke and JEA to negotiate a territorial boundary within Duval County and allow for the exchange of facilities to establish this territorial boundary over a reasonable period of time. (Tr. 207-208, Dew).
3. If the JEA and Okefenoke are not able to agree within a reasonable period of time, the Commission should draw a territorial line based upon good utility practice and Florida Law and should make both parties abide by its decision. (Tr. 208, Dew).

JEA: JEA, Jacksonville's municipal electric utility, should serve all citizens in the city which are not otherwise served pursuant to a Commission approved territorial agreement.

STAFF ANALYSIS: When a new customer requests service in northern Duval County, JEA decides whether it is economically beneficial for JEA to serve the customer. If JEA determines that it is cost-effective to JEA, JEA will serve. If JEA determines that it is not cost-effective to JEA to serve, JEA releases the customer to Okefenoke. JEA has released customers to Okefenoke in low-density areas, and served more developed areas itself. Over the years, as parts of northern Duval County have become more populated, JEA has found it economically beneficial to serve in those areas already served by Okefenoke. This practice has led to widespread duplication of facilities.

Staff recommends that the Commission should put an end to this "cream skimming" approach to the provision of electric service. Okefenoke Rural Electric Membership Corporation should continue to serve all of its present customers in Duval County, including the Airport Holiday Inn, as well as 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 should be served by Okefenoke, and Jacksonville Electric Authority should 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 its eminent domain powers. JEA should not serve customers who have disconnected Okefenoke's facilities. JEA should not duplicate the facilities of Okefenoke in northern Duval county to serve new customers or under any circumstances.

ISSUE 24: What conditions, if any, should accompany the Commission's decision regarding which party should be permitted to serve the disputed area?

RECOMMENDATION: Staff recommends that the Commission should retain jurisdiction over this matter and require JEA to submit a specific, detailed proposal for the elimination of duplicate facilities in the disputed area within 120 days of the date of issuance of the Commission's final order.

POSITION OF PARTIES

OREMC: The specific conditions, if any, which should accompany the Commission's decision depend on the nature of the FPSC's decision. Any conditions imposed by the FPSC should be consistent with sound utility practice and Florida law. Okefenoke suggests that a joint use agreement between the two parties be a condition for the safety of the general public and the employees of JEA and Okefenoke. Nearly any decision reached by the Commission will still leave facilities of both utilities in close approximation due to the layout of facilities both inside and outside Duval County. A joint use agreement between the utilities will allow the utilities to more efficiently and effectively correct clearance problems between their facilities.

JEA: Mr. Ferdman was asked by a Commissioner, what would be the best resolution of this problem for all of the citizens of Duval County. (See Tr. 319-325). "This problem" from the Commission's perspective is the coexistence of two electric utilities serving the same geographical area and the likelihood of "further uneconomical and unnecessary duplication of facilities." The "problem" from Okefenoke's point of view is the recent loss of a major customer and the uncertainty of their future in Jacksonville. There is one resolution which will satisfy the Commission's duty to assure the avoidance of further uneconomic duplication, and will not offend the principle of municipal sovereignty or conflict with the legislative prohibition against construing or applying Chapter 366, Florida Statutes, to prevent or prohibit JEA from distributing at retail electrical energy to a Jacksonville citizen. As stated by Mr. Ferdman, only one electric utility should own the facilities currently owned by both. The sovereign and superior right of JEA to own all of the facilities should be acknowledged by the Commission. If Okefenoke fails to negotiate a satisfactory sale within a reasonable time, then either JEA or the city should exercise those sovereign powers necessary to obtain ownership. Once ownership is consolidated, duplication will end.

The interests of individual customers can be protected by allowing continuing membership in the rural cooperative for those who so elect. This can be accomplished by allowing Okefenoke to use JEA's lines for delivery similar to the arrangement in effect between the City of Tallahassee and Talquin Cooperative, Inc.

DOCKET NO. 911141-EU
September 18, 1992

Okefenoke's property interest can be fully compensated either to its satisfaction, or by a finding of full value in an appropriate court of law. Both utilities will then be able to plan properly, and both will have specific resources with which to plan.

STAFF ANALYSIS: As discussed in Issue 14, JEA has created extensive uneconomic duplication of facilities in northern Duval County, and JEA bears the responsibility to correct it. To that end, Staff recommends that the Commission should retain jurisdiction of this case and require JEA to submit a specific, detailed proposal for the elimination of duplicate facilities in northern Duval County within 120 days of the date of issuance of the Commission's final order in this case. Okefenoke should be directed to cooperate with JEA in the creation of this proposal.

ISSUE 25: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open.

STAFF ANALYSIS: This docket should remain open pending the Commission's review and approval of JEA's plan to eliminate duplicative electric facilities in northern Duval County.

MCB:bmi

911141.rec