

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

ORIGINAL
FILE COPY

STEPHEN A. ECENIA
KENNETH A. HOFFMAN
THOMAS W. KONRAD
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE
R. MICHAEL UNDERWOOD
WILLIAM B. WILLINGHAM

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

TELEPHONE (904) 681-6768
TELECOPIER (904) 681-6515

August 14, 1995

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 950307-EU

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Jacksonville Electric Authority are the original and fifteen copies of Jacksonville Electric Authority's Answer and Affirmative Defenses to Florida Power and Light Company's Counterpetition.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman
Kenneth A. Hoffman



PROFESSIONAL ASSOCIATION

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU _____ KAH/rl
- CTR _____
- ERC Pass
- LEG Culpepper
- LN 3
- CAC _____
- EDC _____
- SEC 1
- AMS _____
- ATU _____

cc: All Parties of Record

nb

DOCUMENT NUMBER-DATE
07742 AUG 14 95
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In re: Petition of Jacksonville)
Electric Authority to Resolve a)
Territorial Dispute with Florida)
Power & Light Company in St. Johns)
County)

Docket No. 950307-EU

Filed: August 14, 1995

**JACKSONVILLE ELECTRIC AUTHORITY'S ANSWER AND
AFFIRMATIVE DEFENSES TO FLORIDA POWER
AND LIGHT COMPANY'S COUNTERPETITION**

Jacksonville Electric Authority ("JEA"), by and through its undersigned counsel, files its Answer and Affirmative Defenses to Florida Power and Light Company's ("FPL") Counterpetition and states:

ANSWER

1. JEA admits paragraph 24.
2. With respect to paragraph 25, JEA denies that FPL is seeking relief from the Commission against Sheldon R. Ferdman but admits that FPL is seeking relief from the Commission against JEA.
3. JEA admits paragraph 26.
4. JEA denies paragraph 27.
5. JEA admits paragraph 28.
6. JEA admits paragraph 29.
7. JEA admits paragraph 30.
8. JEA admits paragraph 31.
9. JEA admits paragraph 32.
10. JEA admits the allegation set forth in the first sentence of paragraph 33 but denies the allegation set forth in the second sentence of paragraph 33.
11. JEA denies paragraph 34.

DOCUMENT NUMBER-DATE

07742 AUG 14 95

FPSC-RECORDS/REPORTING

12. JEA denies paragraph 35.

13. JEA denies FPL's right to the relief requested in its Counterpetition and demands strict proof thereof.

AFFIRMATIVE DEFENSES

First Affirmative Defense: FPL has failed to allege and submit testimony demonstrating that modification or cancellation of the April 13, 1979 territorial agreement (the "1979 Territorial Agreement") between JEA and FPL is necessary because of changed conditions or other circumstances not present in the proceedings which led to approval by the Commission of said agreement. Since the 1979 Territorial Agreement approved by the Commission expressly contemplated service by one utility in the territory of the other utility, and because FPL had customers and facilities in JEA's territory when FPL agreed to reaffirm the 1963 territorial agreement boundary in the 1979 Territorial Agreement, there has been no change of circumstances sufficient to support modification or cancellation of the 1979 Territorial Agreement approved in Order No. 9363.

Second Affirmative Defense: FPL has failed to allege and submit testimony demonstrating that modification or cancellation of the 1979 Territorial Agreement is consistent with the Commission's express statutory purpose including the Commission's mandate to avoid the uneconomic duplication of facilities and duty to plan, develop and maintain a coordinated electric power grid throughout the State of Florida. Modification or cancellation of the 1979 Territorial Agreement and Order No. 9363 is inconsistent with the

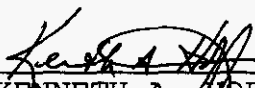
aforesaid statutory mandates.

Third Affirmative Defense: FPL has provided electric service to customers located in JEA's territory as such territory is defined by the 1979 Territorial Agreement in violation of Sections 3.2 and/or 3.4 of said agreement.

Fourth Affirmative Defense: Section 3.4 of the 1979 Territorial Agreement authorizes FPL to provide temporary or interim service in JEA's territory. Section 3.4 of the 1979 Territorial Agreement does not, and cannot, convey a permanent right to FPL to provide electric service to customers in JEA's territory that FPL did not serve as of April 13, 1979.

Fifth Affirmative Defense: FPL's position that electric service provided by FPL in JEA's territory pursuant to Section 3.4 of the 1979 Territorial Agreement supports a modification of the territorial boundary incorporated in the 1979 Territorial Agreement is contrary to Commission and Florida court precedent and the protections provided to Florida's electric utilities and their customers under the state action immunity doctrine.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQUIRE
WILLIAM B. WILLINGHAM, ESQUIRE
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, Florida 32302-0551
(904) 681-6788

and

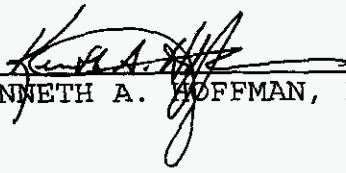
BRUCE PAGE, ESQUIRE
Jacksonville Electric Authority
220 East Bay Street
Suite 600
Jacksonville, FL 32202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following by U. S. Mail this 14th day of August, 1995:

Mark A. Logan, Esq.
Bryant, Miller & Olive
201 South Monroe Street
Suite 500
Tallahassee, Florida 32301

Beth Culpepper, Esq.
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald L. Gunter Building
Room 370
Tallahassee, Florida 32399-0850



KENNETH A. HOFFMAN, ESQUIRE

JEA.2aff