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See Ltr.

SUBJECT: Forwards "Answer of Florida Municipal Power Agency to FPL Response in Opposition to Petition for Enforcement Action."

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SPIEGEL & McDIARMID

1350 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-4798

TELEPHONE (202) 879-4000
TELECOPIER (202) 393-2866

September 24, 1993

Thomas E. Murley, Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

Re: Florida Power & Light Company (St. Lucie Plant, Unit No. 2) Docket No. 50-389A; Operating License No. NPF-16

Dear Director Murley,

Enclosed please find the Answer of Florida Municipal Power Agency to the Response of Florida Power & Light Company in Opposition to Petition for Enforcement Action, with attached appendices.

Also enclosed are two copies of the Answer and appendices, which we request be time stamped and returned to our messenger.

Sincerely,

David Pomper

David E. Pomper
Attorney for FMPA

ENCLOSURES

cc: NRC Public Documents Room

Joseph Rutberg, Esq.
Deputy Assistant General Counsel
for Materials, Antitrust, and Proceedings

J.A. Bouknight, Jr., Esq.
Attorney for Florida Power & Light Company

2998
1/1

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

Florida Power & Light Company	)	Docket No. 50-389A
(St. Lucie Plant, Unit No. 2)	)	Operating License No. NPF-16

APPENDICES TO ANSWER OF FLORIDA MUNICIPAL POWER AGENCY TO FLORIDA POOWER AND LIGHT COMPANY'S RESPONSE IN OPPOSITION TO PETITION FOR ENFORCEMENT ACTION

VOLUME I OF II

Robert A. Jablon
Alan J. Roth
David E. Pomper
SPIEGEL & McDIARMID
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1350 New York Avenue N.W.
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306 East College Avenue
Tallahassee, FL 32302

Attorneys for Florida Municipal Power Agency

September 24, 1993

INDEX TO APPENDICES

ANSWER OF FLORIDA MUNICIPAL POWER AGENCY TO FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO PETITION FOR ENFORCEMENT ACTION

Motion to Require Filing of NRC License Conditions in FERC Docket No. ER93-465-000 (August 24, 1993).

13. Excerpts of Florida Municipal Power Agency's Motion to Intervene, Protest, Motion to Reject, Alternative Request for Partial Summary Disposition, Alternative Request for Suspension and Request for Hearing, and Answer Opposing Waiver Requests in FERC Docket No. ER93-922-000 (September 21, 1993).

14. Affidavit of Albert B. Malmsjo, FERC Docket No. ER93-465-000, September 7, 1993.

15. Letter to Calvin Henze from W.C. Locke, Jr., April 27, 1990.

16. Florida Power & Light Company's Memorandum in Support of Its Motion for Summary Judgment in FMPA v. FPL, Case No. 92-35-CIV-ORL-3A22 (April 15, 1993), pp. 4-11, 15-19.

17. FPL's Statement of Issues of Fact to be Litigated at Trial, Pre-Trial Stipulation, FMPA v. FPL, Case No. 92-35-CIV-ORL-3A22 (August 17, 1993), p. 18.

18. Answer of Florida Power & Light Company to the Motions filed by Florida Cities, Seminole Electric Cooperative, Inc., Tampa Electric Company, Jacksonville Electric Authority, and Utilities Commission, New Smyrna Beach in FERC Docket No. ER93-465-000 (April 27, 1993), pp. 35-37.

19. Letter to Howard K. Shapar from Bruce Wilson, November 14, 1973.

20. Letter to Howard K. Shapar from Thomas E. Kauper, March 2, 1976.

21. Third Affidavit of William C. Locke, Jr., FMPA v. FPL, Case No. 92-35-CIV-ORL-3A22, April 13, 1993.

APPENDIX 1

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

PLAINTIFF,

v.

FLORIDA POWER & LIGHT COMPANY,

DEFENDANT.

Southeast Financial Center
Miami, Florida 33131
Wednesday, November 4, 1992
9:45 a.m. - 4:10 p.m.

DEPOSITION OF JUAN E. ENJAMIO

Taken before BRIAN GARY BERKOWITZ, Shorthand Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

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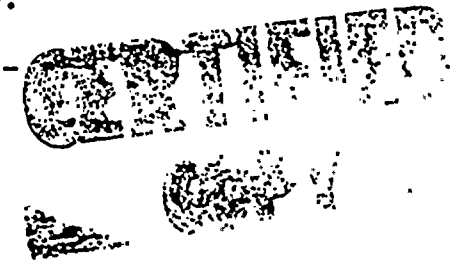

Q. Can you clarify what that means, in terms of what unit is dispatched, when?

A. Normally, you would try to reduce fuel and other costs of operating your generation system.

Q. Did FMPA request a computer model of your system to perform its own studies?

A. FMPA had the computer system of -- computer model of our system. In fact, they had the same model that we had, because it was the FCG model, and we all have access to it.

Q. Did FMPA ask for the assumptions that you used in your studies?

A. We presented to FMPA the only -- the assumptions, the load forecast assumptions that were used for some of their systems, which were the only assumptions, I believe, that were changed from the original FCG data bank cases, and those assumptions had come from FMPA in another form. So we did show them, yes.

Q. How about assumptions regarding the FPL system? Did you show FMPA those assumptions?

A. We explained to them how we dispatched the system in the studies we did.

Q. You explained, but did you show them the assumptions?

APPENDIX 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

PLAINTIFF,

v.

FLORIDA POWER & LIGHT COMPANY,

DEFENDANT.

Southeast Financial Center
Miami, Florida
November 19, 1992
9:30 a.m. - 11:30 p.m.

DEPOSITION OF STEPHEN FRANK

Taken before THOMAS R. NEUMANN, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

- - - - - - -

Q. Don't reveal the substance of any conversation.

A. Okay.

Q. Do you understand that FMPA desires to purchase transmission services from Florida Power and Light in order to integrate its power supply resources and to use them to supply certain of its members on a least cost basis?

A. Yes.

Q. FPL coordinates its power supply resources to operate on a least cost basis; is that correct?

A. Yes.

Q. And essentially FMPA wants to do the same thing.

A. Is that a question?

Q. Yes. Is that your understanding?

A. Yes. I assume that's what they want to do.

Q. Would you agree that Florida Power & Light has a transmission monopoly in its area of service?

MR. DAVIS: Object to the question, calls for a legal conclusion. The witness is not qualified.

MR. JABLON: He just told you he escaped law school.

THE WITNESS: I don't know.

APPENDIX 3

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

v.

FLORIDA POWER & LIGHT COMPANY,

Defendant.

Southeast Financial Center
Miami, Florida
Monday, November 2nd, 1992
9:32 a.m.

DEPOSITION OF DEAN R. GOSSELIN

Taken before BARNET I. ABRAMOWITZ, CSR-CM and Notary Public in and for the State of Florida at Large, pursuant to notice issued in the above cause.

is required through discussions with counsel.

A. I believe these changes were negotiated with FMPA at the time of adding Clewiston to the agreement.

Q. Was it FMPA that wanted to add the language in Section 21.1 of Exhibit 2 relating to a superseding transmission service agreement?

A. To my knowledge, yes.

Q. And did you have an understanding as to why FMPA wanted to include that language in Exhibit 2?

A. As I recall, it was in contemplation of a transmission service agreement for the integrated dispatch operation project.

Q. And when you say in contemplation of a transmission service agreement for the integrated dispatch project, what did you mean by "in contemplation"?

A. I believe at the time that we were negotiating the revisions to the all-requirements transmission service agreement, FPL and FMPA were in discussions regarding transmission service for the integrated dispatch operation.

Q. And FMPA wanted this provision, this change in Section 21.1 because those discussions were

still ongoing at the time?

MR. DAVIS: I will object to this witness's knowledge of why FMPA wanted to do anything. He is not in a position to know why FMPA does or doesn't do anything.

Q. Did you have any understanding as to why FMPA wanted this change to the language of Section 21.1?

A. Yes.

Q. And what was that understanding?

A. In the event that a transmission service arrangement was negotiated which included the all-requirements cities, that this agreement would be able to be revised to accommodate such understanding that may have been reached.

Q. And what was your understanding of FMPA's desire based on?

A. As I recall, it was a discussion between myself, Bob Schoneck and Bob Williams of FMPA.

Q. And so your understanding was based on what Bob Williams told you?

A. And the discussion we had between the three of us.

MS. BLAIR: Why don't we take a short break. I am about to move on to another topic.

document, these are two pages from the document, let's be clear on the record.

THE WITNESS: I believe -- okay.

BY MS. BLAIR:

Q. Is it your understanding, Mr. Gosselin, that these two pages that we have marked as Exhibit 3 were excerpted from some larger document?

A. Yes.

Q. And can you describe the larger document from which these came?

A. The document was an April of 1990 letter from FPL to FMPA.

Q. You say Bob Schoneck prepared these pages that we have marked as Exhibit 3. Is that correct?

A. Yes.

Q. Did he prepare the larger document from which these came?

A. I don't recall who -- I believe there was a letter attached to it, and I do not know who the author of that letter was.

Q. Who originated the HUB concept?

A. To my knowledge, that was Bob Schoneck and Bill Locke.

Q. Did you have any input into the development of the HUB concept?

A. I had some input into the terms associated with the HUB concept.

Q. Could you describe your input for me, please.

A. I was asked to consider the operational aspects of the HUB concept.

Q. I think you described for me what you did to evaluate the operational aspects of the HUB concept.

A. I reviewed the concepts to determine whether or not FPL could operate within the terms that were laid out and beneath the HUB concept.

Q. Did you conclude that it could?

A. Yes.

Q. Did anybody help you in that evaluation? Did you consult with anybody in that evaluation?

A. Yes, I would have consulted with the operations department of FPL.

Q. Do you recall who in particular you talked to?

A. I spoke with Joe Stepenovitch.

Q. Anybody else you remember?

A. I don't recall anyone else.

Q. Did you ever discuss with Mr. Schoneck or Mr. Locke the purposes for formulting the HUB

proposal?

A. Yes.

Q. Did any of those discussions occur without legal counsel present?

A. Yes.

Q. Would you describe for me in as much detail as you can recall the substance of those discussions.

A. The discussions involved developing a concept which would meet the needs of FMPA's IDO proposals and underlying agreements, with the thought that FPL would be able to plan to meet obligations that would be arrived at under an agreement, we could operate such a system reliably without impacting the economics of other customers, and that there wouldn't be any subsidies between FPL's other customers and FMPA in providing this service.

Q. Was the HUB expected to be a physical place?

A. Not to my knowledge.

Q. How would the operations of FPL have been different under the HUB concept as compared with the transmission service that FMPA wanted?

MR. DAVIS: Which transmission service that FMPA wanted?

MS. BLAIR: The integrated dispatch transmission service that FMPA requested.

THE WITNESS: Which proposal? There were many.

MS. BLAIR: FMPA's original proposal.

MR. DAVIS: Do you have that in mind?

THE WITNESS: I recall some provisions of it, but not in toto.

MR. DAVIS: Do you have the original proposals that he could look at?

(Pause)

THE WITNESS: Operationally the HUB concept would have considered transactions to be scheduled, and scheduling is a very important part of what FPL does to insure that its other customers are not harmed and that it's meetings its obligations under the agreements it enters into for transmission service.

Under the original IDO transmission proposal, I believe it was dated August 25th, 1989, there would be no schedules.

BY MS. BLAIR:

Q. As the discussions went on, did FMPA agree to provide schedules?

A. FMPA agreed to advise FPL's operation

FMPA owns jointly with OUC to Jacksonville Beach, Green Cove Springs and Clewiston scheduled in the sense that you described earlier?

A. To the extent that those jointly owned resources are within the Orlando control area, they are not scheduled.

Q. Does Florida Power & Light also deliver some power from resources that are jointly owned by FMPA and OUC to Fort Pierce, Vero Beach, Lake Worth and Key West?

A. Yes.

Q. Could those resources be delivered to those cities without using the FPL transmission system?

A. No.

Q. Under the HUB concept, could FMPA have served the entire loads of each member system through transmission?

A. Can you restate the question?

MR. DAVIS: Objection to the form.

Q. Let me try again.

Under the HUB concept, could FMPA have contracted for enough transmission to meet the entire load of each member system?

MR. ROSS: You mean the IDO member systems

or all of them?

MS. BLAIR: The IDO member systems.

THE WITNESS: Yes, FMPA could have done that.

BY MS. BLAIR:

Q. In fact, didn't FPL want FMPA to establish a contract demand equal to the total load of each IDO member system?

A. FPL's earlier proposals did speak to that point, however, FPL did offer to enter into a joint study with FMPA to take into account diversity of the loads.

Q. Did FPL indicate what level of diversity it was willing to consider?

A. FPL indicated it was willing to do a joint study to determine whatever diversity there would be as a result of the combined loads.

Q. Was that joint study ever undertaken?

A. Not to my knowledge.

Q. Has ESI ever been affiliated with FPL in any way?

A. Yes, ESI is a subsidiary of FPL group and FPL is a subsidiary of FPL group.

MR. DAVIS: We would have clarified that later. He misunderstood your question earlier, and

APPENDIX 4

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

- - - - - - - - - - - - - - - - - -X

FLORIDA MUNICIPAL POWER AGENCY, :
Plaintiff, :
v. : Case No.
FLORIDA POWER & LIGHT COMPANY, : 92-35-Civ-Orl-22
a Florida corporation, :
Defendant. :

- - - - - - - - - - - - - - - - - - X

Washington, D.C.
Tuesday, January 12, 1993

Continued deposition of WILLIAM LOCKE, a witness herein, called for examination by counsel for Plaintiff in the above-entitled matter, pursuant to agreement, the witness having been previously duly sworn by JODY A. PARRISH, a Notary Public in and for the District of Columbia, taken at the offices of Newman & Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C., at 12:30 p.m., Tuesday, January 12, 1993, and the proceedings being taken down by Stenotype

the statement, or the clause, "with higher priority than FPL's native load requirements" contained on Exhibit 59?

A. This is a -- I want to make sure I'm very clear in this response, so if you will give me a minute to make sure, we can go through this step by step.

Q. Certainly.

A. Okay. As we finally -- and I emphasize, as we finally understood and FMPA had finally clarified what they intended to do, what FMPA had requested from Florida Power & Light is to be able to dispatch their units through the Florida Power & Light system, to be able to move generation from one source to one delivery point, from another source to another delivery point, delivery point to delivery point, utilizing the FPL system.

The proposal that FMPA put on the table did not recognize, one, did not recognize the way that FPL has to operate its own system. It has to operate its generation in concert with its transmission. It has to operate its generation in concert with constraints that are on its system, and it operates it with the intendant cost of altering economic dispatch in order to accommodate serving its load.

APPENDIX 5

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

PLAINTIFF,

v.

FLORIDA POWER & LIGHT COMPANY,

DEFENDANT.

Southeast Financial Center
Miami, Florida 33131
Tuesday, November 10, 1992
1:37 p.m. - 5:30 p.m.

DEPOSITION OF WILLIAM ROBERT SCHONECK

Taken before BRIAN GARY BERKOWITZ, Shorthand Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

- - - - - - -

CERTIFIED

does travel over the path of least resistance, and it flows over lines, and it is constrained by the amount of power that you can push over those lines.

So, in reference to, I guess, footnote number one, I would have to agree with that.

Q. Would you, please, turn to page 10, the second full paragraph, which reads, "In fact, while some planning is coordinated to promote reliability, FPL plans, finances, constructs, operates, utilizes and make rates for its transmission network as its network. FPC acts in the same fashion with respect to its own network." "FPC" referring to Florida Power Corporation.

From the standpoint of today, would that be a correct statement?

A. Our current practices, we do plan a transmission network, and we do have a postage stamp rate.

Q. Do you coordinate some planning to promote reliability? By "you," I mean FPL.

A. Absolutely.

Q. Does FPL plan, finance, construct, operate, utilize and make rates for FPL's transmission network as an entity?

A. What do you mean by "as an entity"?

Q. As its network.

A. Yes.

Q. What transmission planning coordination does FPL do?

Let me withdraw that question and let me ask you, do you have any reason not to -- to question the correctness of this paragraph I've just read, as of the 1983 time frame?

A. I assume that it must be true.

Q. You say you assume it must be true.

A. I don't know. I wasn't there in 1983. He didn't write this in 1983.

Q. Does it sound true to you?

A. I --

Q. But would it appear true to you?

A. FPL plans and finances and constructs a transmission network, and operates a transmission network.

Q. Mr. Schoneck, in an earlier answer, you agreed that transmission planning -- that some transmission planning is coordinated to promote reliability.

With whom do you coordinate transmission planning?

A. First of all, I'm not a transmission planner,

but overall, in the planning spectrum, the reliability is built into the transmission system, and that's handled by our planning department.

Q. Do you know with whom Florida Power & Light coordinates transmission planning?

A. There is a form at the FCG, and there's a form you put your ten year site plan, each of the utilities, of what plans they have for future expansion, that's an ongoing basis, that's published.

Q. Are those the only two areas of coordinated transmission planning that you know of, or two mechanisms?

A. To get a better answer, you would have to ask our planners, but those are the ones that I am aware of.

Q. When you said there's a form at FCG, would you describe your personal role with FCG?

A. I'm on a subcommittee, a reliability subcommittee.

Q. And for how long have you been on the reliability subcommittee?

A. Immediately after I assumed the responsibilities in July of '91.

Q. Is that your only role with FCG?

A. That is correct.

Q. What is your position on the reliability subcommittee?

A. I'm a member of the subcommittee.

Q. A representative of Florida Power & Light?

A. Florida Power & Light.

Q. What does the subcommittee do?

A. The subcommittee reviews reliability criteria agreed to by the individual utilities within the state.

Q. And it is the reliability subcommittee of what?

A. Of the FCG operating committee.

Q. Of the FCG operating committee.

You referred earlier, I'm not going to quote you exactly, because I don't remember your exact terminology, to Florida Power & Light's attempting to achieve economies by coordinating or integrating its generation. Is that correct?

A. That's correct.

Q. Essentially, Florida Power & Light uses its transmission system to attempt to supply load by operating the least expensive generation or power supply mix available to it. Is that correct?

A. Yes, it is.

Q. Virtually every other utility attempts to do the same. Is that correct?

A. I would think so.

Q. Indeed, a purpose of the FMPA IDO project is to allow FMPA to coordinate its generation in the same way that FPL does. Is that your understanding?

MR. ROSS: Can you just clarify what you mean by "its generation"?

BY MR. JABLON:

Q. Let me ask another question.

Is it your understanding that a purpose of the IDO project is to permit the Florida Municipal Power Agency to coordinate its owned or contracted power supply resources on an economic basis?

A. Yes.

Q. Is it your understanding that the Florida Municipal Power Agency would like to integrate a combination of wholesale power purchases, its interests in generating plants, such as Stanton, and some of the units which are currently owned by its members?

A. Yes.

Q. For how long have you known that FMPA would like to integrate its power supply resources?

A. I guess, with their initial letter of request, sometime in late '89.

Q. Did you either have any discussions with people at FMPA or hear about any discussions or

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

v.

FLORIDA POWER & LIGHT COMPANY,

Defendant.

Southeast Financial Center
Miami, Florida
Wednesday, November 11, 1992
10:05 a.m.

DEPOSITION OF WILLIAM ROBERT SCHONECK
VOLUME II

Taken before BARNET I. ABRAMOWITZ, CSR-CM and Notary Public in and for the State of Florida at Large, pursuant to notice issued in the above cause.

(Pause)

MR. JABLON: Can we go off the record for one second.

(Discussion off the record)

BY MR. JABLON:

Q. Maybe we better have the document marked.

We will mark it as Schoneck Exhibit 2.

(Schoneck Exhibit 2 was marked for identification)

BY MR. JABLON:

Q. Go ahead, Mr. Schoneck.

A. Again, this was our first conceptual proposal for discussions that was presented to FMPA from FPL, and the basic provisions under it was that for a long-term basis, to meet the needs of the project, that FMPA was to assign, or had the responsibility of reserving an adequate amount of transmission, including for regulation service to meet the regulation requirement at each delivery point.

And in the event that FMPA did not reserve a sufficient amount at each delivery point, that our proposal was there would be some type of a planning penalty assessed.

The delivery and receipt of power and

energy for transmission service is, as we refer to, a modified point-to-point directional service, and this is where the HUB concept came from, to be provided on a scheduled basis concept for the regulation component, which would be on a nonscheduled basis.

Q. Does that complete your answer?

A. That's page 1 of the proposal.

Q. Can one derive from Schoneck Exhibit 2 or from subsequent information which you provided to the Florida Municipal Power Agency, the methodology for determining transmission rates under the HUB proposal?

A. I don't do transmission rates.

Q. As you proposed it, would the rate for transmission under the HUB proposal be the same as the existing rate for the All-Requirements project, the existing transmission rate?

A. Are you talking about a postage stamp rate? What rate are you referring to?

Q. What differences would there be in the rates per kilowatt or for kilowatt hour of transmission, assuming the rates were derived at the same time based on the same cost of service under the HUB proposal, compared with the rates under the All-Requirements project?

unfair. Is that correct?

A. That is correct.

Q. But are you saying that from a reliability standpoint or from a technical standpoint that FMPA's proposed transactions under IDO cannot take place or cannot take place without jeopardizing FPL's transmission network?

A. I'm saying that operating to the first contingency criteria basically is what Florida Power & Light uses for reliability criteria, and I'm saying that as proposed by FMPA, that was not taken into consideration in their proposal, and that the redispatch of generation to resolve reliability criteria, real reliability criteria, ends when you are costing Florida Power & Light's customers money, which I believe is unfair.

Q. Under your HUB proposal, how did that proposal take into account the reliability criteria to which you just referred?

A. If you know what your long-term firm commitments are, you plan your transmission to meet those commitments. That's why it is so important to have that information so that the system planners can take that into account in the overall planning of the transmission grid.

Q. Now, that would be true equally if the Florida Municipal Power Agency purchased transmission for IDO under the HUB proposal or if it purchased transmission under its proposal. Is that correct?

A. It is correct that the amount in order to meet the maximum demand that is anticipated under the project is extremely important in the planning process.

Q. And under the HUB proposal, did Florida Power & Light hold itself out as being willing to transmit from FMPA generating resources to FMPA delivery points on a basis under which the sources of power and the deliveries might vary?

MR. ROSS: Can you just clarify for the record what you define as FMPA resources.

BY MR. JABLON:

Q. Again, by FMPA resources, as I have discussed before, I mean the resources which FMPA either presently owns or has under contract or might contemplate to have under contract, including generation with which it might contract which is located in the individual member cities.

MR. ROSS: Thank you.

THE WITNESS: Could you go back and ask the question.

APPENDIX 6

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 92-35-CIV-ORL-22

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

vs.

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation,

Defendant.
_____/

DEPOSITION OF WILLIAM H. SMITH

Taken before Darline M. West, Registered Professional Reporter, Notary Public in and for the State of Florida At Large, pursuant to Notice of Taking Deposition filed by the Plaintiff in the above cause.

- - -

Tuesday, February 23, 1993
1061 E. Indiantown Road
Jupiter, Florida
8:10 - 1:55 p.m.

KNIPES-COHEN OF FLORIDA, INC.
1400 CENTREPARK BOULEVARD, SUITE 960
WEST PALM BEACH, FLORIDA 33401
(407) 478-04041

case relate to the 500 kV network, voltages at the 500 kV buses, the voltages at the 230 kV buses.

Q. All of them or just particular ones?

A. Well, certainly not all of them, but a good many of them. All of the 500 CV buses on the East Coast, perhaps not Orange River, but certainly those on the East Coast, and the 230 network, particularly in the southern part of the state and the central part of the state.

Q. Is it possible to model a contract path for transmission?

A. When you say "model a contract path," what do you mean?

Q. Let me see if I can ask it this way: Does the flow of power occur on a contract path or over a contract path?

A. Sometimes it does, sometimes it doesn't.

Q. I take it that power flows aren't governed by a particular contract path; would that be correct?

A. Power flows don't know anything about contracts, nor do contracts know anything about power flows.

Q. Precisely.

Suppose that you were told that

APPENDIX 7

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,
Plaintiff,
v.
FLORIDA POWER & LIGHT COMPANY,
Defendant.

200 South Biscayne Boulevard
Miami, Florida
November 17, 1992
9:45 a.m. - 5:15 p.m.

DEPOSITION OF RICHARD LARRY TAYLOR

Taken before RICHARD BURSKY, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, pursuant to notice issued in the above cause.

built generation rather than the transmission?

Q. Yes.

A. It would reduce the ability, yes.

Q. Does Florida Power & Light attempt to operate its generating resources on a least cost basis?

A. On a marginal cost basis.

Q. And by a marginal cost basis, if loads increase during the day will FPL add generation or purchase power from the next cheapest source in terms of the marginal cost of operation?

A. In terms of the marginal costs, yes.

Q. All utilities try to do this?

A. I don't know.

Q. Would you describe it that it is good utility practice to try and do this?

A. I would say it is good utility practice to try to do that, yes.

Q. And FPL uses its transmission network to integrate its power supply resources, is that correct?

A. Yes, we do.

Q. Is it your understanding that with regard to IDO, that basically FMPA is trying to do the same thing?

A. That's what I understand, yes.

Q. To do so FMPA has to use the Florida Power & Light owned transmission network, is that correct?

A. They want to use it, yes. They have to --

Q. To accomplish --

A. I don't know if they have to. There are other facilities in the state other than our transmission and whether they would need the use of that also, I don't know.

Q. It may also have to use Florida Power Corporation owned transmission facilities, is that correct?

A. In addition, possibly to others too.

Q. But do you understand that among the FMPA members who have said they would like to join the IDO project are Key West or the City Electric System of Key West, the Lake Worth utilities, Lake Worth, Fort Pierce, Vero Beach, Jacksonville Beach, Green Cove Springs and Clewiston or their utility authorities?

A. Yes.

Q. Is it feasible for FMPA to implement IDO for the benefit of these cities without using the FPL owned transmission network?

A. They would need the FPL network, yes.

Q. FMPA cannot practically duplicate the FPL

APPENDIX 8

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY

Plaintiff,

v. Case No. 92-35-CIV-ORL-18

FLORIDA POWER AND LIGHT COMPANY

Defendant.
_____/

MOTION OF PLAINTIFF FLORIDA MUNICIPAL POWER AGENCY
FOR LEAVE TO FILE SUPPLEMENTED AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(d) and Rule 3.01 of this Court, plaintiff Florida Municipal Power Agency ("FMPA") moves the Court for an order permitting FMPA to file its Supplemented Amended Complaint. The supplemental allegations therein set forth that FPL has refused to sell wholesale power to FMPA, in violation of its contractual obligations and of the antitrust laws of Florida and the United States.

MEMORANDUM IN SUPPORT OF MOTION OF
PLAINTIFF FLORIDA MUNICIPAL POWER AGENCY
FOR LEAVE TO FILE SUPPLEMENTED AMENDED COMPLAINT

Plaintiff's motion for leave to file the Supplemented Amended Complaint should be granted pursuant to Federal Rule of Civil Procedure 15(d). The Supplemented Amended Complaint contains supplemental allegations concerning events which have transpired since February 12, 1992, the date of filing of

the Amended Complaint[1] and which are factually related to the events alleged in this Supplemented Amended Complaint. Accordingly, it is in the interest of justice that issues concerning these recent events be litigated in this action.

Pursuant to Local Rule 4.01, the complaint as it is requested to be supplemented is being provided for filing in its entirety and with the supplements incorporated therein. The Appendices to the Supplemented Amended Complaint are the same Appendices included in the Amended Complaint. The Court's attention is directed to Paragraphs 17(c), 17(d), 31, 33(f), Request for Relief (e) at the end of Count II, and Request for Relief (e) at the end of Count III, which contain the supplemental material. No other paragraphs were altered.

The undersigned would represent to the Court that he has conferred with Counsel for the Defendant and there is no objection to this motion being granted.

RESPECTFULLY SUBMITTED this 6th day of October, 1992.

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306 East College Avenue
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[1] A copy of the relevant correspondence is appended hereto as Attachments 1 through 6.

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff, CASE NO: 92-35-Civ-Orl-18

vs.

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation,

Defendant.
_____/

SUPPLEMENTED
AMENDED COMPLAINT

The Plaintiff, Florida Municipal Power Agency ("FMPA"), by and through its undersigned attorneys, sues the Defendant, Florida Power & Light Company, a Florida corporation ("FPL"), and alleges:

JURISDICTION AND VENUE

1. Count I and Count II of this action, claiming breach of contract and violations of Chapter 542, Florida Statutes (1989), originally were filed in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida, Case No. CI 91-10837. On January 10, 1992, Defendant FPL filed a Notice of Removal, asserting that this Court has

original jurisdiction over FMPA's claims in Count I and Count II under federal question jurisdiction pursuant to 28 U.S.C. § 1331. The General Allegations, Count I, and Count II of this Amended Complaint are identical to those portions of the Complaint filed by FMPA in the Circuit Court for Orange County, which the Defendant FPL removed to this Court.

2. The Defendant's actions described below also have violated and continue to violate Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2). Count III of this Complaint seeks to redress and eliminate Defendant's violations of Sections 1 and 2 of the Sherman Act. Plaintiff seeks injunctive relief and treble damages.

3. Jurisdiction over Count III is conferred upon this Court by Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26).

4. Since this Court has original jurisdiction over Count III of this Complaint, and since Count III involves to a significant degree the same facts and circumstances at issue in Counts I and II, this Court has pendent jurisdiction over Counts I and II pursuant to 28 U.S.C. § 1367.

5. Defendant transacts business within the Central District of Florida. Venue lies in this Court under Sections 4 and 12 of the Clayton Act (15 U.S.C. §§ 15 and 22).

GENERAL ALLEGATIONS

6. Plaintiff, FMPA, is a legal entity organized and established pursuant to the laws of the State of Florida. State v. Florida Municipal Power Agency, 428 So.2d 1387 (Fla. 1983). The twenty-seven (27) members of FMPA are Florida municipally owned and operated electric utilities. FMPA's corporate offices are located at 7201 Lake Ellenor Drive, Orlando, Orange County, Florida.

7. On behalf of certain of its members and their ratepayers, FMPA contracts, and has the ability to contract for, the acquisition, construction and ownership of electric generation and transmission facilities. FMPA has the authority and is the proper party to institute and maintain this action pursuant to express and contractual authority from its All-Requirements Members identified herein and as a third-party beneficiary of the Contract identified below.

8. The Defendant, FPL, is a Florida corporation and a public electric utility which has, or usually keeps, offices for transaction of its customary business in several counties in the State.

9. FMPA currently provides all of the required power supply for certain of its members (the Cities of Ocala, Bushnell, Leesburg, Jacksonville Beach, Green Cove Springs and Clewiston), and some of its other members (the Cities of Lake Worth and Vero Beach, the Fort Pierce Utilities Authority and the Utility Board of the City of Key West) have contracted with FMPA to provide essentially all of their electric power supply requirements. (These ten (10) members of FMPA shall collectively be referred to herein as the "All-Requirements Members".)

10. FMPA's owned or contracted power supply resources include an ownership share in FPL's St. Lucie Unit 2 nuclear plant; an ownership share in the Stanton No. 1 and 2 coal units; an ownership share in four combustion turbine units, and purchases of wholesale power from several utilities, including significant amounts from FPL and Florida Power Corporation. In addition, the Cities of Vero Beach and Lake Worth, the Fort Pierce Utilities Authority and the Utility Board of the City of Key West currently own and operate substantial local electric generation facilities. Additional new generation units and purchases are currently being analyzed by FMPA, but the ability of FMPA to obtain and use this generation will be dependent upon adequate and reliable transmission arrangements with FPL, which the Contract, identified below, and state and federal antitrust

laws require FPL to provide. When FPL complies with its obligations so that FMPA can supply the electricity requirements requested by the All-Requirements Members, FMPA will be responsible for scheduling and operating the individual member-owned generation units referred to herein.

11. In order to provide a reliable and economic power supply, FMPA, on behalf of the All-Requirements Members, wants and needs to integrate its existing and future power supply resources in order to operate the All-Requirements Members' most efficient generation resources at any one time, similar to the way FPL and other electric utilities operate, taking into account reliability, fuel supply, economics, environmental and other factors.

12. FMPA and the All-Requirements Members can obtain savings from jointly planning and operating their power supply resources through FMPA, because, among other things, they can operate their available resources efficiently; obtain economies in power supply planning and purchasing; and be better able to plan for new generation and power supply resources.

13. FPL owns and controls the transmission network necessary for FMPA to buy, sell, transmit and coordinate electricity between and among other utilities and to provide electricity among its All-Requirements Members. FMPA must transmit electricity over FPL-owned and controlled

transmission lines in order to supply its All-Requirements Members with electricity for resale, integrate its power supply, effectively compete with FPL for economic power supply and wholesale electricity sales and allow its All-Requirements Members to effectively compete with FPL for retail electricity sales.

COUNT I

14. This is an action for damages that exceed $10,000 for breach of contract and an action to require specific performance of the same contract.

15. Between May 26, 1981, and March 3, 1982, several municipally owned and operated electric utilities, which are members of FMPA, entered into a contract with FPL. In exchange for obtaining certain transmission and other rights, which are set forth in the Contract described below, including provisions necessary to establish FMPA, FMPA's members settled antitrust claims against FPL valued at hundreds of millions of dollars, including substantial potential damages and rights of access to FPL's operating nuclear plants. The Contract arose as a result of the actions described herein and is evidenced by the documents described herein and attached as Appendix "A".

(a) In 1981 and for several years prior thereto, certain Florida municipally owned and operated electric utilities, which are now members of FMPA, brought actions

against FPL in various fora, including the United States Nuclear Regulatory Commission, In the Matter of Florida Power & Light Co. (St. Lucie Plant, Unit No. 2), Docket Nos. 50-389 and 50-389A, and the United States District Court, Southern District of Florida, Lake Worth Utilities Authority, et al. v. FPL, Case No. 79-5101-CIV-JKL.

(b) On May 26, 1981, the United States Nuclear Regulatory Commission, pursuant to a Memorandum and Order by the Atomic Safety and Licensing Board, issued Amendment No. 3 to the St. Lucie Plant Unit No. 2 Construction Permit, a true copy of which is included in Appendix A as "A-1", and which is referred to herein as the "License Conditions." In order for FPL to comply with antitrust conditions, FPL was specifically required to allow FMPA, on behalf of certain of its members, to acquire an undivided ownership interest in FPL's St. Lucie 2 nuclear plant and to transmit electricity between and among the municipally owned and operated electric utilities, certain of which are members of FMPA.

(c) On February 11, 1982, FPL and certain Florida municipally owned and operated electric utilities identified therein, which are now members of FMPA, entered into a contract entitled "Agreement", a true copy of which is included in Appendix A as "A-2".

(d) A true copy of the front page of the St. Lucie Unit No. 2 Participation Agreement Between Florida Power &

Light Company and Florida Municipal Power Agency ("Participation Agreement") for the joint ownership of FPL's St. Lucie 2 nuclear unit is included in Appendix A as "A-3". (The Participation Agreement is not attached in its entirety since it is well over 150 pages in length and FPL has an executed original in its possession.)

(e) On March 3, 1982, the parties identified therein entered into a contract entitled "The Settlement Agreement", a true copy of which is included in Appendix A as "A-4".

(f) The Fort Pierce Utilities Authority, which is now a member of FMPA, entered into a contract with FPL entitled "Settlement Agreement Between Fort Pierce Utilities Authority and Florida Power & Light Company". A true copy of the pertinent portions of this contract is included in Appendix A as "A-5."

(g) Additional proceedings against FPL by Florida municipally owned and operated electric utilities, which are now members of FMPA, were withdrawn or dismissed, as appropriate, to further consummate their contract. True copies of a Withdrawal of Request For Hearing; a Joint Stipulation to Dismiss with Prejudice; and a Joint Motion to Withdraw Intervention, Dismiss and Terminate Proceedings, and Vacate Memorandum and Order; are included in Appendix A as "A-6", "A-7", and "A-8", respectively.

16. The documents identified and the actions described in paragraph 15 constitute the "Contract" between Plaintiff and Defendant, FPL, which provides certain transmission rights to FMPA and its members, and which creates certain obligations on the part of FPL with respect thereto. Defendant, FPL, has breached and continues to breach the Contract. FMPA has demanded and continues to demand that FPL abide by and perform in accordance with the Contract. In addition, FMPA seeks and is entitled to damages for FPL's continuing breach.

17. The Defendant, FPL, has breached the Contract as described below:

(a) Article X of the License Conditions is entitled "Transmission Services" and mandates that FPL "shall transmit power . . . (2) between two or among more than two neighboring entities...." Notwithstanding its contractual obligations, and although requested and demanded by FMPA, FPL has refused to transmit electric power between and among neighboring entities and/or neighboring distribution systems as defined in the License Conditions, which include FMPA All-Requirements Members, or to coordinate transmission with FMPA and its members.

(b) Specifically, FPL has refused to provide transmission service for transmission of power between and

among neighboring entities, which include All-Requirements Members:

(1) By requiring the All-Requirements Members to pay multiple times for the same use of FPL's transmission facilities.

(2) By ignoring all or substantially all of the generation capacity of certain FMPA All-Requirements Members, which is located in or near those member cities, and by demanding that these FMPA members pay for the transmission of power as if no internal generation capacity exists, which would require FMPA to pay for "firm" or assured transmission capacity that is not necessary.

(3) By refusing to offer non-firm transmission to FMPA so that FMPA can economically and efficiently utilize its resources.

(4) By otherwise refusing to transmit power for FMPA, as required by the Contract and the License Conditions.

(5) By not offering FMPA reasonable terms and conditions for transmission service.

(c) Article XI of the License Conditions, entitled "Wholesale Firm Power Sales," mandates that FPL shall "make sales to a neighboring entity which supplies power to an eligible neighboring entity or neighboring distribution system in lieu of making such sales directly to the eligible

neighboring entity or neighboring distribution system." Notwithstanding its contractual obligations, and although requested and demanded by FMPA, FPL has refused to sell wholesale power to FMPA in lieu of sales directly to FMPA members.

(d) Specifically, FPL has refused to sell FMPA firm partial requirements power in lieu of sales directly to the cities of Jacksonville Beach, Green Cove Springs, and Clewiston. Each of these FMPA members is an eligible neighboring entity or neighboring distribution system. Acting with the concurrence of these members, FMPA has asked FPL to sell that power to FMPA for resale to these and other members. FPL has refused to do so.

18. FPL's refusals to provide transmission of power pursuant to the terms and conditions of the Contract have delayed, interfered with and prevented FMPA's ability to plan, obtain and coordinate purchases and sales of electricity for its All-Requirements Members, thereby denying FMPA the benefits of the Contract, which has directly resulted in substantially increased costs to FMPA and its All-Requirements Members.

19. FPL's refusals to abide by the terms of the Contract make it impracticable for FMPA to coordinate generation planning and operation for its members, which has directly

resulted in increased costs to FMPA and its All-Requirements Members.

20. FPL's refusal to provide transmission as described herein and as required by the Contract has therefore damaged FMPA and its All-Requirements Members.

21. Venue is proper in any county in which FMPA or its All-Requirements Members are situated, because FPL has, among other acts, breached and continues to breach a contract to be performed in each of those counties and FMPA and its All-Requirements Members have been damaged in each of those counties. Venue is also proper in any county where FPL has, or usually keeps, an office for transaction of its customary business.

22. FMPA has complied with all conditions precedent to the institution of this action. FMPA has agreed to pay its attorneys a reasonable fee for their services.

WHEREFORE, FMPA respectfully requests this Court to enter its order:

(a) requiring FPL to comply with the terms and conditions of the Contract;

(b) awarding FMPA damages against FPL, including attorneys' fees, together with interest and costs to which it is lawfully entitled; and

(c) granting such other relief to Plaintiff as may be appropriate.

COUNT II

The Plaintiff, Florida Municipal Power Agency ("FMPA"), sues Defendant, Florida Power & Light Company, ("FPL"), and alleges:

23. This is an action for damages in excess of $10,000.00 and other relief for FPL's violations of Chapter 542, Florida Statutes (1989), (The "Florida Antitrust Act of 1980"), as alleged herein.

24. Paragraphs 1 through 13; 15 through 20; and 22 are realleged and incorporated fully herein.

25. FPL is one of the largest electric utilities in the United States and serves approximately one-half of Florida's electric load. It operates throughout most of Southern and Eastern Florida, and its area of operation extends up the east coast of Florida to the Georgia border. Its area of retail service covers approximately 36 counties, 27,659 square miles, and 700 communities. It serves approximately three million customers.

26. FPL sells electricity both at wholesale to other electric utilities and at retail to ultimate users. FPL provides both high voltage electricity, (i.e., transmission voltage electricity, which is usually defined as 69 KV and above) at the wholesale level to its own and others' distribution systems throughout its area of operation ("service area") and low voltage electricity (i.e.,

subtransmission and distribution voltage electricity, which is usually defined as less than 69 KV) directly to retail customers throughout a large portion of its area of operation. FMPA's members compete with FPL in the provision of low voltage electricity to consumers, and FMPA and FMPA members compete or attempt to compete with FPL in the provision of high voltage electricity to certain distribution systems and to other utilities. On information and belief, FPL's current high voltage load exceeds 90 percent of total high voltage load throughout its area of operation -- including both the high voltage electricity supplied to FPL's own distribution systems and that supplied to FMPA's members and other wholesale customers. On information and belief, FPL's current net generation capability is approximately 15,209 megawatts. It had a peak load of approximately 13,754 megawatts in 1990.

27. FPL coordinates the provision of high voltage electricity using its integrated high voltage transmission network. To compete with FPL, FMPA must likewise coordinate the provision of high voltage electricity. The coordination of high voltage electricity involves the acquisition, assembly and scheduling of high voltage power supplies from various generation and purchased power sources, which have varying operational and availability characteristics, to meet simultaneous and ongoing customer needs at various

distribution locations. Thus, efficient coordination requires flexibility in scheduling high voltage electricity transmission from various generation and purchased power sources to various distribution locations throughout Southern and Eastern Florida.

28. FPL possesses a transmission monopoly throughout its area of operation. FPL's integrated transmission network is the only existing or practicable transmission network throughout Southern and Eastern Florida for the transmission and coordination of high voltage electricity. FMPA must use FPL's transmission facilities in order to transmit and coordinate high voltage electricity between and among FMPA's various member cities within FPL's area of operation. FMPA cannot coordinate the production and delivery of high voltage electricity available from its own generation resources, or those of its members, or purchases from other sources, without using FPL's transmission network. FMPA's (and its members') total firm use of FPLs' monopolistic transmission system is small compared with FPLs' transmission system capacity. The additional firm transmission use which is necessary for FMPA's All-Requirements Members is less than one percent (1%) of FPL's current transmission system capacity.

29. FMPA and its All-Requirements Members are in actual and potential competition with FPL in relevant geographic

and product markets. Among other things, FMPA competes with FPL for high voltage electricity sales and purchases and sales of coordination services at the wholesale level, and FMPA's members compete with FPL for low voltage retail electricity sales. The cost, reliability and environmental characteristics of high voltage electricity supply available to FMPA and FMPA's members depends upon economical and efficient coordination of high voltage power resources, which, in turn, requires the use of FPL's essential transmission facilities. This, in turn, affects FMPA's members' ability to compete with FPL for retail sales, including competition for the right to serve retail areas, the attraction of commercial and industrial loads, and "yardstick" competition (i.e., direct comparison of rates and service quality made by utilities' customers and public officials).

30. FPL has used its ownership of, and strategic monopoly over, transmission facilities essential to FMPA and others to monopolize or attempt to monopolize high voltage electricity coordination within its area of operation and to monopolize or attempt to monopolize the provision of high voltage and low voltage electricity within this same area. FPL has also monopolized or attempted to monopolize transmission between its area of operation and transmission systems in other geographic markets throughout the

Southeastern United States by refusing FMPA's participation in the transmission network and thereby depriving FMPA of fair access to essential transmission facilities which connect FPL and other utilities.

31. FMPA has requested FPL to provide transmission between and among both its power supply resources and power supply resources of its All-Requirements Members. It has requested that such transmission be suitable for FMPA to provide power supply to and among these members and to coordinate and integrate its power supply resources and those of the involved members. FMPA has also requested to purchase wholesale partial requirements power from FPL for delivery to its All-Requirements Members. If viewed in its component parts, such a purchase would encompass a block of generation coupled with network transmission between and among the delivery points of FMPA All-Requirements Members.

32. FMPA has offered to make investments in the State and area transmission system, proportionate to its needs, to provide for its transmission use.

33. While FPL has offered to sell FMPA some transmission services, it has refused to provide transmission service or to permit FMPA to invest in transmission on a basis that will practically permit FMPA to become the all-requirements supplier to the additional FMPA members described in paragraph 9, and to coordinate and integrate its power

supply resources and those of its requesting members. Among other things:

(a) FPL's proposed charges for transmission would require FMPA or its All-Requirements Members to pay multiple transmission charges for the same service;

(b) FPL has insisted that FMPA's All-Requirements Members pay firm transmission rates for service to FMPA members who do not require firm transmission service;

(c) FPL is insisting on charging FMPA on a discriminatory basis compared with FPL's internal use of its transmission facilities;

(d) FPL is imposing on FMPA discriminatory terms and conditions for transmission services compared with its own internal use of transmission;

(e) FPL is insisting on providing FMPA inferior access to and inferior quality of use of transmission compared with its internal use of transmission.

(f) FPL has refused to sell FMPA wholesale partial requirements power for delivery to FMPA's All-Requirements Members (that is, a block of generation coupled with network transmission between and among the delivery points of FMPA's All-Requirements Members) and is insisting on separately contracting to sell partial requirements power directly to three of FMPA's All-Requirements Members (that is, to sell three distinct blocks of generation each of which is coupled

with point-to-point transmission only to the purchasing All-Requirements Member).

34. The total impact of FPL's proposed transmission pricing and terms of service constitutes a refusal to provide transmission to FMPA for service among neighboring entities including power supply resources and FMPA All-Requirements Members.

35. As a result of FPL's actions as set forth herein, in violation of the Contract and Chapter 542, Florida Statutes (1989), FMPA cannot economically serve its All-Requirements Members' requests for full requirements power supply and cannot economically coordinate and integrate its requesting members' power supply resources.

36. As a result of FPL's refusals to deal in transmission and its tie of high voltage power and coordination services to essential transmission, FMPA has been and continues to be damaged in its competition or potential competition to supply high voltage power and in its potential competition to supply coordination services, and FMPA's All-Requirements Members have been and continue to be damaged in their competition to supply low voltage power at retail.

37. As a result of FPL's refusals to deal as set forth herein, FPL is competitively advantaging itself to the

detriment of FMPA and its All-Requirements Members, contrary to the public interest.

38. FPL is also planning and constructing additional high voltage transmission facilities that will electrically tie FPL to generation resources throughout the Southeastern United States.

39. On information and belief, FPL is coordinating, or intends to coordinate, its construction of high voltage transmission facilities with Florida Power Corporation, the State's second largest electric utility.

40. FMPA has stated its desire to participate in ownership of the network transmission facilities, but FPL has refused this request. The exclusion of FMPA from participation in such network transmission facilities reinforces and extends FPL's monopoly over transmission to regions beyond its current service area. FPL's refusal to deal with FMPA in this manner bolsters FPL's monopolization of transmission, high voltage power, low voltage power, and coordination services in the relevant markets, including wholesale or retail markets, because this refusal adversely affects FMPA's or the All-Requirements Members' ability to compete in those markets. The exclusion of FMPA from participation in the high voltage transmission facilities will adversely affect FMPA in future electricity competition.

41. FPL's exploitation of its monopoly over essential transmission facilities, by actions set forth herein, results in an extension of that monopoly to other markets -- namely, those for high voltage power, low voltage power, and coordination services. FMPA and its members have been impaired and will continue to be impaired in their ability to compete with FPL, and they and their ratepayers will suffer substantial economic injury.

42. Absent relief from this Court, Florida citizens have been and will continue to be denied the benefits of free and open competition in trade and commerce.

43. As a result of FPL's aforesaid violation of Chapter 542, Florida Statutes (1989), FMPA and its All-Requirements Members have been and will continue to be injured and financially damaged in amounts not yet determined, but substantially in excess of $10,000.

44. Under Section 542.30, Florida Statutes (1989), venue is proper in any county in which FMPA or any of its All-Requirements Members are situated or in any county where FPL is found or has an agent.

45. FMPA has agreed to pay its attorneys a reasonable fee for their services and is entitled, as allowed by law, to reasonable attorneys' fees from FPL in instituting and maintaining this cause.

WHEREFORE, FMPA requests the court to:

(a) determine that FPL has violated Chapter 542, Florida Statutes (1989), by monopolizing or attempting to monopolize the relevant markets set forth herein for transmission, high voltage power, low voltage power, and coordination services, and including wholesale and retail markets;

(b) require FPL to transmit electric power between and among neighboring entities and/or neighboring distribution systems, which include FMPA All-Requirements Members and FMPA's power supply resources, as required by the License Conditions, on reasonable terms and conditions;

(c) require FPL to permit FMPA to contribute to the transmission network and have use of the transmission network on reasonable terms and conditions;

(d) require FPL to recognize FMPA transmission investments as part of the transmission network such that FMPA can obtain transmission on a basis which is functionally and economically equivalent to FPL or, alternatively, require FPL to provide transmission service equivalent to such FMPA transmission ownership;

(e) require FPL to permit FMPA to purchase wholesale partial requirements power (that is, a block of generation coupled with network transmission between and among the delivery points of FMPA's All-Requirements Members);

(f) require FPL to pay FMPA three times the amount of damages that FMPA and its All-Requirements Members have sustained as a result of FPL's violations of Chapter 542, Florida Statutes;

(g) require FPL to pay FMPA's reasonable attorneys' fees, together with the costs and expenses of this action; and

(h) grant such other and additional relief as is just and proper in the circumstances.

COUNT III

The Plaintiff, Florida Municipal Power Agency ("FMPA"), sues Defendant, Florida Power & Light Company ("FPL"), and alleges:

46. This is an action for damages in excess of $10,000.00 and other relief for FPL's violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2.

47. Paragraphs 1 through 13; 15 through 20; 22; 25 through 43, and 45 are realleged and incorporated fully herein.

48. FPL's activities occur in the flow of interstate commerce and substantially affect interstate commerce. The electricity sold by FPL is produced at generating plants in Florida and other states. Such electricity is commingled and transmitted across state lines for sale and use in Florida and other states in and substantially affecting

interstate commerce. The United State Supreme Court has found that FPL transmits power "in interstate commerce," subjecting it to the jurisdiction of the Federal Energy Regulatory Commission. Federal Power Commission v. Florida Power & Light Company, 404 U.S. 453 (1972).

49. FPL's exploitation of its monopoly power over essential transmission facilities, by actions set forth herein, has precluded or injured competition in relevant wholesale and retail electricity markets in or substantially affecting interstate commerce. Absent relief from this court, the public has been and will continue to be denied the benefits of free and open competition in trade and commerce.

50. The actions described in Paragraphs 47 through 49 violate Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2.

51. As a result of FPL's aforesaid violation of Sections 1 and 2 of the Sherman Act, FMPA and its All-Requirements Members have been and will continue to be injured and financially damaged in amounts not yet determined, but substantially in excess of $10,000.

52. FMPA has agreed to pay its attorneys a reasonable fee for their services and is entitled, as allowed by law, to reasonable attorneys' fees from FPL in instituting and maintaining this cause.

WHEREFORE, FMPA requests the court to:

(a) determine that FPL has violated Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, by monopolizing or attempting to monopolize the relevant markets set forth herein for transmission, high voltage power, low voltage power, and coordination services, and including wholesale and retail markets, and by tying sales of high voltage power and coordination services with sales of transmission;

(b) require FPL to transmit electric power between and among neighboring entities and/or neighboring distribution systems, which include FMPA All-Requirements Members and FMPA's power supply resources, as required by the License Conditions, on reasonable terms and conditions;

(c) require FPL to permit FMPA to contribute to the transmission network and have use of the transmission network on reasonable terms and conditions;

(d) require FPL to recognize FMPA transmission investments as part of the transmission network such that FMPA can obtain transmission on a basis which is functionally and economically equivalent to FPL or, alternatively, require FPL to provide transmission service equivalent to such FMPA transmission ownership;

(e) require FPL to permit FMPA to purchase wholesale partial requirements power (that is, a block of generation coupled with network transmission between and

among the delivery points of FMPA's All-Requirements Members);

(f) require FPL to pay FMPA three times the amount of damages that FMPA and its All-Requirements Members have sustained as a result of FPL's violations of Sections 1 and 2 of the Sherman Act;

(g) require FPL to pay FMPA's reasonable attorneys' fees, together with the costs and expenses of this action; and

(h) grant such other and additional relief as is just and proper in the circumstances.

RESPECTFULLY SUBMITTED this 6th day of October, 1992.

L. LEE WILLIAMS, JR.
Florida Bar ID #0176926
Moore, Williams, Bryant,
Peebles & Gautier, P.A.
306 East College Avenue
Post Office Box 1169
Tallahassee, Florida 32302
(904) 222-5510

FREDERICK M. BRYANT
Florida Bar ID #0126370
General Counsel, Florida
Municipal Power Agency
Moore, Williams, Bryant,
Peebles & Gautier, P.A.
306 East College Avenue
Post Office Box 1169
Tallahassee, Florida 32302
(904) 222-5510

AND

ROBERT A. JABLON
BONNIE S. BLAIR
Spiegel & McDiarmid
Suite 1100
1350 New York Avenue, N.W.
Washington, D.C. 20005-4798

7201 Lake Ellenor Drive
Orlando, Florida 32809-5769
(407) 859-7310

June 11, 1992

Mr. Stephen E. Frank
President and Chief Operating Officer
Florida Power & Light Company
P. O. Box 14000
Juno Beach, FL 33400

Dear Steve:

FMPA currently purchases firm partial requirements wholesale power from FPL as agent for Clewiston, Green Cove Springs and Jacksonville Beach. During our past negotiations on this matter, FPL told us that FMPA could not purchase wholesale power for all three member systems (or others) and have that power dispatched in accordance with FMPA members' needs. FPL's stated reason was that it felt a financial need for the cities to be individually liable for payment. As a result, FPL has only been willing to sell wholesale power based upon the separate demands of each system and to bill and to dispatch such power on a non-integrated basis.

In reviewing our power supply needs, we have concluded that it would be beneficial to us and to our members, if FMPA could purchase wholesale power under a single contract for delivery to Clewiston, Green Cove Springs and Jacksonville Beach or our other members instead of acting as agent for those systems under arrangements which do not integrate wholesale power purchases. We believe that our ability to integrate wholesale power purchases of our individual members was contemplated by the St. Lucie Unit 2 Nuclear Regulatory Commission antitrust license conditions. See Condition IX(b), (d). Further, there is no basis for the contention that FMPA is not sufficiently financially responsible to pay for its wholesale power purchases. We therefore request your agreement that FMPA can buy wholesale power directly from FPL.

We would appreciate your responding whether, and on what terms, we can purchase such wholesale power to enable us to integrate our wholesale purchases with our other power supply for our member systems. We look forward to receiving your response.

Sincerely,

John C. L'Engle
General Manager

JCL/ae

ATTACHMENT 1

P.O. Box 029100, Miami, FL, 33102-9100

FPL

July 24, 1992

Mr. Claude L'Engle
General Manager
Florida Municipal Power Agency
Orlando Central Park, Suite 100
7201 Lake Ellenor Drive
Orlando, FL 32809

RECEIVED
JUL 27
FMPA
ORLANDO, FL

Dear Claude:

This responds to your letter of June 11, 1992, to Mr. Frank.

Your letter requests that FMPA be permitted to buy wholesale power directly from FPL. FPL now sells partial requirements to FMPA on behalf of the Cities of Jacksonville Beach, Green Cove Springs and Clewiston and anticipates continuing to do so in the future. I am not aware of there being, or having been, any disagreement over whether FMPA is financially qualified to purchase this service. We have requested assurance, either directly from the FMPA member cities, or by way of contractual arrangements between FMPA and its members, that those FMPA members who receive partial requirements deliveries comply with the terms of the partial requirements service agreement between FPL and FMPA. For example, the provision of FPL's wholesale tariff that requires a customer to prudently operate its system is important so as not to jeopardize the reliability of service on FPL's system. As it is the individual member city, not FMPA, which owns, operates and maintains the transmission and distribution facilities on its side of the point of delivery it has been essential that a contractual commitment between FPL and the individual city be entered into to provide assurances regarding the reliable operation of a city's facilities under the Sale-for-Resale Tariff.

The thrust of your request is that FPL sell wholesale power to FMPA under a single contract with which FMPA could arrange for delivery of partial requirements service to unspecified delivery points in unspecified amounts. This request is inconsistent with FPL's existing partial requirements service, which is provided to specific delivery points in specific amounts for good reasons. As we have discussed on many occasions, the location of customer load is an important factor in the planning and operation of FPL's power supply system. In order to prudently plan and operate our transmission system, FPL must be provided with the specific amounts of power to be delivered and the specific delivery points. If FMPA were to be relieved of the obligation to specify contract demands by delivery point, service reliability could be decreased and the costs of serving FPL's other customers would be increased, as FPL would have to plan to serve up to the total amount of all contracted demand for each hour to each city (limited only by the total load at that

ATTACHMENT 2

city) even though FMPA does not intend to compensate FPL for providing this service to each city.

Claude, I am sure that you already are aware of these facts. It is a disappointment that many of FPL's recent dealings with FMPA have involved proposals of this sort -- proposals designed simply to benefit FMPA at the expense of other FPL customers. As we have repeatedly stated, FPL is willing to discuss and negotiate contractual arrangements in an effort to further accommodate your members long term needs. However, any contractual arrangement must reflect FPL's costs to serve and must not result in subsidies from our other customers. Additionally, under any such arrangement, FPL must continue to be able to prudently plan and operate our system in an efficient and reliable manner.

I hope that soon we can reach a point where our discussions concern proposals that could create efficiencies, so that we may work together to produce benefits for both FMPA's and FPL's customers.

Sincerely,

W. C. Locke, Jr., Manager
Inter-Utility Markets

WCLjr:mn

cc: S. E. Frank

7201 Lake Ellenor Drive
Orlando, Florida 32809-5769
(407) 859-7310

September 3, 1992

Mr. Stephen E. Frank
President and Chief Operating Officer
Florida Power & Light Company
P. O. Box 14000
Juno Beach, FL 33400

Dear Steve:

I truly hesitate to write this letter at this time in light of the horrendous problems on your system due to Hurricane Andrew. As we communicated to your company in the early hours after the hurricane, if there is anything FMPA or its member systems can do to assist in your rebuilding efforts, please do not hesitate to contact me. However, there is an important matter I feel I must address.

I regret your refusal to sell FMPA wholesale power, as is stated in Bill Locke's letter of July 24. FPL gives as reasons the necessity of its having assurances that the cities which ultimately receive the power will reliably operate their facilities and also the assertion of planning and operational difficulties. If there are in fact any technical scheduling, delivery or other problems associated with our purchasing wholesale power for resale to the cities, such problems are addressed every day in the state and can be readily overcome. I note that FPL sells both wholesale and retail power throughout its system. Variations in demand at individual delivery points are a natural occurrence in the industry and are constantly accommodated. It is apparent that FPL's unwillingness to sell us wholesale power is a matter of company policy and not one of technical difficulty.

We believe that we have a right to purchase wholesale power under the St. Lucie license conditions. These were agreed to by FPL. Contractual rights aside, we do not understand why FPL refuses to sell power on a "user friendly" basis, which would be beneficial not only to us and our members, but to FPL's long-term marketing, as well. For these reasons, we hope that you will reconsider FPL's position.

We understand Bill's letter to be a refusal by FPL to deal with us directly. In order to protect our members, we have no choice except to attempt to protect what we believe to be our legal rights. However, we hope that you will change your mind. We believe that if FPL would sell and price its power to us in a way which would be most beneficial to our customers, we could provide a valued long-term market for FPL. We believe that what we are requesting would truly be a win-win situation for FMPA and FPL.

Sincerely,

John C. L'Engle
General Manager

JCL/ae
cc: W. C. Locke, Jr.

P.O. Box 029100, Miami, FL 33102-9100

FPL

September 29, 1992

Mr. Claude L'Engle
Florida Municipal Power Agency
Orlando Central Park, Suite 100
7201 Lake Ellenor Drive
Orlando, FL 32809

Dear Claude:

Enclosed is a copy of a letter from Alvin Davis to Robert Jablon, responding to your letter of September 3, 1992 to Mr. Frank. It was obvious to all of us that the letter that you signed was a litigation tactic, and not a legitimate effort to pursue a commercial arrangement.

Even so, I am concerned with how badly the letter misstates the facts. And I am disappointed in your willingness to send it.

FPL is willing to sell wholesale power to FMPA. It already does. FPL is also prepared to sell a single block of wholesale power to FMPA, under arrangements where FMPA pays its fair share (as determined by the cost responsibility principles applied by the FERC) of FPL's system costs, including the costs associated with reserving and using transmission capacity to deliver the power to the delivery points of FMPA's member Cities.

Your letter of June 11, 1992 did not propose any such arrangement. It proposed that, under the existing wholesale power tariff on file with FERC, a number of separate FMPA member delivery points be treated as if they were a single delivery point, so that the same service that is now being provided would be provided in the future for a lower charge. There would be no reduction in FPL's costs. The same body of costs would simply be divided differently, with FMPA and its members paying less and FPL's other customers paying more. No one can call that a "win-win" transaction.

As I have made clear many times, FPL is prepared to consider seriously any legitimate proposal that would benefit FMPA without adversely affecting the cost of service to FPL's other customers. If there is any serious desire on FMPA's part to purchase a single block of wholesale power, on a basis that does not disadvantage FPL's other customers, I am

ATTACHMENT 4

prepared to pursue the matter with you promptly. Let's not waste any more of each others time with these type of letters.

Sincerely,

W. C. Locke, Jr., Manager
Inter-Utility Markets

Steel Hector & Davis
Miami, Florida

Alvin B. Davis
(305) 577-7905

September 29, 1992

Robert A. Jablon, Esq.
Spiegel & McDiarmid
1350 New York Avenue, N.W.
Washington, D.C. 20005-4798

In re: John L'Engle's Letter To Steve Frank

Dear Mr. Jablon:

Since it threatens additional litigation and since it appears to have been written by counsel in the first place, Mr. Frank has asked us to reply to Mr. L'Engle's letter to him of September 3, 1992.

Letters of that type, which mischaracterize FPL's contracts, FPL's negotiations, FPL's policies, FPL's practices and FPL's responses to your earlier letters, do not provide the foundation for what Mr. L'Engle whimsically describes as a "win-win situation" for anyone. To the contrary, they reinforce the unavoidable perception that FMPA attempts to achieve through costly, ill-considered litigation, what no rational company would or should surrender in business negotiations.

That such a letter would arrive on the same day as FPL is informed of FMPA's "Supplemental Amended Complaint" makes it plain that the purpose of the letter is to buttress that filing, not to pursue any legitimate effort to effectuate a business transaction. While the complaint can certainly do with more substance, it won't be found in these disingenuous requests for additional contracts.

To the extent that FMPA can generate a sincere, specific proposal that would be beneficial to its customers without being at the expense of FPL's customers, FPL will, as always, give it careful, thoughtful consideration. As FMPA's officers and operating personnel well know, any such proposal should be directed to Bill Locke. It would be best if the proposal did not conclude with what has become FMPA's customary threat to sue if FPL does not accede to the terms suggested. FPL is not "refusing to deal", as FMPA's lawyers have had Mr. L'Engle characterize it. FPL is refusing to be blackmailed.

Very truly yours,

Alvin B. Davis

ABD/ps

SPIEGEL & McDIARMID

1350 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-4798

TELEPHONE (202) 879-4000
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THOMAS C. TRAUGER
JOHN J. CORBETT
CYNTHIA S. BOGORAD
GARY J. NEWELL
RENA I. STEINZOR
P. DANIEL BRUNER
SCOTT H. STRAUSS
BEN FINKELSTEIN
STEPHEN M. FELDMAN
MARGARET A. McGOLDRICK

DAVID KOLKER
LISA G. DOWDEN
RISE J. PETERS
PETER J. HOPKINS
RUSSELL F. SMITH, III
KODWO GHARTEY-TAGOE
DAVID E. POMPER
MEG MEISER
• TERESA A. FERRANTE
• MATTHEW F. LINTNER
• MARK S. HEGEDUS

• NOT ADMITTED IN DC

OF COUNSEL
ROBERT A. SALTZSTEIN
BRADLEY S. WEISS
GUY MARTIN

October 1, 1992

Via Telecopy

Alvin B. Davis, Esquire
Steel, Hector & Davis
4000 Southeast Financial Center
200 South Biscayne Boulevard
Miami, FL 33131-2398

Re: Florida Municipal Power Agency v. Florida Power & Light Company, Case No. 92-35-Civ-Orl-18

Dear Alvin:

This is in response to your letter of September 29, 1992, regarding FMPA's request to purchase wholesale power from FPL. The fact is that the antitrust conditions to which FPL agreed give FMPA the right to purchase wholesale power from FPL in FMPA's own name. The fact is that FPL is refusing to sell such power to FMPA. FPL has no basis for this refusal.

The timing of FMPA's letter was dictated both by its desire to purchase the wholesale power which it requested and by its desire to put FPL on notice of its position. FPL is in the business of marketing power. I do not know why FPL doesn't just say yes to FMPA's request.

If I am missing something, please let me know.

Sincerely,

Robert A Jablon by BSB

Robert A. Jablon

RAJ/das

ATTACHMENT 5

Steel Hector & Davis
Miami, Florida

Alvin B. Davis
(305) 577-2855

October 1, 1992

VIA TELECOPIER

Robert A. Jablon, Esq.
Spiegel & McDiarmid
1350 New York Avenue, N.W.
Washington, D.C. 20005-4798

In re: Florida Municipal Power Agency
vs. Florida Power & Light Co.

Dear Bob:

You are missing something.

Sincerely,

Alvin B. Davis

ABD/ps

ATTACHMENT 6

Miami Office
4000 Southeast Financial Center
Miami, FL 33131-2398
(305) 577-2800
Fax: (305) 358-1418

215 North Eagle Drive
1300 Northbridge Centre 1
West Palm Beach, FL 33401-4327
(407) 650-7900
Fax: (407) 655-1509

440 Royal Palm Way
Palm Beach, FL 33480
(407) 650-7300

215 South Monroe
Suite 601
Tallahassee, FL 32301-1804
(904) 222-2300
Fax: (904) 222-8410

APPENDIX 9

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket No. ER93-465-000
	)	

NOTICE OF SEMINOLE ELECTRIC COOPERATIVE, INC.
OF WITHDRAWAL
OF AFFIDAVIT AND PORTIONS OF PROTEST

Pursuant to Rule 216(a) of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure,1/ Seminole Electric Cooperative, Inc. ("Seminole") hereby notices the withdrawal of the Affidavit of Dr. Gordon T.C. Taylor, filed as Exhibit 6 to Seminole's August 24, 1993 Protest in this docket.2/ Seminole also hereby notices the withdrawal of those portions of the Protest which refer to the Affidavit.3/ This action does not relate to the truthfulness or accuracy of the affidavit.

1/ 18 C.F.R. §§ 385.216(a).

2/ "Motion To Intervene, Motions To Reject, Protest, Motion To Require Filing of License Conditions, and Request for Five Months' Suspension," dated August 24, 1993 ("Protest").

3/ The Protest makes reference to the Affidavit at pages 148 (final four lines of main text and n. 106) through 149 (first four lines of main text); 151 (sentence starting at line 11 of main text, and n. 114) through 153 (main text prior to Section IV.B.1.b.(3)(b), and n. 119); 187 (sentence starting at next to last line of main text) through 188 (first word); and 231 (parenthetical starting at line 4).

Respectfully submitted,

SEMINOLE ELECTRIC COOPERATIVE, INC.

By William T. Miller
William T. Miller
Jonathan S. Liebowitz
John Michael Adragna

Miller, Balis & O'Neil, P.C.
1101 Fourteenth St., N.W.
Suite 1400
Washington, D.C. 20005
(202) 789-1450

September 23, 1993

M:\19150\ER93-465\WITHDRWL.NOT

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each of the parties shown on the official service list compiled by the Secretary in this proceeding, by depositing copies thereof in the first class mail, postage prepaid.

Dated at Washington, D.C. this 23rd day of September, 1993.

William T. Miller

William T. Miller
Miller, Balis & O'Neil, P.C.
1101 Fourteenth Street, N.W.
Suite 1400
Washington, D.C. 20005
(202) 789-1450

APPENDIX 10

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Florida Municipal Power Agency	)	Docket No. EL93-___
	)	
v.	)	
	)	
Florida Power & Light Company	)	

COMPLAINT, APPLICATION
AND MOTION FOR SUMMARY DISPOSITION
OF FLORIDA MUNICIPAL POWER AGENCY

Pursuant to Sections 206, 211, 212, and 306 of the Federal Power Act ("FPA"), 16 U.S.C. §§ 824e and 825e, as amended by the Regulatory Fairness Act of 1988, 16 U.S.C. § 824e(b) and by the Energy Policy Act of 1992, § 721, 1992 U.S.C.C.A.N. (106 Stat.) 2915, and Rules 204, 206, 212, 217 and 502(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.204, 385.206, 385.212, 385.217, and 385.502(c), Florida Municipal Power Agency ("FMPA") hereby files this complaint, application for an order requiring provision of transmission services, and motion for summary disposition against Florida Power & Light Company ("FPL" or "the Company").

FMPA is here seeking prospective relief putting in place the transmission required for the Integrated Dispatch and Operations ("IDO") project, through which FMPA would effect the dispatch, operation and planning of power supply resources for participating members on an integrated basis, and thereby achieve economies on the order of $10 million annually. As demonstrated below, FMPA is entitled to this transmission under FPA Section

206, because such transmission is mandated by antitrust license conditions agreed to by FPL in settlement of litigation and is necessary for just, reasonable, pro-competitive rates consistent with the Act's public interest standard. FMPA is also entitled to such relief under FPA Sections 211 and 212, as amended by the Energy Policy Act of 1992.

FMPA requests that the Commission initiate complaint and mandatory transmission proceedings and issue orders: (1) summarily finding that FPL is obligated to sell network transmission over its system for FMPA's IDO project without imposing multiple charges for transmission among multiple points; (2) ordering FPL to provide transmission for FMPA's IDO project on that basis; (3) finding that the access limitations embodied in the rates, terms, and conditions of (a) existing FMPA-FPL Transmission Service Agreements ("TSAs") on file with the Commission and (b) the transmission tariffs proposed by FPL in FERC Docket No. ER93-465-000 are unjust and unreasonable, produce excessive revenues, and should be modified as explained herein; (4) directing FPL to file a compliance tariff forthwith; (5) directing FPL to file its antitrust license conditions with the Commission; (6) establishing a refund-effective date 60 days from the date of the filing of this complaint; and (7) affording FMPA such other relief as may be deemed appropriate.

I. COMMUNICATIONS

The names, addresses and telephone numbers of the persons to whom communications concerning this matter should be addressed are as follows:

* Robert A. Jablon
Alan J. Roth
Bonnie S. Blair
Spiegel & McDiarmid
Suite 1100
1350 New York Avenue N.W.
Washington, DC 20005-4798
(202) 879-4000

* Frederick M. Bryant
L. Lee Williams, Jr.
Moore, Williams, Bryant, Peebles & Gautier
306 E. College Avenue
Tallahassee, FL 32301
(904) 222-5510

J. Claude L'Engle
* Robert C. Williams
Florida Municipal Power Agency
Suite 100
7201 Lake Ellenor Drive
Orlando, FL 32809
(407) 859-7314

* Nicholas P. Guarriello
R.W. Beck & Associates
Suite 300
800 North Magnolia Avenue
P.O. Box 6817
Orlando, FL 32853
(407) 422-4911

FMPA requests waiver of Rule 203(b)(3) to allow the designation of all four of the above addresses (and the individuals who have asterisks (*) next to their names) for inclusion on the official service list in this proceeding.

II. DESCRIPTION OF THE PARTIES

A. FMPA

FMPA was created in 1978, in accordance with the provisions of the Florida Constitution, with Florida Statutes Ch. 361 (the "Joint Power Act"), and with various Interlocal Agreements enacted in accordance with the provisions of Florida Statutes Ch. 163 (the "Florida Interlocal Cooperation Act"). As a joint action agency, FMPA provides power supply and other project services for 26 member electric systems through individual projects as approved by the members. Each of these member systems is either a municipal government or a municipally-owned local power authority. These members are located throughout Florida, ranging from Jacksonville Beach to Key West.

To date, FMPA has created five power supply projects, including joint ownership with FPL of St. Lucie Unit No. 2 (involving 75 MW for participating members), and joint ownership with the Orlando Utilities Commission ("OUC") of Stanton Energy Center Unit No. 1 (involving 110 MW in three separate projects for 12 members). FMPA has also contracted (in two projects) to own 120 MW of OUC's Stanton Energy Center Unit No. 2.

FMPA owns and contracts for the complete power supply of six member systems in the FMPA All-Requirements Power Supply Project, which began operation in May of 1986. Three of these member systems are located in the FPL system and three in the Florida Power Corporation ("FPC") system. The All-Requirements Project owns coal and combustion turbine capacity and has

contracts with FPL as well as FPC, Tampa Electric Company ("TECO"), OUC, the City of Lake Worth and the City of Homestead for the firm power supply necessary to serve the All-Requirements Project's 450 MW peak demand.

Through the All-Requirements Project, FMPA purchases nearly 200 MW of Partial Requirements power from FPL and FPC and interchange service from FPL, FPC and TECO. (PR power from FPL is purchased by FMPA's member cities, with FMPA acting as purchasing agent.) Under the Interchange Contract with TECO, FMPA purchases 10 MW of firm Schedule D from the Big Bend Plant. Under the interchange contracts with all three companies, FMPA purchases economy power, short-term firm and emergency service.

Individual FMPA members who own generation and are not in the All-Requirements Project also have significant transactions with FPL and others in Florida.

B. FPL

This complaint is directed against:

Florida Power & Light Company
P.O. Box 029100
Miami, Florida 33102-9100

FPL is the nation's fourth largest electric utility. Its service territory includes most of eastern and southern Florida.

FPL is a transmission monopolist. FPL owns a transmission system comprising more than 80% of the high voltage transmission facilities within its service area. FPL, like all utilities, plans and uses the transmission system on a network basis, to integrate and coordinate its generation, to seek to

reduce its cost of producing electricity. FPL's transmission network is an essential facility: It is not feasible for FMPA to duplicate FPL's network; access to that network is necessary to permit FMPA to compete; and denial of access inflicts a severe competitive handicap on FMPA.

FPL is using its transmission monopoly to frustrate competition by FMPA. FPL competes with FMPA, among other ways, to serve the wholesale electricity requirements of municipal electric systems in FPL's territory. By refusing to sell network service to FMPA, FPL is preventing fair competition for that business.

III. FACTUAL AND PROCEDURAL BACKGROUND TO THE COMPLAINT 1/

During the 1970's and early 1980's, a number of Florida cities brought legal actions against FPL, which included the filing of antitrust and other claims in the Southern District of Florida, 2/ and petitions and interventions before the Atomic Energy Commission and its successor, the Nuclear Regulatory Commission. Before the NRC, the Justice Department and the NRC

1/ Additional details of the following history are supplied in the April 29, 1993 affidavits of Robert Bathen (Appendix 18) and Nicholas Guarriello (Appendix 20).

2/ Lake Worth Utils. Auth. v. FPL, Case No. 79-5101-CIV-JKL. In addition to raising claims for damages, the cities sought, among other things, access to FPL's transmission system to permit them to buy from and sell to various electric utilities and to "coordinate" their generation; an "integrated Florida Power Pool" to permit inter-utility planning and operations on a least cost basis; rights to participate in FPL's nuclear monopoly; rights to purchase FPL wholesale power; and cessation of FPL's opposition to their forming a joint action agency.

staff, as well as the Florida cities, sought to attach antitrust conditions to FPL's St. Lucie nuclear license. Florida Power & Light Company (St. Lucie Plant, Unit No. 2), NRC Docket No. 50-389A ("St. Lucie").

FPL, the NRC Staff, and the DOJ entered into a settlement agreement to resolve their differences in the St. Lucie proceeding. 3/ FPL agreed to antitrust license conditions ("Antitrust Conditions," Appendix 23), which "assure the Cities that FPL will provide transmission service in accordance with the license conditions during the operating life of St. Lucie Unit No. 2" and "set basic rules that FPL must follow in providing transmission service." 4/ These "basic rules" include the obligation to transmit "between two or among more than two" receipt and delivery points of "neighboring entities," including FMPA. The Conditions also require FPL to make filings with FERC as needed to implement the Conditions' bulk power supply policies, and in particular, to file transmission service agreements in the event of a dispute with regard to the terms of requested service.

3/ See September 12, 1980 Joint Motion of Department of Justice, NRC Staff, and Applicant to Approve and Authorize Implementation of Settlement Agreement, St. Lucie, and appended Stipulation (Appendix 21).

4/ August 7, 1981 Response of Florida Power & Light Company to Cities' Motion to Establish Procedures, for a Declaration of Situation Inconsistent with the Antitrust Laws and for Related Relief at 72, St. Lucie (Appendix 22).

The meaning of the transmission "among" requirement to which FPL agreed had been unambiguously established six years earlier by the Atomic Energy Commission. The AEC defined transmission "among" to require "transmission from any member of a coordinating group to any other member of such group," where "[f]or each coordinating group of entities there shall be a single transmission charge." In the Matter of Louisiana Power and Light Company (Waterford Steam Generating Station Unit No. 3), Docket No. 50-382A, 8 AEC 718, 733, 744 (Atomic Safety and Licensing Bd. 1974), aff'd, 1 NRC 45 (Appeal Bd. 1975) ("LP&L"). The AEC insisted on the "among" requirement because it found that the multiplicity of transmission charges inherent in point-to-point rates would not permit coordinated operations and development and therefore would not suffice to overcome a situation inconsistent with the antitrust laws. Id. at 733-34. The AEC explained that the purpose of this "among" requirement "is to prevent multiple transmission charges for transmission of a contracted transmission entitlement among a coordinating group of two or more entities." Id. at 737.

On February 11, 1982, March 3, 1982, and April 20, 1982, FPL entered settlement agreements with the various Florida cities. These settlements incorporate and build on the Antitrust Conditions. (The Antitrust Conditions are attached as Appendix 23; relevant portions of other key documents memorializing the comprehensive FPL-Florida cities settlement

agreement are attached as Appendix 24. 5/) Indeed, Section 13(a) of the March 3, 1982 Settlement Agreement (Appendix 24) expressly provides that Florida cities will inform the NRC that "they accept the settlement License Conditions" (emphasis supplied). Further, the agreed-upon covenant not to sue (Appendix 24) barred the cities from maintaining, among other things, an action in any court or agency forum based on matters alleged in the settled district court antitrust action, "except for enforcement of the Settlement Agreement...and the NRC License Conditions for St. Lucie Unit No. 2."

As part of the same comprehensive settlement, FPL agreed to support Florida legislation enabling FMPA to issue revenue bonds. See Appendix 24. The legislation soon passed. FMPA began to develop into a functioning joint action agency providing power supply to participating members. To this end, FMPA in 1983 purchased a share of the St. Lucie nuclear power plant. In 1985 and 1986, FMPA purchased unit power shares from the Stanton coal plant. In 1985, FMPA became the All-Requirements supplier to several member cities which had no on-system generation resources of their own.

Each of these projects required use of the FPL transmission system for delivery of the relevant power to the participating FMPA members. FPL's agreement to provide

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5/ See Appendix 25 for a list of other documents memorializing the comprehensive settlement but not included in Appendix 24 to avoid unnecessary copying.

transmission service therefore had to be in hand before FMPA could sign ownership agreements or make timely commitments to obtain financing for these projects. Consequently, FMPA entered into several transmission service agreements ("TSAs"), each providing for delivery of specified generating resources to specified delivery points. In 1990, FPL entered into a "Restated and Revised" TSA, which superseded the 1985 TSA under which FPL agreed to provide specified transmission services for FMPA's "All-Requirements" Project.

The four existing TSAs under which FMPA receives long-term wheeling service from FPL 6/ are:

(1) St. Lucie Delivery Service Agreement, dated June 27, 1983, FERC Electric Rate Schedule No. 72;

(2) Stanton Transmission Service Agreement, dated November 25, 1986, FERC Electric Rate Schedule No. 92;

(3) Stanton Tri-City Transmission Service Agreement, dated November 25, 1986, FERC Electric Rate Schedule No. 93; and

(4) Restated and Revised Transmission Service Agreement dated October 2, 1990, FERC Electric Rate Schedule No. 109 (superseding FERC Electric Rate Schedule No. 84).

6/ The Agreement to Provide Specified Transmission Service, dated April 24, 1986, FERC Electric Rate Schedule No. 86, is an additional rate schedule which provides for shorter-term transmission for interchange-type transactions (i.e., shorter-term, economy and emergency services). Like the TSAs for long-term service, this rate schedule is restricted to point-to-point service and does not suffice to permit integrated planning, dispatch and operation. See June 3, 1992 Affidavit of Nicholas P. Guarriello at 5-7 (Appendix 19).

None of the FPL-FMPA TSAs has been approved by the Commission. While they were accepted for filing, that does not constitute Commission approval. See 18 C.F.R. § 35.4.

These FPL-FMPA TSAs provide transmission "between" pairs of delivery points, but fall short of providing transmission "among" as defined by the NRC in LP&L, i.e. network transmission. Although in each case FMPA requested network transmission, FPL refused and, in light of the time constraints on FMPA's economic resource commitments and the controlling necessity to obtain some form of timely transmission commitment from FPL, FMPA was forced to accept point-to-point service limitations in those TSAs. See April 29, 1993 affidavit of Nicholas P. Guarriello (Appendix 20). However, FMPA did so in connection with Transmission Service Agreement provisions that expressly preserved FMPA's rights to obtain network transmission service.

Specifically, each FMPA-FPL TSA includes a "Unilateral Changes and Modifications" clause, expressly reserving to both FPL and FMPA broad rights to change the TSAs' terms, conditions, and charges. Every TSA also contains an atypically broad no-waiver clause providing that "[a]ny waiver at any time by either Party hereto of its rights with respect to the other Party or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter." See, e.g., All-Requirements TSA, Section 22.2. The All-Requirements TSA also contains an express "independent rights" clause, Section 22.13, which provides:

"Nothing in this Agreement shall be construed as a waiver by FMPA of any of its rights independent of this Agreement... ." The independent rights clause was included in the TSA as originally executed in 1985, and as restated in 1990. The 1990 restatement also contains a clause providing for that TSA to be "supersede[d] or replace[d]" at any time. FPL witnesses have testified that the clause was added to facilitate replacing the TSA with one that would provide transmission for FMPA's IDO project. 7/

The IDO project represents the logical next step in FMPA's development. Integrating and coordinating its resources has been an important long-term FMPA goal. 8/ FMPA has previously sought to establish a Florida-wide power pool and, failing that, a FMPA-FPL power pool, but those efforts were rebuffed by FPL. The IDO project would establish an integrated dispatch and operations pool of certain FMPA members, thereby permitting substantially more economic and efficient use of their

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7/ Dean Gosselin, who negotiated with FMPA on behalf of FPL, testified on deposition (in the District Court case described below) that this provision was included "in contemplation of a transmission service agreement for the integrated dispatch operation project," so that "[i]n the event that a transmission service arrangement was negotiated which included the all-requirements cities, that this agreement would be able to be revised to accommodate such understanding that may have been reached." See Tr. 42-43 (Appendix 7).

8/ Network transmission was desirable, but not essential, to the prior FMPA projects discussed above. However, network transmission is essential to permitting FMPA to integrate its resources. As is discussed infra, FPL's refusal to sell network transmission prevents FMPA from planning and operating its generation mix on a least-cost basis in the way that FPL can plan and operate.

existing resources and planning for more economic future resources. These economies, which are quantified in the April 29, 1993 Affidavit of Albert B. Malmsjo (Appendix 26), are projected to range from approximately $7.5 million in 1993 to almost $20 million in 2003. 9/

Bushnell, Clewiston, Ft. Pierce, Green Cove Springs, Jacksonville Beach, Key West, Lake Worth, Leesburg and Ocala have asked FMPA to provide their power supply through the IDO project. 10/ These cities are all located within or adjacent to Florida Power & Light Company's territory, or are interconnected directly or indirectly with FPL's transmission system.

FMPA began to actively consider the IDO project in June, 1987. Aware that FPL had refused previous requests to implement FMPA's right to transmission "among" through a TSA, FMPA did not begin negotiations for the requisite transmission

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9/ Thus, IDO would effectuate the purposes of the Federal Power Act, as expressed in FPA § 202(a), which promotes pooling as a means to "assur[e] an abundant supply of electric energy throughout the United States with the greatest possible economy," and FPA §§ 211 & 212(a), which facilitate transmission as a means to "promote the economically efficient transmission and generation of electricity," as well as the policies of the antitrust laws.

10/ The municipal electric systems of Bushnell, Clewiston, Green Cove Springs, Jacksonville Beach, Leesburg, and Ocala, which do not have on-system generation resources, presently receive their power supply from FMPA through FMPA's "All-Requirements" project. The IDO project represents an expansion of the All-Requirements project to include four FMPA members having on-system generation resources, namely the municipal electric systems of Fort Pierce, Key West, Lake Worth, and Vero Beach. For simplicity, the expanded project is referred to herein as the "IDO project," and all the participating cities are referred to as "IDO participants."

arrangement until it had thoroughly studied the project's feasibility, had obtained agreements from interested members, and had drafted a proposed TSA, one sufficient to provide transmission for IDO and ready for filing at FERC. FMPA sent this proposal to FPL in September, 1989. Two years of attempts to negotiate with FPL followed, during which FPL never budged from its refusal to provide network transmission despite numerous significant concessions by FMPA. As a result, FMPA has not been able to implement its IDO project.

Finally convinced that litigation was necessary before FPL would honor its obligation to provide network transmission, FMPA filed a lawsuit in Florida state court on December 13, 1991, asserting FMPA's right to network transmission under contract law and Florida's antitrust statute. FPL removed the case to the federal district court for the Middle District of Florida, where it is docketed as Florida Municipal Power Agency v. Florida Power and Light Co., Case No. 92-35-Civ-Orl-3A22 ("District Court

case"), where discovery is largely complete 11/ and where trialis scheduled to begin this coming September. 12/

On March 19, 1993, FPL unilaterally submitted to the Commission (in Docket No. ER93-465-000) a comprehensive restructuring of FPL's transmission, wholesale power, and interchange tariffs. FPL's "open access" tariff filing purports to establish a new regime for transmission service to which the TSAs will be conformed. See March 19, 1993 Letter from FPL Vice President William G. Walker III to the Commission ("Transmittal Letter"), at 43-44 (Appendix 27). However, this exclusively "point-to-point" regime is inconsistent with FPL's network transmission obligations under the Antitrust Conditions. Despite its obligation to provide transmission "between or among," and despite FMPA's persistent requests for such service (including

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11/ Numerous fruits of discovery from the District Court case are cited in this complaint and appended hereto. Unless otherwise indicated, references to depositions and to documents from FPL's files are to the District Court case discovery. A list identifying the various FPL deponents is attached as Appendix 17.

Confidentiality restrictions relating to that discovery inhibit FMPA from revealing most of the other documents produced in that discovery. See Florida Cities' June 21, 1993 Motion for Discovery Order in Docket No. ER93-465-000. FMPA believes that the relief requested in this complaint can and should be ordered without evidentiary hearing. However, if hearings are determined to be necessary, discovery should be ordered to permit FMPA to further show, for example, FPL's anticompetitive intent. It is particularly inappropriate, in FMPA's view, that FPL will not permit FMPA to present to the Commission discovery which it has already received under the District Court's orders.

12/ After FPL removed FMPA's complaint to the Federal district court, FMPA amended its complaint to assert claims under the Federal antitrust laws, based on the same facts as FMPA's original claims under the Florida antitrust laws.

the filing of a lawsuit), FPL proposes to provide only "access between generation resources and bulk-power loads connected to FPL's system or [connected] to systems interconnected with FPL." Transmittal Letter at 6 (emphasis added) (Appendix 27). 13/

FMPA and those of its members which do business with FPL jointly filed a timely protest and motion to intervene in Docket No. ER93-465-000. See Florida Cities' April 12, 1993 Motion to Intervene, Motion to Reject, Alternative Request for Partial Summary Dispositions, Alternative Motion for Deferral of Power Service Restrictions, Alternative Request for Suspension and Request for Hearing, Answer Opposing Waiver Requests, and Motion to Require Filing of NRC License Conditions ("Florida Cities' Opposition"). Among other challenges to FPL's filing, Florida Cities' Opposition demonstrated that FPL's failure to file a tariff for network transmission service was both anticompetitive and inconsistent with FPL's obligations under the Antitrust Conditions.

In response to network access arguments made in Florida Cities' Opposition and by others in Docket No. ER93-465-000, FPL asserted that that proceeding was not the proper forum for adjudicating FMPA's entitlement to the network access required for IDO. Instead, FPL suggested that FMPA should file a

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13/ By letter Order dated May 18, 1993, FPL's filing was found deficient in a number of respects, and FPL was ordered to make a conforming filing within 30 days. The deficiency letter did not reach the issue of network versus point-to-point service. FPL subsequently requested (and was granted) an extension until July 26, 1993 to submit a revised filing.

Section 206 or Section 211 complaint with FERC. See FPL's April 27, 1993 Answer at 35-37 (Appendix 28). FMPA hereby does so. 14/

FMPA seeks a speedy determination of its right to purchase network transmission. Each day that FMPA is prevented from integrating and coordinating its resources costs the Florida economy tens of thousands of dollars in irrevocably lost efficiencies. 15/ FPL has repeatedly sought to avoid a determination of its network transmission obligation. In addition to its jurisdictional argument in Docket No. ER93-465-000, FPL has also argued before the District Court that the NRC has exclusive jurisdiction. The District Court rejected this argument by Order of April 9, 1992 (Appendix 29). In a summary judgment motion filed April 15, 1993 and pending before the Court, FPL has renewed its argument that the District Court lacks jurisdiction. Notwithstanding FPL's arguments, the District Court, the NRC, and this Commission all have jurisdiction to determine FPL's network transmission obligation, and each has its own, partially overlapping, array of remedies for FPL's breach of that obligation. Although the District Court

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14/ FMPA does not concede that network rights are not at issue in Docket No. ER93-465-000. In any case, leaving aside the question of which Commission dockets should vindicate those rights, there should be no dispute that the Commission is an appropriate forum.

15/ FPL may be required to compensate FMPA for its losses through a damages award in the District Court case. Nonetheless, the opportunities for more efficient operation and planning of FMPA's resources that are being lost while FMPA fights to enforce its rights are lost to the public forever.

and the NRC also plainly have jurisdiction to enforce FPL's obligations under its agreements and under the antitrust laws, this Commission has clear, parallel jurisdiction to ensure that transmission rates are "just and reasonable," in the public interest, and in accordance with FPL's prior agreements. See infra Part IV.D. FMPA is filing this Complaint to ensure that those remedies available exclusively from this Commission can be applied once FMPA obtains a determination of its rights. FMPA is also filing today a petition with the NRC, so as to leave no escape route for FPL's forum evasion tactics. 16/

IV. FPL'S RATE SCHEDULES UNDER ITS EXISTING TSAs AND PROPOSED TARIFF ARE IN VIOLATION OF SECTION 206, BECAUSE THEY RESTRICT FMPA TO POINT-TO-POINT SERVICE

A. The Antitrust Conditions Require FPL to Provide Transmission Over Its Network Among Receipt and Delivery Points of Neighboring Entities Without Imposing Multiple Transmission Charges

Article X of FPL's Antitrust Conditions (Appendix 23 at 24) requires FPL to provide transmission over its network "between two or among more than two neighboring entities, or sections of a neighboring entity's system which are geographically separated, with which, now or in the future, Company is interconnected." 17/ FPL's obligation under this requirement is clear. Long before the

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16/ To the extent that the Commission intends to defer to proceedings before the District Court or NRC, it should state that intention, so as to avoid an Alphonse-and-Gaston situation of mutual deference.

17/ FMPA qualifies as a neighboring entity. See infra Part IV.C.

"among" requirement was agreed to by FPL, the term had been given a specific and well-established meaning by the AEC in the LP&L case. Accordingly, the Commission should by summary disposition establish the legal effect of FPL's unambiguous contractual obligation.

In LP&L, the DOJ, AEC Staff and LP&L proposed license conditions that required LP&L to transmit only "between" pairs of Louisiana entities, with a separate charge imposed for transmission in each direction. Id. at 739-40. The AEC Atomic Safety and Licensing Board 18/ held a hearing to determine whether this proposal was sufficient to overcome a situation inconsistent with the antitrust laws. Id. at 733-34. The AEC recognized that, as a matter of straight-forward mathematics, LP&L's proposed transmission "between" commitment would result, for transmission connecting multiple entities, in charges totaling many times LP&L's standard transmission rate. 19/

18/ The Licensing Board and the Appeal Boards exercise the delegated authority of the AEC, as testified by former NRC Commissioner Roberts, offered by FPL as an expert witness in the District Court case, and by former Commissioner Gilinsky, offered by FMPA. Roberts Tr. 15-16 (Appendix 12); Gilinsky Tr. 53-54 (Appendix 6). For convenience, we refer to the Licensing Board as the "AEC" herein.

19/ The AEC found (id. at 732):

> If two small entities wish transmission from A to B and from B to A they must execute two contracts and pay two transmission charges... . This can be expressed mathematically as two permutations taken two at the time (P 2/2) which is 2 x 1 = 2

[FOOTNOTE CONTINUED ON NEXT PAGE]

The AEC held that the imposition of multiple charges for transmission connecting a single group of entities was unreasonable and inadequate to accomplish the purpose of the license conditions:

> The payment of 6 to 20 or more transmission charges by a single group of entities is deemed unreasonable.
>
> The limitation of [transmission] "between two entities" in Applicant's Commitment No. 5 is not an adequate provision designed to permit coordination (both operation and development) sufficient to overcome a situation inconsistent with the antitrust laws.

LP&L at 733-34 (emphasis added). The AEC found that because of the relatively small size of the entities in the area "coordination will require transmission among three to five or more" entities. Id. at 733. It concluded that even the commitment to provide transmission among two entities "in either direction for a single charge" was inadequate because it was "limited to two entities thus foreclosing transmission among three or more entities." Id. at 732.

In order to permit coordinated operation of generating resources controlled by smaller utilities, the AEC revised the proposed license conditions to provide for

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[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
transmission charges. For three entities -- the expression is P 3/2 -- 3 x 2 or six transmission charges. For four entities -- P 4/2 -- 4 x 3 or 12 transmission charges. For five entities -- P 5/2 -- 5 x 4 or 20 transmission charges.

transmission "among" multiple entities, id. at 734, that is "transmission from any member of a coordinating group to any other members of such group," id. at 733. The AEC stated:

> In Schedule B [the revised conditions, reprinted at 8 AEC 740-744], Condition 5 is the same as Commitment No. 5 of Schedule A [the proposed conditions, reprinted at 8 AEC 738-740], except that "between two entities" has been changed to "among entities." The purpose of this change is to prevent multiple transmission charges for transmission of a contracted transmission entitlement among a coordinating group of two or more entities. To make the purpose of this change free from doubt, a clarifying sentence has been added.

Id. at 737 (emphasis added). The referenced "clarifying sentence" makes the meaning of the "among" requirement crystal clear: "For each coordinating group of entities there shall be a single transmission charge." Id. at 744 (emphasis in original). 20/

Transmission "among" thus requires "network transmission." The coordinating group pays a single charge based on the amount transmitted on its behalf (at any one time) over the transmission network as a whole, without regard to the distribution of that transmission among the delivery points of the coordinating group. The proposal in

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20/ Of course, the number of transmission "charges" does not depend on the number of separate bills or items on an invoice. Rather, whether it is a single or multiple charge depends on whether the coordinating group pays more for transmission of a given amount of power among multiple delivery points than it would if that same quantity were transmitted from just one point to another. LP&L was concerned with substance, not form.

LP&L to transmit only "between" locations was rejected because it left room for multiplicative transmission charges based on the number of receipt and delivery points at which power is added to and taken from the network.

The same requirement for transmission "among," with the specific meaning that it carries under LP&L, was written into the FPL Antitrust Conditions. Because Antitrust Condition X(a)(2) (Appendix 23) plainly and unambiguously requires more than transmission "between" delivery points, FPL cannot avoid summary disposition by claiming that it intended otherwise. See Hashwani v. Barbar, 822 F.2d 1038 (11th Cir. 1987). Significantly, the "among" requirement appears only in Condition X(a)(2); other Antitrust Condition provisions such as X(a)(1) (which applies to transmission of power from FPL power sources to neighboring utilities) omit the "among" language and require only transmission "between" multiple power resources and load centers and neighboring distribution systems. If "among" signified mere grammar or bare access connecting multiple points through a concatenation of point-to-point services, it would appear in Condition X(a)(1) as well. 21/ In any event, FPL must be

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21/ As a matter of grammar, "among" signifies one joint relationship as distinguished from several bilateral relationships. See, e.g., The New York Times Manual of Style and Usage 12 (1979) ("between is correct in reference to more than two when the items are related severally and individually: The talks between the three powers ended in agreement to divide the responsibility among them.") (emphasis retained); accord, William Strunk, Jr. and E.B. White, The Elements of Style 40 (3d

[FOOTNOTE CONTINUED ON NEXT PAGE]

presumed to have understood and intended that transmission "among" means network transmission. As the Supreme Court stated in United States v. I.T.T. Continental Baking Co., 420 U.S. 223, 240 (1975): "We must assume that the parties here used the words with the specialized meaning they have in the antitrust field, since they were composing a legal document in settlement of an antitrust complaint." See also Robin v. Sun Oil Co., 548 F.2d 554, 558 (5th Cir. 1977) (lawyers who drafted settlement agreement presumed to know technical legal meaning of the words they chose).

FPL is in no position to claim otherwise. Shortly after it agreed to the Antitrust Conditions, FPL recognized that their terms were carefully chosen to reflect AEC/NRC precedent. In the November 7, 1983 Answer of Florida Power & Light Company to Staff's Motion to Require Filing, Florida Power & Light Co., 26 FERC ¶ 63,019 (1984), vacated as moot, 30 FERC ¶ 52,230 (1985) (Appendix 30), FPL (at 8) stated that "[t]he license conditions were negotiated over a long period of time with the NRC's antitrust staff. These negotiations included extensive discussion of the language of the conditions, much of which was honed by the NRC Staff in negotiations with other licensees over a period of years."

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
ed. 1979). Thus, use of "among" to signify several point-to-point services would be grammatically incorrect.

The transmission "among" requirement discussed in LP&L plainly falls within the category of well-honed provisions to which FPL referred. LP&L points out (at 733) that the same requirement appears in the license conditions for the Grand Gulf nuclear plant, 38 Fed. Reg. 14877 (1973), and (at 735) that "both Justice and Staff are familiar with, understand, and have agreed to such language" in the proceedings concerning that plant. Essentially identical language appears in numerous other utilities' license conditions, for example, PG&E's Stanislaus Commitments attached to its Diablo Canyon license, see 41 Fed. Reg. 20225, 20227 (1976), and the conditions attached to Florida Power Corporation's license for the Crystal River Unit 3 nuclear plant, see 37 Fed. Reg. 3782 (1972). 22/ The requirement of transmission "among" is a standard "laundry list" item in antitrust licensing conditions, whose specific meaning was widely understood long before FPL agreed to it.

FPL cannot be heard to complain now that it did not understand the Antitrust Conditions to which it agreed. Like LP&L, FPL is prohibited from multiplying transmission charges for transmission connecting receipt and delivery points of a single coordinating group. By agreeing to the Antitrust Conditions, FPL obligated itself, inter alia, to

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22/ The Federal Register publications of the Stanislaus Commitments, Grand Gulf and Crystal River transmission requirements are attached as Appendix 31.

provide transmission "among" these geographically separate sections of FMPA's system for a single charge.

FMPA's motion for summary disposition, see Part VI infra, seeks a declaration of this obligation, so as to prevent FPL from obfuscating any further proceedings with red herring arguments. 23/ FPL is obligated to sell network transmission service for FMPA's IDO project, and it should be ordered to comply with that obligation, as discussed in Part IX infra.

B. FPL's TSAs and Tariff Proposals Provide for Only Point-to-Point Service

FPL has refused to provide network transmission required by the transmission "among" requirement of its Antitrust Conditions and LP&L. FMPA has long sought a transmission arrangement that would enable it to distribute a given quantity of transmission network usage among various delivery points, without paying multiple monthly or yearly transmission charges. In the existing TSAs under which FPL transmits for existing FMPA power supply projects, during

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23/ No issue like that set for hearing in Pacific Gas & Electric Co., 52 FERC ¶ 61,347, p. 62,378 n.14 (1990), is presented by FMPA's motion for summary disposition. In that case, the Commission held that the rate filed by PG&E did not "on its face" conflict with PG&E's antitrust license conditions, and set that issue for hearing. Here, as demonstrated in Part IV.B below, there can be no genuine factual dispute that FPL has imposed point-to-point access restrictions that result in multiple charges. In any case, even if there were a genuine factual dispute on that issue, that would not prevent partial summary disposition declaring that FPL is obligated to sell network transmission for IDO at a single charge.

more than two years of negotiations and eighteen months of ensuing litigation over transmission for FMPA's IDO project, and in its "open access" tariff, FPL has refused to provide such transmission.

For example, if FMPA wishes to coordinate its resources economically so that on some days 50 MW go from point A to B, on other days 50 MW go from B to C, and on still other days 50 MW go from C to A, FMPA must pay three 50 MW contract demands; FMPA must pay for 150 MW of transmission capacity, even though it will never use more than 50 MW of FPL's transmission network capacity at any one time. Indeed, if FMPA wishes to transmit this same 50 MW of power in the other direction, e.g., from point C to B on some days, from point B to A on other days and from point A to C on other days, it must reserve and pay for yet another 150 MW of transmission capacity. Thus, to transmit a maximum of 50 MW of power flexibly among points A, B and C, FMPA must pay FPL for 300 MW of transmission capacity.

The unreasonableness of this limitation is increased by the fact that FPL's transmission charges have nothing to do with the cost of transmission from points A to B, etc., but rather reflect FPL's total transmission system costs. Thus, if FMPA desires to coordinate and integrate its generation on FPL's system in an economic and efficient manner, it must pay multiples of FPL's per MW total system transmission costs for each MW of system capability actually

used (i.e., six times the 50 MW maximum usage at any one time in the examples above).

FPL is thus offering to transmit only "between" the various FMPA delivery points. Like LP&L, FPL seeks to impose multiples of its basic transmission charge as a function of the number of delivery points involved and a function of the maximum possible delivery to and from each such point. In LP&L terminology, FPL is effectively offering transmission "from A to B and from B to A," with further permutations for C, D, etc., all for a separate charge. In LP&L, such directional point-to-point transmission, with multiple charges imposed, was specifically rejected as only transmission "between," not transmission "among." LP&L, 8 AEC at 732. FPL's refusal to sell network service has large and harmful practical consequences: FMPA does not have the same transmission access that FPL does; FMPA would have to pay multiples of what FPL does to purchase anything approaching transmission use on a par with FPL; FMPA is assigned a disproportionate share of transmission system costs; and ultimately, FMPA is injured in competition to the detriment of itself, its member cities, and all Florida ratepayers.

1. Existing TSAs

Each of FPL's existing TSAs contains point-to-point restrictions, under which FPL provides service only "between" pairs of interconnection points where electricity is received

onto and delivered from the FPL system. FPL insisted on these restrictions despite FMPA's repeated requests, in negotiating each TSA, for network transmission rights. 24/

For example, the 1990 "Restated and Revised" TSA, as amended, provides for transmission of electricity to three FMPA member cities from each of their multiple power supply sources, but it does not provide for delivery of each resource among identified FMPA delivery points, as needed in a given hour. Rather, the TSA provides for transmission of each specified resource, in amounts tied to each of the participating member cities separately and in one direction only, to the specified delivery point. For example:

> FPL shall provide transmission service for the power and energy produced by each City's Stanton Resources from the point of interconnection between FPL's transmission system and OUC's transmission system to each such City's delivery point... .
>
> * * *
>
> FPL shall provide transmission service for the power and energy produced by each City's OUC System Resources from the point of interconnection between FPL's transmission system and OUC's transmission system to each such City's delivery point. This transmission service shall be termed "OUC System Transmission Service".
>
> * * *
>
> FPL shall provide transmission service for the power and energy produced by each City's OUC

24/ As described in Part III above, FMPA accepted these limitations due to the economic and practical necessity to obtain timely transmission commitments from FPL, while preserving rights to obtain network transmission service.

> System II Resources from the point of interconnection between FPL's transmission system and OUC's transmission system for delivery to each such City's delivery point. This transmission service shall be termed "OUC System II Transmission Service".

Rate Schedule No. 109, as amended on May 1, 1991, at 13, §§ 3.2, 3.4.1 and 3.4.2. For each receipt-delivery point pair, FMPA must pay an additional, cumulative transmission charge. See id., Articles VII and XI. FPL recently stated that "[t]ransmission service provided by FPL to FMPA is priced on a 'point-to-point' basis." FPL's April 15, 1993 Memorandum of Law in Support of its Motion for Summary Judgment in the District Court case ("FPL Memo"), at 4 (Appendix 32). "Under point-to-point pricing, FMPA must pay separately for each 'contract demand' between each point of receipt of power on FPL's system and each point of delivery from the FPL system." Id. at n.2 (Appendix 32).

More accurately, FPL's transmission service is priced on a network basis, but cannot be used except on a point-to-point basis. Each extra "contract demand" MW charged to transmission customers means that they pay for an extra share of the "rolled-in" cost of FPL's entire network. FPL prices transmission on a "postage stamp" basis under which transmission customers pay a share of the total cost of FPL's transmission network, not only the cost of the facilities located on a path between the receipt and delivery points involved in a given transaction. FPL described this pricing methodology, approvingly, to the D.C. Circuit Court of Appeals in FPL's brief in Ft. Pierce Utils.

Auth. v. FERC, 730 F.2d 778 (D.C. Cir. 1984) ("D.C. Circuit brief") (September 8, 1983, at 4, 5-6) (Appendix 33):

> As part of its business of providing its customers with a reliable supply of electric energy, Florida Power & Light Company, as herein relevant, has built and operates an electric transmission network that extends over eastern and southern Florida and is interconnected with neighboring utility systems, including certain Florida cities... .
>
> The Company recovers its transmission costs from all its wholesale and retail customers... . The specific rate design methodology by which FPL recovers transmission costs is through a "postage stamp" rate. As the term implies, all FPL customers are allocated a share of transmission costs without specifically identifying the cost of transmission facilities on which the electricity for each customer travels. This is done because the determination of what facilities are "used" by which customer in what proportions, and what these facilities cost, is not possible. 1/ FPL's transmission network is constructed to meet the peak demand of all its customers in its service area throughout the year. Therefore, allocation of costs on the basis of peak demand on its system is, and always has been, determined to be the fairest method of apportioning transmission capacity costs... .
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>
> 1/ This would be true even if electricity travelled through a transmission network on a shortest-distance-between-two-points basis. But electricity does not; rather, it travels on a path of least resistance... . The path of electrons will change constantly as load conditions change.

FMPA is not contesting this "postage-stamp" design; it is a sound basis for pricing a network rate. As the Commission recently explained:

> The Commission has long held that an integrated transmission grid is a cohesive

> network moving energy in bulk. Because the grid operates as a single piece of equipment, the Commission has consistently priced transmission service based on the cost of the grid as a whole. The Commission has rejected the direct cost assignment of grid facilities... .
>
> * * *
>
> Nothing in the Commission's new pricing policy changes or undermines these fundamental premises. There continues to be only one service -- service over the entire grid -- and both native load and third-party customers "use" the entire grid, including any expansion.

Public Service Company of Colorado, 62 FERC ¶ 61,013 at 61,061 (1993). However, the service limitations in each FPL TSA constrain transmission customers to buy extra "postage stamps" for each contract demand between two points. This postage-stamp-per-contract-demand rate design is the basis on which FMPA is being charged under each of the existing TSAs. 25/

25/ FPL is of two minds concerning whether its existing TSAs are limited to point-to-point service. On the one hand, FPL states that these TSAs "combine some features of point-to-point service with features of network service and thus provide FMPA with considerable flexibility." FPL's April 27, 1993 Answer in FERC Docket No. ER93-465-000, at 32 (Appendix 28). In the District Court case, however, FPL has argued that FMPA's efforts to obtain network service for the IDO project were "futile" because FMPA was aware that FPL had a "continuing policy" under which FPL's responses to requests for network service "were not merely 'no,' but 'hell no.'" FPL's April 15, 1993 Memorandum of Law in Support of its Motion for Summary Judgment in the District Court case at 8-10 (quoting deposition of FMPA General Counsel Fred M. Bryant at Tr. 98-99) (Appendix 32). However, whether FPL's TSAs are marginally more flexible than absolutely rigid point-to-point service is not the issue. The TSAs contain substantial point-to-point restrictions which preclude economic coordination and breach FPL's Antitrust Condition obligations.

As quoted in the text, FPL clearly recognizes that it does

[FOOTNOTE CONTINUED ON NEXT PAGE]

2. Transmission for IDO

Throughout two years of negotiations in which FMPA pursued transmission for the IDO project, FMPA requested the ability to distribute a given quantity of transmission network usage among various receipt and delivery points, without paying multiple transmission charges. That is, FMPA sought to have its transmission contract demand measured by the coincident FMPA transmission load on the FPL transmission system (and not by the sum of the highest number of MW that could be delivered through each FMPA delivery point on a non-coincident basis). FPL never offered to transmit on that basis. FMPA did not simply propose one network transmission rate and insist that FPL accept it.

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
not provide true network service to transmission customers. When it chooses to depict the TSAs as containing "features" of network service, FPL refers to several provisions in the Restated and Revised TSA (namely, "Replacement Transmission Service" (Article IV), "Superseding Transmission Service" (Section 6.1) and transmission for "New FMPA Resources" (Section 6.5) and to less extensive replacement transmission provisions in other TSAs. See Answer at 32 n.41 (Appendix 28). The provisions make the TSAs in which they appear slightly less unreasonable than they would otherwise be, but do not make those TSAs either reasonable or a sufficient vehicle for providing transmission among separate sections of FMPA. Even with these provisions, none of these TSAs enable the resources transmitted thereunder to be used efficiently, i.e. integrated into a generation mix that is planned and operated together to supply changing loads. Rather, each TSA imposes multiplicative transmission charges calculated as a function of the contract demands hypothetically delivered from each resource to each city, prohibiting integrated planning, dispatch and operations and violating FPL's Antitrust Condition obligation. The TSAs' inadequacy is especially damaging when the resources transmitted under them are part of a normal mix of transmitted generation -- one that is not artificially restricted to baseload units by restrictive transmission -- making delivery flexibility more important.

Rather, FMPA suggested numerous potential network transmission arrangements, and invited FPL to propose others. However, FPL adamantly rejected the network transmission concept and each implementing FMPA proposal.

FMPA repeatedly requested FPL to file a network rate at the FERC, pursuant to FPL's express obligation to file a rate schedule in the event there is no agreement regarding requested transmission services. See Antitrust Conditions X(b) and XII (Appendix 23); see also Pacific Gas & Elec. Co., 31 NRC 595, 602 (1990) (concurring in District Court finding that PG&E had violated a similar filing obligation). FMPA repeated that request through counsel in a March 25, 1993 letter from R. Jablon to L. Bouknight (Appendix 34). FPL's counsel responded, in a March 29, 1993 letter (Appendix 35), with a resounding no. See id. at 2 (calling FMPA's request a "waste [of]... time").

Even FPL's "hub" concept, which was floated in negotiations with FMPA, calls for multiple charges for transmission connecting a group of coordinating entities. 26/

26/ The hub concept, as described in FPL's April 27, 1990 letter to FMPA (Exhibit B to Appendix 36), merely substitutes a hypothetical "FMPA hub" as one end of each separate directional transaction to and from FMPA receipt and delivery points. Thus, a transaction from B to A becomes one transaction (with one charge) from B to the hub and a second transaction (with a second charge) from the hub to A. A transaction from A to B on another day would result in two more charges. In this example, even if the maximum amount of electricity FMPA seeks to move on the FPL network at any one time is 100 MW, FPL would charge FMPA for 400 MW of transmission or four times the amount it would charge for point-to-point transmission from A to B. By contrast, in this example, transmission "among" would result in a charge for 100 MW of transmission.

Indeed, FPL's letter to FMPA describing the hub concept characterizes it as "modified point - point, directional service." 27/ While the hub concept may appear on the surface to be a small step towards compliance with FPL's obligation to sell network service, there is abundant evidence that it was put forward in bad faith. Numerous FPL witnesses have testified in the District Court case that the "hub" concept was never seriously studied by FPL. 28/ Moreover, FPL never told FMPA how it would develop the price for service under the hub concept. 29/

Thus, FPL has not been willing to sell FMPA transmission at a single charge reflecting FMPA's use of FPL's network. By its own admission, FPL has insisted on multiple charges for transmission connecting a single coordinated group -- charges that vary with the number of FMPA receipt and delivery points involved and the amount of power that can be delivered to and from each such point. FPL has not offered to charge based on FMPA's proportionate (i.e., peak demand) use of the network.

27/ A copy of this letter is appended to the April 30, 1992 Affidavit of Nicholas P. Guarriello (Appendix 36) as Exhibit B. As described in ¶ 16 of the Affidavit, in oral negotiations, FPL discussed several variants of its hub concept, but never developed them in concrete terms, never proposed the rate that might apply, and ultimately took these variants off the table.

28/ Rey Tr. 17 (Appendix 11); Enjamio Tr. 122-23, 125-27 (Appendix 4); Locke Tr. 107-11 (Appendix 9); Schoneck Tr. 119-20 (Appendix 13); Stepenovitch Tr. 175-80 (Appendix 15).

29/ See Gosselin Tr. 63-65 (Appendix 7); Locke Tr. 182 (Appendix 9).

3. "Open Access" Tariff

FPL's "open access" transmission tariffs submitted in Docket No. ER93-465-000 (and currently being revised by FPL, see supra Part III) are part of a comprehensive revision of FPL's existing wholesale services (transmission, interchange, and requirements power) and the framework for future wholesale transactions. The proposed new regime would effectively govern all future FPL wholesale dealings. FPL proposes to conform its existing TSAs to this new regime. 30/ This new regime, like FPL's existing TSAs but unlike the Antitrust Conditions, would only provide for point-to-point services. See, e.g., Tariff No. 1, Article VII, Section 7.3 at 27; Tariff No. 3, Articles I and VI, Sections 1.15 and 6.1 at 4, 15 (Appendix 54). Transmission customers must reserve and pay for separate contract demands equal to the maximum amount of transmission they will use from each point of receipt to each point of delivery. Tariff No. 1, Article I, Sections 1.5, 1.19, 1.20 at 1-2, 5 (Appendix 54). Despite its obligation to provide transmission "between or among," FPL proposes to provide only "access between generation resources and bulk-power loads connected to FPL's system or [connected] to systems interconnected with FPL." Transmittal Letter at 6 (emphasis added) (Appendix 27).

In sum, in its existing TSAs and the negotiations preceding them, in its responses to FMPA's request for

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30/ See Transmittal Letter at 44 (Appendix 27).

transmission for the IDO project, and in its recent comprehensive tariff filing, FPL has repeatedly failed to fulfill its obligation to sell network transmission service.

C. The Antitrust Conditions Commit FPL to Sell Required Transmission Services to FMPA

In the Joint Motion and Stipulation expressing FPL's settlement with the DOJ and the NRC Staff, FPL committed to deal with neighboring entities and neighboring distribution systems in conformance with the Antitrust Conditions (footnotes omitted, emphasis added):

> ...The joint movants request that the conditions be made effective immediately, without prejudice to this Board's authority to impose different or additional conditions after a hearing. Granting this motion will assure that, effective immediately, FPL will be committed to deal with other electric utilities in conformance with the conditions.

September 12, 1980 Joint Motion of DOJ, NRC Staff, and Applicant to Approve and Authorize Implementation of Settlement Agreement at 1-2 (Appendix 21).

> If the motion to make the license conditions in their entirety effective immediately is not granted, FPL may withdraw its agreement to accept these conditions...; if such motion is granted, however, FPL will abide by these conditions....

September 12, 1980 Stipulation between DOJ, the NRC Staff and FPL at 1-2 (Appendix 21).

This commitment requires FPL to sell defined transmission services to FMPA. FMPA qualifies as a neighboring entity under the definition set forth in Article I(c) of the FPL

Antitrust Conditions and is specifically named as a neighboring entity in Article X(d). 31/ Therefore, FPL must sell FMPA network transmission -- transmission "among...sections of a neighboring entity's system which are geographically separated, with which...company is interconnected." Article X(a)(2) (Appendix 23). The coordinated system which FMPA has been contracted to operate currently includes FMPA's power sources and the points at which it delivers power to its members. The FPL network is interconnected with the geographically separate sections of FMPA's system either directly or through another utility (at locations referred to herein for simplicity as "delivery points, or sometimes as "receipt and delivery points.") Accordingly, FMPA is entitled to transmission among these separate sections.

Although it is not essential to FERC enforcement of a commitment entered into before a sister agency, it bears notice that like the municipals in PG&E, FMPA is a third-party contract beneficiary of the September 12, 1980 FPL/DOJ/NRC Staff settlement and the Antitrust Conditions FPL agreed to therein. 32/

31/ FPL must also sell transmission to other neighboring entities and neighboring distribution systems, including individual FMPA member cities. Individual FMPA member cities experience additional adverse impacts from the unavailability of network service.

32/ Both settlements provide that the applicant was willing to have the antitrust conditions included in its licenses; PG&E's stated willingness to connect the conditions to its Diablo Canyon license if the Stanislaus plant is not licensed does not alter the nature of its commitment. Indeed, the FPL/DOJ/NRC settlement (quoted in the text above), if anything, contains a more explicit commitment to benefit third parties than the PG&E/DOJ settlement.

As in California, Florida law enforces contract rights held by third-party beneficiaries, including the intended third-party beneficiary of an agreement between a private party and the government. See Technicable Video Sys., Inc. v. Americable of Greater Miami, Ltd., 479 So.2d 180 (Fla. 3d DCA 1985) (minority business may bring third-party beneficiary action against cable operator to enforce the minority set-aside provisions of ordinance granting cable system license).

The intention to confer enforceable legal rights on neighboring entities, including FMPA, is confirmed by the FPL, DOJ, and NRC Staff pleadings in support of their settlement. FPL stated, "the settlement...provides other electric systems legal rights in addition to those which they have now" (emphasis added). 33/ In the same pleading, FPL also endorsed pleadings previously filed by the DOJ and the NRC Staff, in which the DOJ stated that "[t]he conditions confer upon beneficiary systems immediately the right to make use of increased power supply options." 34/ The NRC Staff stated that the Antitrust Conditions create "entitlements for coordination and transmission services," for which "FMPA would qualify." 35/ See also those parties'

33/ See January 27, 1981 Answer of FPL to Cities' Reply Concerning Joint Motion at 2 (Appendix 37).

34/ See December 3, 1980 Response of the DOJ to the Florida Cities' Answer to the Joint Motion at 3 (Appendix 38) (emphasis omitted).

35/ See Staff's Response to the Florida Cities' Answer to Joint Motion to Make Effective License Conditions Proposed by the Applicant, the Staff, and the DOJ, dated December 3, 1980 at 10-11 (Appendix 39).

Joint Motion at 2 (Appendix 21). Indeed, Florida cities noted that "[a]s a preliminary matter, Florida Cities assume that FMPA qualifies for all rights contained in the license conditions." 36/ No one, including FPL, disputed that FMPA qualifies as a neighboring entity and as such is entitled to Antitrust Condition transmission services.

In addition, FMPA is an intended third-party beneficiary of the Florida cities/FPL Settlement Agreements. See, e.g., the Settlement Agreement (Appendix 24). Through these Settlement Agreements, FPL and the cities agreed to support state legislation providing for a joint power supply agency, which permitted FMPA to finance generation and otherwise engage in activities for the benefit of the cities. Finally, numerous FMPA member cities, including the IDO participants are signatories -- direct promisees -- of those agreements. Therefore, these cities are direct promisees entitled to have FPL provide the service defined in the Antitrust Conditions.

D. The Commission has Authority and Responsibility to Ensure that Jurisdictional Rate Schedules are Consistent with Antitrust Condition Obligations

The Commission has full authority, and indeed has a duty, to ensure that jurisdictional rate schedules are consistent with Antitrust Condition obligations. See Pacific Gas and Electric Co., 49 FERC ¶ 61,116, 61,497 (1989). The Antitrust Conditions are legally binding obligations which enforce pro-

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36/ See Florida Cities' Answer to Joint Motion, corrected copy filed October 16, 1980, at 12 (Appendix 40).

competitive bulk power supply policies integral to this Commission's statutory mission. Whatever the Antitrust Conditions' technical legal character, FPL admits that they are legally binding obligations to which FPL remains subject, and under which FPL must provide transmission service even if a would-be customer does not agree to FPL's proposed terms. See FPL's April 27, 1993 Answer in Docket No. ER93-465-000, at 58-60 (FPL "remains subject to its License Conditions," under which, "[i]n the absence of an agreed upon contract, FPL has an obligation to file an agreement unilaterally with the Commission, and the wheeling customer may challenge that contract") (Appendix 28). It is unjust and unreasonable, and contrary to the public interest, to permit FPL to collect rates and impose service restrictions inconsistent with those obligations.

1. The Commission Should Consider and Give Effect to the National Policies Embodied in the Antitrust Conditions

The pro-competitive objectives of the Antitrust Conditions are closely related to this Commission's statutory mission. The Federal Power Act aims to "assur[e] an abundant supply of electric energy throughout the United States with the greatest possible economy." FPA § 202(a), 16 U.S.C. § 824a(a). This objective requires the Commission to give great weight to ensuring that jurisdictional rate schedules enhance the state of competition in the electric industry:

> Recalling the primary objectives of the Commission...one would be hard put to think of a matter of more direct and proper concern to the Commission than the state of competition

> in the regulated industry. By doing whatever is within its power to enhance that competition, the Commission serves the same objective as it does by direct regulation of price; indeed, Commission decisions affecting the structure of the power industry could scarcely be made rationally without regard to the impact they will have on the competitive climate.

NAACP v. FPC, 520 F.2d 432, 441 (D.C. Cir. 1975), aff'd, 425 U.S. 662, 668 (1976). Cf. Public Util. Comm'n v. FERC, 900 F.2d 269, 281 (D.C. Cir. 1990) (contrasting intellectual property concerns, in which the "Commission could never be expected to develop expertise," with antitrust concerns, which complement the rate regulatory response to monopoly, and noting that "a regulatory eye on such [antitrust-based] concerns will commonly be useful"). Accordingly, the Commission is required to consider the competitive effects of its actions and coordinate its actions with those of other agencies to promote competition beneficial to the public interest. See, e.g., FPC v. Conway Corp., 426 U.S. 271 (1976); Gulf States Utilities Co. v. FPC, 411 U.S. 747 (1973); Northern Natural Gas Co. v. FPC, 399 F.2d 953 (D.C. Cir. 1968).

Consistent with this requirement, the Commission repeatedly has held that relevant antitrust licensing conditions must be considered in determining the justness or reasonableness of jurisdictional rates. Most recently, in Entergy Services, Inc., 63 FERC ¶ 61,025 at p. 61,147 (1993), reh'g denied, final order pending (June 30, 1993), the Commission held that if a transmission customer "alleges that the terms and conditions

contained in [a] service agreement do not conform to applicable requirements, the Commission will address the issue at that time based on the specific facts presented" (emphasis added). Significantly, the "applicable requirement" urged in that case was the same license condition requirement of transmission "between and among" neighboring entities' receipt and delivery points that is at issue here. Similarly, in Pacific Gas and Electric Co., 49 FERC ¶ 61,116, 61,497 (1989) (footnote omitted), the Commission rejected PG&E's argument that the "Stanislaus Commitments" (antitrust conditions agreed to by PG&E) are not within the Commission's purview:

> We...disagree with PG&E that the Stanislaus Commitments are not subject to the Commission's review. PG&E correctly states that the Commitments are within the jurisdiction of the Nuclear Regulatory Commission as conditions of the Diablo Canyon Nuclear Power Plant Unit No. 1 license. However, to the extent that the Commitments affect or relate to the IRS [interconnection rate schedule], which is a rate schedule subject to our jurisdiction under the Federal Power Act, they are also subject to our review.

Accordingly, the Commission has consistently held that Antitrust Conditions must be considered where relevant to rate proceedings. See, e.g., North Carolina Eastern Municipal Power Agency v. Carolina Power & Light Co., 57 FERC ¶ 61,372 at p. 62,254 (1991); Pacific Gas & Electric Co., 52 FERC ¶ 61,347 at p. 62,378 n.14 (1990); Florida Power & Light Co., 26 FERC ¶ 63,019 at p. 65,053 (1984) (the relevance of St. Lucie license conditions to a FERC proceeding in which a party claims that

transmission service offered by FPL does not "accord with that required by the license conditions" "cannot be seriously disputed"), vacated as moot, 30 FERC ¶ 61,230, p. 61,459 (1985) (vacating on the ground that "[n]o party to the proceeding asserts that the settlement is inconsistent with the NRC license conditions"); Cleveland Electric Illuminating Co., 11 FERC ¶ 61,114 at p. 61,248 (1980). Here the Antitrust Conditions are clearly relevant to the case issues presented; they establish the "basic rules" governing transmission service which the United States government, and Florida municipal governments, have considered necessary lest FPL's abuse of its monopoly power create a situation inconsistent with the antitrust laws, and are the primary basis for the relief requested.

That the Antitrust Conditions are not a FERC order does not diminish the Commission's duty to effectuate them in setting rates. It has never been an acceptable principle of administrative law that legal obligations "not invented here" may be ignored in determining whether rate provisions are just, reasonable, and in the public interest. 37/ To the contrary, the Commission has long held that "[i]n applying such criteria [just,

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37/ See McLean Trucking Co. v. U.S., 321 U.S. 67, 79-88 (1944) (Interstate Commerce Commission, charged with regulating in the public interest and promoting reasonable rates, required to consider policies of the antitrust laws); Southern S.S. Co. v. NLRB, 316 U.S. 31, 47 (1942) ("[f]requently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without an excessive emphasis upon its immediate task").

reasonable, and not unduly discriminatory or preferential], we must also consider and give effect to national policies embodied in other statutes." 38/ Here, the Commission should consider and give effect to the national policies embodied in the Antitrust Conditions.

2. The Commission has Ample Jurisdiction to Interpret and Enforce the Antitrust Conditions

FPL agreed to the Antitrust Conditions in settlement of, among other things, Justice Department, NRC staff, and Florida cities claims for license conditions to prevent an anticompetitive situation, and antitrust claims brought by Florida cities in federal district court in 1979. No complex jurisdictional analysis ought to be required to demonstrate that

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38/ Middle South Services, Inc., 33 FERC ¶ 61,408 at p. 61,786 (1985) on rehearing, 34 FERC ¶ 61,342 (1986). In Middle South, FERC held itself constrained to recognize state regulatory commissions' determinations of avoided costs, and to ensure that FERC-jurisdictional wholesale power rates are consistent with those determinations. Id. at 61,788. The Commission concluded that, to give effect to PURPA, it was appropriate to defer to state avoided cost determinations, and found no interference with FERC jurisdiction because "in establishing avoided cost rates the State commissions act pursuant to Federal, not State law. ... The issue is whether this Commission should, in establishing just and reasonable rates, defer to the factual decisions of other agencies acting pursuant to Federal law." 33 FERC at pp. 61,788-89. The decision to defer to another regulatory agency acting under Federal law was not limited to its facts: the Commission went out of its way to "note[] that this is not the only instance where deference to the determinations of another agency is consistent with the establishment of rates under the Federal Power Act." Id. See also Ohio Power Co. v. FERC, 954 F.2d 779, 784-86 (D.C. Cir. 1992), cert. denied, 113 S.Ct. 483 (1992) (requiring FERC in light of overlapping regulatory authority to defer to SEC determination under the Public Utility Holding Company Act of the prices for inter-affiliate coal transactions).

this Commission, an agency of the United States government established to protect energy consumers, can require compliance with basic pro-competitive rules which FPL agreed to at the insistence of several other government agencies working for the same goal. However, FPL has raised technical jurisdictional objections to enforcement of the Antitrust Conditions by every forum called on to consider the issue, most recently arguing that FERC has no authority to enforce or even interpret the Conditions. 39/ Therefore, FMPA will briefly state the grounds supporting this Commission's authority and obligation to enforce FPL's Antitrust Condition obligations.

To begin with, the Antitrust Conditions are contractually binding and enforceable by this Commission. FPL chose to enter into them and received valuable consideration in return, including a license to use publicly-developed nuclear power technology and settlement of substantial claims raised in antitrust litigation before this Commission, the NRC, and the federal courts. 40/ In settling with the Department of Justice

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39/ See FPL's April 27, 1993 Answer in FERC Docket No. ER93-465-00, at 260 (Appendix 28). FPL has also prevented enforcement by the Florida state courts, by removing FMPA's suit to federal district court; has unsuccessfully sought to dismiss that case from federal district court by arguing that the NRC has exclusive jurisdiction; and has argued in the District Court case that only FERC has jurisdiction to determine whether FERC-filed rate schedules comport with the Antitrust Conditions -- necessarily implying that the NRC lacks jurisdiction. See FPL's March 20, 1992 Motion to Dismiss at 12-15, and its April 15, 1993 Motion for Summary Judgment at 15-19 (Appendix 32).

40/ FPL settled with the DOJ and NRC after the Fifth Circuit Court of Appeals ruled that FPL had illegally violated the

[FOOTNOTE CONTINUED ON NEXT PAGE]

and the NRC staff in the St. Lucie case, for example, FPL joined in stating that "effective immediately, FPL will be committed to deal with other electric utilities in conformance with the conditions," 41/ and stipulated that if its motion were granted, "FPL will abide by these conditions." 42/

Therefore, FPL's agreement to abide by the Antitrust Conditions is enforceable in contract (and directly, as discussed below). See United States v. Pacific Gas & Elec., 714 F.Supp. 1039 (N.D. Cal 1989):

> In addition to being NRC license conditions, the Stanislaus Commitments are part of a contract between PG&E and the Department of Justice under which the DOJ dropped its antitrust investigation of PG&E in return for PG&E's agreement to include the Commitments as part of its Diablo Canyon License.... WAPA, NCPA and the Cities are entitled to sue as third-party beneficiaries of that contract to enforce their rights under that contract.

Id. at 1051 (citations omitted)

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
Sherman Act, see Gainesville v. Florida Power Corp, 573 F.2d 292, (5th Cir.), cert. denied, 439 U.S. 966 (1978), and after this Commission ruled that FPL had illegally refused to deal in wholesale power sales, see Re Florida Power & Light Co., Opinion No. 57, 8 FERC ¶ 61,121 (1979). After an NRC licensing board had determined that "a situation inconsistent with the antitrust laws does exist," see St. Lucie, 14 NRC 1167 (1981), vacated as moot due to settlement, 15 NRC 639 (1982), FPL settled with Florida Cities.

41/ September 12, 1980 Joint Motion of Department of Justice, NRC Staff, and Applicant to Approve and Authorize Implementation of Settlement Agreement at 2 (Appendix 21).

42/ September 12, 1980 Stipulation at 1-2 (Appendix 21).

The NRC concurred in PG&E's holding that the NRC was not the exclusive avenue for enforcement of antitrust conditions. In response to a petition seeking NRC action to enforce PG&E's license conditions, the NRC withheld action pending, and ultimately relied on, the decision of the district court. Pacific Gas and Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), 31 NRC 595, 601, 603-4 (1990).

Even before these PG&E decisions, a FERC Administrative Law Judge had already determined that FPL's Antitrust Conditions are contractual in nature:

> The St. Lucie License conditions are a part of and reflect a settlement agreement voluntarily entered into by FPL with the Department of Justice and the NRC Staff.... By virtue of the settlement agreement and by accepting the St. Lucie license, FPL agreed to be bound by the terms of the license conditions. Thus, the license conditions and underlying settlement agreement are in the nature of a contract.

Florida Power & Light Company, 26 FERC ¶ 63,019, at 65,054 (1984) (emphasis changed), vacated as moot, 30 FERC ¶ 61,230 (1985). In that case, FPL had argued unsuccessfully that "there is no independent consensual agreement by FPL to comply with the license conditions." Answer of FPL to Staff's Motion to Require Filing (Appendix 30 at 21 n.25). See also Pacific Gas and Elec. Co., 11 FERC ¶ 61,246, 61,484 (Stanislaus Commitments "embody an agreement" between PG&E and DOJ), reh'g denied, 12 FERC ¶ 62,097 (1980), aff'd mem., 679 F.2d 262 (D.C. Cir. 1982).

By agreeing to the Antitrust Conditions, FPL agreed to provide transmission "between and among" receipt and delivery points of neighboring entities at a single charge. This agreement did not fix the level of that single charge, but did constrain what types of service and rate arrangements FPL may file with or support before FERC. In setting the precise rate which will henceforth apply, the Commission must give weight to that agreement. Cf. Union Elec. Co. v. FERC, 890 F.2d 1193, 1194-95 (D.C. Cir. 1989) (Mobile-Sierra doctrine extends to settlement agreements and agreements regarding ratemaking methodology).

The Antitrust Conditions are a contract affecting jurisdictional rate schedules, and must therefore be filed pursuant to FPA § 205(c). However, the Commission's jurisdiction, in fixing the just and reasonable rate, to consider the implications of what FPL agreed to in accepting the Antitrust Conditions does not depend on that agreement being filed with the Commission. See Sam Rayburn Dam Elec. Coop. v. FPC, 515 F.2d 998, 1008 (D.C. Cir. 1975) (Commission's obligation to respect integrity of contracts not limited to "such contracts as are properly filed with and recognized by the FPC"). The Antitrust Conditions' "regulatory force...arises before, and survives in the absence of, the physical filing of the document with the Commission." Borough of Lansdale v. Federal Power Comm'n, 494 F.2d 1104, 1114 (D.C. Cir. 1974). Under Mobile-Sierra, the

Antitrust Conditions set the parameters of what rate schedules FPL may lawfully keep on file with the Commission.

Leaving aside the Antitrust Conditions' contractual nature, because FPL is in any event legally committed to adhere to them for as long as it holds the St. Lucie license, the Antitrust Conditions are also "practices" affecting FPL's jurisdictional rates and charges, which FPL is therefore obligated to file with the Commission and to follow. See Federal Power Act § 205(c); Pacific Gas & Electric Co., 11 FERC ¶ 61,246 at 61,484, 61,486 (1980), aff'd mem., 679 F.2d 262 (D.C. Cir. 1982). 43/ Because the Antitrust Conditions are also an NRC order incorporated in FPL's St. Lucie nuclear license, they are likewise "regulations" affecting FPL's jurisdictional rates and charges, which FPL must follow under FPA § 205(c).

Moreover, the Antitrust Conditions themselves contemplate that FERC will consider whether FPL's FERC-filed rate schedules comport with FPL's Antitrust Condition obligations (Appendix 23). Condition XII provides:

> Rate schedules and agreements, as required to provide for the facilities and arrangements needed to implement the bulk power supply policies herein, are to be submitted by the Company to the regulatory agency having jurisdiction thereof.

Similarly, Condition X(b) provides:

43/ Unlike the unilateral, tentative transmission policy at issue in Florida Power & Light Co. v. FERC, 660 F.2d 668 (5th Cir. Unit B Nov. 1981), cert. denied, 459 U.S. 1156 (1983), FPL has agreed and is committed to abide by the Antitrust Conditions through April 6, 2023. Therefore, enforcing the Antitrust Conditions will not compel involuntary wheeling.

> In the event that the Company and a requesting entity are unable to agree regarding transmission services required to be provided under this section X, Company shall, upon the request of such entity, immediately file a service agreement at the Federal Energy Regulatory Commission or its successor agency providing for such service.

In Pacific Gas and Electric Co, 31 NRC 595, 602 (1990), the Nuclear Regulatory Commission held that a provision in PG&E's license conditions "requires PG&E to file service schedules with the FERC even if the parties do not agree to all the proposed terms and conditions. The purpose of License Condition 9(a) is to resolve any conceptual differences in the proposed service schedule at the FERC." 44/ Clearly, the NRC considers FERC empowered to examine whether TSAs differ from what FPL has termed the "basic rules" required by license conditions.

FERC's jurisdiction to enforce FPL's Antitrust Condition duties is concurrent with, not exclusive of, the courts and NRC. Contractual obligations enforceable by this Commission may also be enforced in court. See, e.g., International Paper Co. v. FPC, 476 F.2d 121 (5th Cir. 1973); Texasgulf, Inc. v. United Gas Pipe Line Co., 610 F.Supp. 1329 (D.D.C.), vacated as moot due to settlement, 617 F.Supp. 41 (1985). As the Commission stated in Villages of Edgerton and Montpelier v. Ohio Power Co., 49 FERC

44/ PG&E's License Condition 9(a) (Appendix 31) states that "rates, charges, terms and practices are and shall be subject to the acceptance and approval of any regulatory agencies or courts having jurisdiction over them." The FPL license conditions, quoted in the text, contain even stronger provisions requiring FPL to provide requested services, and permit FERC resolution of disputes over rates.

¶ 61,306, p. 62,161 (1980) reh'g denied, 50 FERC ¶ 61,165 (1990): "We can decide that we can resolve a contractual dispute or we can decide that we should allow a contractual dispute to be litigated in federal or state court. . . ." Similarly, FERC's obligation to consider antitrust policy does not oust the courts' antitrust jurisdiction. See Otter Tail Power Co. v. United States, 410 U.S. 366, 375-77 (1973). 45/

E. Even Leaving Aside the Antitrust Conditions, Point-to-Point Restrictions, as FPL Applies Them, Are Unjust, Unreasonable, Unduly Discriminatory and Contrary to the Public Interest

Even leaving aside the Antitrust Conditions, point-to-point restrictions are inappropriate when applied as they are by FPL: imposed on a would-be coordinating group paying postage stamp rates, and discriminatorily not applied to FPL's own use of its network to serve its retail customers. This misapplication of point-to-point restrictions results in exorbitant prices for the transmission service needed to permit coordination -- prices many times out of proportion to the coordinating group's real impact on the transmission network, and so high as to make coordination infeasible, effectively denying access. Unable to coordinate, members of the would-be coordinating group are constrained to make independent, less economic arrangements,

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45/ The Commission has ample discretion to exercise its concurrent jurisdiction in a manner that will promote a speedy resolution of FMPA's claims. See California v. FPC, 369 U.S. 482 (1962); Kansas Power & Light Co. v. FPC, 554 F.2d 1178, 1183-86 & n.12 (D.C. Cir. 1977); Rowan v. Allied Chemical Corp., 39 FPC 64 (1968); Pan American Petroleum Corp., 32 FPC 1394 (1964).

causing a large net social loss in allocative efficiency. Worse, by sabotaging the coordinating group while discriminating in favor of its own sales customers, the transmission owner frustrates competition in bulk power markets, causing a long-term loss of dynamic efficiency. Moreover, network service corresponds to the reality of electricity flows more closely than does the point-to-point contract path fiction. 46/ The Commission should therefore find that the point-to-point service restrictions FPL imposes on transmission dependent utilities ("TDUs") are unreasonable because they prevent efficient coordination and integration among TDUs, unnecessarily increase electricity costs, and impair competition.

1. Network Transmission Serves an Important Function Not Fulfilled by Point-to-Point Services

Point-to-point service is insufficient to permit a utility with multiple, geographically distributed generation resources and load centers to operate economically. In order to capture economies available due to the diversity of their loads and resources, coordinate their reserves, coordinate the operation of their resources to provide the lowest cost service,

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46/ As described by FPL deponents in the District Court case, electricity flows through the transmission network according to the laws of physics, and not according to any predetermined "contract path." See Alfonso Tr. 23-24 (Appendix 2); Schoneck Tr. 82-83 (Appendix 13); Smith Tr. 77 (Appendix 14); Taylor Tr. 182-83 (Appendix 16). See also Fort Pierce Utils. Auth. v. Federal Energy Regulatory Comm'n, 730 F.2d 778, 782 (D.C. Cir. 1984), and FPL's September 8, 1983 brief to D.C. Circuit in that case at 5 & n.1 (electricity "travels on a path of least resistance"; determination of facilities used "is not possible") (Appendix 33).

and plan for economic resource additions, such utilities must be able to distribute power from each resource flexibly among multiple load centers, and to deliver a changing mix of power from multiple resources to each load center. Where utilities having multiple, geographically distributed generation resources and load centers own a transmission system, that is how they use it.

Where such utilities are transmission dependent, they are no less in need of network service to operate economically. The critical economic functions served by network transmission cannot practically and economically be fulfilled through a series of independent point-to-point transactions. As the AEC recognized in LP&L, multiple point-to-point services are inadequate to permit TDUs to engage in coordinated operation and development. The AEC held that a proposed license condition providing for only multiple point-to-point services to interconnect "three to five or more" resources and load centers was "not an adequate provision designed to permit coordination (both operation and development) sufficient to overcome a situation inconsistent with the antitrust laws." LP&L, 8 AEC at 733-34.

Network service therefore serves the public interest as expressed in Section 212(a) of the Federal Power Act, as amended by the Energy Policy Act of 1992, which requires that "rates, charges, terms and conditions [for transmission ordered under Section 211]...promote the economically efficient transmission

and generation of electricity" (emphasis added). FPL's point-to-point restrictions are inconsistent with this Congressional directive (and with FPA Section 202(a), see supra Part II.D.1.). 47/

The history of FMPA's attempt to establish integrated dispatch and operations demonstrates that network transmission serves an important function not fulfilled by point-to-point services. By integrating municipally-owned generation located in the various IDO participant cities and cities' contractual power supply resources with FMPA-owned or contracted power supply resources, FMPA can more economically use its power supply resources and achieve for these members a lower power supply cost than they can obtain from individual, isolated operation. FPL has recognized that all utilities seek (or should seek) to reduce their power supply costs by integrating the operation of their generation resources. 48/ See generally El Paso Natural Gas Co. v. FPC, 281 F.2d 567, 573 ("It is the obligation of all regulated public utilities to operate with all reasonable economies"), cert. denied, 366 U.S. 912 (1961). FPL claims to operate in this manner, and it recognizes that FMPA desires to do so. 49/

47/ See also Part IV.C infra (discussing how provision of network service accords with the language and intent of transmission access provisions of the Energy Policy Act).

48/ Frank Tr. 5 (Appendix 5); Taylor Tr. 46-47, 106-107, 244 (Appendix 16); Schoneck Tr. 86-87 (Appendix 13); Enjamio Tr. 105-07 (Appendix 4).

49/ Id.

However, for FMPA to be able to operate and plan its generation on an integrated basis, it must use FPL's transmission system on a network basis like FPL uses its transmission system for its own needs. 50/ FMPA has requested either that it be able to invest in the FPL transmission network to obtain network transmission rights or that it be able to purchase transmission services to permit it to use transmission on a network basis. Because FPL has refused to sell network transmission, FMPA has not been able to coordinate the power supply for its members under its IDO project. 51/ FPL's refusals to sell network transmission are causing or will cause unnecessary electricity costs to FMPA of more than $150 million. See April 29, 1993 Affidavit of Albert B. Malmsjo (Appendix 26).

2. The Point-to-Point Service FPL Provides TDUs is Unjust, Unreasonable and Unduly Discriminatory as Compared With the Transmission Service FPL Provides Itself

The accumulation of transmission charges that would result if FMPA attempted to use point-to-point FPL transmission to coordinate its generation are described above. Not only are these duplicative charges unreasonable for the reasons set forth in LP&L, but they are unduly discriminatory as compared with the

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50/ See April 12, 1993 Affidavit of Albert B. Malmsjo at ¶ 7 (Appendix 42).

51/ FPL's claim (Transmittal Letter at 43, Appendix 27) that its existing point-to-point TSAs permit FMPA to integrate its generation resources should be summarily rejected as an assault on common sense. See April 12, 1993 Affidavit of Albert B. Malmsjo (Appendix 42).

basis on which FPL uses and charges itself for use of its transmission system. This discrimination gives FPL a substantial competitive advantage in bulk power markets. FPL's point-to-point transmission tariffs thus undermine, rather than serve, the competitive purposes of the Federal Power Act, as amended by the Energy Policy Act of 1992.

In contrast to the hypothetical described in Part IV.B. above, where FMPA must pay for 300 MW of transmission capacity to move a maximum of 50 MW of power among points A, B and C on FPL's system, FPL has full use of its network to coordinate and integrate its own generation to maximize economies and efficiencies to serve retail and wholesale customers. FPL charges itself (through its wholesale and retail customers) for this service on the basis of 12 CP usage of the total system. Thus, if FPL wishes to transmit 50 MW from generator A to point B at the time of the monthly peak and from generator C to point B on the next day, it charges its sales customers for a maximum of 50 MW. In effect, FPL enjoys the flexibility and economic efficiency of an internal pool, but denies those benefits to others. 52/ This discrimination is baseless. FPL's high-voltage transmission facilities are integrated into a "cohesive network moving energy in bulk," which "operates as a single piece of equipment." Public Service Company of Colorado, 62 FERC ¶ 61,013

52/ Compare Schoneck Tr. 139 (Appendix 13) (FPL does not schedule power between each of its load centers and each of its generating plants).

at 61,061 (1993). Whether it is FMPA or FPL that seeks to coordinate its resources by transmitting over that integrated grid, such transmission represents "only one service -- service over the entire grid -- and both native load and third-party customers 'use' the entire grid." Id.; see also Public Service Electric & Gas Co., 63 FERC ¶ 61,200 (1993), slip op. at 6 (same; traditional average cost pricing recovers a "pro rata share of the cost of its [the transmission owner's] existing system"). Neither of the cost measures discussed in Colorado and PSE&G, incremental grid expansion costs 53/ and average embedded costs, cumulates as a function of the number of receipt-and-delivery-point pairs involved in a transmission transaction. FPL's insistence on so multiplying its transmission charges results in a price many times in excess of the lowest reasonable cost-based rate.

The competitive disadvantage at which TDUs are placed by FPL's discrimination is obvious. As discussed above, this discrimination eliminates FMPA's ability to compete with FPL to provide integrated power supply to the IDO Participants.

The competitive disadvantage caused by this discriminatory treatment is highlighted when new market entrants are considered. For example, if FPL wishes to purchase 50 MW

53/ Grid expansion costs are separate from incremental interconnection facility costs, e.g. additional step-down transformers needed to remove a local constraint at a point of delivery, that are not used by or useful to other transmission users. Such costs have long been directly assigned to transmission customers.

from an economic project constructed by an IPP on its system to displace more expensive FPL generation, FPL will charge itself (and its customers) nothing additional to transmit the power. 54/ On the other hand, if FMPA wishes to purchase 50 MW from this same IPP to displace 50 MW of more expensive generation of its own, it must pay FPL at least 50 MW of additional transmission charges (above and beyond the 300 MW paid in the earlier hypothetical), even though FMPA's maximum system usage is still 50 MW. If FMPA wants to use this 50 MW of generation with any flexibility (e.g., to be able to use it to serve loads at points A, B and C on different days), it must pay another set of multiple transmission charges for that right. Thus, what costs FPL (and its customers) nothing on an incremental basis would result in 150 MW of additional transmission charges to FMPA in this hypothetical. Not only does this discrimination foreclose FMPA from economic power resources and impair FMPA's ability to compete with FPL, but it deprives new entrants of a competitive market for their generation.

Point-to-point transmission is plainly unduly discriminatory as compared with how FPL uses and charges itself for the system to serve its wholesale and retail customers. The discriminatory treatment of FPL loads, as compared with those of its TDUs, is also apparent from the fact that while loads served by FPL get the benefit of full use of the network for their 12 CP

54/ Assuming there is no need to enhance local facilities to reliably bring the IPP's power onto the grid.

allocation of FPL's total transmission costs, transmission customers enjoy use of only a fictional "contract path" for bearing an even greater share of FPL's total transmission system costs. 55/

This discrimination was highlighted by the deposition testimony in the District Court case of Joseph P. Cresse, former Chairman of the Florida Public Service Commission, whom FPL has designated as an expert witness. Although on deposition cross-examination by FPL he advocated charging transmission customers on the basis of "reserved" paths (Cresse Tr. at 86-88, 93-94 and Exh. 1 (Appendix 3)), i.e., point-to-point service, on redirect he conceded that transmission customers that pay for transmission on a "rolled-in" or total transmission system cost basis should be charged not on the basis of the number of paths they might want to use from time to time, but on their use of the system as a whole:

> Q [Assume] A is a retail customer; it's a town. Okay?

55/ If transmission contract demands continue to be charged on a point-to-point basis (contrary to the arguments for network rights being pressed here and by FMPA and other intervenors in Docket No. ER93-465-000) the allocator should be system capability transfers between all points by FPL and others (including FPL's own internal deliveries to distribution). This sum-of-the-pairs method, at minimum, is required to avoid a mismatch between the demand allocator and billing determinants. The Commission recently confirmed the importance of proper matching. See Northeast Utilities Service Co., 62 FERC ¶ 61,294, p. 62,907 (1993), reh'g pending. Here, proper matching requires that if FMPA is to be charged on the basis of paths, costs be allocated on that same pair-by-pair basis. Such an allocator would, in general, recognize each point at which FPL's transmission system receives power from FPL generating resources, or steps power down to FPL's distribution voltages.

A Okay, a retail customer.

Q D and B are FP&L generators. And on some days the power is flowing from B to A for the 100 megawatts this town needs, and on some days it's flowing from D to A for 100 megawatts.

Are...the retail customers in town A going to pay to reserve 100 megawatts here on line A to D and 100 megawatts on line A to B, or are they paying towards the total -- 100 megawatts of the total system transmission costs?

A They are paying for 100 megawatts of the total system, which includes A to B and A to D.

Q If A is a wholesale transmission customer and some days they want to bring 100 megawatts in from point D, and on some days they want to bring in 100 megawatts from point B, are you saying that they should pay 200 megawatts worth towards -- of the transmission capacity of this system?

A No. I'm saying, they have to pay 100 from here to here and 100 from here that you're going to reserve. You're paying 100 megawatts of the entire cost of all the system.

Q So, in both cases, the transmission customer and the retail customer should be paying for 100 megawatts worth of the system transmission costs?

A If that's what you're reserving, correct, and if that's what they're reserving.

Q If they wanted to -- like the retail customer, if they want to be able to bring in the 100 megawatts from along several paths, they should pay 100 megawatts, not for each special path?

A They have to pay 100 megawatts of the total system cost.

Q Right, total system transmission cost.

A Yeah. To make it very simple, if the retail customer is using 100 megawatts of the total system, and the wholesale customer is using 100 megawatts of the total system, retail customers ought to pay 50 percent and the wholesale customers ought to pay 50 percent of the cost of the total system.

Q And that's regardless of the specific number of paths each of them might be using?

A You could make an exception in terms of cost causation. If one customer was using selected paths, you could -- if the regulators wanted to establish a selected path tariff, maybe they could price selected paths.

Q But so long as everybody is paying this rolled-in cost, it wouldn't be related to selected paths?

A My earlier illustration was 50 percent of the total.

See Cresse Tr. 96-98 (Appendix 3).

In sum, FPL provides transmission customers only point-to-point service, with multiple charges for service at multiple points. This service does not enable FMPA and others to integrate and coordinate their generation, or buy and sell capacity and energy off-system in competition with FPL. FPL's point-to-point service is not equivalent to the network service FPL provides itself to coordinate and to engage in bulk power transactions and integrate its system. Yet, FPL charges transmission customers at least a full share of total system transmission costs for the unnecessarily limited service. FPL's proposed point-to-point service is therefore unduly discriminatory and anticompetitive.

3. FPL's Discriminatory Point-To-Point Transmission Effectively Sabotages Competition In Bulk Power Markets, Thus Thwarting The Competitive Purposes Of the Act

By providing transmission to others only on terms and prices less favorable than it enjoys, FPL effectively denies or limits transmission and severely distorts the generation market. FPL Vice President of Power Delivery Richard Taylor has testified that in this environment, "[t]here is an advantage of owning and controlling the transmission system to all sources" 56/ and that FPL uses its transmission assets to benefit its own generation. 57/

Absent a requirement of equal transmission access and pricing, relaxation of generation pricing regulation will simply intensify the motive and increase the opportunity for transmission owners such as FPL to capitalize on their substantial market power. As FPL's "open access" filings amply illustrate, transmission owners will be able to "negotiate" (or impose) higher prices for power sales and coordination services, leveraging transmission advantage into false competitive advantage for generation sales. 58/ In addition, as discussed above, cumulative point-to-point transmission "tolls" stunt the development of competitive generation markets by effectively

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56/ See Taylor Tr. 235 (Appendix 16).

57/ See id. at 172 (Appendix 16).

58/ Cf. David W. Penn and Rodney Stevenson, For Competition's Sake -- Transmission Access First, in Competition in Electricity: New Markets and New Structures 443 (James Plummer and Susan Troppman eds., 1990).

excluding market participants, preventing economic integration of resources, and destroying the economic feasibility of power supply options that otherwise would reduce regional power costs. Discriminatory point-to-point restrictions thus subvert competition on the merits, and instead tend to suppress or eliminate competitors.

This monopolizing tendency is not merely hypothetical. By refusing to sell network transmission and thereby blocking IDO, FPL has already constrained one FMPA member (the City Electric System of Key West) to purchase wholesale power from FPL instead. See Malmsjo Tr. 297-301, 305-15, 336-40 (Appendix 10). More generally, FPL's expansionist intent is evident in its thinly-veiled proposal to acquire the municipal electric system of Homestead, Florida, made almost immediately after Hurricane Andrew devastated that city. See April 28, 1993 Affidavit of Robert W. Brush, submitted in the District Court case (Appendix 43). FPL documents produced in discovery in the District Court case evidence that FPL has recently considered other acquisitions. 59/ For transmission to operate as the medium through which competition can occur, access of non-owners must be equal, in terms of both price and quality, to that enjoyed by transmission owners. In Public Service Co. of Indiana, 51 FERC ¶ 61,367, 62,201 reh'g denied, 52 FERC ¶ 61,260,

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59/ Confidentiality restrictions applicable to that discovery prevent FMPA from identifying here the targets of those potential acquisitions or attaching those documents. See note regarding discovery documents, supra Part III.

order on clarification, 53 FERC ¶ 61,131 (1990), dismissed, No. 90-1528 (D.C. Cir. January 21, 1992), the Commission recognized that to prevent PSI from exercising an "unfair competitive advantage" in marketing bulk power, it must serve itself under the same transmission tariff terms to which other eligible utilities are subject. In this way, the transmission owner would compete for generation purchases or sales on an equal footing with transmission dependent utilities and IPPs. See also Order 636, 57 Fed. Reg. 13,267 (1992).

In the case of transmission dependent systems, such equality means full network access to the transmission system of the surrounding transmission owner(s), priced so that the retail customers of all those who depend on the system share equally in the cost of that system. Compare Northeast Utils. Serv. Co., 56 FERC ¶ 61,269, at pp. 62,049-50 (1991), modified in part, 58 FERC ¶ 61,070 (1992), reh'g denied, 59 FERC ¶ 61,042, aff'd in pertinent part, Nos. 92-1165, et al. (1st Cir. May 19, 1993).

Competitive bulk power markets require that TDUs be able to purchase and use transmission on the network basis now enjoyed only by FPL. Active coordination services and secondary power markets, where entitlements are bought and sold for a variety of terms, are essential components of a vigorously competitive bulk power market. 60/ Transmission dependent systems must be able to

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60/ This secondary market -- in which generation is resold on a long-term basis, as well as a short-term and hourly basis -- is important because the ability to resell generation reduces the risk of buying generation in the primary generation market -- the

[FOOTNOTE CONTINUED ON NEXT PAGE]

use transmission flexibly if the transmission owner is to be prevented from severely distorting those markets. FPL's point-to-point service limitations, and its other existing or proposed limitations (unnecessarily inflexible dispatching and scheduling requirements, unnecessary and discriminatory reservation requirements and penalty provisions, and the treatment of each distinct firm or non-firm use of the system as a separate transaction engendering separate charges), severely impede the ability of transmission dependent systems to participate in bulk power markets and can preclude a secondary market in generation.

In light of the Commission's new authority to order transmission under the Energy Policy Act and Congress' clear intent to promote competitive generation markets, there is no longer any basis for the Commission to accept discriminatory point-to-point transmission service for TDUs who request network service. Cf. Entergy Services, Inc., 63 FERC ¶ 61,156 (1993) (Energy Policy Act removed statutory basis for discrimination against QFs, requiring Commission to exercise ratemaking authority under Section 205 in a nondiscriminatory manner). 61/

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
market for new generation. The ability to resell generation also allows for matching of needs and resources on a much more efficient basis than can be accomplished through the primary generation market alone.

61/ For example, the Commission's stated view that it was without authority to order expanded service was the express predicate for the Commission's enforcement of the terms of a point-to-point transmission arrangement in Wisconsin Elec. Power Co., 40 FERC ¶ 63,007, at pp. 65,057-62, aff'd in pertinent part and modified in part, 46 FERC ¶ 61,019, pp. 61,112-13; reh'g denied, 48 FERC
[FOOTNOTE CONTINUED ON NEXT PAGE]

F. Nothing in the Existing FMPA-FPL TSAs Prevents them Being Replaced or Modified as Necessary to put in Place a Network Service Agreement

Because the point-to-point restrictions in FPL's existing TSAs make them unjust, unreasonable, and unduly discriminatory, the Commission should apply a remedy that will cure that shortcoming. 62/ Each of the existing FMPA-FPL TSAs reserves to FMPA broad § 206 unilateral rate change rights. These reservations preserve FMPA's statutory rights to seek review of FPL's rates for justness, reasonableness, and nondiscrimination. 63/ As FPL recently stated to the Commission,

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¶ 61,247, pp. 61,859-60 (1989), petition for review denied per curiam, 918 F.2d 225 (D.C. Cir. 1990).

62/ The existing TSAs also impose an excessive rate because they charge $1.84 per kW-month. That charge substantially exceeds the $1.58 per kW-month which FPL has calculated as a 1993 transmission rate for Long-Term Firm Transmission Service. See the table showing rates for Tariff No. 1 service in FPL's March 19, 1993 "open access" filing, Volume VII, Part 1, Section IV.D, Ref. Item TLTM (Appendix 55). That overcharge is the subject of a separate complaint and request for hearing filed by FMPA on May 14, 1993, in Docket No. EL93-40-000, and will not be addressed further herein.

63/ See Papago Tribal Util. Auth. v. FERC, 723 F.2d 950, 954 (D.C. Cir. 1983) (contract which restricts § 206 rights for a limited period permits application for modification under a "public interest" standard during that period and under a just and reasonable standard after that period), cert. denied, 467 U.S. 1241 (1984); Kansas Cities v. FERC, 723 F.2d 82, 88 (D.C. Cir. 1983) ("Courts and the Commission have almost universally construed contractual references to future rate changes to authorize § 206 proceedings with a just-and-reasonable standard of proof"); Mississippi Industries v. FERC, 808 F.2d 1525, 1552 (D.C. Cir.) (where contract does not explicitly restrict § 206 rights, "[t]he parties' bargain itself contemplates the Commission's review," thereby "'leav[ing] unaffected' the Commission's power to replace rates, and terms affecting rates, that are either contrary to the public interest or unjust,
[FOOTNOTE CONTINUED ON NEXT PAGE]

"FMPA...has the right to seek changes to any of its existing contracts under FPA Section 206... ." FPL's April 27, 1993 Answer in Docket No. ER93-465-000 at 35 (Appendix 28).

FPL has made clear that the grounds on which FMPA may seek changes include justness and reasonableness. See id. at 7-8 n.7 ("Where such a [Section 211] dispute involves a party seeking to modify existing contracts, however, FPL should be entitled, under the standards of Section 206, to the benefit of the existing contracts that have been accepted for filing by the Commission until and unless such contracts are found to be unjust or unreasonable"). Indeed, in its May 18, 1992 Memorandum of Law in Opposition to Plaintiff's Motion for Partial Summary Judgment in the District Court case at 12 n.7 (Appendix 44) FPL stated:

> [T]he FERC-filed transmission contracts each contain a provision expressly permitting FMPA to file with the FERC a complaint alleging that the rates, terms, or conditions of those contracts have become unjust and unreasonable.

As FPL's repeated representations admit, the single limitation on FMPA's unilateral Section 206 rights that appears in any of the existing TSAs does not prevent the Commission from applying a remedy on justness and reasonableness grounds. Section 21.1 of Rate Schedule 109 purports to temporarily (until May 1, 1994) limit the grounds on which FMPA unilaterally may seek modification, but contains two large exceptions: FMPA may

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[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
unreasonable, unduly discriminatory or preferential to the detriment of the contracting parties"), modified on other grounds, 822 F.2d 1104 (D.C. Cir. 1987) (en banc).

apply for a rate change, and/or for a superseding or replacement TSA, at any time. 64/ The latter clause was added specifically to facilitate institution of a transmission arrangement for FMPA's IDO project. See Gosselin Tr. 42-43 (Appendix 7). Thus, the Commission may, for example, supersede or replace any or all of the existing TSAs with a network rate; credit payments under any or all of the existing TSAs toward a network service rate; change the rates under any or all of the existing TSAs; and make any other appropriate changes in the TSAs.

Moreover, even if FMPA did not retain broad Section 206 rights to unilaterally apply for modification of the existing TSAs, there would be compelling grounds for the Commission to exercise its plenary modification power. 65/ Network service is in the public interest, not only the interest of FMPA. First, enforcing the Antitrust Conditions will promote the public interest in enforcement of contractual (and regulatory) obligations. See FPC v. Sierra Pacific Power Co., 350 U.S. 348

64/ Even outside of these exceptions, Section 21.1 does not prevent FMPA seeking modification on Mobile-Sierra "public interest" grounds. Moreover, in view of this TSA's express "independent rights" clause and the duress by which FPL wrongfully constrained FMPA to execute this TSA, see supra Part III, Section 21.1 does not effect a voluntary waiver of FMPA's rights to seek modification on justness and reasonableness grounds.

65/ See Papago, 723 F.2d at 954 (temporary limitation on § 206 rights "cannot abridge the right of the parties to bring to the attention of the Commission during that period rates not in the public interest"); see also Mobile, 350 U.S. at 344-45 (natural gas companies which lack standing to file a complaint under Natural Gas Act Section 5(a) may ask the Commission to initiate an investigation on its own motion).

(1956) and United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) (Mobile-Sierra). Second, enforcing the policies of the antitrust laws, which those Conditions embody and which require transmission among a coordinating group of TDUs, will enable competition (especially competition for the wholesale loads in FPL's service territory). Competition is a potent promoter of the public interest and will ultimately benefit customers of FPL, FMPA, and every utility in Florida. Third, if networking is ordered for service under FPL's "open access" tariff and for resources not covered by the existing TSAs, those TSAs should be conformed to the network rate to prevent FPL being unjustly enriched and to promote uniform administration of FPL's transmission rates. Fourth, the existing TSAs not only "reflect[] circumstances where the seller has exercised market power over the purchaser," 66/ they reflect the economic duress brought about by FPL's wrongful failure to sell network service

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66/ Northeast Utilities Service Company (Re Public Service Co. of New Hampshire), 50 FERC ¶ 61,266, p. 61,839, reh'g granted in part and denied in part, 51 FERC ¶ 61,117 (1990). In such circumstances, the Commission "retains power -- through the 'public interest' language -- to make modifications under the traditional just and reasonable and nondiscrimination standards." Northeast Utilities Service Company (Re Public Service Co. of New Hampshire), 53 FERC ¶ 63,020, p. 65,235 (1990), summarily aff'd in pertinent part, 56 FERC ¶ 61,269 at 61,993 & n.59 (1991), on reh'g, 58 FERC ¶ 61,070, reh'g denied, 59 FERC ¶ 61,042 (1992). On review of the foregoing decisions, the First Circuit recently held that the Commission had not adequately explained its reasons for exercising its "public interest" modification power under a "just and reasonable" standard in the circumstances presented. Northeast Utilities Service Co. v. FERC, No. 92-1165 et al. (1st Cir. May 19, 1993), slip op. at 57-63. The court stated that "a fuller explanation from the Commission is required before proceeding down this route," id. at 61-62, but went no further.

and manipulation of time constraints. See supra Part III. For all these reasons, relief is "necessary in the public interest," meeting the heightened standard stated in Sierra, 350 U.S. at 355.

V. APPLICATION FOR AN ORDER UNDER SECTIONS 211 AND 212 REQUIRING THE PROVISION OF TRANSMISSION SERVICES

FMPA believes that the Commission has ample authority under Section 206 to order FPL to provide it network transmission to implement the IDO project. In any event, to the extent the relief sought by FMPA might not be available under Section 206, FMPA requests an order requiring such network transmission under Sections 211 and 212 of the Act, as amended by the Energy Policy Act of 1992. As described below, exercise of the Commission's new transmission authority is fully justified under the circumstances.

A. Network Transmission is in the Public Interest

The critical ingredient for a transmission order under amended Sections 211 and 212 is a Commission finding that the order is in the public interest. See amended Section 211(a). As demonstrated in Part IV above, that essential public interest requirement is fully satisfied here.

It is plainly in the public interest to require FPL to provide FMPA transmission on a network basis, consistent with FPL's obligations under Antitrust Conditions, as discussed in Part IV.D above. The public interest is served by requiring FPL to provide transmission in accordance with its contractual

obligations, particularly where those obligations were entered into with the government (and Florida cities) in settlement of claims that there would otherwise be a situation inconsistent with the antitrust laws. It is also in the public interest to effectuate national policy by requiring FPL to provide transmission in accord with Antitrust Conditions which constitute a standing NRC order.

In addition, network transmission will permit FMPA to integrate its generating resources in an economic and efficient manner, as discussed in Part IV.E.1 above. Network transmission would enable FMPA to operate in the manner FPL itself has recognized all utilities (including FPL) seek to operate. See Frank Tr. 5 (Appendix 5); Taylor Tr. 46-47 (Appendix 16); Schoneck Tr. 83-87 (Appendix 13); Enjamio Tr. 105-07 (Appendix 4). Network transmission thus furthers the public interest as reflected in the language of Section 212(a) by "promot[ing] the economically efficient...generation of electricity."

Moreover, as discussed in Parts IV.E.2. and IV.E.3, it is plainly in the public interest to require transmission that will permit real competition in generation markets, without handicapping FMPA or suppliers that wish to do business with them. Network transmission would serve the public interest by ending the discriminatory treatment of FMPA, which must pay a system rate for transmission (like FPL charges itself for its own transmission usage) but obtains only inferior point-to-point

services (as compared with the network service FPL provides itself). Network service would put FMPA -- and its member cities and others -- on a more equal plane with FPL in bulk power markets, thus enhancing competition in those markets and serving the pro-competitive purposes of the Energy Policy Act of 1992.

B. There Are No Obstacles to a Section 211/212 Order Requiring Network Transmission

1. FMPA is eligible to apply for a Section 211 Order

FMPA and its members are eligible to apply for a Section 211 order. Under Section 211(a), eligible entities include any "electric utility." Electric utilities are defined to include any state agency or municipality, which includes FMPA and its members. See FPA § 3(22), 16 U.S.C. § 796(22). 67/

2. FPL is a transmitting utility

FPL, as an electric utility which owns (and operates) electric power transmission facilities used for the sale of electric energy at wholesale, meets the definition of transmitting utility obligated to provide transmission under Section 211. See FPA § 3(23), 16 U.S.C. § 796(23).

3. FMPA has made a request more than 60 days ago

On September 8, 1989, FMPA submitted to FPL a written contract for network transmission for the IDO project. See Appendix 45. FMPA pursued its request for network transmission through negotiations with FPL, and sent FPL a number of written

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67/ The so-called sham wholesale transaction exception (§ 212(h)) plainly has no application here.

requests for network transmission during that process. FMPA repeatedly requested that FPL file a network transmission rate at FERC. See Guarriello Tr. 35-37, 40-41 (Appendix 8). Ultimately, when the negotiations proved fruitless, FMPA filed a lawsuit on December 13, 1991 to secure network transmission service. In the context of this lawsuit, FMPA submitted numerous pleadings requesting network transmission service.

Finally, FMPA again wrote FPL on March 25, 1993 requesting such a filing. See Appendix 34. FPL's March 29, 1993 response to this request, consistent with its prior responses to FMPA's previous requests, was to airily reject it. See Appendix 35. Thus, FMPA has amply satisfied the 60-day request requirement.

4. There is no reliability issue

Section 211(b) provides that "[n]o order may be issued under this section ... if, after giving consideration to consistently applied regional or national reliability standards, guidelines, or criteria, the Commission finds that such order would unreasonably impair the continued reliability of electric systems affected by the order." While it is FPL's burden to demonstrate an unreasonable impairment of reliability, 68/ FPL's actions and positions to date make clear that any reliability argument it now puts forth is a red herring.

68/ With appropriate support, e.g., by making available any computer models relied on to attempt to show such impairment.

a. There is no basis for FPL to claim any reliability impact

While FMPA has maintained before the District Court that the network transmission it seeks is a service FPL has refused to provide, FPL has taken the position that the issue is just pricing, stating, e.g., that "FMPA's claim to network transmission service is, at bottom, a pricing dispute subject to FERC's exclusive jurisdiction." 69/ In his March 29, 1993 letter again rejecting FMPA's request, FPL's counsel stated (Appendix 35 at 1) that "the dispute in this case is not about service. The existing contracts offer transmission service that would permit FMPA's member Cities, if they choose, to operate their generating resources as a 'network.'"

The absence of a serious reliability objection to FMPA's proposal is underscored by the "hub concept," which FPL put forth in negotiations with FMPA. 70/ FPL has contended that this hub concept would permit FMPA to integrate its generation and operate

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69/ FPL's Third Motion for Summary Judgment, dated April 1, 1993, at 2 n.4 (Appendix 46). This motion (as well as all other summary judgment motions filed on April 1, 1993 by both FPL and FMPA) was rejected because of a procedural ruling; each side was required to file one single, summary judgment motion. In the refiled motion, this argument is made in a more truncated form. See FPL's April 15, 1993 Motion for Summary Judgment, at 1 ("Fairly described, this is a dispute over the pricing of electrical transmission service"), and FPL's supporting memorandum at 11-13 (Appendix 32).

70/ Although the hub concept was put forward in bad faith, see supra Part IV.B.2, FPL's representations in negotiations and in litigation that it is willing to transmit on that basis estop it from claiming physical constraints on providing the transmission FMPA is requesting.

on a coordinated basis. See, e.g., FPL's April 27, 1990 letter describing the hub concept (Exhibit B to Appendix 36) and see May 14, 1992 Affidavit of William C. Locke, at ¶¶ 24-27 (Appendix 47). However, under the hub concept, FPL would continue to impose on FMPA multiple charges for transmission among the FMPA delivery points. See Part IV.B.2 supra and Attachment B to Appendix 36. FPL's Manager of Inter-Utility Relations characterized the hub concept as one which FPL believed would be workable operationally, and stated that FPL therefore proposed it to FMPA without having FPL personnel evaluate its impact on FPL's system. See Locke Tr. 107-11 (Appendix 9). See also, e.g., Adjemian Tr. 52 (Appendix 1); Enjamio Tr. 122-23, 125-28 (Appendix 4); Stepenovitch Tr. 178-80 (Appendix 15); Rey Tr. 17 (Appendix 11).

Indeed, FPL negotiator Schoneck has testified that FPL assumed physical operation of FMPA's units would be the same under the hub and FMPA's network proposal. Schoneck Tr. 213 (Appendix 13). He further explained that it followed that the impacts on FPL's system would be the same for the hub concept and the FMPA proposal. Id. at 216-17 (Appendix 13). In addition, FPL negotiator Schoneck testified that so long as FMPA informed FPL of the maximum transmission demands at each delivery point, there was no reason why FPL couldn't accommodate FMPA's proposed transactions under FMPA's network proposal. Id. at 134-35 (Appendix 13). Other than to ensure that the local interconnection facilities at the delivery point are sufficient

to accommodate the flows to and from that delivery point, FMPA disputes FPL's contention that it needs to plan for, and be compensated for, maximum transactions along each contract path, rather than physical flows on the integrated network system.

Moreover, FMPA was willing in the negotiation process, and remains willing today, to address any legitimate reliability concerns. For example, according to deposition testimony of FPL witnesses, although FPL does not schedule its own flows within its control area (Schoneck Tr. 139, Appendix 13), although there is generally (and under NERC requirements) no scheduling within a control area (Gosselin Tr. 117, Appendix 7), and although FMPA's current deliveries to Jacksonville Beach, Clewiston and Green Cove Springs, which operate within the Orlando control area, are not currently scheduled (Gosselin Tr. 61, 117-19, Appendix 7), FPL expressed concerns during the negotiations about the absence of within-control-area scheduling under FMPA's proposal. To address that concern, FMPA offered to advise FPL, upon request, of its intended transactions within FPL's control area (Gosselin Tr. 60-61, Appendix 7).

b. Any Reliability Impact Results from FPL's Failure to Fulfill its Antitrust Condition Planning Obligations, not from the Requested Network Transmission

If, contrary to the evidence described above, FPL could demonstrate a reliability issue, FPL's failure to fulfill its obligation under the Antitrust Conditions to plan for FMPA's transmission needs and its consequent responsibility for any

transmission constraints on its system would preclude any finding that ordering the requested network transmission for FMPA "would unreasonably impair the continued reliability of electric systems affected by the order" under Section 211(b).

FPL's NRC Antitrust Conditions require FPL to include the needs of neighboring entities in its transmission planning. Antitrust Condition X(c), page 26 (Appendix 23) provides:

> Company shall keep requesting neighboring entities and neighboring distribution systems informed of its transmission planning and construction programs and shall include therein sufficient transmission capacity as required by such entities, provided that such entities provide the Company sufficient advance notice of their requirements and contract in a timely manner to reimburse the Company for costs, as allowed by the regulatory agency having jurisdiction, appropriately attributable to compliance with the request.

Given FPL's Antitrust Condition planning obligation, any system constraints simply cannot be attributed to FMPA's requested use. Moreover, discovery in the District Court case has revealed potent evidence that FPL has acted in disregard of its NRC Antitrust Condition planning obligations. FPL has admitted that it plans only for transmission needs covered by pre-existing firm TSAs, and does not include in its planning even known and outstanding requests for transmission service (such as FMPA's request for network access). See FPL's Response to Interrogatory 26 (Appendix 48); see also Schoneck Tr. 94-98

(Appendix 13); Taylor Tr. 55 (Appendix 16). 71/ At the same time, FPL has insisted upon being the sole transmission provider and has consistently rebuffed the repeated efforts of FMPA and its members to share equitably in the benefits and burdens of the transmission network. 72/

If there are constraints on FPL's transmission system, the responsible cause of such constraints is FPL itself. Historically, FPL resisted building interconnections with Georgia until it was established that the absence of such interconnections would be insufficient to avoid Federal Power Commission jurisdiction. See generally, FPC v. Florida Power & Light Co., 404 U.S. 453 (1972). However, in the early 1980s, FPL made a conscious decision to rely upon increased purchases from Georgia instead of constructing additional generation in Florida. FPL is now importing more than 2,000 MW from Georgia on an almost continuous basis. At the same time, it has deferred construction of the Martin units in central Florida.

71/ Nor does FPL make any effort to comply with its obligation to keep neighboring entities informed of its transmission planning, other than by disclosures to the Florida Coordinating Group, which make public FPL's unilateral decisions after they are already made. Schoneck Tr. 84-85 (Appendix 13); Taylor Tr. 55-57; 256-258 (Appendix 16).

72/ On numerous occasions, FMPA and its members have requested permission to acquire ownership rights, by investment or purchase, to a share or portion of the FPL transmission system, but FPL has never permitted such ownership. See detailed description in Plaintiff FMPA's Responses and Objections to Defendant FPL's Second Set of Interrogatories, dated February 10, 1993, Response to Interrogatory 18 (Appendix 49).

In the early 1980s, FPL Director of Power Supply Planning James E. Scalf testified in favor of rapidly increasing its coal-by-wire purchases from Georgia from 125 MW to 1,000 MW. 73/ FPL's witness testified further to FPL's intention to seek contracts increasing total purchases to 2,000 MW. 74/ However, he testified against additional transmission construction within Florida (i.e., the Tifton-Ft. White-Central Florida 500 kV interconnection) because of a claimed lack of need. 75/ FPL's witness stated that the "[c]ompletion of the Duval-Poinsett 500 kV project will substantially increase the ability of the system to withstand major system disturbances such that the need for dropping customer load will be virtually eliminated," will allow for increased reliability and "will ensure ample transmission capacity for future load growth in the FPL service territory through which the Duval-Poinsett 500 kV lines will

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73/ December 23, 1981 Pre-filed Testimony of James E. Scalf at 4, In re: Commission Investigation to Determine the Need for an Additional 500 kv Transmission Line Interconnection with the Southern Company System, FPSC Docket No. 810346-EU (Appendix 50).

74/ Id. at 5.

75/ Id. at 12-14. More recently, FPL has proposed additional 500 kV construction together with Florida Power Corporation, but FPC has deferred its part of the construction. When asked during his deposition in the District Court case if FMPA could participate, FPL's witness Locke said no, because FPL needs the capacity for itself. See Locke Tr. 271 (Appendix 9). Thus, FPL's position appears to be that construction which it supports -- and only that construction -- is needed, but that there is never room for investment participation by transmission dependent utilities. FPL cannot reasonably insist that it must monopolize transmission and make reliability claims against transmission use by others.

pass." 76/ The Company represented to the FPSC that "the bottleneck is the availability of coal-by-wire and not the interstate transfer capacity," and represented that FPL's proposed construction, without more, would benefit Florida reliability. 77/ FPL also stated that approval of its proposed construction would provide for capacity to permit transmission by other systems. 78/ Indeed, its witness stated that there would be sufficient transmission capacity to import 200 MW more without any added cost. 79/

FPL witnesses have recognized that there is a clear trade-off between constructing generation and transmission. Alfonso Tr. 34 (Appendix 2); Taylor Tr. 45-46, 101-102 (Appendix 16); Adjemian Tr. 11-12 (Appendix 1); Locke, Tr. 87

76/ Petition to the Florida Public Service Commission to Commence Determination of Need for: Duval-Poinsett 500 kV Project (April, 1981) at 8, 9 (Appendix 51).

77/ Response of FPL to FPSC Order No. 10278, filed October 19, 1981, In re: Commission Investigation to Determine the Need for an Additional 500 kV Transmission Line Interconnection with the Southern Company System, Docket No. 810346-EU, at 1 (Appendix 52).

78/ Id. 6-7.

79/ March 8, 1982 Testimony of James E. Scalf In re: Commission Investigation to Determine the Need for an Additional 500 kV Transmission Line Interconnection with the Southern Company System, FPSC Docket No. 810346-EU at 519-520 (Appendix 53).

FPL's representation to the FPSC should be compared with the at most negligible amount of additional transmission loading required by FMPA to implement its IDO proposal. Under its TSAs, FPL transmits certain power for FMPA, but on a point-to-point basis. Any additional firm transmission needed for IDO cannot be said to be a significant cause of transmission bottlenecks.

(Appendix 9). They have also recognized that FPL's decision to rely on new Georgia imports instead of building generation in Florida would have a consequential impact on transmission availability and use in Florida. Alfonso Tr. 34 (Appendix 2); Taylor Tr. 45-46 (Appendix 16). See also Adjemian Tr. 11-12 (Appendix 1).

The consequence of FPL's planning and operational decisions has been to create what FPL claims are constraints on the amount of transmission available for others. FPL imposes limits on proposed uses of the transmission system such that all of FPL's uses of its transmission lines for its own imports are locked-in, and transmission usage by third parties is constrained.

In sum: (1) FPL has invested in substantial 500 kV transmission facilities, which are used exclusively by FPL for its power importation and which are not available to transmission service customers; (2) FPL's imports limit the ability of others to use the transmission system, especially as compared with the transmission capacity that would have been available for others if FPL had built additional generation in Florida to serve loads; 80/ and (3) any incremental uses of transmission proposed by FMPA will have a negligible impact on FPL's transmission system compared with FPL's own use, including its loading of the transmission system to import power from Georgia. For example,

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80/ FPL has bought additional gas turbine capacity in South Florida, but has deferred or canceled major base-load generation.

proposed incremental FMPA transmission use is significantly below variations in load which may be anticipated as a result of weather conditions and similar factors. See Schoneck Tr. 163-164 (Appendix 13); Taylor Tr. 137-139 (Appendix 16).

Given the above, it must be concluded that any constraints which FPL may claim are created by FMPA in reality result from FPL's planning deficiencies or from FPL's conscious choice to rely on a maximum importation of power from Georgia for its own use; FMPA's requested use is not the responsible cause. As explained by FPL's transmission planning engineer Domingo Alfonso, all loads on the network contribute to transmission constraints. Tr. 33-34 (Appendix 2). See also Schoneck Tr. 183 (Appendix 13); Locke Tr. 46-47 (Appendix 9). However, especially considering FPL's planning and transmission obligations to neighboring entities under its Antitrust Conditions, an order requiring FPL to provide FMPA with requested network transmission cannot be considered to unreasonably impair FPL's reliability.

5. FMPA's Purchases from FPL Pose no Bar to a Section 211 Order

FMPA is the purchasing agent for three partial requirements contracts under which three FMPA member cities take PR power and energy from FPL. 81/ Purchases under those contracts should pose no obstacle to a Section 211 order.

81/ Partial Requirements Service Agreement among FPL, FMPA and the City of Jacksonville Beach, dated March 30, 1985; Partial Requirements Service Agreement Among FPL, FMPA, and The City of Green Cove Springs, dated March 30, 1985; and Partial Requirements Service Agreement Among FPL, FMPA, and The City of

[FOOTNOTE CONTINUED ON NEXT PAGE]

Section 211(c)(2) provides: "No [Section 211] order may be issued...which requires the transmitting utility subject to the order to transmit, during any period, an amount of electric energy which replaces any amount of electric energy...required to be provided to such applicant pursuant to a contract during such period." Under the PR contracts, FPL is only "required to...provide[]" FMPA with the energy FMPA chooses to schedule in accordance with contractual scheduling requirements (and within the limits of its then-specified contract demands, which can be reduced over time). It is therefore extremely unlikely that Section 211(c)(2)(A) will ever come into play -- FMPA would have to seek to use network transmission to replace energy it had already scheduled. This interpretation of Section 211(c)(2)(A) is consistent with the competitive purpose of the Energy Policy Act of 1992, which amended this provision and otherwise transformed FERC's limited preexisting transmission authority, aimed primarily at conservation, efficiency and reliability (see repealed Section 211(a)(2)), into a tool to encourage competition in bulk power markets. 82/

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
Clewiston, dated October 2, 1990. The contractual nature of these relationships is not altered by the fact that the contracts adopt by reference FPL's PR tariff provisions.

82/ To the extent that an example noted in dicta in Southeastern Power Administration v. Kentucky Utilities Co., 26 FERC ¶ 61,127 at p. 61,324 n. 14 (1984) takes an overly expansive reading of the scope of Section 211(c), that reading is not consistent with the language of the provision itself or FERC's own characterization of the purpose of that provision as preventing the "breaking" of existing contracts. Id., 26 FERC at p. 61,325

[FOOTNOTE CONTINUED ON NEXT PAGE]

In addition, Section 211(c)(2)(A) could never pose a complete or permanent bar to a network transmission order. Even assuming (incorrectly) that it could limit FMPA's use of Section 211 transmission, such transmission would be unavailable only during a specified period and for specified purposes. 83/

Thus, Section 211(c)(2) poses no serious obstacle to Section 211 transmission order.

C. The Commission Has Authority to Order Network Transmission Under Sections 211 and 212

Sections 211 and 212 plainly authorize the Commission to require non-discriminatory transmission access, including network access, and a strong argument can be made that it would be inconsistent with the language and pro-competitive intent of these provisions for the Commission to restrict itself to ordering access on a basis that is not equal.

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
n.15 (quoting Senator Johnston). More fundamentally, SEPA's reading of Section 211(c)(2) as a complement to the now defunct Section 211(c)(1) "reasonably preserve existing competitive relationships" requirement can have no vitality in the context of the self-consciously pro-competitive purposes of the Energy Policy Act of 1992, of which Section 211(c), as amended, is now a part.

83/ Moreover, in light of FPL's refusal to contract directly with FMPA for PR sales (FPL instead has insisted on treating FMPA as merely agent for the various cities to which energy is delivered) Section 211(c)(2)(A) therefore does not apply to FMPA's PR purchases. Although the Commission in SEPA accepted an interpretation of "applicant" for purposes of Section 211(c)(2) to include the non-applicant buyer of energy to be transported, the Commission made clear that "[s]hould the question arise directly in another case we shall take a fresh look at the meaning of subsection 211(c)(2)." SEPA, 26 FERC at p. 61,324 n.12.

Nothing in the language of Sections 211 and 212 limits the Commission to ordering transmission only on a point-to-point basis, with restrictions that cripple the recipient's ability to compete, e.g., barring a transmission customer from non-firm use of the network capacity which should be associated with the firm capacity it purchases. To the contrary, transmission inadequate to permit competitive markets to develop and flourish would not satisfy Section 211(a)'s public interest standard. The reliability provision's reference to "electric systems affected by the order" (Section 211(b)) reinforces the conclusion that Congress was not viewing transmission as a point-to-point, single system transaction, but saw transmission in the context of a network.

In addition, the pricing language of Section 212(a) reinforces the appropriateness of ordering network services under Section 211. The pricing language plainly does not entitle transmission owners to access on more favorable prices and terms than other users. As confirmed by the Joint Explanatory Statement of the Committee of Conference, H.R. CONF. REP. No. 1018, 102d Cong., 2d Sess. 388 (1992): "Rates, charges, terms, and conditions for wholesale transmission services ordered under Section 211 in all cases shall be just and reasonable, and not unduly discriminatory or preferential." As discussed in Part IV.E.2 above, for one class of competitors -- transmission owners -- to have access to the generation market on better

prices or terms than competitors that do not own transmission would plainly constitute undue discrimination or preference.

Finally, Section 212(a)'s express requirement that transmission "rates, charges, terms and conditions...promote the economically efficient transmission and generation of electricity" mandates that transmission be made available on a network basis, on prices and terms equivalent to those enjoyed by owners. As described in Part IV.E above, network transmission is necessary to enable FMPA to economically and efficiently plan and operate its generation, in the same manner FPL integrates its own generation.

VI. MOTION FOR SUMMARY DISPOSITION

For the reasons stated above, see, e.g., Parts IV.A and IV.C, the Commission should summarily find and declare that FPL is obligated to sell network transmission over its system for FMPA's IDO project without imposing multiple charges for transmission among multiple points, and direct FPL to file compliance "rate schedules and agreements, as required to provide for the facilities and arrangements needed to implement" that obligation, see Antitrust Condition XII (Appendix 23).

VII. REMEDIES

For the reasons outlined above, the Commission should end the injuries to the public interest caused by the point-to-point restrictions in FPL's existing and proposed transmission rate schedules, and instead set rates under which FPL will sell transmission to FMPA on a network basis. Under the Federal Power

Act (as amended), the Commission has ample authority to fashion an effective remedy. See Niagara Mohawk Power Corp. v. FPC, 379 F.2d 153, 159 (D.C. Cir. 1969) (Commission's authority is at its "zenith" when it fashions remedies); see also Northeast Utils. Service Co. v. FERC, No. 92-1165, slip op. at 37-38 (1st Cir. May 19, 1993) (same).

The specific relief sought by FMPA is the establishment of a transmission rate schedule (or schedules) that will provide transmission for all of the generating resources for which FMPA seeks transmission, among the receipt and delivery points at which it is interconnected with the FPL transmission system, at a total price which justly and reasonably compensates FPL for the net coincident loading on that system. As shown below, there are multiple remedial pathways from FPL's existing rates for transmission service towards that result. While there is some overlap between these remedies, they are, for the most part, designed to operate in a complementary manner to provide the prospective relief requested here. The Commission should combine these approaches as appropriate to achieve that end.

Remedy one. Transmission Tariffs Nos. 1, 2, and 3 proposed by FPL in Docket No. ER93-465-000, if refiled, should be modified to provide that FPL will transmit for FMPA (and others similarly situated) under those tariffs (as modified pursuant to Commission review) on a network basis. For example, in proposed Tariff No. 1, Sections 1.5, 1.19, and 1.20 (Appendix 54) should be modified to provide that Service Agreements may specify

multiple Points of Delivery and Points of Receipt, in which event a single Contract Demand would be specified. 84/ Furthermore, this Contract Demand would represent the maximum coincident amount of power to be transmitted, pursuant to that Service Agreement, over the FPL Transmission System at any one time. Corresponding modifications should be made to other relevant Tariff No. 1 provisions (such as Sections 7.3, Schedule 4, and Schedule 5 Appendix A), and to Tariffs Nos. 2 and 3.

Remedy two. The point-to-point service restrictions in FPL's existing rate schedules for transmission service to FMPA should be modified (or replaced with a superseding TSA from which those restrictions are deleted). The changed rate schedule(s) should provide that all of the FMPA resources eligible for transmission under the present transmission rate schedules and agreements will be transmitted to each of the FMPA designated delivery points in any combination as FMPA may reasonably request. Such a remedy could be effected by, for example, superseding the replacement transmission service provisions (Article IV) of the Revised and Restated TSA (and similarly for other transmission contracts) to provide that each FMPA resource (including eligible future resources) qualifies as a pre-specified source of replacement power and energy, that replacement transmission is available up to the amount of unused

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84/ These section references are to FPL's proposed tariffs as filed on March 19, 1993. The revised tariffs that FPL is to file by July 26, 1993 presumably will track the referenced provisions, but may renumber them.

contract demand associated with any generating resource that at other times could be transmitted under any of the TSAs, and that replacement transmission can be used to transmit any pre-specified resource to any FMPA delivery point on FPL's transmission system.

Remedy three. To the extent the requested transmission cannot be accommodated by relief available under Section 206, FPL should be ordered under FPA Sections 211 and 212 to provide a new transmission service, sufficient to transmit all the resources for which FMPA seeks transmission, among the receipt and delivery points at which FMPA's resources and loads are interconnected with the FPL system. This new service should be priced on a network basis such as a rolled-in embedded average cost allocated by coincident peak demand, or any other just and reasonable method that does not multiply transmission charges as a function of the number of receipt-and-delivery-point pairs.

Remedy four. In conjunction with remedies one and three above, after establishing a new network rate schedule (either by modifying FPL's "open access" transmission tariffs or by ordering FPL to provide new transmission) the Commission should terminate, or, in the case of the Revised and Restated TSA, supersede or replace the existing rate schedules for transmission of FMPA resources. 85/ The Commission has authority to combine the new

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85/ Of course, existing arrangements should not be terminated unless and until a new arrangement is in place that assures FMPA will continue to receive transmission service on rates, terms, and conditions no more unfavorable than FPL presently provides.
[FOOTNOTE CONTINUED ON NEXT PAGE]

network service with the preexisting TSA service, leaving only a rate schedule for network service on file, rather than allowing FPL to collect the network rate on top of preexisting rates. The D.C. Circuit has held that "in a situation involving two contracts, at different prices, for different portions of a single service, it is within the power of the Commission to combine the two contracts even though the combination results seemingly in a technical breach" of the older contract. 86/ The Commission likewise has authority to combine two rate schedules for transmission of a single resource.

Remedy five. As discussed in connection with remedies one and three above, FPL should be required to provide network transmission rate schedule, that would provide for transmission of power and energy from all FMPA designated resources to all FMPA designated delivery points. If the Commission were to also leave the preexisting rate schedules in place and unchanged, the new network tariff or rate schedule should include a credit for payments under the preexisting rate schedules towards the rate charged for such new network transmission service. Crediting would be appropriate because resources currently transmitted

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[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
If the new arrangement is a modification of FPL's "open access" tariff, present arrangements should continue in effect until an appropriate Service Agreement takes effect.

86/ Mississippi River Fuel Corp. v. FPC, 252 F.2d 619, 624-25 (D.C. Cir. 1957) (affirming Commission decision to prevent an unreasonable difference between the old and new contracts, in that case by raising the old (lower-priced) contract rate), cert. denied, 355 U.S. 904 (1957).

under existing rate schedules would instead be transmitted under the new service, with the result that FMPA would be paying for service under the existing rate schedules but not taking it. That result would be, in the words of Section 212(a), a "benefit[] to the transmission system of providing the [new] transmission service." FPA Section 212 makes clear that such benefits should be credited in setting just and reasonable transmission rates. Such crediting would be necessary for as long as FMPA was required to continue to make payments under existing rate schedules, to avoid double collections.

Remedy six. To the extent the relief provided through the above remedies leaves open issues concerning rates, terms, and conditions, FPL should be directed to file a compliance tariff forthwith.

Remedy seven. FPL should be ordered to file the Antitrust Conditions with the Commission. As demonstrated in Part IV.D.2 above, the Conditions have an important bearing on the justness and reasonableness of FPL's existing and proposed transmission services. Several years ago, FPL succeeded in vacating as moot the order of a FERC Administrative Law Judge directing filing of the definitional and transmission requirements section of the Conditions, see Florida Power & Light Co., 30 FERC ¶ 61,230 (1985), vacating as moot, 26 FERC ¶ 63,091 (1984) partly on the basis of a representation made to this Commission in that case that "there is...no reason for concern that license conditions will not be enforced so long as they

remain part of the license issued by the NRC." February 24, 1983 Brief on Exceptions of Florida Power & Light Company in ER83-523-000 at 17 (Appendix 56). Subsequent experience has shown that there is reason for concern that FPL's FERC filings will not fulfill FPL's license condition obligations if the Antitrust Conditions are not filed.

Remedy eight. The Commission should order such additional remedies as may be appropriate to enable FMPA to integrate its dispatch, operations, and planning.

In view of the jurisdictional limitations on retroactive ratemaking, the relief which FMPA is seeking from the Commission is entirely prospective from this filing. Retrospective relief, such as the contract and antitrust damages for past injuries which (along with other relief) FMPA continues to seek in the District Court case, is outside the scope of this Complaint, Application and Motion.

VIII. REFUND EFFECTIVE DATE

Federal Power Act Section 206(b), 16 U.S.C. § 824e(b), requires that the Commission establish a refund effective date that is no earlier than 60 days after the date of the filing of the subject complaint, and no later than five months after the expiration of the 60-day period. See Massachusetts Municipal Wholesale Electric Com. v. Northeast Utils., 57 FERC ¶ 61,306 at 61,997 (1991). The Commission's practice is to afford the complainant maximum refund protection. Canal Electric Co., 46 FERC ¶ 61,153, at 61,539, reh'g denied, 47 FERC ¶ 61,275 (1989).

Given that the level of transmission charges to FMPA under the five TSAs is excessive, the Commission should set the earliest possible refund date, i.e., 60 days after the filing of the complaint.

IX. CONCLUSION

WHEREFORE, for the foregoing reasons, FMPA respectfully requests that the Commission initiate complaint proceedings and issue orders: (1) summarily finding that FPL is obligated to sell network transmission over its system for FMPA's IDO project without imposing multiple charges for transmission among multiple points; (2) ordering FPL to provide transmission for FMPA's IDO project on that basis; (3) finding that the access limitations embodied in the rates, terms, and conditions of (a) existing FMPA-FPL Transmission Service Agreements ("TSAs") on file with the Commission and (b) the transmission tariffs proposed by FPL in FERC Docket No. ER93-465-000 are unjust and unreasonable, produce excessive revenues, and should be modified as explained herein; (4) directing FPL to file a compliance tariff forthwith; (5) directing FPL to file its antitrust license conditions with the Commission; (6) establishing a refund-effective date 60 days

from the date of the filing of this complaint; and (7) affording FMPA such other relief as may be deemed appropriate.

Respectfully submitted,

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July 2, 1993

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document, and its appendix volumes, to be served by hand delivery to Lon Bouknight, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C.

Dated at Washington, D.C. this 2nd day of July, 1993.

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APPENDIX 11

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Florida Municipal Power Agency	)	Docket Nos. EL93-51-000
	)	and TX93-4-000
v.	)	
	)	
Florida Power & Light Company	)	

RESPONSE OF FLORIDA MUNICIPAL POWER AGENCY
TO FLORIDA POWER & LIGHT COMPANY'S
MOTIONS TO DISMISS OR REJECT

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, Florida Municipal Power Agency ("FMPA") responds to Florida Power & Light Company's August 23, 1993 motions to dismiss or reject FMPA's Section 206 Complaint and Section 211 Application ("Complaint"). 1/

On September 8, 1989, FMPA formally requested that FPL provide transmission service on a network basis for its Integrated Dispatch and Operations ("IDO") project. FMPA needs network transmission to plan and operate the power supply resources of FMPA and its members on a combined least cost basis, that is, in the same manner as FPL and virtually every other

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1/ Although FPL's filing is styled an "Answer" and studiously avoids the word "motion," FPL plainly has so moved. See, e.g., headings I and II, pp. 30, 61 and conclusion, p. 68. Accordingly, a response is permissible. Cf. FPL's April 27, 1993 and September 8, 1993 answers in Docket No. ER93-465-000 at 2-3 and 1-2, respectively. Alternatively, FMPA respectfully requests that the Commission consider this response which principally addresses new matter raised by FPL that is intertwined with its motions. FPL's filing will be cited herein as the "Answer," the name FPL gave it.

major electric utility attempts to do. For four full years, in spite of repeated requests, FPL has refused and continues to refuse to sell such network transmission service to FMPA.

FPL's obligation to file network rates is unambiguous. In settlements with the United States Department of Justice ("DOJ") and the Nuclear Regulatory Commission ("NRC") Staff, and with Florida Cities, who are members of FMPA, FPL committed to sell network ("between and among") transmission service if requested, to "immediately" file a service agreement with the FERC providing the requested service so that the FERC may determine the just and reasonable price for that service, and to submit to the FERC "[r]ate schedules and agreements, as required to provide for the facilities and arrangements needed to implement the bulk power supply policies herein." 2/

Notwithstanding its vague and heavily conditioned promise to consider providing some form of network service at some indefinite future date (Answer at 2-3), the fact remains that FPL still has not filed a service commitment, as its contracts with the United States and Florida municipal governments unequivocally require. FPL is evading its clear obligation to invoke this Commission's jurisdiction to determine just and reasonable rates and terms for the requested service.

2/ See Antitrust Conditions §§ X(a), X(b), and XII. See also Louisiana Power & Light Co., (Waterford Steam Generating Station Unit No. 3), 8 AEC 718 (1974), aff'd 1 NRC 45 (1975) ("LP&L"); infra Part II.A.

This pattern of evasion is exactly what the Antitrust Conditions are designed to prevent. As described in the Affidavit of Dr. Gordon Taylor, the former FERC Director of Economics and Finance who advised the Department of Justice in negotiation of FPL's settlement license conditions to correct a "situation inconsistent with the antitrust laws," 3/ FPL has long mastered the art of using extended negotiations to delay or avoid providing service, and the Antitrust Conditions' transmission obligations were designed to address that practice and to ensure the availability of network transmission. 4/ Indeed, there is supreme irony in FPL's current position. In 1973, FPL obtained an initial advice letter from the Justice Department finding no present need for an antitrust hearing regarding FPL's St. Lucie nuclear license on the basis of a promise to "seriously consider" the participation of interested Florida municipal systems in its next nuclear unit. 5/ FPL's failure to follow through on that promise, which "surprised" the Justice Department, 6/ caused the NRC to initiate antitrust proceedings which ultimately resulted

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3/ See Atomic Energy Act, Section 105(c), 42 U.S.C. 2135(c).

4/ Affidavit of Gordon Taylor at pp. 13-15. This affidavit was filed as Exhibit 6 to Motion to Intervene, Motions to Reject, Protest, Motion to Require Filing of License Conditions, and Request for Five Months' Suspension of Seminole Electric Cooperative, Inc. in FERC Docket No. ER93-465-000, dated August 24, 1993. A copy is attached hereto as Attachment 1.

5/ See November 14, 1973 letter from the DOJ to the NRC at p. 7 (Attachment 2 hereto).

6/ See March 2, 1976 letter from the DOJ to the NRC at p. 3 (Attachment 3 hereto).

in FPL's commitment to Antitrust License Conditions, including a central provision aimed at giving municipal systems network access required to enable them to coordinate their generation among themselves. Now FPL asks that it not be compelled to fulfill that commitment, because it promises to do so at some unspecified time, in some unspecified manner. History repeats itself -- the second time as farce.

Against this background, FPL has the effrontery to ask that FMPA's Section 206 Complaint be dismissed because the Commission does not have the jurisdiction to force "involuntary wheeling" by FPL and that FMPA's Section 211 Application be rejected because FPL is willing to transmit on a network basis voluntarily, but claims that it has not yet received sufficient information to determine what FMPA wants.

The Commission must recognize FPL's protestation that "[i]t has consistently been and remains FPL's position that it will negotiate ... a form of 'network' service" (Answer at 2) for what it is -- a sham designed to evade FERC jurisdiction and further delay provision of network service. If FPL were truly willing to provide network service:

- why hasn't FPL filed a network rate it views as just and reasonable, as required by FPL's settlements and antitrust license conditions, in response to FMPA's repeated requests for network service during two years of negotiations, instead of steadfastly refusing to sell network transmission?
- why hasn't FPL filed a network rate in response to FMPA's District Court action and summary judgment motion that sought a declaration of FPL's obligation under its Antitrust Conditions to file a network rate, instead of vigorously resisting that motion?

- why hasn't FPL filed a network rate rather than arguing before the District Court that FMPA's complaint is barred by the statute of limitations because FMPA should have known "FPL's responses to requests for network service were not merely 'no,' but 'hell no'"? 7/
- why hasn't FPL removed the point-to-point restrictions from its "open access" tariff filings in Docket No. ER93-465-000, instead of arguing that network transmission need not be considered in that proceeding and that FPL has no obligation to provide such service?
- and why hasn't FPL filed a network rate in response to FMPA's Complaint, rather than spending 67 pages arguing why FERC cannot and should not order it to provide network service?

FPL's purported willingness to provide "a form of 'network' service" (at 2) is just the newest manifestation of FPL's "anywhere but here, anytime but now" strategy of delay and avoidance that it has employed in each forum in which FMPA has sought to enforce its contractual and statutory rights to network transmission. 8/

Rather than accept FPL's transparent evasive maneuver and invitation to further interminable delay, the Commission should hold FPL to its newly-professed willingness to transmit on a network basis, as well as its commitments under the Antitrust Conditions and settlement agreements. The Commission should

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7/ See FPL's April 15, 1993 Memorandum in Support of Motion for Summary Judgment, at 10 (Attachment 4). See also FPL's August 17, 1993 proposed contested issues of fact in the pre-trial stipulation in the District Court proceeding, at 18 (disputing that "FMPA has ever believed and has ever had any basis for assuming that FPL would change or had changed its policy not to price transmission service on the network basis") (Attachment 5).

8/ See Complaint at 45 & n.39.

summarily order FPL to file a tariff, proposed agreement or rate schedule for network service for FMPA, as requested in FMPA's Complaint (at 86). 9/ In light of the express terms of Antitrust Conditions X and XII, this Commission has ample authority to issue such an order under Section 206. Once FPL makes that filing and submits its network service proposal to FERC jurisdiction, the Commission can focus on what even FPL concedes (Answer at 62) should be the real issue for decision by this Commission: the rates, terms and conditions for network service. In that way, the Commission can carry out its mandate under the Federal Power Act as amended by the Energy Policy Act of 1992.

I. FPL'S PURPORTED WILLINGNESS TO NEGOTIATE A FORM OF NETWORK SERVICE PROVIDES NO BASIS FOR DISMISSAL, AND IS SIMPLY A PLOY TO EVADE FERC JURISDICTION AND DELAY

A. Empty Promises Do Not Vitiate FERC Jurisdiction under Section 211

FPL claims (Answer at 2) that it has "consistently" been willing to negotiate a form of network service, and that its willingness to voluntarily provide such service moots FMPA's Section 211 Application. FPL's statement at best is disingenuous and can provide no basis for dismissal of FMPA's Complaint. If anything is clear from FPL's actions in two years of negotiation and two years of litigation with FMPA, it is that FPL refuses to sell FMPA network service for its IDO project, despite its

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9/ Alternatively, the Commission should condition acceptance of FPL's tariff filings in Docket No. ER93-465-000 on removal of their point-to-point restrictions. See Complaint at 87-88 (remedy one).

express obligation to do so under the Antitrust Conditions and its settlement agreements. There is an Alice in Wonderland quality to FPL's position: FPL asserts that FMPA waived rights to network transmission by not somehow requiring FPL to unilaterally file a network rate (Answer at 40), but when, in the face of FPL's refusals, FMPA has sought to enforce its rights to require FPL to file a network rate, FPL argues that FMPA's Complaint should be dismissed because it will voluntarily negotiate to provide "a form of 'network' service." FPL's ploy should fool no one.

As described in the accompanying affidavit of Albert B. Malmsjo, on September 8, 1989, FMPA formally asked FPL to sell it network transmission for its IDO project. 10/ The request was followed by months of meetings, several FPL requests for information to enable FPL to study the proposal, and FMPA responses providing the detailed information requested and offering to provide more if sought. Despite months of study and meetings, and numerous significant concessions by FMPA in an attempt to be responsive to FPL concerns, FPL never, in two years of negotiations, budged from its refusal to sell network transmission. Indeed (presumably because such recognition would concede the obvious fact that FPL knew precisely what FMPA was requesting), nowhere in its Answer does FPL even acknowledge the positions it took in negotiations with FMPA, much less attempt to

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10/ FPL was in fact aware well before this request that FMPA wanted to purchase network transmission services.

refute FMPA's demonstration (Complaint at 32-34) that FPL never offered to transmit on a network basis. 11/

In the face of FPL's intransigence, FMPA turned to the courts to enforce its contractual rights to require FPL to file a network rate. On May 1, 1992, FMPA moved for partial summary judgment, requesting a declaration that FPL was obligated to file a network rate. 12/ FPL responded to FMPA's District Court suit and motion for partial summary judgment not by filing a network transmission rate, but instead by vigorously resisting the suit, asserting (at various times) that the FERC or the NRC has exclusive jurisdiction, and arguing, among other things, that FMPA's claims are time-barred because the "[t]ransmission service provided by FPL to FMPA is priced on a 'point-to-point' basis" and that FPL's policy against providing network transmission was so unequivocal, inflexible and longstanding that FMPA's request was futile. 13/

FPL is well aware of the impact of delay. FMPA's damage study, which was made available to FPL in discovery in the District Court case, shows the cost of denial of network access

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11/ Conspicuously absent from FPL's Answer is any reference to its "hub" concept, which FPL itself termed "modified point - point, directional service." See Exhibit B to Appendix 36 to FMPA's Complaint. See also FMPA's Complaint at 33-34 & n. 26 and 27.

12/ That motion is still pending before the Court.

13/ See FPL's April 15, 1993 Motion for Summary Judgment, filed in the District Court case, at 4 and 4-11, relying on affidavits to support its then stated position that it provides only point-to-point service (Attachment 4). Id. at 4 n.2.

to be in the range of $1 million per month. FPL's refusal to sell FMPA network service for IDO has already constrained one IDO participant to enter into a long-term wholesale power purchase arrangement with FPL. See Complaint at 63. The distorted generation planning necessitated by FPL's refusal causes large net economic losses that can never be regained. 14/

Especially in light of this mounting injury to FMPA and to the public interest, FPL's new pledge to negotiate "a form of 'network' service" (at 3) in no way moots this proceeding, but rather highlights the need for immediate, decisive action by this Commission. 15/ Indeed, in view of FPL's long history of promising whatever it takes to avoid enforcement action and then

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14/ See Complaint Appendix 26 and the attached Affidavit of Albert B. Malmsjo, ¶¶ 20-21. Conspicuously absent from FPL's Answer is any serious contention that point-to-point restrictions are in the public interest.

15/ While the Commission should hold FPL to this new commitment, as well as its Antitrust Conditions, it could well be that FPL's new pledge is but an all-too-clever word game. In sworn affidavits in the District Court case, FPL has repeatedly described the TSAs as point-to-point service (see, e.g., May 14, 1992 Locke Affidavit ¶¶ 10, 14 (Attachment 6) ("FMPA proposed to transform the contract demands associated with the specific point-to-point transmission services provided under the St. Lucie, Stanton, Tri-City, and All-Requirements TSAs..."); April 13, 1993 Third Affidavit of William C. Locke, Jr. at ¶ 5 (Attachment 7) ("As I explained in my prior Affidavit, under FPL's existing transmission service contracts with FMPA, with limited exceptions, transmission service is provided only from identified points of receipt to identified points of delivery on the basis of a separate 'contract demand' for each such service"). Before this Commission, however, FPL has suddenly changed its tune, now characterizing the All-Requirements TSA as "close to full network service." Answer at 14. In light of FPL's current usage of the term "network" service, its purported willingness to negotiate a "form of 'network' service" may be nothing more than sleight of hand.

reneging once the regulatory authorities turn their attention elsewhere, this harm is also "capable of repetition, yet evading review." See, e.g., National Solid Wastes Mgt. Ass'n v. Alabama Dept. of Environmental Mgt. 924 F.2d 1001 (11th Cir.), cert. denied, 111 S.Ct. 2800 (1991).

B. FMPA Has Requested Transmission Service Within the Meaning of Section 211; FPL Knows What FMPA is Requesting and has had Ample Information to Analyze FMPA's Request for Network Service

FPL's claim that it is the victim of "stealth requests or moving targets" (Answer at 5) reflects at best a sudden case of total amnesia. FPL apparently has forgotten the detailed information FMPA provided in response to FPL's requests during the two years of negotiations regarding FMPA's request for network transmission for the IDO project, the studies FPL performed regarding the impact of FMPA's IDO project on its transmission system, the enormous amounts of information provided in FMPA's District Court damage study, and FPL's own documents, affidavits and deposition testimony demonstrating that FPL knew precisely what FMPA was requesting and could analyze that request to death. In short, FPL's contention that FMPA has failed to request transmission service within the meaning of Section 211 is preposterous.

1. FMPA Defined the Service Sought and Provided Data Sufficient to Permit FPL to Analyze the Request

FPL alleges FMPA's "proposals failed to permit FPL to do any meaningful analysis" (Answer at 63), "did not identify the loads served" (Answer at 64 n. 86), and failed to identify the

resources involved (Answer at 63). According to FPL, FMPA's proposals were "entirely open-ended" and not susceptible to study. Id.

As shown in the accompanying affidavit of Albert B. Malmsjo, FMPA's request for network transmission for the IDO project was not left to casual, vague innuendo as FPL contends. Rather, the September 8, 1989 formal request for network service included a draft network service contract suitable for filing with this Commission. The FMPA proposal was modelled after the Florida Power Corporation-Reedy Creek Improvement District arrangement (Affidavit ¶ 15). Contrary to FPL's claims, this request specifically identified the systems and resources involved, as well as making provision for adding new resources and delivery points in the future (Affidavit ¶ 10). Moreover, FMPA made this proposal to FPL only after it had secured contractual commitments from the IDO participants. 16/

16/ The executed contracts were, of course, contingent on the availability of suitable transmission arrangements, because the rates and terms of transmission were critical to the IDO project, and the contracts therefore were placed in escrow pending the outcome of negotiations with FPL. Particularly in light of the actions FMPA has taken to enforce its right to network access, there can be no serious question as to the "bona fide" nature of FMPA's request. FPL's insistence on an FMPA commitment to sign a blank check for network transmission flies in the face of the Commission's express recognition that transmission requesters need a firm commitment and a reasonable opportunity to evaluate that commitment in making their power supply plans. See FERC Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities Under Sections 211(a) and 213(a) of the Federal Power Act, as Amended by the Energy Policy Act of 1992, 58 Fed. Reg. 38,964 (1993) (to be codified at 18 C.F.R. pt. 2), at p. 38,968.

As Mr. Malmsjo further describes (Affidavit ¶ 16), while FMPA modified its proposal in the course of two years of negotiations, those modifications were made to address FPL's purported concerns. For example, in later proposals, FMPA attempted to address FPL's objections to the absence of "scheduling" by committing to inform FPL, on request, of within-control area dispatch schedules. 17/ FMPA's efforts to address FPL objections by attempting to make its proposal more acceptable to FPL hardly transform the proposal into a "moving target."

Further, Mr. Malmsjo's affidavit (¶¶ 9-14) demonstrates that FMPA responded fully to FPL requests for information to enable FPL to analyze FMPA's request for network transmission and that FPL did not ask for any additional information from the fall of 1989 until discovery in the District Court case. Indeed, FPL prepared drafts of two different studies purportedly designed to analyze the impact of the IDO project on FPL's transmission system. Although FMPA challenged those studies as invalid because FPL used wholly unrealistic assumptions (e.g., shutdown of all FMPA local generation and supply of all FMPA loads from northern generation), see Malmsjo Affidavit ¶¶ 10(I), 13, FPL's choice of assumptions that distort the outcome of the studies

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17/ See Malmsjo Affidavit ¶ 14. "Scheduling" is not applicable to many FMPA unit commitments, because scheduling is defined by NERC as a between-control area concept, as FPL deponents in the District Court case have conceded. See, e.g., Gosselin Tr. 117-119 (Attachment 8).

does not detract from the fundamental fact that FPL was able to analyze FMPA's request for network transmission.

The specious nature of FPL's claims that it lacked information to understand and analyze FMPA's requests is underscored by FPL's decision to use the FMPA network request as a test case to try out new "state of the art" system modeling software. FPL had available information sufficient to run the studies, although FPL ultimately abandoned the software. 18/

Indeed, FPL's designated expert in the District Court case on FPL's transmission and generation planning stated on deposition that he had planned to model the IDO project as proposed in FMPA's September 1989 proposal and conceded that he had ample information to perform that study:

> Q. What data will you rely on for how FMPA would have operated under the September 1989 proposal?
>
> A. What data? Well, we will largely rely on data that FMPA and other utilities provide through the FCG [Florida Coordination Group].
>
> Q. Do you need any other types of data to make that analysis?
>
> A. I don't believe so.

Smith Tr. 73 (Attachment 11). This is hardly the testimony of someone in the dark as to what FMPA is proposing or lacking information to analyze FMPA's proposal.

18/ See Adjemian Tr. 61-62, 73-74 (Attachment 9); Rey Tr. 17-21 (Attachment 10). FMPA cannot refer to internal FPL documents regarding this point due to FPL's insistence on the oral confidentiality agreement covering such documents produced in the District Court proceeding. See Complaint at 15 n.11.

FPL's position that it has been unable to understand and study FMPA's request is also directly refuted by internal FPL documents and FPL deposition testimony showing that FPL has long known what FMPA was seeking. For example, FPL negotiator Schoneck testified that he had known that FMPA wanted to integrate its power supply resources since "their initial letter of request, sometime in late '89." 19/ FPL's Manager of Inter-Utility Markets Locke testified that his October 8, 1990 letter to FMPA was based on what FPL "finally understood and FMPA had finally clarified" -- that FMPA had requested "to be able to dispatch their units through the Florida Power & Light system." 20/ Indeed, numerous FPL deponents, from FPL's President down, confirm that FPL fully understood that FMPA sought to use FPL's transmission system in the same way FPL uses it: on a network basis, to integrate and coordinate its generation, to supply the least cost energy to the IDO participants, that is, to operate like all other utilities. 21/ The fallacy of FPL's protests that it was unable to comprehend FMPA's network request is further demonstrated by FPL internal documents evaluating the strategic and competitive significance of FMPA's proposal. 22/

19/ Schoneck Tr. 87 (Attachment 12).

20/ Locke Tr. 578 (Attachment 13).

21/ See Frank, 5 (Attachment 14); Taylor, 46-47 (Attachment 15); Schoneck, 83-87 (Attachment 12); Enjamio, 105-07 (Attachment 16).

22/ See, e.g., document entitled "Wholesale Power Market" at pp. 524026, 524036-38, 524042-43 (Attachment 17 hereto). FMPA's ability to cite and attach other documentary evidence on this

[FOOTNOTE CONTINUED ON NEXT PAGE]

Finally, assuming there was any cognizable argument that FPL lacked knowledge of FMPA's request before FMPA initiated its District Court litigation, FMPA's court complaint and the discovery provided in that case should put that argument to rest. Through discovery in the District Court case, FPL had available to it every FMPA study or analysis regarding the IDO project. In addition, as described by Mr. Malmsjo (Affidavit ¶ 11), FMPA's damage study and the accompanying 23 volumes of backup data even provide the results of projected hourly dispatch of the IDO project from 1988-2006. Although Mr. Malmsjo offered to furnish hourly data for any period FPL specified, FPL never requested such data.

In short, there is simply nothing to FPL's claim that it has lacked the information necessary to understand and analyze FMPA's requests.

2. FMPA's Network Service Request Qualifies as a Request for Transmission Service Within the Meaning of Section 211

As demonstrated above, FMPA has plainly "requested" transmission service within the meaning of Section 211. FPL's argument to the contrary is refuted by the language of Section 211 and the Commission's Policy Statement Regarding Good Faith Requests for Transmission Services, 58 Fed. Reg. 38,964,

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[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
point is constrained by an oral confidentiality agreement covering documents produced in the District Court case. See Complaint at 15 n.11.

issued July 14, 1993, and severely undermines the purposes of the transmission access provisions of the Energy Policy Act of 1992.

The thrust of FPL's argument is that FMPA's original September 1989 request does not meet good faith request requirements 4 and 8 (a description of the service in sufficient detail to permit the transmitting utility to model the additional services, and a "transaction profile"). 23/ See Answer at 63-66. As demonstrated above and in Mr. Malmsjo's affidavit, FMPA either provided or offered to provide information sufficient to meet those requirements, and FPL has in fact been able to model the proposed network service. Moreover, Mr. Malmsjo's affidavit demonstrates that not only has FMPA amply satisfied the Commission's good faith request requirements, but it has also supplied or offered to supply essentially all the information FPL now claims it needs (Answer at 4-5). 24/

In addition, FPL's narrow focus on FMPA's original 1989 proposal and FPL's criticism of FMPA for modifying its proposal are contrary to the Commission's Good Faith Request Policy Statement (58 Fed. Reg. at 38,966): "[I]n view of the language, structure, and requirements of section 213(a), we believe that as

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23/ 58 Fed. Reg. at 38,969-70 (to be codified at 18 C.F.R. § 2.20(b)(4) and (8)).

24/ As described by Mr. Malmsjo, the only information on FPL's list conceivably lacking is detailed information FPL does not need regarding resources that have been interconnected (directly or indirectly) with FPL's system for many years and which are below the 75 MW threshold FPL uses for transmission analysis purposes (because smaller units would not create system disturbances; see Adjemian Tr. 19-22 (Attachment 9)).

a policy matter sections 211(a) and 213(a) should be implemented in a manner which encourages negotiation." Thus, FMPA's modification of its proposal during two years of negotiation is precisely the behavior the Commission is seeking to encourage.

More fundamentally, where FPL was obligated to file with the Commission and initiate service in the event of a dispute, and FMPA has even filed a lawsuit to obtain service, it would be a clear miscarriage of justice directly contravening Congress' intent for the Commission to find that FMPA's repeated requests for transmission failed to meet the Section 211 requirements. FPL's position is particularly strained where FMPA's Complaint was filed before the Good Faith Request Policy Statement was issued and where the Commission's Policy Statement expressly solicits comments on whether the proposed requirements will "unduly restrict the ability of parties to request the transmission services that they need" (58 Fed. Reg. at 38,967). Under these circumstances, and in light of the fact that the statute itself distinguishes between the "request" requirements of Section 211 and the "good faith request" requirements of Section 213, 25/ the Commission should reject FPL's effort to

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25/ This distinction between the statutory language for Section 211 and 213 requests is particularly significant in light of the fact that Senator Johnston's September 9, 1992 "Transmission Offer" during the House-Senate Conference on HR 776 (Attachment 18) required "bona fide" requests as to both Section 211 and Section 213 (then Section 214). The Conference Committee ultimately imposed a "good faith" requirement only as to Section 213 information requests and not as a necessary prerequisite to a Section 211 transmission order. The Conference Committee's distinction between the requests required under

[FOOTNOTE CONTINUED ON NEXT PAGE]

delay the provision of the transmission services that are plainly in the public interest and would facilitate the competition that the Energy Policy Act sought to promote.

The bottom line is that more than sixty days before FMPA filed its Complaint in this docket, FPL was made well aware that FMPA sought network service, and FPL had a full opportunity to study that request and to offer the requested service voluntarily. FPL's March 29, 1993 dismissal (Attachment 19) of FMPA's March 25, 1993 request (Attachment 20) that FPL file a network rate as a "waste ... [of] time" makes abundantly clear that FPL was in no way deprived of the opportunity to voluntarily offer FMPA the requested network service at rates FPL believed were just and reasonable. 26/ No purpose consistent with the Act would be served by imposing an additional "waiting period" before addressing the merits. 27/

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
Sections 211 and 213, which was adopted by the full Congress, is hardly accidental and cannot be ignored. Moreover, while it may be administratively sensible to apply "good faith" request requirements to both Section 211 and 213 in the future, it would defeat the purposes of the Energy Policy Act retroactively to require rigid adherence to the Good Faith Request Policy Statement where the basic substantive requirements for requests have been fully satisfied.

26/ FPL's claim that FMPA was unwilling to pay for transmission on a basis comparable to native load (Answer at 27) is untrue. Compare Complaint at 51-65, 87. In any event, FPL's allegation, if true, would not diminish the good faith nature of FMPA's request for network transmission. Nor would it diminish FPL's obligation under the Antitrust Conditions unilaterally to file a network rate in the event of disagreement. See Part II.A infra.

27/ Of course, the information provided by FMPA in 1989 and the updated information provided in FMPA's damage study reflect
[FOOTNOTE CONTINUED ON NEXT PAGE]

II. FPL (NOT FMPA) IS EVADING ITS CONTRACTUAL OBLIGATIONS, BY FAILING TO FILE WITH THIS COMMISSION ARRANGEMENTS THAT WILL IMPLEMENT ITS OBLIGATION TO PROVIDE NETWORK SERVICE

A. FPL Remains Obligated To File For Network Rates Upon Request

The Antitrust Conditions impose a clear duty on FPL to file a rate for requested services whether or not the requesting neighboring utility has agreed to FPL's terms. At times, FPL concedes as much. See FPL Answer at 9-11, 31-32, 34-35, 42. This concession is telling, given that the Conditions expressly require network service, 28/ FMPA has repeatedly requested network service, and FPL has refused to provide it. The conclusion is inescapable that FPL has repeatedly violated its obligation to sell such service to FMPA on request. FPL must not be allowed to benefit from that violation.

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
FMPA's projections as of the time the information was provided. FMPA will provide updated information in the course of this proceeding to support Commission determination of the appropriate rates, terms and conditions for network service. However, the fact that FMPA's request for network transmission and supporting information are more than sixty days old in no way disqualifies them from satisfying Section 211(a)'s requirement that transmission be requested at least sixty days prior to the filing of an application. It would contravene the purposes of the Act to penalize FMPA for FPL's intransigence by forcing FMPA to go back to "square one," as FPL urges.

28/ See LP&L. FPL's claim (at 44-47) that LP&L involved a different factual context is inapposite, because LP&L established "among" as a well "honed" term of art that FPL committed to for its own system (see Complaint Appendix 30 at 8), as well as wrong, see Taylor Affidavit (Attachment 1). The factual context in the St. Lucie proceeding, i.e., Florida Cities pursuing (among other relief) the ability to coordinate and integrate their resources, is indistinguishable from the context of LP&L.

The Antitrust Conditions anticipate that FPL would attempt (as it has) to vitiate the Conditions' substantive transmission obligations by failing to file implementing arrangements, see supra, and are carefully structured to foil such an evasion of the Commission's jurisdiction. They impose on FPL an unequivocal obligation to provide network service that can be accommodated from a technical standpoint, while allowing FPL to take certain defined steps to protect its legitimate interests. For example, under Article X(a), FPL can condition transmission access on reasonable advance notice required for planning if it first "distributes a written timetable setting forth reasonable periods of time within which such advance notice must be received for transmission services over existing company facilities." 29/

Most importantly, while FPL is entitled (see Article X(b)) to recover its reasonably allocable costs of transmission if a "transmission agreement, transmission tariff, or ... another mutually agreeable basis" provides for such recovery, the Antitrust Conditions make clear that the existence of an approved basis for cost recovery is not a pre-condition to FPL's obligation to provide network service. FPL's suggestion to the contrary (at 47) is flat wrong. Article X(b), which is not part of the "only if" limitations on Article X(a), is unambiguous:

29/ Because FPL did not distribute such a timetable prior to FMPA's requests, there is no basis for FPL's contention (at 47) that transmission service need be provided "only if ... reasonable advance request is given."

> In the event that the Company and a requesting entity are unable to agree regarding transmission services required to be provided under this section X, Company shall, upon the request of such entity, immediately file a service agreement at the Federal Energy Regulatory Commission or its successor agency providing for such service.

FPL has clearly violated this obligation. FPL (at 47) offers the lame excuse that FPL's obligation to sell network transmission "is not an automatic, self-implementing requirement that exists in a vacuum, but rather it exists in the context of the qualifiers contained in the rest of the License Conditions and the parties' actions subsequent to the effectiveness of the Conditions." FPL's resort to "context" to avoid its network service obligation is unavailing. The critical context is the Antitrust Conditions themselves, which specify that FPL must immediately file with this Commission whatever papers are needed to implement its various service obligations whenever those services are requested.

B. The Provisionally Limited Access Provided By The Individual TSAs Does Not Replace The Antitrust Conditions' Basic Rules

FPL's Antitrust Condition obligation to sell network service on request remains in effect, and will as long as FPL holds its St. Lucie license. FPL seeks to capitalize on its illegal footdragging by arguing that FMPA, in accepting several point-to-point services between particular FMPA loads and resources instead of demanding that FPL file a network tariff unilaterally, waived rights to additional services and to

reformation of the TSAs as necessary to bring FPL into compliance with the Antitrust Conditions. Indeed, FPL brazenly proclaims (at 60): 30/

> It is the existing TSAs, executed by FMPA, after the effectiveness of the License Conditions, that govern FPL's transmission obligations at this point, not the License Conditions themselves.

While FPL retains the right unilaterally to change the TSAs, which right it is currently exercising to the maximum in connection with its proposed massive and far reaching changes to virtually every aspect of its wholesale power, interchange and transmission arrangements, 31/ FPL contends that FMPA's effort to avail itself of its rights to seek changes in the TSAs is an evasion of FMPA's contractual obligations.

The short answer is that FMPA did not agree to any waiver or extinguishment of its Antitrust Condition rights to network transmission. See April 29, 1993 Affidavit of Nicholas P. Guarriello, Complaint Appendix 20. FPL can point to no request on its part that FMPA waive its rights to network transmission service in connection with the negotiations of the TSAs. Nor can FPL point to an agreement by the Department of

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30/ FPL's latest position on the effect of the TSAs is directly at odds with its April 30, 1993 memorandum opposing summary judgment (at 22-23) (Attachment 22) in the District Court case. There, FPL disclaimed the position that to the extent the Antitrust Conditions are broader than the TSAs, the TSAs waive or estop those broader rights.

31/ See FPL filings in Docket No. ER93-465-000 and Docket No. ER93-922-000.

Justice and the NRC Staff, or the Florida Cities, to substitute the TSAs for the Antitrust Conditions. Nor has FPL filed with the NRC to do so. Ultimately, FPL's argument is merely that because FMPA accepted transmission from individual plants to individual delivery points under several TSAs -- all that FPL was willing to offer -- that FMPA has waived basic rights to network transmission. 32/ But, FPL's claim that the "between" transmission TSAs supplant its clear Antitrust Condition obligation to provide "among" transmission conflicts with the Antitrust Conditions and is wholly unsupported by the TSAs themselves.

Before the NRC in the St. Lucie proceeding, FPL successfully argued that a license condition requiring it to file a broadly applicable tariff was unnecessary, and that FPL should be permitted to proceed contract-by-contract, because the Antitrust Conditions function as an overarching charter ensuring transmission access:

> [T]he settlement license conditions. ... assure the Cities that FPL will provide transmission service in accordance with the license conditions during the operating life of St. Lucie Unit No. 2. 2/

2/ The license conditions set basic rules that FPL must follow in providing transmission service. However, they do not prescribe specific rates or terms and conditions for

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32/ In the District Court case, FPL has conceded that its waiver argument is based on the TSAs themselves, not any other action on FMPA's part. See FPL's response to Interrogatory Nos. 22 and 23 (Attachment 23).

> service. These would be embodied in the contracts between the parties and would be subject to plenary review by FERC.

See FPL's August 7, 1981 Response to Cities' Motion to Establish Procedures, for a Declaration that a Situation Inconsistent with the Antitrust Laws Presently Exists and for Related Relief (Complaint Appendix 22) at 72. FPL now argues that it need no longer follow the "basic rules," and that the FERC's plenary review is constrained, because FMPA entered into several TSAs for particular services. In essence, FPL argues that FMPA could not buy limited transmission service for specified projects for which network transmission was desirable but not essential without forever surrendering its rights to network transmission for projects, such as the IDO project, where network transmission is obviously critical. Neither the TSAs, nor the Antitrust Conditions, nor the Federal Power Act countenance such an absurd result. Indeed, the TSAs cannot have been intended to replace the Antitrust Conditions because they do not purport (either as a group or individually) to set forth the totality of the transmission FPL is obligated to sell to FMPA. 33/

33/ For this reason, there is nothing illogical, as FPL claims (at 43) about FMPA's contentions that the TSAs "are not, on their face, necessarily inconsistent with the Antitrust Conditions" but that leaving the TSA rates on file as the totality of FPL's service obligations in the face of FMPA's requests for network service is inconsistent with the Antitrust Conditions. The TSAs' provisions for "between" transmission are less than the "among" transmission that the Antitrust Conditions require FPL to sell upon request. See also FMPA's fifth requested remedy, Complaint at 90-91.

FPL (at 12-14) singles out the 1985 FPL-FMPA TSA, FERC Electric Rate Schedule No. 84, as the "most comprehensive" TSA. Even that TSA, like the others, does not purport to provide for FMPA's full transmission requirements or otherwise exclude the provision of less restricted service in the future. To the contrary, it contains an express "independent rights" clause which preserves FMPA's right to have service restrictions removed where another source of rights supports that result. 34/ The Antitrust Conditions and the Federal Power Act do so here. 35/

Moreover, the TSAs explicitly reserve for FMPA broad rights to have the TSAs integrated, superseded, and/or modified to institute network service. Had the TSAs been intended to replace FPL's Antitrust Condition obligations, they could easily have so stated. Instead, they unambiguously reserve to FMPA broad § 206 rights to replace the terms and conditions filed by FPL with just and reasonable ones. They contain express no-waiver clauses and make no negative reference to the Antitrust Conditions. Accordingly, they cannot have been intended to replace FPL's continuing obligation to file additional rate

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34/ FPL (at 42) states that this clause preserves only FMPA's rights to obtain "other transmission services from FPL for different FMPA members and/or generating resources, or to seek service upon expiration of the Agreement." FPL's cramped construction is unsupported. Even so, it is tantamount to an admission that remedies three, four, and five requested in FMPA's Complaint (at 89-91) are available to the Commission.

35/ Indeed, that TSA has been superseded, and the Restated and Revised TSA which replaced it has been amended, to expand FMPA's transmission rights in a limited way while reaffirming FMPA's right to obtain network service.

schedules and agreements as necessary to provide for requested network service.

FPL seeks to dismiss FMPA's reopener rights by suggesting that § 206 permits only changes in the unit rate, not modification of terms and conditions to remove point-to-point restrictions. See Answer at 31 ("an expanded and different service" cannot be ordered under Section 206). Even if FPL were correct, this case should not be dismissed, in part because the unit rate would have to be reduced to reflect a sum-of-the-pairs allocator. 36/ But FPL is wrong; § 206 readily permits the ordering of delivery point additions, see, e.g., Buckeye Power, Inc. v. Cincinnati Gas & Electric Co., 37 FERC ¶ 61,298 (1986). Indeed, FPL is judicially estopped to contend otherwise. In Florida Power & Light Co. v. FERC, 660 F.2d 668 (5th Cir. Unit B Nov. 1981) cert denied, 459 U.S. 1156 (1983), FPL obtained reversal of a Commission order requiring filing of its corporate wheeling policy on the grounds that any unjust, unreasonable, or unduly discriminatory feature of filed rates can be modified under FPA § 206:

> [T]he parties ... agree that the Commission under § 206(a) would have the authority to investigate sua sponte FP&L's tariff and policy of availability to determine whether any feature is unjust, unreasonable, unduly discriminatory, or preferential. If such a determination is made, the Commission may adjust the tariff and policy.

36/ The sum-of-the-pairs method is explained in Florida Cities' August 24, 1993 Amended Protest in Docket No. ER93-465, at 66-67.

See id. at 676. 37/ Moreover, the path for FPL to file for changes that would institute network service has been and remains open. Any suggestion to the contrary comes with ill-grace from a utility which is proposing changes in the rates, terms, and conditions of dozens of interchange and transmission agreements, and has just filed (on September 1, 1993) for extensive changes in the very TSAs it relies on here. 38/

FMPA's Complaint regarding those TSAs does not, contrary to FPL's distortions (at 34 and 36), "toss aside" the TSAs or

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37/ See also, e.g., Central Iowa Power Coop. v. FERC, 606 F.2d 1156, 1168 (D.C. Cir. 1979) ("The Commission had authority ... under section 206 of the Act, 16 U.S.C. § 824e (1976), to order changes in the limited scope of the Agreement, including the addition of pool services, if, in the absence of such modifications, the Agreement presented 'any rule, regulation, practice or contract [that was] unjust, unreasonable, unduly discriminatory or preferential"); Georgia Power Co. v. FPC, 373 F.2d 485 (5th Cir. 1967) (Commission authorized to remove restrictive resale load ceiling). Especially in light of the Energy Policy Act of 1992, there is no basis to distinguish these Section 206 changes from the removal of point-to-point restrictions in the TSAs. Cf. Entergy Services, Inc., 63 FERC ¶ 61,156 (1993).

38/ To be sure, there are cases (which predate the Energy Policy Act of 1992, and which FMPA would argue were wrongly decided) holding that service restrictions cannot be loosened in circumstances where that amounts to ordering involuntary wheeling. For example, that is the basis of the Commission's decision not to order network service in Wisconsin Elec. Power Co., 40 FERC ¶ 63,007, at pp. 65057-62, aff'd in pertinent part and modified in part, 46 FERC ¶ 61,019, pp. 61,112-13, reh'g denied, 48 FERC ¶ 61,247 pp. 61,859-60 (1989), petition for review denied per curiam, 918 F.2d 225 (D.C. Cir. 1990). Here, however, FPL has already committed itself to provide the requested service (under the Antitrust Conditions); wheeling is required to effectuate antitrust policy and avoid undue discrimination; and FPL has already entered into TSAs reaffirming its obligation to transmit many of the resources involved. FPL's involuntary wheeling argument is a red herring.

presuppose that FMPA may "walk away" from them "simply by arguing" that the Antitrust Conditions require more. FMPA remains dependent on the TSAs for transmission of the resources required to serve its customers and is committed to take and pay for that transmission on rates, terms and conditions the Commission determines are and continue to be just and reasonable. That is hardly the meaningless commitment FPL depicts. Indeed, FMPA is continuing to pay FPL millions of dollars annually for transmission. FMPA has simply invoked reopener provisions, which are contained in and are no less a part of the TSAs than the point-to-point restrictions on which FPL relies.

Moreover, the TSAs need not be modified to institute a form of network service. In the IDO negotiations, FMPA proposed to continue the TSAs and credit payments under them towards service under a new wrap-around network TSA. FPL rejected that proposal. Granting FMPA's fifth request for relief would likewise allow for networking while leaving the TSAs in place and unchanged. See Complaint at 90-91.

Perhaps because it is too awkward to maintain that FPL -- but not FMPA -- may initiate proceedings to change the TSAs, FPL falls back on arguing that the Antitrust Conditions are no longer relevant to determining whether the TSAs are just and reasonable because "Section 206 does not allow a party to be relieved from its bargain ... ." Answer at 38. FPL relies on

Public Service Co. of New Mexico, 39/ but ignores the dramatically different factual premise of that decision:

> San Diego has presented no evidence showing that Public Service has any leverage over it. On the facts presented, we find San Diego's intimation, that Public Service somehow had market power over San Diego, to be without merit.

Id. Here, FMPA is a transmission dependent utility, in many respects at FPL's mercy. The Commission has a responsibility to ensure that FPL has not abused its abundant leverage over FMPA. See Farmers' Union Cent. Exch. v. FERC, 734 F.2d 1486 (D.C. Cir.), cert. denied, 469 U.S. 1034 (1984). 40/

FPL's argument also relies (at 35-37) on a secondary holding in United States v. Pacific Gas & Elec. Co., 714 F.Supp. 1039 (N.D. Cal. 1989). However, FPL ignores the PG&E court's primary holding that to the extent PG&E's requirements contracts provided for service modifications (through alternate power clauses), PG&E had been obligated to make such modifications to implement its license conditions. 41/ Like the alternate power clauses in PG&E, the independent rights, no-waiver, and reopener clauses in the TSAs provide "escape clause[s]" requiring FPL to

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39/ Public Service Co. of New Mexico, 43 FERC ¶ 61,469, p. 62,152 reh'g denied, 45 FERC ¶ 61,034 (1988), aff'd sub nom. San Diego Gas & Elec. Co. v. FERC, 904 F.2d 727 (D.C. Cir. 1990).

40/ Moreover, PSNM was a § 205 decision which expressly did not prejudice SDG&E's § 206 rights. See 43 FERC at 62,152.

41/ The Healdsburg, Lompoc, and Santa Clara requirements contracts all contained such clauses. The court held that PG&E was obligated to enter into good faith negotiations to amend those contracts to accommodate third-party purchases.

agree to service modifications that implement the Antitrust Conditions. 42/

Further, this aspect of PG&E hinges on court's reading of specific language in the Stanislaus Commitments requiring PG&E to "offer to sell ... firm, full or partial requirements power ... under a contract." Id. at 1052. FPL's Antitrust Conditions do not make execution of a contract a condition precedent to the obligation to provide service. Rather, the Antitrust Conditions require FPL to provide various transmission services, and separate that requirement from the provisions under which FPL is to institute arrangements for charging for those services. 43/

42/ See PG&E at 1052. By the same token, this case does not present the issue "whether the Stanislaus Commitments allow the Cities unilaterally to terminate or modify full requirements contracts with PG&E made after the Commitments took effect," see PG&E, 714 F.Supp. at 1052. Here, the TSAs themselves, not solely the Antitrust Conditions, allow FMPA unilaterally to file to change the TSAs. In short, the TSAs contain their own "escape clause." FMPA is entitled (and FPL was obligated) to invoke it.

43/ The secondary PG&E holding also depended on an application of the filed rate doctrine that is not at issue here. PG&E concerned whether energy which several cities had already received had been purchased from PG&E or from the Western Area Power Administration. Because PG&E's filed rates required three of the six cities (Alameda, Lodi, and Ukiah) to purchase all their energy from PG&E, the district court required them to pay PG&E for the energy. By contrast, this is a Commission proceeding to determine whether filed rate schedules should be modified prospectively to make them just and reasonable. FMPA acknowledges that the transmission services FMPA received prior to the refund period in this case were received under filed rates (like the energy received by the California cities). FMPA is seeking damages in the District Court case for its economic losses related to power sales blocked by FPL's failure to file a network rate, not for past transmission overcharges.

Ultimately, after the district court ruled, the NRC held that PG&E's license conditions required it to "file service schedules with the FERC even if the parties do not agree to all the proposed terms and conditions," thereby facilitating the FERC's "resolution of any problems or difficulties of interpretation between PG&E and parties that wish to take service under the license conditions." Pacific Gas & Electric Co., 31 NRC 595, 602 (1990). The NRC censured PG&E for "circumvent[ing] this [the FERC's] jurisdiction by failing to file required service schedules," thereby "potentially forcing those parties to take service under whatever terms PG&E provides" and violating its license conditions. Id. FPL has followed an equally illegal course.

FPL has illegally refused to initiate network transmission service on request. 44/ In the face of that wrong, FMPA sought to mitigate the resulting harm by taking and paying for service on a point-to-point basis until (but only until) either FPL filed the required papers and initiated network

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44/ FPL's improper conduct in refusing to provide network service, to file a network tariff, or even to engage in good-faith discussion of the network concept constitutes a wrongful act or threat. The elements of duress under Florida law are therefore met. Compare Complaint at 9-12 with Answer at 39. FPL (at 19) misleadingly claims that FMPA's former General Manager testified that FPL never committed a wrongful act. Mr. Henze testified that while FPL adhered to its "handshake" agreements made during the course of negotiations, FPL's refusal to sell network transmission as required was a wrongful act. November 3, 1992 Tr. 52-53, 77 (Attachment 21). In any event, the Commission need not find duress in order to find that the TSAs reflect and enhance FPL's market power, are unjust, unreasonable, and discriminatory, and must therefore be changed.

service, or FMPA succeeded in otherwise vindicating its right to network service. What FPL (at 11) characterizes as a "tactical choice" and "business decision" was, as a practical matter, FMPA's only non-suicidal option. See April 29, 1993 Affidavit of Nicholas P. Guarriello at ¶¶ 8-17 (Complaint Appendix 20). FMPA's so-called alternative was to hope that FPL could be brought to fulfill its obligation to unilaterally file an unexecuted service commitment, quickly enough that FMPA would not lose opportunities critical to its continued economic viability. Given that FPL was already violating the License Conditions by failing to initiate network service, FMPA can hardly be faulted for not relying on that uncertain alternative, rather than taking service under TSAs that fully preserved FMPA's rights to seek Commission modification of those TSAs. 45/ FPL's stonewalling response to FMPA's most recent requests, and its opposition to FMPA's July 3, 1993 NRC filing (which asks that FPL be directed to file a rate with this Commission), suggest the response that FMPA would have received had it done as FPL now suggests. Nor

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45/ The thrust of FPL's position is that FMPA lost the right to networking in 1983, when the St. Lucie TSA was executed -- even though (as FPL concedes at 14) St. Lucie is a base load resource for which scheduling flexibility was less important when other resources were not also being transmitted. In 1983, FMPA's members had just spent six years litigating to overcome FPL's refusal to allow municipal systems to invest in St. Lucie. FPL contends that in order to preserve the right to obtain network service in the future, FMPA had to bet the fruits of their hard won settlement on FPL's good faith, rather than accept service under a TSA with reopener clauses.

could FMPA, consistent with time constraints for commitments to generation resources, rely on timely legal remedies. Id.

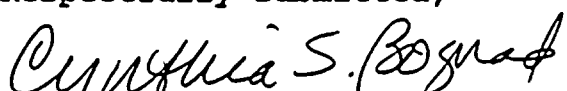
Fundamentally, FPL contends that the Commission may not exercise its authority to make rates just and reasonable because FMPA committed to take and pay for service subject to the Commission's continuing authority to determine the just and reasonable rates, terms and conditions, and that FMPA cannot integrate its resources and loads in the future because FPL has temporarily prevented FMPA from integrating the resources and loads it had in the past. Nothing in the Federal Power Act requires such an absurd result. Rather, the Act is intended to protect consumers from abuse of market power by transmission monopolists such as FPL.

CONCLUSION

The time has long since come for FPL to file a network transmission rate schedule. FPL should be summarily directed to do so, and the Commission should proceed to determine the appropriate rates, terms, and conditions.

WHEREFORE, for the foregoing reasons, FPL's motions to dismiss and reject must be denied.

Respectfully submitted,



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September 9, 1993

The September 7, 1993 Affidavit of Albert B. Malsmjo, originally attached to this Appendix (FMPA's Response to FPL's Motions to Dismiss or Reject), has been omitted here to avoid duplicative copying.

It is included as a separate Appendix to the instant September 24, 1993 pleading.

INDEX TO ATTACHMENTS

RESPONSE OF FLORIDA MUNICIPAL POWER AGENCY
TO FLORIDA POWER & LIGHT COMPANY'S
MOTIONS TO DISMISS OR REJECT

1. Affidavit of Dr. Gordon T.C. Taylor, filed as Exhibit 6 to the Motion to Intervene, Motions to Reject, Protest, Motion to Require Filing of License Conditions, and Request for Five Months' Suspension of Seminole Electric Cooperative, Inc. in Docket No. ER93-465-000, dated August 24, 1993.

2. Letter from the Department of Justice to the Atomic Energy Commission, dated November 14, 1973.

3. Letter from the Department of Justice to the Nuclear Regulatory Commission, dated March 2, 1976.

4. Defendant Florida Power & Light Co.'s Memorandum in Support of Motion for Summary Judgment, dated April 15, 1992, filed in FMPA v. FPL, Case No. 92-35-CIV-ORL-3A22, at pages 4-11.

5. Florida Power & Light Co.'s Statement of Proposed Issues of Fact to Be Litigated at Trial, Pre-Trial Statement, dated August 16, 1993, filed in FMPA v. FPL, Case No. 92-35-CIV-ORL-3A22, at page 18.

6. Affidavit of William C. Locke, Jr., dated May 14, 1992.

7. Third Affidavit of William C. Locke, Jr., dated April 13, 1993.

8. Excerpts from the Deposition of Dean R. Gosselin, November 2, 1993, pages 117-119.

9. Excerpts from the Deposition of Karabet Adjemian, November 18, 1992, pages 19-22, 61-62, 73-74.

10. Excerpts from the Deposition of Raimundo Rey, November 16, 1992, pages 17, 21.

11. Excerpts from the Deposition William H. Smith, February 23, 1993, page 73.

12. Excerpts from the Deposition of William Robert Schoneck, November 10, 1992, pages 83-87.

13. Excerpts from the Deposition of William C. Locke, Jr., January 8, 1993, page 578.

14. Excerpts from the Deposition of Stephen Frank, November 19, 1992, page 5.

15. Excerpts from the Deposition of Richard Larry Taylor, November 17, 1992, pages 46-47.

16. Excerpts from the Deposition of Juan E. Enjamio, November 4, 1992, pages 105-107.

17. Document entitled "Wholesale Power Market," produced by Florida Power & Light in FMPA v. FPL, Case No. 92-35-CIV-ORL-3A22, Bates Nos. 524015-524052.

18. Transmission Offer by Senator Johnston, Conference Committee on H.R. 776, September 9, 1992.

19. Letter to Robert A. Jablon, Esq. from J.A. Bouknight, Jr., Esq., dated March 29, 1993.

20. Letter to J.A. Bouknight, Jr., Esq. from Robert A. Jablon, Esq., dated March 25, 1993.

21. Excerpts from the Deposition of Calvin R. Henze, November 3, 1992, pages 52-53, 77.

22. Plaintiff Florida Municipal Power Agency's Memorandum in Opposition to FPL's Motion for Summary Judgment, dated April 15, 1993, FMPA v. FPL, Case No. 92-35-CIV-ORL-3A22, pages 22-23.

23. Defendant Florida Power & Light Company's Responses and Objections to Plaintiff's Fourth and Fifth Set of Interrogatories, dated March 1, 1993, FMPA v. FPL, Case No. 92-35-CIV-ORL-3A22, Nos. 22 and 23.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket No. ER93-465-000

AFFIDAVIT OF DR. GORDON T.C. TAYLOR

I. INTRODUCTION

1. Having been duly sworn, Gordon T.C. Taylor deposes as follows: My name is Gordon T.C. Taylor. I am an independent Consulting Economist and President of Taylor Economic Research, Inc., 2615 N.E. Stanton Street, Portland, Oregon 97212. I have been retained as a consultant in the subject case by Seminole Electric Cooperative, Inc., but in this affidavit testify only as a fact witness.

2. The purpose of this affidavit is to explain based on my personal knowledge and belief the meaning of the terms "transmission services" and "costs" that appear in the U.S. Nuclear Regulatory Commission ("NRC") antitrust license conditions to Florida Power & Light Company's St. Lucie Plant Unit No. 2. My personal knowledge of what these definitions were intended to require of the Florida Power & Light Company ("FPL") is based on serving as a consultant to the U.S. Department of Justice, Antitrust Division, in preparing these license conditions.

3. My affidavit is organized into sections. Section II outlines my professional training and experience. Section III reviews my analysis of competition issues I filed in prepared direct testimony in four Florida Power & Light Company cases at the Federal Energy Regulatory Commission just prior to being retained by the Antitrust Division to assist in preparing the St. Lucie Unit No. 2 license conditions. My analysis for testimony in these four cases formed the basis for my recommendations in preparing the license conditions. Section IV explains what the terms "transmission services" and "costs" were intended to require of FPL.

II. PROFESSIONAL TRAINING AND EXPERIENCE

4. In 1962 I received a B.A. degree in Economics from the University of Washington at Seattle. In 1966 I received a M.A. degree in Economics, and in 1973 a Ph.D. degree in Economics, both from the University of California at Berkeley.

5. I have had approximately 25 years of professional experience as an economist. From 1964 to 1974 I taught Economics, first at the University of California at Berkeley and then at the University of Maryland at Baltimore. From 1974 to 1979 I was on the staff of the Federal Power Commission and then the Federal Energy Regulatory Commission (hereinafter, both are referred to as the "FERC"), where I served as Director of the Division of Economics and Finance. From 1979 through 1980 I was an independent consulting economist. During 1981 and 1982 I was a partner in Whitfield Russell Associates, a public utility

consulting firm. During 1983 I served as Director of Rates at the Bonneville Power Administration. Since 1983 I have been an independent consulting economist.

6. As Director of the Division of Economics and Finance at the FERC, I was responsible for providing analysis and advice on economic, financial, and public policy issues in support of the Commission's regulation of licensed hydroelectric projects, electric utilities, and natural gas and oil pipelines.

7. My consulting has included a broad range of economic, financial, public utility, and regulatory issues in the electric power and other industries. I have been a consulting economist for cooperative, federal, municipal, and state electric utilities, private businesses (e.g., geothermal, river piloting, steel, wastewater treatment), and Federal agencies including the Bonneville Power Administration, Federal Energy Administration, Federal Energy Regulatory Commission, U.S. Air Force, U.S. Environmental Protection Agency, and the U.S. Nuclear Regulatory Commission. As explained in more detail below, I also have served as a consulting economist and expert economic witness for the U.S. Department of Justice, Antitrust Division.

8. I have testified as an expert economic witness in over fifty cases or proceedings before United States District Courts, the Federal Energy Regulatory Commission, the U.S. Nuclear Regulatory Commission, and regulatory commissions of several states (California, North Dakota, Rhode Island, South Dakota, Texas, Utah, and Washington).

9. I have testified in District Courts on electric power industry antitrust economic issues including foreclosing access to essential electric power transmission facilities, blocking an electric utility competitor's entry into the electric power generation market, price squeeze, and antitrust injury and damages. I also have testified in District Court on electric utility cost allocation methodology. I have testified before the FERC and state commissions regarding the effects on competition from proposed electric utility mergers, and I have testified before the FERC on anticompetitive effects of an electric utility's exercise of monopoly power to inflate a competitor's bulk power costs and price squeeze, denial of transmission access and refusals to wheel, restrictive transmission access with unduly discriminatory transmission rates and terms and conditions of service, and unilateral termination of service to wholesale customers.

10. In 1979, after resigning from the FERC staff and opening an office as an independent Consulting Economist, I was retained by the U.S. Department of Justice, Antitrust Division. I was first retained as a economic consultant and expert economic witness regarding NRC antitrust licensing conditions for two nuclear electric generating plants in Texas (Comanche Peak and the South Texas Project), and subsequently I was retained as an economic consultant for settlement negotiations regarding NRC antitrust licensing conditions for the Florida Power & Light Company's St. Lucie Plant Unit No. 2. My advice to the Antitrust

Division of appropriate and necessary language to include in the St. Lucie Unit No. 2 license conditions was based primarily on my antitrust economic analysis of the electric power industry in Florida, and of the Florida Power & Light Company in particular, which I had recently conducted.

III. TESTIMONY REGARDING FLORIDA POWER & LIGHT

11. During the two-year period August 1977 to July 1979, I filed prepared direct testimony on behalf of the FERC staff in four Florida Power & Light Company ("FPL") cases: (1) FPC Docket No. E-9574; (2) FERC Docket No. ER77-175; (3) FERC Docket Nos. ER78-19 (Phase I) and ER78-81; and (4) FERC Docket No. ER78-19 (Phase II). When I filed in the first three cases I was a member of the FERC staff, and I was retained as a consultant to the FERC staff to testify in the fourth case. FPL withdrew its application in the first case before trial; I testified at trial in the other three cases. In addition to these four FPL cases, while I was on the staff I assisted staff counsel in settlement negotiations in Tampa Electric Company, et al., FERC Docket Nos. ER77-516, ER77-549, and ER77-550, which involved three bilateral interchange contracts among FPL, Florida Power Corporation, and Tampa Electric Company.

12. The purpose of my prepared direct testimony in Florida Power & Light Company, FPC Docket No. E-9574, was to evaluate the potential economic effects from FPL's proposed merger with the municipal utility of Vero Beach. Vero Beach self-generated, but after OPEC its fuel costs skyrocketed. Vero Beach asked FPL to

transmit or "wheel" power that it could purchase from the Orlando Utilities Commission, but FPL stalled and effectively refused. Page 72, line 17. Vero Beach next asked FPL to sell it wholesale requirements power, but FPL flatly refused. Page 85, line 36. Then FPL offered to purchase the Vero Beach utility. My overall conclusion was that the proposed merger was not in the public interest. Page 103, line 43.

13. In my testimony in the Vero Beach case, I also concluded that FPL's integrated service area transmission system is a relevant market and an essential facility. Page 59, line 48. Regarding FPL's exercise of its monopoly power over essential transmission facilities, I concluded that:

> FPL, has refused to wheel third party power and in fact has explicitly denied a request by the City of Vero Beach to obtain wheeling when the City wanted to bring power in from the Orlando Utilities Commission.
>
> FPL, although it says that it will wheel power, refuses to file a general wheeling tariff, thereby making it extremely difficult, expensive, and time-consuming for any utility desiring wheeling to obtain service. This type of anticompetitive conduct by FPL increases the transaction costs of customers attempting to obtain transmission service, and is as effective as an outright refusal to wheel.

Page 100, line 47. In addition, I concluded that in comparison to the Otter Tail Power Company which had blatantly refused to transmit power from another supplier to a municipal utility:

> ... FPL is much more subtle in its exercise of its bottleneck monopoly in transmission. FPL does not say, flatly, that it will not wheel power. Instead, FPL refuses to put in a general wheeling rate ... FPL requires that

each intended use of its transmission system be negotiated separately. Whenever a utility requests wheeling, FPL engages in footdragging and other excuses that in effect constitute a refusal to deal.

Page 104, line 29.

14. After my testimony regarding FPL's attempt to take over the Vero Beach municipal utility was filed, the U.S. Department of Justice, Antitrust Division, filed a motion to intervene in support of FERC's case. FPL opposed the Antitrust Division's intervention. When intervention was granted, FPL withdrew its application to acquire Vero Beach.

15. The purpose of my prepared direct testimony in Florida Power & Light Company, FERC Docket No. ER77-175, was to analyze the economic issues related to FPL's proposed wheeling or transmission service tariff for the transmission of electric power from the Crystal River No. 3 Nuclear Unit ("CR-3") to the Utilities Commission of the City of New Smyrna Beach ("New Smyrna Beach"). My primary concern was that although FPL would provide point-to-point transmission, FPL would not file a general systemwide transmission tariff allowing transmission generally among all points on the FPL transmission system. An additional concern was that although FPL costed transmission as if it were providing general systemwide transmission throughout its system among all points, it was limiting transmission service to just point-to-point transmission. For example, I concluded in my prepared direct testimony as follows:

In summary, the facts are: (1) that FPL has no general transmission tariff on file

> with the FERC; (2) that only second party point-to-point wheeling service is being provided by FPL and then to only one utility in FPL's service area; [and] (3) that FPL's policy is against a general wheeling tariff...

Page 21, line 36.

16. In addition, I concluded that after the FERC staff modified FPL's costing to eliminate the use of incremental transmission losses and incremental costs (e.g., losses and the cost of capital), FPL's systemwide rolled-in costing was then appropriate for establishing a tariff for transmission service throughout FPL's transmission system. Page 10, line 48. I concluded that with staff's adjustments making the changes to average losses and average embedded costs that:

> The costing that FPL supplied is the basis for a uniform systemwide postage stamp rate. Staff witnesses have shown there is no cost justification for the limitations on transmission service that FPL would impose.

Page 31, line 37. I concluded further that:

> By not wheeling power in a general fashion, FPL blocks access to alternative sources of supply for co-op and municipal systems. In so doing, such systems can't shop for less expensive sources of supply or sell excess generating capacity except to FPL... Without access to wheeling, smaller systems are unable to minimize their costs by optimally combining the peak and intermediate load output from their generating units with base load power purchased from others.

Page 22, line 37. Finally, I concluded that:

> FPL's transmission tariff filing is unduly limited and restrictive. Moreover, rather than filing a general systemwide tariff, FPL continues to insist unreasonably on separately negotiated and litigated point-

to-point restrictive transmission contracts for each and every request for transmission.

Page 32, line 13.

17. In Florida Power & Light Company, FERC Docket Nos. ER78-19 (Phase I) and ER78-81, the purpose of my prepared direct testimony filed February 1978 was to evaluate FPL's proposed limitations on the availability of firm power under its wholesale requirements tariff and a notice of cancellation of wholesale requirements service to the municipal utility of the City of Homestead.

18. In Florida Power & Light Company, FERC Docket No. ER78-19 (Phase II), the purpose of my prepared direct testimony filed July 1979 was to analyze FPL's proposed transmission wheeling tariffs to determine whether any of the terms and conditions were restrictive, discriminatory, or anticompetitive in effect. Page 2, line 1. My interpretation of FPL's tariffs was since FPL charged for systemwide transmission service, that it should provide systemwide service among all points without restrictions and limitations. FPL, however, limited the transmission service it offered to point-to-point transmission although charging for systemwide service.

19. Regarding markets, I concluded in my prepared direct testimony that:

> The transmission services market relevant to the analysis of FPL's transmission services agreements is the geographic area in which FPL has strategic dominance over its competitors because FPL controls transmission. This relevant market area is FPL's service territory.

Page 16, line 4. Regarding monopoly power, I concluded in my testimony that:

> FPL has monopoly power over transmission services in its service area and has had a company policy of refusing to wheel power for other utilities.

Page 10. line 18.

20. In addition, I concluded that FPL had a general policy of refusing to provide transmission for other utilities. My testimony states that:

> FPL's policy of refusing to deal in transmission services is demonstrated by the lack of a filed general tariff for wheeling and by FPL's statement of policy. In 1975, in a letter to the New Smyrna Beach Utility Commission marked Exhibit ___(GT-2), FPL stated in the fourth paragraph that: "FPL does not intend to file a generally applicable tariff for transmission services."

Page 10, line 37.

21. Moreover, FPL stated in a letter responding to a request by the Jacksonville Electric Authority for transmission service required to obtain power from a supplier other than FPL that:

> ... we have carefully considered your request to use our transmission system for dealing with a third party. We are strongly opposed to this...
>
> We can readily understand your concern about power supply for the summer of 1971. The situation will be tight in peninsular Florida, but we stand ready to help you as we have always done in the past. We feel that you should make a request to us to obtain power for you from any source available to us. This is the way we have always supplied you.

Page 11, line 21. I concluded from this FPL letter that FPL was exercising its monopoly power over transmission to exclude competition, and that:

> By not wheeling in a general fashion FPL in effect frustrates, hinders, or blocks access to alternative sources of supply for cooperative and municipal systems. Because of FPL's policies, such systems can't easily shop for less expensive sources of supply, particularly longer term supplies, or readily sell excess generating capacity except to FPL... Without unencumbered access to wheeling, smaller systems are unable to minimize their costs by optimally combining the peak and intermediate load output from their generating units with base load power purchased from others.

Page 14, line 16.

22. My conclusions regarding FPL's proposed set of point-to-point transmission tariffs were as follows:

> I have four basic conclusions. One, FPL has in fact filed a cost justification for a uniform systemwide postage transmission tariff, but FPL also has imposed restrictions and limitations on the service it will provide under this tariff. These restrictions and limitations are unjust, unreasonable, and unduly discriminatory.
>
> Two, these restrictions and limitations result in an anticompetitive effect because they reduce the ability of the utilities in FPL's service area (a) to compete in and to have access to the bulk power market in FPL's service area and in Florida generally, (b) to compete to retain the franchise to serve at retail in their service area, and (c) to compete to retain or to attract retail electric customers of all types.
>
> Three, there is no cost justification from the standpoint of cost savings from the filing of numerous specific agreements rather than filing a general tariff. In fact, as I previously explained, the filing of separate

> numerous agreements imposes unnecessary and excessive transaction costs from negotiation and litigation on transmission customers that are anticompetitive in effect. Moreover, this form of tariff is more difficult and costly for the Commission to regulate.
>
> Four, there is clearly no justification for the filing of numerous service agreements rather than a tariff of general applicability from the standpoint of the type of service provided. The rates, terms, and conditions of transmission service for all customers with service agreements on file are substantially identical. Thus, FPL cannot legitimately claim that it has in any way tailored its contracts to fit the need of particular customers.

Page 31, line 25.

IV. ST. LUCIE UNIT NO. 2 LICENSE CONDITIONS

23. As a consultant to the Antitrust Division for settlement negotiations with Florida Power & Light regarding FPL's St. Lucie Unit No. 2, I advised the Antitrust Division regarding language to include in the antitrust license conditions. My advice included drafting language for the license conditions. In addition, I participated on behalf of the Antitrust Division in settlement negotiations with the Florida Power & Light Company on the antitrust license conditions.

24. At that time, FPL was providing only point-to-point transmission service between designated points on the transmission system. Moreover, FPL's provision of even point-to-point transmission was limited. FPL refused to provide general systemwide transmission among all of the various points on its transmission system, much less provide at fully-allocated average embedded cost rates general systemwide transmission service for

each neighboring utility that requested it. In my opinion, FPL's provision to other utilities of only point-to-point transmission between designated points was unduly discriminatory and anticompetitive for at least four reasons. First, FPL provided itself with systemwide transmission service in supplying wholesale requirements power. FPL charged its wholesale requirements customers a fully-allocated average embedded cost rate for the systemwide service FPL provided itself in serving them. Second, FPL also provided itself with systemwide transmission service in supplying its retail customers. FPL charged its retail customers a fully-allocated average embedded cost rate for the systemwide service FPL provided itself in serving them. Third, FPL's rates for point-to-point transmission service covered the cost of supplying systemwide transmission, but FPL nevertheless restricted transmission to only point-to-point service between two designated points on the FPL transmission system. And fourth, FPL's refusals to provide systemwide general transmission blocked both economic transactions and economic dispatch, thus FPL artificially inflated the costs of its competitors.

25. I believed that point-to-point transmission service was restrictive. Therefore, I recommended to the Antitrust Division that it require FPL to provide each neighboring system with systemwide transmission service among all points on the FPL transmission system at a single fully-allocated average embedded cost rate allocated based on the neighboring system's peak use of

FPL's integrated system, not the sum of its point-to-point loads. The Antitrust Division agreed with my recommendation. The section of the St. Lucie Unit No. 2 license conditions regarding transmission services reads as follows:

> X. TRANSMISSION SERVICES
>
> (a) The Company [FPL] shall transmit power (1) between Company power sources and neighboring entities or neighboring distribution systems with which Company is connected, (2) between two or among more than two neighboring entities, or sections of a neighboring entity's system which are geographically separated, with which, now or in the future, Company is interconnected, (3) between any neighboring entity with whom, now or in the future, Company is interconnected and one or more neighboring distribution system(s) with whom, now or in the future, it is connected, (4) between any neighboring entity or neighboring distribution system(s) and any other electric utility outside the applicable area .....

The terminology in Section X.(a)(2) which reads: "[FPL] shall transmit power ... between two or among more than two neighboring entities" was intended to require FPL as a license condition to provide either point-to-point transmission in both directions between any two points, or to provide general systemwide transmission service among all points on the FPL transmission system, as requested by a neighboring utility. Systemwide transmission service among all points on a utility's integrated transmission system is also called "network" transmission service.

26. The St. Lucie Unit No. 2 license conditions in Section X.(b) set forth how FPL is required as a license condition to cost transmission service:

> (b) Company's provision of transmission service under this section shall be on the basis which compensates it for its costs of transmission reasonably allocable to the service in accordance with a transmission agreement, transmission tariff or on another mutually agreeable basis. Company shall file such transmission agreements or transmission tariffs with the Federal Energy Regulatory Commission or its successor agency.

The license conditions define the term "costs" in Section I. Definitions as follows:

> (e) "Costs" means all appropriate costs, including a reasonable return on investment, which are reasonably allocable to an arrangement between two or more electric systems under coordination principles or generally accepted industry practices. In determining costs, no value shall be included for loss of revenues from a sale of power by one party to a consumer which another party might otherwise serve."

27. My first concern regarding costing was that FPL might attempt to use some methodology for costing network transmission service other than the FERC standard fully-allocated average embedded cost methodology. Thus, the first sentence in the definition of "costs" was intended to require as a license condition that FPL apply only the fully-allocated average embedded cost methodology for setting electric transmission rates.

28. My second concern regarding costing was that if a neighboring utility obtained transmission from FPL, and used that transmission to take a sale away from FPL, that FPL might attempt to recover its lost revenue by adding the lost revenue onto its transmission rate. Therefore, the second sentence in the

definition of "costs" is intended to make it clear that FPL is required as a license condition not to recover lost revenue.

29. This completes my affidavit.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket No. ER93-465-000

AFFIDAVIT OF DR. GORDON T.C. TAYLOR

Affiant having been first duly sworn, on oath deposes that the facts contained herein are true to the best of his personal knowledge and belief.

Gordon T.C. Taylor

SUBSCRIBED AND SWORN to before me this 20th day of August 1993.

State of Oregon
Multnomah County

OFFICIAL SEAL
CYNTHIA A DE MARCO
NOTARY PUBLIC - OREGON
COMMISSION NO. 014304
MY COMMISSION EXPIRES MAR 31 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each of the parties shown on the official service list compiled by the Secretary in this proceeding, by depositing copies thereof in the first class mail, postage prepaid.

Dated at Washington, D.C. this 24th day of August, 1993.

William T. Miller

William T. Miller
Miller, Balis & O'Neil, P.C.
1101 Fourteenth Street, N.W.
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(202) 789-1450

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Department of Justice
Washington, D.C. 20530

NOV 14 1973

Howard K. Shapar, Esquire
Assistant General Counsel
Licensing and Regulation
U. S. Atomic Energy Commission
Washington, D. C. 20545

Re: Florida Power & Light Company
St. Lucie Plant, Unit No. 2
AEC Docket No. 50-389A
Department of Justice File 60-415-45

Dear Mr. Shapar:

You have requested our advice pursuant to the provisions of Section 105 of the Atomic Energy Act of 1954, as amended by P. L. 91-560, in regard to the above-captioned application.

Florida Power & Light Company ("Applicant") has applied for a construction permit for its St. Lucie Plant, Unit No. 2, an 810-megawatt nuclear steam generating unit to be located on Hutchinson Island off Florida's east coast. Operation of the facility is presently scheduled for September, 1979.

The Applicant

Applicant is by far the largest electric utility in the State of Florida; it serves approximately half of the statewide electric load. Headquartered in Miami, its area of operation includes most of southern Florida and extends up the east coast to the Georgia border. As of the end of 1972, it provided retail electric power to 574 communities with over 1,500,000 customers. Its total energy sales for 1972 were 28,927,808 megawatt hours. Applicant's summer 1972 peak load was 6,011 megawatts; its dependable generating capacity at that time was 6,585 megawatts--over 70 percent of the generation in the area. Its system of generating stations is integrated by over 3,400 miles of high-voltage transmission lines, approximately 90 percent of the high-voltage transmission in the area--including the 230-kilowatt main transmission grid for southern Florida and the east coast.

Applicant calls itself "the nation's fastest growing electric utility." Florida's rapid growth has been concentrated in the area in which it serves; and for the past several years, the Applicant has added more new customers than any other electric utility in the United States. Applicant's projected peak load for 1980 is 14,475 megawatts--over twice its 1972 load--and generating capacity is planned to increase more than 10,000 megawatts to meet that load.

Applicant's system is directly interconnected and coordinated to some degree with most of the other electric generating systems in Florida: Florida Power Corporation, Tampa Electric Company, and the municipal systems of Jacksonville, Orlando, Fort Pierce, Vero Beach and Lake Worth. Applicant coordinates operations with still other systems through the activities of the Florida Operating Committee. Some of these coordinating arrangements have been entered into only recently.

Applicant supplies electric power in bulk at wholesale to seven rural electric cooperative distribution systems: Lee County, Clay, Glades, Okefenoke, Peace River, Suwanee Valley, and Florida Keys. With the exception of Florida Keys, which has some generation of its own, these cooperatives are exclusively distribution systems and purchase all of their bulk power requirements. 1/ Applicant also supplies bulk power to supplement the generation of two small municipal systems, Homestead and New Smyrna Beach.

Competition

There is substantial and vigorous actual and potential competition among electric utilities in Florida in both bulk power supply and retail distribution markets. Florida law does not require electric utilities to restrict their service areas. The Florida Public Service Commission has approved certain voluntary territorial agreements between Applicant and neighboring systems. 2/

1/ Applicant supplies the total requirements of Lee County, most of the requirements of Clay, Florida Keys, and Glades, and a portion of the requirements of Okefenoke, Peace River and Suwanee Valley.

2/ Some territorial agreements involving the Applicant apparently have taken the form of oral understandings and have never been submitted to the Commission.

Even where these territorial agreements exist, neighboring smaller systems do compete with Applicant at retail. They still compete to attract new loads who can choose to locate either in their service areas or in Applicant's. They still compete to extend service in developing areas on the fringes of their systems. Finally, they compete to stay in business; if their costs and retail rates become too high, their customers may force them to sell out to the Applicant.

There is also competition in bulk power supply, where territorial agreements cannot lawfully operate. The smaller systems have two basic competitive alternatives; either they produce their own bulk power supply, or they buy their bulk power requirements from the Applicant.

Antitrust Implications of This License Application

The Department regards Applicant's ownership of the main high-voltage transmission network in southern and east coast Florida as a significant factor in this antitrust review of the St. Lucie Unit No. 2 license application.

As we have advised you previously,3/ there are substantial economies of scale in the business of generation and bulk supply of electric power. Nuclear power, which is expected to be the cheapest kind of base-load electric power available to meet future load growth, may be produced economically only from large generating units--units with a capacity of 500 megawatts or more. Most electric generating systems cannot install and market power from such large units on their own. They can employ large units--and achieve the economies of scale necessary to compete effectively in today's electric power markets--only through coordination with other generating systems. High-voltage transmission is the necessary medium for such coordination.

Applicant's control over the transmission network in its area has given it the power to grant or deny access to coordination--and thereby access to the benefits of large-scale,

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3/ E.g., letter of advice of June 28, 1971, regarding Consumers Power Company (Midland Units 1 and 2), AEC Docket Nos. 50-329A and 50-330A.

low-cost, base-load nuclear generation--to neighboring smaller systems. There have been some allegations that Applicant may have used this power to deny coordinating benefits to smaller systems or to take the predominant share of the benefits of such coordination as has been entered into. The principal allegations of this nature are (1) that Applicant insisted upon retail territorial allocation agreements as a prerequisite to entering into interconnections and bulk power supply transactions with other systems; (2) that Applicant once refused interconnection arrangements to Gainesville in adherence to wholesale territorial allocation with Florida Power Corporation; 4/ and (3) that on one occasion in the 1960's, Applicant refused to make available to a rural electric cooperative the coordinating arrangements necessary to "firm up" its own isolated generation.

Applicant's control over regional transmission and over access to necessary coordinating arrangements for small systems is illustrated by the current problems of two municipal systems, Homestead and New Smyrna Beach. Both have generation of their own and have endeavored to remain in the business of producing their own bulk power supply and to expand their generating facilities to compete for new and growing loads. 5/ Applicant has interconnected with these two municipal systems for the sale of wholesale bulk power. 6/ The nature of the interconnection and the terms under which the power is sold appear to be designed for systems without any generation or systems planning to cease self-generation, rather than for systems seeking to coordinate with others.

4/ During the course of our antitrust review, the municipal distribution system of Jacksonville Beach (which presently obtains its full bulk power requirements from the Jacksonville municipal system) advised us of a pending request to Applicant (which has transmission lines close by) to consider an interconnection with it for the sale of bulk power. Applicant's ultimate response to this request should indicate its current policy with regard to selling wholesale bulk power to a retail distribution system seeking an alternative source of bulk power supply.

5/ Homestead now has barely sufficient generation to meet its load requirements, and it lacks reserves. New Smyrna Beach's generation is sufficient to serve approximately half of its load.

6/ There is some evidence that Applicant earlier had a policy of refusing to sell power at wholesale to municipal systems.

We are advised that Homestead and New Smyrna Beach are negotiating with the Applicant for parallel interconnections at transmission voltage and appropriate coordinating arrangements. Since the instant application was filed, Homestead and New Smyrna Beach have sought ownership participation in or unit power purchases from St. Lucie Unit No. 2 as a means of satisfying their future power supply needs in coordination with their own generation. Homestead and New Smyrna Beach also have asked the Applicant to agree to provide transmission services ("wheeling") to accommodate future power transactions with other systems as another means of satisfying their power supply expansion needs.

The following example indicates how wheeling might be used. We are advised that the Jacksonville electric system proposes to construct two 1,150-megawatt nuclear units and has inquired of other Florida systems, including Homestead and New Smyrna Beach, whether they would be interested in participating in those units or purchasing unit power surplus to Jacksonville's needs. Applicant, which already has a high-voltage interconnection with Jacksonville, could transmit this nuclear power to Homestead and New Smyrna Beach. Applicant has not yet offered, however, to provide such transmission services to Homestead or New Smyrna Beach.

We have noted above that seven rural electric cooperative systems purchase some or all of their bulk power requirements from the Applicant. Six of these systems, 7/ and six other distribution cooperatives who do not obtain any power from Applicant, are members of Seminole Electric Cooperative, Inc., a corporation formed to act for its members in solving their power supply problems. Seminole has at various times in the past conducted studies to determine the feasibility of alternative means of power supply for its members. It appears that the possibility of self-generation by these cooperatives as an alternative to purchased power has had the effect of keeping wholesale purchase rates relatively low, and therefore the cooperatives have continued to purchase their power requirements from the Applicant and other large generating systems.

Recently, both Applicant and Florida Power Corporation have filed wholesale rate increases with the Federal Power Commission; and, as a result, Seminole is again exploring

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7/ The exception is Florida Keys.

power supply alternatives to meet the growing loads of its members. One alternative for the cooperatives would be to acquire a share of, or purchase unit power from, Applicant's St. Lucie Unit No. 2 (in conjunction with appropriate provisions for power delivery, reserve sharing, and other forms of coordination). A second alternative would be to obtain nuclear power from Jacksonville or other systems which may contemplate installing nuclear generation, with provision for delivery of that power over Applicant's high-voltage transmission system to those cooperatives with which it is interconnected. Since the filing of this license application, Seminole has advised the Applicant of its interest in participating in St. Lucie Unit No. 2 and in other forms of coordination to achieve a feasible long-range power supply program.

Applicant has recently installed its first two nuclear generating units, Turkey Point Nos. 3 and 4, each with a capability of 728 megawatts. A third nuclear unit, St. Lucie Unit No. 1, with 810 megawatts of capacity, is projected to enter service in September, 1975. Unit No. 2, the subject of the present license application, and also 810 megawatts in size, is scheduled for operation in September, 1979. When Unit No. 2 comes on line, Applicant will have over 3,000 megawatts of large-scale, low-cost, base-load nuclear generating capacity. The marketing of power produced by this substantial block of nuclear generation clearly could impair the competitive viability of the other systems in Applicant's area if they are unable to exercise a similar opportunity to obtain their power from nuclear generation.

If systems such as Homestead and New Smyrna Beach are denied both access to nuclear generating units like Applicant's St. Lucie No. 2 and access to other systems' nuclear generation through the use of Applicant's transmission system, they will not be able to take advantage of nuclear generation to meet growing loads as bulk power suppliers. Likewise, without similar access to nuclear generation, the feasibility of Seminole's members entering the bulk power supply business as an alternative to full-requirements wholesale purchase appears greatly diminished.

Conclusion

Our antitrust review led us to the following conclusions: (1) Applicant is the dominant electric utility in Florida and because of its ownership of transmission, has the power to

grant or deny other systems in its area the access to coordination--and thus the nuclear power--needed to compete in bulk power supply and retail distribution markets; (2) there is some indication Applicant's dominance may have been enhanced through conduct inhibiting the competitive opportunities of the smaller systems in its area; and (3) construction and operation of St. Lucie No. 2, and the sale of power therefrom to meet Applicant's load growth and compete with the smaller systems in its area could create or maintain a situation inconsistent with the antitrust laws if access to nuclear generation were denied those smaller systems.

We related our concern over these matters to representatives of the Applicant. While denying construction and operation of St. Lucie Unit No. 2 could have the effect we feared, they advised us that Applicant would nevertheless seriously consider offering participation in St. Lucie Unit No. 2 (with the transmission services, reserve sharing, and other coordination necessary to support such participation) to the three utilities who, prior to our rendering this advice, have given Applicant notice of their interest in such participation to meet a portion of their future power supply requirements--i.e., Homestead, New Smyrna Beach and Seminole Electric Cooperative. Further, because of the status of Applicant's transmission network as the key to coordination by these systems with others, the Department requested Applicant also to consider adopting a policy to facilitate their efforts to obtain access to other economical power sources. It was indicated that the Applicant's final position on these matters will be determined within the next 90 days; this would appear to leave sufficient time to formulate such license conditions as may be appropriate.

In view of the consideration Applicant is now giving to the question of access by other entities to nuclear generation, and the probability that participation in St. Lucie Unit No. 2 will be made available to certain of these entities, 8/ the Department does not at this time recommend an antitrust hearing. Considering that issuance of the construction permit

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8/ In this connection we note also that Applicant will almost certainly apply to the Commission for licenses to construct and operate additional nuclear generation units. Further questions concerning the opportunities of its neighboring systems (including systems other than Homestead, New Smyrna Beach, and Seminole) for access to the benefits of nuclear generation may be ripe for resolution in the antitrust review of such license applications.

for St. Lucie Unit No. 2 is not contemplated until early in 1975, we believe it reasonable to ask the Commission to abide the outcome of Applicant's 90-day consideration prior to ultimately deciding whether or not to hold an antitrust hearing. The Department would, of course, be pleased to advise the Commission further on this question or other relevant questions, in the light of whatever offers Applicant may make and other intervening developments.

Sincerely yours,

Bruce B. Wilson

BRUCE B. WILSON
Acting Assistant Attorney General
Antitrust Division

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Department of Justice
Washington, D.C. 20530

MAR 2 1975

Howard K. Shapar, Esquire
Executive Legal Director
Nuclear Regulatory Commission
Washington, D. C. 20555

Re: Florida Power & Light Company Nuclear Units
NRC Docket No. P-547-A.

Dear Mr. Shapar:

You have requested our advice pursuant to the provisions of Section 105c of the Atomic Energy Act of 1954, as amended, in regard to the above-captioned application.

Florida Power & Light Company has applied for construction permits for two nuclear steam generating units of 1140 megawatts each. The Applicant has advised us that the first unit is presently scheduled for operation in 1985, with the second planned for an as yet undetermined date thereafter. When these units are operational, nuclear generation will represent approximately 30 percent of Applicant's total generating capacity; its growing importance to Applicant's future as the largest producer and supplier of electric power in Florida is quite clear.

A description of the Applicant's electric power system, coordinating relationships, dealings with smaller systems who are its actual and potential competitors, and our conclusions based thereon was transmitted to the Atomic Energy Commission by letter of November 14, 1973, in connection with its request for our advice on Florida Power & Light's application to construct the St. Lucie Plant, Unit 2, AEC Docket No. 50-389A. In that letter, the Department noted the substantial competition among electric utilities in Florida in bulk power supply and retail distribution. Further, we described the power which Applicant's control over the high-voltage transmission network in its area gave it over neighboring smaller systems' opportunities to coordinate generation and transmission and over their access to large-scale, low-cost, base-load nuclear generation. Applicant still possesses such power.

Our previous letter also set forth certain allegations of Applicant's anticompetitive conduct that had been made during the course of our antitrust review, and we discussed the then-ongoing attempts of particular small systems to obtain coordinating agreements with the Applicant, including access to nuclear generation. We raised these matters with the Applicant, as did the AEC's Regulatory Staff. Following this advice to the AEC, the Applicant entered into license conditions offering ownership in St. Lucie Unit 2 to small systems that had timely requested such access.

Subsequent to our antitrust review of its St. Lucie Unit 2 Application, Florida Power & Light has entered into coordinating agreements with the municipal electric systems of Homestead and New Smyrna Beach. It has also committed itself to wheel power to certain systems in its area from Florida Power Corp.'s Crystal River Nuclear Plant. We note also that Applicant recently obtained a jury verdict in its favor in an antitrust action brought by the City of Gainesville, wherein at least some of the alleged anticompetitive activities raised at the time of our review of the St. Lucie Unit 2 application were litigated. While the Department, of course, does not believe that it or the Commission is estopped in the present antitrust review by that jury's findings, and it appears, in any event, that those findings were strictly limited to the issue whether a territorial agreement existed between Florida Power Corp. and the Applicant, we have nevertheless taken into account the jury's verdict.

We have also been advised that Applicant has been negotiating with Homestead and New Smyrna Beach and with six rural electric distribution cooperatives (members of Seminole Electric Cooperative, a generation and transmission cooperative) for participation in St. Lucie Unit 2. Seminole, however, has reported encountering difficulties in those negotiations, most significantly Florida Power & Light's insistence on dealing with the individual distribution cooperatives rather than with Seminole (which has contracted to be their power supply agent), and some question has been raised that FP&L's motives for such insistence may be anticompetitive, and not simply the reasonable desire for adequate contractual security. Also, as a result of comments made by FP&L representatives during these negotiations, Seminole has reported doubts concerning Applicant's willingness to engage in other coordinating transactions with it as its system develops.

Further, Applicant's license conditions for St. Lucie Unit 2 required it to give smaller systems in its area timely notice of its plans to construct its next nuclear units, which are, of course, the two now applied for. Applicant gave such notice on April 1, 1975, and, as a result, received a number of responses from smaller systems expressing various degrees of interest in participation in these units. We had understood, relying upon information earlier submitted by FP&L in connection with the instant license application, that discussions were in progress to develop a participating agreement concerning this facility. Recently, however, FP&L advised us that our information was in error and that in July 1975 it had submitted corrected information to your Commission (which, according to our records, was not transmitted to us). We were surprised to learn that Applicant has neither responded to these indications of interest, nor, as yet, determined what, if any, form of access to the units now applied for it is willing to make available to other, smaller electric systems. Applicant is not prepared to commit itself at this time to accept reasonable license conditions offering the opportunity for access to those smaller systems.

In light of the various factors described above, the Department cannot state that the activities under the license now applied for will not create or maintain a situation inconsistent with the antitrust laws. We believe that the Commission may wish to consider in the light of subsequent developments, particularly regarding Applicant's ongoing negotiations with Seminole Electric Cooperative and its members for participation in St. Lucie Unit 2 and Applicant's eventual responses to indications of interest in participation in these new nuclear units, whether or not to hold an antitrust hearing on the instant application.

Sincerely yours,

Thomas E. Kauper

THOMAS E. KAUPER
Assistant Attorney General
Antitrust Division

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY, Plaintiff, vs. FLORIDA POWER & LIGHT COMPANY, a Florida Corporation, Defendant.	)	Case No. 92-35-CIV-ORL-22

DEFENDANT FLORIDA POWER & LIGHT COMPANY'S MOTION FOR SUMMARY JUDGMENT

Defendant, Florida Power & Light Company ("FPL"), respectfully moves this Court for entry of an Order granting summary judgment in its favor as to all counts of the Supplemented Amended Complaint ("Complaint"). The grounds for this motion, which are set out more fully in the accompanying Memorandum of Law, are as follows:

1. All claims are barred by statutes of limitations. The alleged rights giving rise to the claims were created in 1981 or 1982. The alleged violations of those rights occurred within a year of that time. The lawsuit to enforce those rights was not filed until December 13, 1991. It is time barred.

2. This Court lacks subject matter jurisdiction. Fairly described, this is a dispute over the pricing of electrical transmission service. The Federal Energy Regulatory Commission ("FERC") has exclusive jurisdiction over such disputes. Under the "filed rate doctrine", the federal

staffing to address these issues promptly and effectively. If FMPA intends to pursue this matter further, it should be directed to the FERC. The Supplemented Amended Complaint asserts no claims entitling FMPA to relief from this Court. Judgment should be entered in favor of FPL on all claims.

ARGUMENT

I. THE CONTRACT AND ANTITRUST CAUSES OF ACTION ARE BARRED BY THE APPLICABLE STATUTES OF LIMITATIONS

A. The Alleged Violations of FMPA's Rights Occurred More Than Five Years Before FMPA Filed Its Suit

Transmission service provided by FPL to FMPA is priced on a "point-to-point" basis. 2/ According to FMPA, during the negotiations for each of the existing contracts, beginning in 1982, it requested what it now claims it was always legally entitled to receive under the "Contract," i.e., transmission service that is priced on a "network" basis. 3/

2/ Under point-to-point pricing, FMPA must pay separately for each "contract demand" between each point of receipt of power on FPL's system and each point of delivery from the FPL system. For example, assume that FMPA has paid for a contract demand from point of receipt A to point of delivery C. If FMPA decides to transmit from B to C rather than A to C, then, under the existing contracts, FMPA has agreed to pay for a separate transmission service from FPL. See Affidavit of William C. Locke, Jr. In Opposition To Plaintiff's Motion For Partial Summary Judgment at ¶ 10 (May 18, 1992) ("Locke Aff.") (Tab B) (The contracts, as amended, are attached to the Locke Aff. at Tabs A thru E); Third Affidavit of William C. Locke, Jr. at ¶ 5 (Apr. 15, 1993) ("Locke Third Aff.").

3/ Plaintiff FMPA's Responses and Objections to Defendant FPL's Second Set of Interrogatories, Interrogatory Responses 10(g), 14, 19 (Feb. 10, 1993). See Tab C.

(continued...)

Likewise, according to FMPA, FPL refused every such request for network transmission. 4/ Thus, FMPA has admitted that the alleged breach of the "Contract" and the alleged antitrust violations occurred during the 1982-83 negotiations relating to the first such agreement. 5/

The limitations periods for those causes of action began to run at the very latest in June 1983, when the first agreement was signed. A civil antitrust action brought under the Sherman or Clayton Acts or under chapter 542 of the Florida Statutes must be commenced within four years after the cause of action first accrues. 6/ Therefore, FMPA's causes

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3/(...continued)
Network pricing would save FMPA money and cost FPL money because it would allow FMPA to pay only for the quantity of power delivered, while requiring FPL to reserve the capacity to receive and deliver power at multiple points on its delivery system at anytime, as FMPA may designate from moment to moment. Locke Aff. at ¶ 16 (Tab B). An FPL analogy used in negotiations was to guaranteed hotel reservations. A guest who insists that a room be held for late arrival in any of three cities on a given night will not succeed in paying only one room charge on the theory that only one room actually will be occupied on that night. Id. at ¶ 27.

4/ E.g., Interrogatory Response 16 (Tab C). See also Interrogatory Response 19 (Tab C); Dep. of Calvin Henze at 53/9 thru 54/3, 74/16-21 (Nov. 3, 1992) (Tab D).

5/ Interrogatory Responses 14, 19 (Tab C). Asked whether FPL's specification of delivery points during those negotiations amounted to a rejection of the network concept, FMPA's General Counsel responded: "I think, in my mind, it amounts to an abdication of the absolute explicit obligations that Florida Power & Light has under the License Conditions." Dep. of Frederick Bryant at 19/18-20 (Tab B).

6/ 15 U.S.C. § 15b (1988); Fla. Stat. ch. 95.11(3)(p) (1991). Assuming arguendo that FMPA's "Contract" can be characterized as an "instrument" upon which an action can be (continued...)

of action expired years before this action was filed in December 1991.

Moreover, FMPA's discovery responses uniformly demonstrate FMPA's unwavering conviction that no later than 1982 it was FPL's policy not to provide the network pricing that FMPA sought and now claims it was entitled to under the "Contract." FMPA never believed that policy would change. To the contrary, FMPA's General Counsel, lead consultants, and General Manager insisted that no change would ever occur.

- Frederick Bryant, FMPA's General Counsel since 1978, emphasized the consistency of FPL's policy:

> [I]n the 25 years -- 23 years that I've been dealing with FPL, their response has never differed: Not only, 'no,' but, 'hell, no.' 7/
>
> I have been involved with Florida Power & Light since 1975, and I can tell you that, since 1975, Florida Power & Light's position on the transmission has always been point to point. And they were unwilling to discuss, even acknowledge, any other type of discussion since 1975. . . . FPL has never agreed to offer network. They've always insisted on point-to-point. 8/

6/(...continued)
brought, Florida law requires that a legal or equitable action on a contract founded on a written instrument must be commenced within five years of the alleged breach of the contract. Fla. Stat. ch. 95.11(2)(b) (1991). This period begins to run at the first breach -- June 1983. City of Miami v. Brooks, 70 So. 2d 306, 309 (Fla. 1954).

7/ Bryant Dep. at 98/25 thru 99/2 (Tab E).

8/ Id. at 21/24 thru 22/4, 23/23-24.

- Nicholas P. Guarriello, FMPA's lead consultant, Rule 30(b)(6) designated witness on "Contract" performance and active participant in all negotiations, echoed that view:

> An absolute no, that they would not do it, no way, no how. 9/
>
> Network transmission was the one we always tried to get and they said no, point-to-point. 10/
>
> But the main thing we were looking for specifically was the network transmission. We raised it in every negotiation and the answer was no, it will be point-to-point. 11/
>
> Q. Well, if nothing else, you understood FPL's policy on network transmission service, didn't you?
> A. I clearly understood they said it was going to be point-to-point. 12/

- Calvin Henze, FMPA's General Manager from 1978 through 1991, and signatory to all the 1982-86 contracts, had the same understanding of FPL's policy:

> [W]e asked for network transmission, which we feel we were entitled to under the Settlement Agreement and the St. Lucie Agreement, and . . . we did not receive the network transmission agreement. . . . [FMPA] requested it orally in the St. Lucie transmission contract . . . . We also did in the Stanton and the Tri-City and, again, we were told no. Then we pursued it, I have diligently [sic], in the All-Requirements contract because we felt

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9/ Dep. of Nicholas P. Guarriello at 26/1-2 (Feb. 25, 1993) (Tab F).

10/ Id. at 285/20-21 (Feb. 26, 1993).

11/ Id. at 286/19-22.

12/ Id. at 287/1-5.

like it was very important to us at that time. 13/

Not surprisingly then, when FMPA submitted its September 1989 network proposal, the rejection of which led to this lawsuit, FMPA did not expect FPL to agree to it. 14/

FMPA's certainty about FPL's policy is underscored by FMPA's assertion of work product privilege for documents prepared prior to the September 1989 proposal, on the ground that they were prepared "in contemplation of litigation" as to that proposal. 15/ Setting aside the bad faith implicit in preparing for litigation before even embarking on negotiations, this privilege claim demonstrates FMPA's continuing understanding of FPL's continuing policy on network pricing of transmission. 16/

13/ Henze Dep. at 52/24 thru 54/1 (Nov. 3, 1992) (Tab D); see also id. at 76/2-20. The contracts referenced in Mr. Henze's answer were executed in 1983, 1985, and November 1986. See Locke Aff., Tabs B thru E. Other FMPA witnesses had the same clear understanding of FPL's policy. See, e.g., Dep. of Albert Malmsjo at 155/12-17, 156/20-21, 159/20 thru 160/2 (Feb. 16, 1993) (Tab G).

14/ Dep. of designated corporate representative Guarriello at 30/16-18 (Feb. 25, 1993) ("I had nothing that would tell me they had changed their mind. . . .") (Tab F). See also Henze Dep. at 109/20 thru 110/14 (Nov. 2, 1992) (Tab D); Malmsjo Dep. at 167/4-10 (Feb. 16, 1993) (Tab G).

15/ Guarriello Dep. Exs. 4 and 5 (Tab F). See Guarriello Dep. at 27/21 thru 30/9 (Feb. 25, 1993) (Tab F).

16/ See Guarriello Dep. at 30/16-17 (Feb. 25, 1993) (Tab F). See also Interrogatory Response 11 (Tab C).

To the extent that FMPA still claims that FPL has a legal obligation to sell FMPA a portion of FPL's transmission system (see infra n.82), FMPA's witnesses also testified that FMPA

(continued...)

B. FPL's Actions Did Not Toll The Statutes Of Limitations

The only theoretical escape available to FMPA from the limitations box built solely of FMPA's own evidence would be an assertion that FPL's actions somehow constituted a "continuing violation" of the "Contract" and of federal and state antitrust law. To grasp at that straw, FMPA would have to invoke a line of cases holding that overt acts in furtherance of a continuing conspiracy (e.g., price-fixing) create new injuries and thus form the basis for a new cause of action. 17/ But, those decisions uniformly provide that when a refusal to deal has occurred, subsequent refusals of

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16/(...continued)
(and its members before it) had repeatedly asked, as far back as 1975, to buy a portion of FPL's transmission system, and that FPL had refused every such request. See, e.g., Bryant Dep. at 48/3 thru 49/6, 54/17 thru 57/1, 87/13-22 (Tab E); Guarriello Dep. at 23/19 thru 25/14 (Feb. 25, 1993), 270/5 thru 272/11 (Feb. 26, 1993) (Tab F); Henze Dep. at 73/5-19 (Nov. 3, 1992) (Tab D). FMPA fully understood that it was "against [FPL's] company policy to sell an ownership interest in the transmission system to the cities." Bryant Dep. at 56/19-20 (Tab E). See also Interrogatory Response 18 (Tab C).

Finally, with regard to FMPA's allegation that FPL has refused to sell FMPA wholesale power (Complaint, ¶ 17(c), (d)), FMPA requested such a sale and FPL refused during the negotiations leading to the March 1985 transmission service agreement. Bryant Dep. at 90/22-24 (Tab E). Again, this refusal was well outside the statutes of limitations periods.

17/ Kaiser Aluminum v. Avondale Shipyards, Inc., 677 F.2d 1045, 1051 (5th Cir. 1982), cert. denied, 459 U.S. 1105 (1983). There is another exception to the antitrust statute of limitations if at the time of the earlier refusal, damages are speculative and unprovable. Id. at 1051. However, FMPA has made no such contention, and its damage expert testified that reasonable damage estimates could have been made for the period commencing June 1983. Dep. of John W. Wilson at 54/6 thru 55/2 (Feb. 18, 1993) (Tab H).

the same nature, made in response to renewed requests, do not constitute new injuries unless the plaintiff had reason for believing that the defendant's position had changed. 18/

Having ascertained to its satisfaction far more than five years before the filing of the Complaint that FPL's responses to requests for network service were not merely "no," but "hell no," there is simply no room for FMPA to claim a factual dispute over whether, in the Eleventh Circuit's words, FMPA had "reason to believe" that FPL's policy, reiterated during five previous contract negotiations, "did not still stand." 19/ The "messages" in the long-standing commercial relationship between these parties were crystal

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18/ Midwestern Waffles, Inc. v. Waffle House, Inc., 734 F.2d 705, 715 (11th Cir. 1984) ("If plaintiffs' subsequent requests for a franchise . . . were genuine, that is if plaintiffs had reason to believe the original decision not to grant them such a franchise did not still stand, there would be a new alleged injury when a genuine subsequent request was denied. If, however, plaintiffs' subsequent requests were futile and plaintiffs had reason to know they were futile, the statute of limitations will be found to bar plaintiffs' claim that defendants violated antitrust law. . . ." (emphasis added)). See also Drumm v. Sizeler Realty Co., 647 F. Supp. 1288, 1291 (E.D. La. 1986), aff'd, 817 F.2d 1195 (5th Cir. 1987).

19/ Midwestern Waffles, 734 F.2d at 715. See also Kaw Valley Elec. Cooperative Co. v. Kansas Elec. Power Cooperative, Inc., 872 F.2d 931, 934-35 (10th Cir. 1989) (summary judgment is appropriate where the defendant's pre-limitations period decision "sent a clear message" to plaintiff, because "[i]f the decision was final, there is no reason to grant [plaintiff] the ability to restart the statute whenever it so desires by a mere futile request").

clear. Summary judgment in favor of FPL is required as a matter of law. 20/

II. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER THE CONTRACT AND ANTITRUST CAUSES OF ACTION

FERC has exclusive jurisdiction over this pricing dispute. Florida state courts, where FMPA first began this lawsuit, have no jurisdiction at all. Federal courts have none, until FERC has acted. FMPA knows that. It filed this action not out of ignorance or confusion, but because it was apprehensive of the reception it would receive in the proper forum and the costs of pursuing the appropriate remedy before the appropriate agency. 21/ Apprehension, however, can not

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20/ The cited cases also apply to the state antitrust count. See St. Petersburg Yacht Charters v. Morgan Yacht, Inc., 457 So. 2d 1028, 1032, 1984-1 Trade Cas. (CCH) ¶ 65,985 at 68,329 (Fla. Dist. Ct. App. 1984). Nor does Florida law permit extension of the limitations period for FMPA's contract claim. See, e.g., Kelly v. School Bd. of Seminole County, 435 So. 2d 804, 805 (Fla. 1983); Brogan v. Mullins, 452 So. 2d 940, 941 (Fla. Dist. Ct. App. 1984), rev. dismissed, 464 So. 2d 555 (Fla. 1985). Indeed, Florida courts construe such statutes with great "strictness." White v. Padgett, 475 F.2d 79, 83 (5th Cir.), cert. denied, 414 U.S. 861 (1973).

21/ FMPA's Executive Committee was advised to misdirect this action away from the FERC by its outside counsel:

> In spite of the fact that we believe that the Federal Energy Regulatory Commission has jurisdiction to correct discriminatory transmission [pricing], FERC has often been reluctant to enforce what it considers to be an initiation of transmission transactions by public systems. Further, FERC proceedings can be expensive and drawn out.

Jablon letter at p. 4 (Tab A).

CONCLUSION

FMPA is simply seeking to co-opt the Court into becoming its negotiating partner against FPL. The claims asserted here are so misleading, so obviously manufactured and so lacking in intrinsic legal merit that they can only have been conceived as a negotiating tactic. Negotiations should be conducted at the negotiating table, not in federal court. For the reasons stated above, FPL respectfully requests the entry of an Order granting summary judgment in its favor on all Counts of the Supplemented Amended Complaint.

DATED this 15th day of April, 1993.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY

Plaintiff,

v. Case No. 92-35-CIV-ORL-3A22

FLORIDA POWER & LIGHT COMPANY

Defendant.

PRE-TRIAL STIPULATION

Pursuant to the Court's Second Amended Docket Control Order dated November 12, 1992, Plaintiff Florida Municipal Power Agency ("FMPA") and Defendant Florida Power & Light Company ("FPL") hereby submit this Pre-Trial Stipulation. The sections of this Pre-Trial Stipulation correspond to the items enumerated in part 4.(B) of the Second Amended Docket Control Order.

1. The factual basis of federal jurisdiction

A. FMPA's Statement

This Court has jurisdiction of the Sherman Act claims, 15 U.S.C. §§ 1 and 2, pursuant to 15 U.S.C. § 15 and 28 U.S.C. § 1337. FPL removed under the Court's federal question jurisdiction, 28 U.S.C. § 1331. To the extent this action presents state law issues, this Court has pendent jurisdiction because those issues arise out of a common nucleus of fact -- FPL's refusal to sell FMPA network transmission and "block" wholesale power, which FMPA claims violates FPL's Antitrust

x. The term "Transmission problem" means a thermal overload, and over/under voltage, or a first contingency thermal or voltage violation.

y. The All-Requirements Members are the 10 cities listed in the Supplemented Amended Complaint.

B. Issues Of Fact To Be Litigated At Trial

NRC License Conditions

1. Whether the Waterford License Conditions in the LP&L case expressly require a single charge for transmission among the affected customers, while FPL's St. Lucie License Conditions contain no such provision.

2. Whether, in November 1981, FPL sent a letter to FMPA offering point-to-point transmission for St. Lucie's deliveries.

3. Whether FMPA understood at the time it signed the St. Lucie Delivery Service Agreement that that agreement was inconsistent with what FMPA believed it was entitled to under the license conditions.

4. Whether FMPA believed that any contract it signed with FPL in the 1980s that had point-to-point service, and not network transmission service, was inconsistent with the License Conditions.

5. Whether FMPA is a signatory to the NRC License Conditions.

6. Whether the Settlement Agreements executed subsequent to the St. Lucie License Conditions include specific

100. Whether FPL's terms offered during the negotiations commencing in September 1989 were comparable to those accepted by FMPA in the five existing contracts that are on file with the FERC.

101. Whether FMPA had any reason to believe that FPL would accept in 1989 terms that had been consistently and unequivocally unacceptable in all the years prior to 1989.

102. Whether FMPA has ever believed and has ever had any basis for assuming that FPL would change or had changed its policy not to price transmission service on the network basis.

103. Whether, when FMPA submitted its September 1989 proposal, FMPA had any reason to expect that FPL had changed its policy against agreeing to provide network transmission service on FMPA's terms.

104. Whether FMPA's proposal to buy a "block" of wholesale power from FPL without specifying contract demands for each delivery point is a proposal to receive wholesale service that is available under the tariff and the existing contracts, but to pay less than would be paid under the tariff, by establishing a single contract demand that is lower than the sum of the contract demands that would be specified separately for each delivery point under the tariff.

105. Whether the heart of FMPA's "refusal-to-deal" claim is the notion that FPL was required to replace its existing point-to-point transmission service agreements with a

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

vs.

FLORIDA POWER & LIGHT COMPANY,
a Florida Corporation,

Defendant.
_____/

DEFENDANT FLORIDA POWER & LIGHT COMPANY'S NOTICE OF FILING AFFIDAVIT OF WILLIAM C. LOCKE, JR., IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant, Florida Power & Light Company ("FPL"), hereby gives notice of filing the Affidavit of William C. Locke, Jr., Manager of Inter-Utility Markets of the Bulk Power Markets Department at FPL. Mr. Locke's affidavit, with attachments, is submitted in opposition to the plaintiff's Motion for Partial Summary Judgment, served on May 1, 1992, and it provides evidentiary support for FPL's memorandum of law in opposition to the motion for summary judgment, served on May 18, 1992.

Respectfully submitted,

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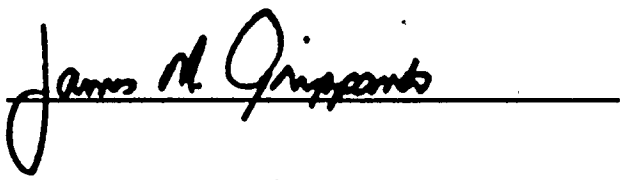
CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing has been served by United States Mail on L. Lee Williams, Jr. and Frederick M. Bryant, Esq., Moore, Williams, Bryant, Peebles & Gautier, P.A., 306 East College Avenue, P.O. Box 1169, Tallahassee, FL (32302-1169, mail) (32301, delivery); and on Robert Jablon, Spiegel & McDiarmid, 1350 New York Ave., N.W., Washington, D.C. 20005-4798, on this 18th day of May, 1992.



State of Florida)
)
County of Dade)

AFFIDAVIT OF WILLIAM C. LOCKE, JR.

I, William C. Locke, Jr., having been first duly sworn according to law, state that the following facts provided under oath are true and correct to the best of my knowledge and information.

I. QUALIFICATIONS

1. I am currently the Manager of Inter-Utility Markets of the Bulk Power Markets Department at Florida Power & Light Company ("FPL"). My business address is 9250 W. Flagler Street, Miami, Florida 33174. I have served in this position and with these responsibilities since April 1989.

2. I have a Bachelor of Science in Electrical Engineering from Clemson University and a Masters of Business Administration from Florida International University.

3. Prior to assuming my current position, I have held various positions in the Inter-Utility Markets area, including coordinator and supervisor. As Manager of the Inter-Utility Markets Department, I am responsible for negotiating and administering contracts between FPL and other utilities. That responsibility includes directing and supervising the negotiation of all contracts between FPL and the Florida Municipal Power Agency ("FMPA"), inclusive of FMPA's request for transmission service for its All-Requirement Project which is the basis for this lawsuit, as

well as administering the existing transmission service contracts between FPL and FMPA.

II. PURPOSE OF AFFIDAVIT

4. The purpose of my affidavit is to address some of the allegations raised in FMPA's Motion for Partial Summary Judgment and to respond to the inaccuracies and misrepresentations in the affidavit of Nicholas P. Guarriello which is attached to the Motion. In the process of so doing, my affidavit will describe and explain:

a) the existing electrical relationship between FPL's electrical system and FMPA's electrical system and the systems of its member cities;

b) the existing contracts between FPL and FMPA; c) the basics of FMPA's proposal and how that proposal is inconsistent with the existing contracts;

d) how FPL and its customers would be adversely affected in the event FPL were forced to supersede and void those existing contracts with FMPA and agree to new contracts on the terms proposed by FMPA; and

e) the proposals that FPL offered to FMPA in an effort to accommodate FMPA's All-Requirements Project.

III. FPL'S ELECTRICAL SYSTEM AND THE RELATIONSHIP TO FMPA AND ITS MEMBERS

5. In order to address the issues raised by FMPA's All-Requirements Project and the transmission proposal FMPA made to FPL, it is first necessary to understand the relationship between

FPL's system and FMPA and its members. FPL has a service territory in which it provides electrical service to retail customers and to meet certain requirements of various wholesale customers. FPL has a responsibility of meeting the loads (i.e., the electrical needs of those customers) within that service territory. FPL operates its electrical system as a self-contained "control area," in which it matches the electrical requirements of its customers with the electricity generated within its system and purchased from or sold to the systems of other utilities. By virtue of a utility operating a control area, the utility must assume and accept its responsibility and obligation to effectively plan and operate its system in a reliable fashion without imposing reliability and economic burdens on the systems of other utilities with which it is interconnected. The more interconnections a utility's control area has, the more important and complex the responsibility and obligation of that utility become. In the agreements between FPL and FMPA, for example, the parties have defined a "control area" as:

> A power system or combination of power systems to which a common generation control scheme is applied. The basic objectives of a Control Area are: (1) to match, at all times, (a) the power output of the generators within such Control Area and (b) capacity and energy purchased from utilities outside such Control Area, to the prevailing load; (2) to maintain, within limits generally accepted by the electric utility industry in the State of Florida, scheduled interchange with other Control Areas; (3) to help maintain the system frequency within limits generally accepted by the electric utility industry in the State of Florida, scheduled interchange with other Control Areas; (4) to provide regulation service in accordance with practices generally accepted by the electric utility industry in the

> State of Florida; and (5) to make available, when necessary and in accordance with practices generally accepted by the electric utility industry in the State of Florida, the power and energy produced by operating reserves.

Further, the control area operators are obligated, under interconnection and interchange agreements, to operate their systems with the objective of matching actual power flows between control areas with pre-arranged transmission schedules.

6. In order to know ahead of time the amount of power to be transmitted on behalf of third-parties from a particular source at the border, or interface, of a utility's control area to a particular point of delivery at another point on the interface of the control area, such deliveries are made in accordance with prearranged "schedules." This allows control area operators to economically commit and dispatch a utility's resources, to plan maintenance outages of transmission and generation facilities and to develop contingency plans for forced outages of transmission and generation facilities.

7. Within the geographic area of FPL's service territory are located various cooperative and municipally-owned electric systems which provide retail electric service to their customers. Some of these municipalities are members of FMPA which operate their own control areas which abut and are contiguous to FPL's control area. (The Cities of Vero Beach, Lake Worth, Key West, and the Fort Pierce Utilities Authority are participants in the proposed FMPA project). These cities, like other utilities, are contractually obligated to operate their systems so as to match

actual power flows with scheduled transactions. Thus, for example, for deliveries to the cities from an FPL resource, the power is scheduled out of FPL's system and into each of these cities at the point of interconnection between the FPL and each city's control area.

In addition to the four cities mentioned above, three member cities (the Cities of Green Cove Springs, Jacksonville Beach, and Clewiston) which do not own and operate electrical generating facilities ("the All-Requirements Cities") are electronically included in the control area of the Orlando Utilities Commission ("OUC") as a result of contractual arrangements between FMPA and OUC, although they are physically and electrically separated by the transmission system of FPL. Under arrangements between FPL and FMPA, FPL permits its transmission system to be used to transmit power from FMPA's generating resources located in the OUC system to each of the three Cities. (FPL's dispatchers are advised of power scheduled and delivered to the All-Requirements Cities that is generated within the OUC system). Because these cities have no generation on their systems, and are radially interconnected with FPL, they are not able to take actions that impose power flows on FPL's system that are unscheduled or unaccounted for. However, power to be delivered from utilities other than OUC must be scheduled into FPL's control area at designated points at FPL's interface with such other utilities for delivery to each of the three Cities.

IV. FPL'S EXISTING CONTRACTS WITH FMPA

8. Under existing contractual arrangements, FPL provides FMPA with wholesale power which is resold to the customers of FMPA member cities. This service includes both the generation of power and the transmission of that power to points of delivery specified in the contracts. Under these contracts, FPL has an obligation to meet the electrical needs of the member cities up to the amounts specified in the contracts. FPL also provides FMPA, under several contracts, with transmission services that allow FMPA to purchase power from third-party utilities located outside FPL's control area and have that power scheduled and delivered to specified delivery points.

All of our power and transmission contracts with FMPA have been filed with and accepted for filing by the Federal Energy Regulatory Commission ("FERC"). At no time has FMPA or any member city ever challenged the justness and reasonableness of the rates, terms, and conditions of those contracts (although FMPA has opposed application by FPL for increased rates for service under some of these contracts). Nor has FMPA or any member city ever given notice to terminate any of the contracts.

9. The transmission agreements between FPL and FMPA fall under two general categories:

a) Long-term firm transmission service - Under the long-term firm agreements, FPL has committed to provide specified transmission service on the same level of priority as service to our native load customers. FPL provides long-term firm

transmission services to FMPA under the St. Lucie Delivery Service Agreement (for the power associated with FMPA's 8.806 percent ownership in FPL's St. Lucie 2 nuclear plant); the Stanton Transmission Agreement and the Tri-City Transmission Agreement (for the power associated with the FMPA member cities' specific entitlements in a generating unit operated by OUC); and the All-Requirements Transmission Services Agreement ("TSA") (which allows FMPA to have power delivered from certain specified resources to the All-Requirements Cities). These agreements obligate FPL to plan, construct, and operate our system to meet that commitment. Attached to my affidavit are true and correct copies of these contracts, labelled as follows: the All-Requirements TSA (Tab A); the St. Lucie TSA (Tab B); the Stanton TSA (Tab C); and the Station Tri-City TSA (Tab D).

Prior to entering into the long-term agreements, FPL studied the effect of the requested services on our system to ascertain whether the services could be provided without interfering with our ability to use our system to provide reliable and economical service to our existing and anticipated customers. FPL's determination that it could provide the services was made on the basis of thorough planning studies which evaluated the source, destination, quantity and duration of the transmission service, the effect of power flows on FPL's transmission lines, the impact of the requested service on our ability to dispatch economically our own generating resources, and whether or not incremental facility additions will be required to effect the transaction.

b) Short-Term firm and hour-to-hour transmission service - Under the short-term transmission service arrangements, FMPA may obtain specified firm transmission services for periods (hourly, daily, weekly, monthly, or annually) of up to three years, which can be used for the delivery of power not covered by the long-term contracts. (See Tab E). For these arrangements, FPL first determines whether or not the service can be provided without impacting the economic dispatch of FPL's system. Once FPL undertakes a transmission commitment, the transmission service provided is firm for the duration of that commitment. The hour-to-hour (or day-to-day) type arrangements allow FMPA to obtain transmission services for power used to displace more expensive power. This service is provided strictly on an as-available basis when the service will not violate our stated reliability criteria or cause us to have to redispatch our own generating units at a higher cost to our other customers. By way of explanation of the last point, the loading of transmission lines is a function of the mix ("dispatch") of generating units that are being operated at any particular time. For example, if FPL's transmission lines from the Orlando area to the Miami area are fully loaded with energy from coal-fueled generation that FPL owns in Georgia and North Florida, the loadings may be reduced by cutting back on coal generation in Georgia and North Florida and starting up (more expensive) oil- and gas-fueled units in the South Florida area, which increases FPL's costs to its customers.

10. Under the existing long-term firm transmission contracts with FPL, FMPA generally is entitled to transmission service over FPL's system from specified points of receipt to specified points of delivery. (See, e.g., Tab A, Section 3.1 at p. 12). Each of the attached long term firm transmission contracts provides for service to multiple FMPA points of delivery. (The contracts permit a certain degree of flexibility that allows FMPA to obtain replacement transmission service if it will not impact FPL's economic dispatch or opportunities for FPL to obtain cheaper power for its customers and will not degrade the reliability of FPL's system). FMPA has reserved and pays for the maximum amount of power (expressed in MWs) FMPA expects to need on each of the specified transmission paths to serve the energy requirements of its member cities, even though FMPA knows that it will not utilize that amount of transmission service in every hour of the day. This obligation is described in the contracts as the "contract demand." (See, e.g., Tab A, Article VII). In return for the payments for contract demands, FPL stands ready to deliver, during any hour requested by FMPA, the specified amount of reserved transmission capacity along the specified transmission paths. This obligation imposes on FPL the duty to plan (i.e., build the necessary facilities) and operate its system to accommodate the firm transmission services contracted for by FMPA.

Another feature of the long-term contracts is that the power is delivered in accordance with prearranged schedules under which FPL knows the source, destination, quantity, and duration of the

power to be delivered. (See, e.g., Tab B, Article 11). As discussed above, by virtue of knowing the schedule of such deliveries, FPL, for example, can determine the impacts of those deliveries on its transmission facilities and its ability to serve its retail and wholesale customers.

11. Although the economy and other short-term firm arrangements do not involve the same type of obligations as do the long-term firm agreements, they do contain many of the same provisions. For example, under either arrangement, FMPA is entitled to specified transmission services between designated points of receipt at the interface of FPL's system and designated points of delivery on FPL's system. (See Tab E). Likewise, FMPA must arrange with FPL's dispatchers for the scheduling of deliveries. FPL is compensated for each separate, specific short-term or economy transmission service provided.

12. I note that FMPA suggests that they were somehow forced to enter into the various transmission contracts with FPL because of litigation costs and the "economic necessity" of arranging the underlying transactions. Having been personally involved in the lengthy negotiations leading up to the execution of the Stanton and Tri-City agreements, I have two responses. First, those agreements, as well as the All-Requirements TSA and the St. Lucie Transmission Service Agreement, were negotiated <u>after</u> the St. Lucie license conditions were imposed by the NRC and <u>after</u> FPL and various Florida municipalities (including FMPA members) entered into the 1982 Settlement Agreement. In other words, these

contracts were negotiated at arms-length under circumstances in which FMPA clearly understood its rights under the St. Lucie license conditions. Second, it was clear to me during the negotiations in which I participated that the FMPA negotiators fully understood FMPA's rights under the NRC license conditions, and that FMPA was represented by competent legal counsel, consultants and negotiators. At no time did any of the FMPA negotiators suggest that FMPA or its members were being "prevented" from availing themselves of their rights under the NRC license conditions.

I should further note that in October 1990, during the pendency of negotiations leading up to this lawsuit, FMPA executed an amendment to the All-Requirements TSA adding the City of Clewiston to that agreement, subject to the same terms and conditions as applied to the other All-Requirements Cities. And, FMPA and FPL currently are negotiating another amendment to the All-Requirements TSA, at the request of FMPA, which will provide FMPA with long-term firm transmission services for additional resources.

V. FMPA'S PROPOSAL

13. In September of 1989, FMPA approached FPL with a transmission service proposal aimed at bringing Vero Beach, Fort Pierce, Lake Worth, and Key West within the "All-Requirements Project." Under this proposal, FMPA would supply all of the power requirements of these four cities, as well as the existing three All-Requirements Cities (Green Cove Springs, Jacksonville Beach,

and Clewiston). FMPA recognized that implementation of this proposal would require additional transmission services from FPL. Indeed, the September 8, 1989 letter to me from FMPA's Director of Engineering acknowledged that "the existing transmission arrangements between FMPA and FPL for the All-Requirements Project need to be modified." (Letter of Robert C. Williams at 1).

14. The primary objective of FMPA's All-Requirements Project is to bring each of the member cities geographically located throughout FPL's service territory within a single control area. Within that control area, FMPA could dispatch utilizing FPL's transmission system, the Project members' generating resources, power from OUC, and power from St. Lucie "between and among" those members without scheduling deliveries with FPL's dispatchers or even informing FPL as to transactions that were occurring within FPL's own system. This is what Mr. Guarriello refers to in his affidavit as "network transmission."

Another feature of the proposal is FMPA's desire to establish and pay for a single contract demand -- what FMPA calls a "single transmission charge" -- in return for which FMPA could require FPL to transmit power between any combination of FMPA sources and delivery points that FMPA may choose to utilize from minute to minute. In addition, FMPA proposed to transform the contract demands associated with the specific point-to-point transmission services provided under the St. Lucie, Stanton, Tri-City, and All-Requirements TSAs into a service that would allow FMPA to obtain transmission virtually anywhere on FPL's system. In

other words, by virtue of paying a single transmission charge FMPA would be able to obtain transmission from FPL, during any time of the day, from any All-Requirements Project resource, to any point of delivery of a member city in FMPA's All-Requirements Project. Implementation of this proposal would require FPL to plan and construct transmission facilities for the maximum anticipated flows into, through, and out of FPL's transmission system for a multitude of combinations while FPL would only receive a "single transmission charge".

VI. FMPA'S PROPOSAL IS INCONSISTENT WITH THE EXISTING CONTRACTS BETWEEN FPL AND FMPA AND, IF ADOPTED, WOULD HARM FPL AND ITS CUSTOMERS

15. The transmission services sought by FMPA to implement its All-Requirements Project are, in two major ways, inconsistent with the provisions of the existing transmission contracts between FPL and FMPA. First, FMPA proposes a single annual contract demand for which it would obtain firm transmission service over numerous transmission paths, rather than contract demands that will compensate FPL for operating and maintaining the transmission facilities necessary to provide firm transmission service. Second, FMPA proposes to do away with prescheduling of deliveries in favor of a free-flowing scheme under which FMPA would utilize FPL's transmission system at will and without prior notice to FPL. As I discuss below, acceding to FMPA's demands would require FPL to surrender bargained-for contract rights, which would be detrimental to FPL and its customers because of the potential impact on FPL's system reliability, costs, and ability to plan and operate the

system, and would increase FPL's cost of service to its other customers.

Impact on FPL's costs

16. Under our current long-term firm transmission contracts with FMPA, FPL has an obligation to stand ready to deliver power, up to the contracted-for amount of transmission service, from the receipt and to the delivery points specified in the contracts. FMPA's payment of contract demands compensates FPL for operating, maintaining and constructing facilities necessary to provide the specific transmission service provided under the contracts. Yet, under FMPA's proposal, FPL would be required -- without additional compensation from FMPA -- to operate, maintain, and construct the facilities necessary to deliver power along any of more than a dozen transmission paths that FMPA may choose from minute to minute.

For example, without compensation additional to that provided under the existing contracts for a single transaction, FPL would be obligated to ensure that there was sufficient transmission facilities to accommodate firm transmission service from Orlando to Jacksonville Beach in one hour, from Vero Beach to Lake Worth in the next hour, and from Lake Worth to Key West in the third hour. Although FMPA maintains that in any given hour FPL would have the obligation to deliver only a set amount of MWs over FPL's "network transmission," the fact of the matter is that compensating FPL to operate and maintain transmission facilities necessary to deliver power from Orlando to Jacksonville Beach does not compensate FPL

for operating and maintaining transmission facilities necessary to deliver power from Lake Worth to Key West. Under FMPA's proposal, the uncompensated costs associated with its transmission requirements would simply be borne by FPL's other customers.

The assertion that the network service desired will not impose additional costs on FPL apparently results from FMPA's imprecise comparison between a transmission system and a "reservoir." Although power does not follow a set path from a receipt point to a delivery point (like railroad cars traveling from City A to City B), the fact is that there must be sufficient transmission capacity both to receive the power into the transmission system and to deliver the power through the system to a particular delivery point. The capacity of the transmission system as a whole (i.e., the "reservoir") is not determinative of whether there are sufficient transmission facilities to accommodate a specific transaction. An electric transmission system is more akin to a system of water mains than to a reservoir. The carrying capacity of particular lines (pipes) is limited, and delivery to different places on the system have different impacts on the system, for example, requiring facility upgrades at different places. Thus, if FMPA does not compensate FPL for the transmission facilities needed to provide firm service to a particular FMPA All-Requirements City, and additional transmission facilities are thus needed to serve FPL's native load customers, FPL's customers will be forced either to pay for additional facilities or bear the cost of FPL dispatching more costly generating resources.

17. The FMPA proposal will also shift additional operational costs to FPL's other customers because many of the transactions contemplated by FMPA will have a significant impact on FPL's hour-to-hour operation of its transmission system. For example, although a large portion of FPL's load is located in South Florida, a significant amount of FPL's generation is located to the north, and FPL imports significant amounts of power from states located to the north of Florida. As a result, during peak hours of the day and peak periods of the year FPL's transmission system is heavily constrained and congested in a north-to-south direction. Because of these constraints, FPL often has to exercise its rights under its contracts with FMPA (and other transmission customers) either to decline or curtail hour-to-hour transactions because there is insufficient transmission capacity to economically dispatch FPL's generating resources to meet our obligation to our native load customers and to provide for the hourly transmission service requested by FMPA, certain of the member cities, or other transmission customers. Were FPL to accept FMPA's proposal to do away with prescheduling of deliveries, FPL would be left with the choice of dispatching (with higher-cost generating units) around the transmission capacity constraints, the costs of which would then be passed on to FPL's customers, or curtailing service to those customers, at least until the situation could be relieved. At one point, FMPA did agree to redispatch its sources of power within 8 hours of receiving notice from FPL. Unfortunately, after

8 hours, because the period of peak usage would have passed, use of the transmission facilities likely would no longer be constrained.

18. Finally, FMPA's proposal would permit it, as long as FMPA stayed within the single contract demand, to engage in economy transactions without paying FPL any additional transmission charges. In effect, the service under the long-term agreements would be expanded to include, in addition to the firm service, the service now provided under the hour-to-hour contracts. Eliminating the existing transmission rates collected for these hour-to-hour arrangements not only would deprive FPL of compensatory transmission revenues to which it is entitled under existing contracts, but would result in higher rates to FPL's other native load customers because at present the hour-to-hour transmission revenues are used to reduce the rates paid by FPL's retail and wholesale customers.

Impact on FPL's planning and operations

19. By proposing to treat all the member cities as if they were located in one particular area electrically and electronically (even though they are located throughout FPL's service territory), FMPA would utilize FPL's transmission system as if it contributes a virtually unlimited source of transmission capability; i.e., FMPA would have the option of having power delivered from any source to any destination from minute-to-minute. Under such an arrangement, rather than being able to analyze the impacts of specific transmission services, FPL would have to assume the worst case scenarios; i.e., that each of FMPA's member cities had shut down

its generation and was relying on transmission from FPL. This likely would result in the construction of additional facilities, the cost of which would be passed along to FPL's other customers.

20. From an operational standpoint, if FPL were to allow FMPA to dispatch its members' generating resources at will and without prearranged schedules, FPL would lose the ability to control the flows over our transmission system, which ability allows FPL to operate the system reliably and in the most efficient and economic manner. For example, Vero Beach, Fort Pierce, Lake Worth, and Key West all have substantial amounts of generation on their own systems so that, if scheduling requirements and control area boundaries are eliminated, each would have the ability to take actions, without FPL's knowledge or prior consent, that may impose potentially detrimental power flows upon FPL's transmission facilities. To alleviate such transmission constraints, FPL might have to dispatch more expensive generating units, forego the savings available from importing power from other sources outside our system, or curtail deliveries to certain customers. Moreover, if FPL were to surrender its current contract rights to consider proposed short-term transmission transactions before they are scheduled, as FMPA proposes, FMPA would, in essence, have a higher priority for arranging short-term transactions over FPL's system than would FPL to serve its native load customers.

21. There are many other features of the FMPA proposal which would be disadvantageous to FPL and our customers, but it is beyond the purposes of my affidavit to go into detail on each and

every aspect of the proposal. I intend simply to demonstrate that FMPA's proposal would eliminate bargained-for protections that FPL has in its existing contracts with FMPA, and impose additional costs on FPL and FPL's other customers.

VII. MR. GUARRIELLO'S DESCRIPTION OF FPL'S POSITION DURING OUR NEGOTIATIONS WITH FMPA IS INCORRECT AND MISLEADING.

22. Like Mr. Guarriello, I participated in many of the negotiations between FMPA and FPL related to the transmission service proposed for the All-Requirements Project. Although I did not attend every session, I was kept fully apprised of the negotiations, and each proposal and correspondence sent to FMPA in connection with the negotiations was prepared by me or under my direct supervision. I believe that Mr. Guarriello's description of the negotiations is inaccurate and oftentimes misleading.

23. Mr. Guarriello's description of FPL's offer during the negotiations as merely being "variations on 'point-to-point' transmission" is highly misleading. In the first place, Mr. Guarriello discusses and attaches a single April 27, 1990 letter from FPL without informing the court that numerous negotiating sessions occurred after that letter, and at least a dozen letters were exchanged after April 27, 1990. Indeed, Mr. Guarriello accompanied representatives of FMPA and its member cities to a meeting with FPL's most senior management during the summer of 1991. Although I believe the proposal articulated in the April 27, 1990 letter was fair and reasonable, the fact of the matter is that

FPL subsequently made other proposals -- none of which are discussed in FMPA's Motion or Mr. Guarriello's affidavit.

Mr. Guarriello also fails to explain to the court that, under traditional FERC transmission pricing policy, utilities are entitled to be compensated for each point-to-point transmission service provided. Hence, an offer to provide firm transmission service priced on other than a point-to-point basis would be a significant concession.

24. In any event, prior to the initiation of this lawsuit, FPL made an offer that was significantly more favorable to FMPA than a mere "variation" on point-to-point pricing. Rather than seeking a transmission charge based on the number of FMPA delivery points (as Mr. Guarriello alleges), FPL proposed a "hub concept" in which a participating member city could obtain firm transmission service to meet its load by reserving only a single contract demand along a transmission path between such city and the conceptual "hub" (which FPL designated as OUC). In other words, the number of points to or from which each participating member city could arrange deliveries was irrelevant. And, in return for FMPA reserving the aggregate of each city's contract demand, FPL offered FMPA:

1) long-term firm transmission service, with FPL undertaking the same planning and operating obligations applicable to native load customers;

2) bidirectional service; i.e., from each FMPA member city to the hub and from the hub to each FMPA city; and

3) transmission service that would be interchangeable at the hub; i.e., in one hour City A could deliver power through the hub to City B, and in the next hour City A

could deliver power through the hub to City C (as long as each city reserved a sufficient contract demand to accommodate the deliveries).

25. Mr. Guarriello's example (in Paragraph 14 of his affidavit) of FPL's offer is also misleading. Under traditional FERC transmission pricing policy, if each of the three FMPA member cities set out in that example required 100 MWs of firm transmission service to serve its load, each city would be required to reserve and pay for 100 MWs of firm transmission service. And, that charge would apply only to the transmission service to each city from the specific source of power specified in the transmission agreement; transmission from another source generally would require another transmission charge. Under FPL's hub proposal, although each of the three cities would still be required to pay for 100 MWs of transmission service, each would be able to obtain deliveries from any resource operated by a participating FMPA member city. In other words, if FMPA reserved and paid for a contract demand of 100 MWs for each of the three cities, City A could require FPL to transmit 100 MWs from City B in Hour 1 and 100 MWs from City C in Hour 2, while City B and City C could each require FPL to transmit their respective 100 MWs to other participating cities in the hours that they were not having power transmitted to City A.

As I explained above, Mr. Guarriello's suggestion that, in the example discussed above, FMPA should only pay for 100 MWs because "at any one time [it] does not need more than 100 MWs" misses the point. Mr. Guarriello ignores the fact that, under

FMPA's proposal, FPL has a firm transmission obligation to deliver 100 MWs of power in any given hour to each of the three cities in the example. And if those cities just happened to be Jacksonville Beach, Lake Worth, and Key West, a charge based on a single 100 MW transaction would not compensate FPL for that transmission obligation. Transmitting power north from Orlando to Jacksonville Beach has a very different impact on FPL's system than transmitting power from Orlando all the way down the system to Key West.

Another point, omitted by Mr. Guarriello, is that, under existing contractual arrangements on file with the FERC, FMPA has the right to have power transmitted on an as-available basis between and among every single FMPA member city and third-party utilities. And, under those contracts FMPA would only pay FPL during the hours in which FPL actually provided transmission service.

26. Finally, throughout our discussions with FMPA, the negotiators stated that FMPA only wanted to obtain the type of firm transmission service that FPL provides for its native load customers. The fact of the matter is that if the three cities mentioned in Mr. Guarriello's Example 14 each were 100 MW native load customers of FPL, FPL would have to pay the costs of owning, operating, and maintaining transmission facilities sufficient to deliver 100 MWs to each city (i.e. a total of 300 MWs) even though at a particular time the aggregate maximum demand of the three cities may be no more than 100 MWs and the coincidental peak of the three (that is the transmission service required by the three

cities at the time of FPL's peak) may be less than 300 MWs. Yet, under FMPA's proposal, in those hours when one of the FMPA cities was not utilizing its full 100 MWs, the costs attributable to operating and maintaining transmission facilities necessary to serve those cities would simple be borne by FPL's other customers.

27. In summary, FPL has offered to provide the "network" transmission service sought by FMPA and has offered to do so under a single contract that would result in a single transmission bill to FMPA each month. The disagreement is over the amount of that transmission bill. The term "single transmission charge," as used by FMPA, means a charge that does not compensate FPL for the legitimate costs of standing ready to transmit at all times a stated amount of electricity over any combination of a multiple number of paths between points of receipt and delivery of power. That is like a customer demanding that a hotel chain incur the costs of guaranteeing the availability of a room in every city in Florida on a given night, but agreeing to pay a charge only for the room in which the customer finally decides to stay.

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W. C. Locke, Jr.
Authorized Agent for
Florida Power & Light Company

STATE OF FLORIDA)
S/S:
COUNTY OF DADE)

I HEREBY CERTIFY that on this 14th day of May, 1992, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared W. C. Locke, Jr., who produced the following as identification, Florida Drivers License, Number L200-923-47-326 and he acknowledged before me that he executed the same as his free act and deed and who did take an oath.

In witness whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 14th day of May, 1992.

Mary Nicklaus
Notary Public
State of Florida
Commission or Serial No.
My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP.SEPT 30,1995
BONDED THRU GENERAL INS. UND.

State of Florida)
)
County of Dade)

THIRD AFFIDAVIT OF WILLIAM C. LOCKE, JR.

I, William C. Locke, Jr., having been duly sworn according to law, state that the following facts provided under oath are true and correct to the best of my knowledge and information.

I. QUALIFICATIONS/PURPOSE OF AFFIDAVIT

1. I am the same William C. Locke, Jr. who filed an Affidavit in this proceeding on May 18, 1992 (filed with Florida Power & Light Company's ("FPL") Memorandum of Law in Response to Florida Municipal Power Agency's ("FMPA") Motion for Partial Summary Judgment). My qualifications are listed in paragraphs 1-3 of that Affidavit.

2. The purpose of this Third Affidavit is to further elaborate upon several of the points I made in my previous Affidavit, and to address FMPA's claims regarding sales of wholesale power by FPL, which claims were appended to the Complaint after my May 18, 1992 Affidavit. In particular, this Third Affidavit, along with my prior Affidavit, will explain how FMPA's network transmission service proposals and requests to purchase a block of wholesale power would have increased costs to FPL's retail and wholesale customers other than FMPA.

II. FMPA'S NETWORK TRANSMISSION SERVICE PROPOSALS

3. As I explained in my May 18, 1992 Affidavit, FPL currently provides FMPA with transmission service pursuant to four firm-transmission service agreements which the parties executed over the past ten years, and which are on file with the Federal Energy Regulatory Commission ("FERC").

4. The revenues received by FPL for transmission service under the existing firm-transmission service contracts with FMPA are credited, in cost allocations prepared for rate cases, against FPL's cost of providing service to FPL's other retail and wholesale customers and thus reduce FPL's cost of serving those customers. If FPL were to provide additional services under the existing firm transmission service contracts without receiving appropriate additional revenues, then FPL's other customers would, in effect, be subsidizing those additional services.

5. As I explained in my prior Affidavit, under FPL's existing transmission service contracts with FMPA, with limited exceptions, transmission service is provided only from identified points of receipt to identified points of delivery on the basis of a separate "contract demand" for each such service. If FMPA wants transmission service in excess of the specified contract demand between those specified points, or if it wants transmission service from a new point of receipt to an existing point of delivery, it must offer to buy and pay for such additional transmission service, and FPL is not

obligated to provide such service unless it determines that it can make the transmission capacity available without adversely affecting its ability to serve its other customers economically.

6. Under FMPA's network transmission service proposal, if at any point in time FMPA were not fully utilizing the entire contract demand for a specified transmission path under the existing transmission contracts, FMPA would be able to utilize that "excess" transmission capacity, at no additional charge, for transmission service between any point of receipt and any point of delivery. Under the existing transmission contracts, FMPA would have to pay separately for such additional transmission service. Thus, acceptance of FMPA's proposal would result in the loss of revenues that are available under the existing contracts, and which are used to reduce the cost of service to FPL's other customers. Therefore, the provision of network transmission service on the terms proposed by FMPA would increase FPL's cost of service to its other customers and put those other customers in a position of subsidizing FMPA's additional transmission service.

7. As I stated in my prior Affidavit, under its proposal FMPA would pay a contract demand charge based on FPL's cost of providing transmission service between two specified points on the FPL transmission system (as it does now) even though FPL would have to operate, maintain, and

construct facilities to stand ready to deliver that amount of contract demand between any two of more than a dozen points that FMPA might choose from hour-to-hour.

8. As I also stated in my prior Affidavit, and as various FMPA witnesses acknowledged during depositions, during substantial time periods of each year, some portions of FPL's transmission system are utilized to the full extent consistent with safe and reliable operation.

9. In addition, under FMPA's network transmission service proposal, FPL would be required to provide additional transmission service for new power resources designated by FMPA without regard to the impact of providing those new services on the economies of FPL's existing operations. Because some portions of FPL's transmission system are utilized to the full extent consistent with safe and reliable operation during substantial time periods of each year, FMPA's proposal could force FPL to give up constrained transmission capacity in order to accommodate a new FMPA power resource. If FPL is required to give up constrained transmission capacity to FMPA, FPL will be forced to depart from the optimal economic dispatch of its generating resources and incur higher energy production costs which would be reflected in higher fuel charges to its retail customers. For example, FPL could be required to reduce its usage of its most efficient coal-fueled capacity to serve its own customers, and be forced to replace that energy with energy produced by

older, less efficient oil-fueled units located elsewhere on its system. Under FMPA's proposal, this risk would be completely open-ended. FPL would simply be required to modify its operations, at whatever cost, to accommodate any new resources designated by FMPA. FMPA did not offer to compensate FPL for these additional costs.

10. As I stated in my prior Affidavit and as demonstrated above, FMPA's September 8, 1989 network transmission service proposal would have required modification of the existing transmission service contracts. Although FMPA modified certain elements of their proposal over the following two years, central to each proposal was the concept of a single contract demand charge (based on the cost of providing service between two specified points) for network transmission service which would require FPL to stand ready to operate, maintain, and construct facilities to deliver power between any two of more than a dozen points that FMPA might choose from hour-to-hour. All of those proposals would, therefore, have required modification or termination of the existing FERC-filed transmission service contracts.

III. FMPA'S PROPOSAL TO BUY A BLOCK OF WHOLESALE POWER

11. In addition to its request for network transmission service, FMPA has, at various times, requested that FPL sell FMPA a "block" of wholesale power which FMPA could then allocate and require FPL to deliver among the delivery points of its member cities from hour-to-hour. This

is contrary to FPL's existing wholesale power tariff, which is on file with and approved by FERC, and which provides for the cities to designate and pay for a separate contract demand for each separate point of delivery. FPL, FMPA, and three FMPA member cities have also entered into contracts which provide for deliveries of wholesale power from FPL to three cities' specified points of delivery. True and correct copies of FPL's wholesale power tariff (Tab A); the Partial Requirements Service Agreement Among Florida Power & Light Company, the Florida Municipal Power Agency, and the City of Jacksonville Beach (Tab B); the Partial Requirements Service Agreement Among Florida Power & Light Company, the Florida Municipal Power Agency, and the City of Green Cove Springs (Tab C); and the Partial Requirements Service Agreement Among Florida Power & Light Company, the Florida Municipal Power Agency, and the City of Clewiston (Tab D) are attached to this Third Affidavit.

12. Selling FMPA a "block" of wholesale power would reduce FPL's revenues for the sale of wholesale power to FMPA without reducing FPL's total system costs, because, although FMPA would be paying for a lesser amount of power, it would not change the demands on FPL's electrical system. As a result, FMPA's proposal would shift cost responsibility from FMPA to FPL's retail and other wholesale customers. In other words, FMPA's proposal to buy a "block" of wholesale power without specifying contract demands for each delivery point is

simply a proposal to receive wholesale service that is available under FPL's FERC-approved wholesale electric tariff and the existing three-party wholesale power contracts, but to pay less than would be paid under the wholesale tariff (by establishing a single contract demand that is lower than the sum of the contract demands that would be specified separately for each delivery point under the tariff).

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W. C. Locke Jr.

Authorized Agent for
Florida Power & Light Company

STATE OF FLORIDA)

S/S:

COUNTY OF DADE)

I HEREBY CERTIFY that on this 13th day of April, 1993, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared W. C. Locke, Jr., who produced the following as identification, Florida Drivers License, Number L200-923-47-326 and he acknowledged before me that he executed the same as his free act and deed and who did take an oath.

In witness whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 13th day of April, 1993.

Notary Public
State of Florida
Commission or Serial No. CC147934
My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP SEPT 30 1995
BONDED THRU GENERAL INS. UND.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

v.

FLORIDA POWER & LIGHT COMPANY,

Defendant.

Southeast Financial Center
Miami, Florida
Monday, November 2nd, 1992
9:32 a.m.

DEPOSITION OF DEAN R. GOSSELIN

Taken before BARNET I. ABRAMOWITZ, CSR-CM and Notary Public in and for the State of Florida at Large, pursuant to notice issued in the above cause.

they were negotiating with Orlando Utilities to include the IDO proposed members in the Orlando control area.

Q. That would have included the generating cities?

A. Specifically Fort Pierce, Vero Beach, Lake Worth and Key West.

Q. What control area are Clewiston, Green Cove Springs and Jacksonville Beach in now?

A. They are within Orlando's control area.

Q. I believe you indicated earlier that deliveries from the Orlando Utilities Commission to those three cities are not scheduled. Is that correct?

MR. DAVIS: That's not what he said.

A. In the strict sense of scheduling as defined by NERC, they are not.

Q. And why are they not scheduled in the sense that you defined?

A. A schedule is between two control areas, for instance, between FPL's control area and Orlando's control area. If the entities are within the same control area, there would be no scheduling.

Q. Does FPL get information concerning OUC's deliveries to these cities?

A. Yes.

Q. How does it get that information?

A. As I understand, that is handled at the operations level, FMPA submits it to FPL operating personnel.

Q. Do OUC's deliveries to Clewiston, Green Cove Springs and Jacksonville Beach use the FPL transmission system?

A. Yes.

Q. Does Florida Power & Light deliver power to Jacksonville Beach, Green Cove Springs and Clewiston from resources that FMPA owns jointly with the Orlando Utilities Commission?

A. To my knowledge, yes.

Q. Does FMPA currently regulate the loads of Jacksonville Beach, Green Cove Springs and Clewiston?

A. It is my understanding that the loads are regulated from the Orlando control center which FMPA participates in.

Q. Again, are the deliveries of the jointly owned resources from FMPA to those cities scheduled in the sense that you described earlier?

A. Repeat the question, please.

Q. Yes.

Are the deliveries from the resources that

FMPA owns jointly with OUC to Jacksonville Beach, Green Cove Springs and Clewiston scheduled in the sense that you described earlier?

A. To the extent that those jointly owned resources are within the Orlando control area, they are not scheduled.

Q. Does Florida Power & Light also deliver some power from resources that are jointly owned by FMPA and OUC to Fort Pierce, Vero Beach, Lake Worth and Key West?

A. Yes.

Q. Could those resources be delivered to those cities without using the FPL transmission system?

A. No.

Q. Under the HUB concept, could FMPA have served the entire loads of each member system through transmission?

A. Can you restate the question?

MR. DAVIS: Objection to the form.

Q. Let me try again.

Under the HUB concept, could FMPA have contracted for enough transmission to meet the entire load of each member system?

MR. ROSS: You mean the IDO member systems

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

PLAINTIFF,

v.

FLORIDA POWER & LIGHT COMPANY,

DEFENDANT.

Southeast Financial Center
Miami, Florida
November 18, 1992
10:10 a.m. - 3:20 p.m.

DEPOSITION OF KARABET ADJEMIAN

Taken before THOMAS R. NEUMANN, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

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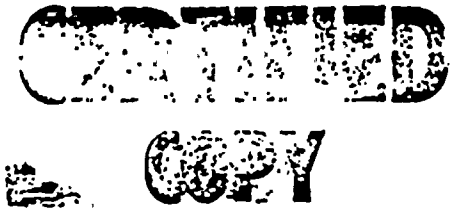

do.

Q. And how do those guidelines come about? Was this memo part of the process that developed those guidelines that are now in place?

A. Yes.

Q. Did the guidelines differ from the recommendations in this memo?

A. Yes.

Q. In what way?

A. It plays less emphasis on tying power plants that have more than one unit -- generating unit interconnecting them with free lines. It is instead proposing the connection with two lines, providing that the system can withstand -- it can withstand the sudden loss of the plant.

I think the guideline was suggesting the plant size of 800 megawatts, that we would want to perform studies beyond that point to see if the stability is impacted, system stability is impacted.

Q. Do you see the statement in the second bold paragraph on the first page, "A single transmission line interconnection for each unit would be considered adequate for power plants where each unit has an output capability of 75 megawatts or less"?

A. Yes.

Q. Has that been adopted as a planning guideline?

A. We have not had any interconnection of this size facility since the proposed guideline was issued, so we have not applied this.

Q. It hasn't been applied. But if such an occasion were to arise, this would be the basis for your planning?

A. Yes.

Q. These guidelines apply to all new FPL plans as well as to non-utility generators?

A. Yes.

Q. How about to plants build by other utilities for interconnection to the FPL system?

A. I would still use them as a guide.

Q. Let me refer you to page two, paragraph 2.

A. Yes.

Q. Do you see the statement that, "The rationale being that the sudden outage of the facility of that rating or lesser would not seriously jeopardize system operation."

That's referring to the rationale for the 75 megawatts threshold for single line interconnection; is that correct?

A. That is right.

Q. Do you agree with that rationale?

A. Let me explain that this is a guideline and in no way this guideline would preclude system planning from performing its stability and load studies in reviewing them proposing to connection.

So this states -- from an operating perspective, this is an operator's rule that the 75 megawatts -- the loss of the 75 megawatts generating facility would fall within what would be constituted as a disturbance. It would not require a -- it would not require a reporting to the NERC for violation for system disturbance. That's all that applies because it's less than the value. It would not require -- not jeopardize the operation in that sense.

Q. Could you explain what the area control error or measure is?

A. It's the net between generating resources and load over a specified period of time for a given area.

Q. This comment refers to a 1991 value for area control error with a current value of 114 megawatts. Do you see the footnote and the text it is attached to?

A. Yes.

Q. Has that value been updated for 1992?

A. I don't know.

Q. Let me give you another document. I ask that it be marked as Exhibit 3.

(The document referred to was thereupon marked Exhibit 3 for Identification.)

MR. POMPER: For the record, its a November 1, 1991 memo to distribution. I want to also note this was an excerpt from a significantly larger document. It includes the first and last pages.

You can see by the Bates numbers which I blacked in that it's a rather large document. I don't want to burden the record with it. I do have the rest of it here, if you want to refer to anything else in the document. But I don't plan to ask any other questions on the other pages, so I haven't copied them.

BY MR. POMPER:

Q. Let me first ask you if you recognize this document.

A. Yes.

Q. Can you tell me the purpose for which it was written?

A. This document represents our -- a reporting of the transmission plan for the next ten years for

A. Yes. I had discussions with Raimundo Rey. As a way of background, let me explain why the discussions.

MAPS is a model, computer model that's developed to analyze costs and patterns of loading of transmission interfaces. At that time we had licensed a model on a trial basis from General Electric to see the manner and needs. We did several benchmark studies with it.

I believe also one of the studies we tested the usefulness was to try out something like a transaction -- wholesale transaction. So I think what this refers to is the study that was done with maps referring to the specific FMPA transaction.

Q. So is it correct that --

A. But I just want to make sure we understand, this was done as a test to see the usefulness of the model. The model, we had not adopted. We have not adopted the model. In fact, it failed so I terminated the license with it. We didn't feel we were getting results that really made sense. We found several problems with the models.

Q. I guess we are communicating. You answered the question I was about to ask next.

A. Okay.

Q. Do you know why IDO in particular was selected as the example to test the software?

A. I guess it was the plausible transaction. I'm speculating.

MR. ROSS: Don't speculate.

THE WITNESS: Any transaction could have done it, but we tried a transaction.

MR. ROSS: Off the record.

(Discussion off the record.)

MR. POMPER: Let's break at this time.

(Thereupon, a lunch recess was taken, after which the following proceedings were had:)

BY MR. POMPER:

Q. We talked earlier this morning about duplicating transmission facilities. You recall that?

A. Yes.

Q. In your professional judgement, can FMPA duplicate the FPL network to the extent necessary to implement the IDO project?

A. I guess I have a problem with the word "duplicate" because I'm still not certain what that implies.

Q. Take the world "duplicate" out of it. Can

A. Yes.

Q. And why did you decide to do so?

A. Two reasons. First, the model itself didn't seem to be particularly -- it was cumbersome to use for the engineers. I did a load flow benchmark with it and it didn't produce very accurate results, particularly when it came to evaluating system losses.

We identified several code bugs in the model that we had to refer to GE to have them improve the accuracy of the model. I felt in a way I guess that I was doing work that GE should have been doing.

The second major reason is I note the cost was exorbitant, so it was not really a good value for me to carry this in my budget.

Q. When you say the results were not accurate, what do you mean by that?

A. We ran some benchmark cases. As I said, for example, the lower flow kept bills of our MAPS, kept bills of our own programs that we typically use and comparing several outputs between those programs that should match and they weren't matching as well. I didn't think the accuracy of the merchandise model was adequate.

Q. Did you review any -- were there any model

outputs modeling the IDO project?

A. I think Raimundo Rey had used and you had seen earlier MAPS' model to analyze the IDO projects. It was a sample transaction to see what kind of offer she could get from it. We hadn't benchmarked that as anything.

It was not used as a go, no-go on the model itself. It was just a test case to see if you could -- if it's feasible to run or easy to run the model. It could have been any other transaction used in its place. It just happened to be the one freshest in our mind since Raimundo already worked on it.

Q. Were results of models of cases that included FMPA pool dispatched and to whom were such results forwarded?

A. What's the question?

Q. To the best of your recollection, who saw the output of the model of those cases that included FMPA pool dispatch?

A. Raimundo Rey, for one. I don't believe there was a report written and sent to anybody. I personally don't have a clear recollection of what the results of that -- what the output was of what the MAPS work was with regard to the IDO project. I don't know that that was sent to anybody.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

v.

FLORIDA POWER & LIGHT COMPANY,

Defendant.

200 South Biscayne Boulevard
Miami, Florida
November 16, 1992
11:35 a.m. - 2:00 p.m.

DEPOSITION OF RAIMUNDO REY

Taken before RICHARD BURSKY, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, pursuant to notice issued in the above cause.

A. No.

Q. Are you familiar with the HUB proposal that FPL made to FMPA?

A. I heard the term but I am not familiar with the details.

Q. Did you or to your knowledge anyone at FPL ever evaluate the impact of that proposal on FPL economic dispatch?

A. To the best of my knowledge, no.

Q. Is that something if FPL had studied you expect you would be aware of?

A. Not necessarily.

Q. Have you done work for FPL that was related to the FMPA IDO project?

A. We explored the capabilities of MAPS using the scenario described as the integrated dispatch proposal with FMPA.

MR. POMPER: Let me distribute a document and ask that it be marked as Exhibit 1.

(Deposition Exhibit 1 was marked for identification)

BY MR. POMPER:

Q. Do you recognize this document?

A. Yes.

Q. Could you please describe for me the

Personal.

A. Right.

Q. What does that signify?

A. The file is in the engineer's office.

MR. POMPER: Let me have another document marked as an exhibit.

(Deposition Exhibit 2 was marked for identification)

BY MR. POMPER:

Q. Do you recognize this document?

A. Yes, I do.

Q. Can you please describe for me the purpose for which it was written?

A. This was a scope of the study that was intended to demonstrate the MAPS capability and essentially explores the scenario of the IDO project or proposal.

Q. Was the purpose simply to discover the capabilities of the software or were you also trying to get substantive information about the IDO projects?

A. Essentially it was to test the software capabilities, but a byproduct of that could have been the information that we would have obtained through that test.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 92-35-CIV-ORL-22

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

vs.

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation,

Defendant.
_____/

DEPOSITION OF WILLIAM H. SMITH

Taken before Darline M. West, Registered Professional Reporter, Notary Public in and for the State of Florida At Large, pursuant to Notice of Taking Deposition filed by the Plaintiff in the above cause.

- - -

Tuesday, February 23, 1993
1061 E. Indiantown Road
Jupiter, Florida
8:10 - 1:55 p.m.

KNIPES-COHEN OF FLORIDA, INC.
1400 CENTREPARK BOULEVARD, SUITE 960
WEST PALM BEACH, FLORIDA 33401
(407) 478-04041

Q. Have you asked them for such data?
A. Not yet.
Q. What kinds of data do you plan to consider with respect to how FMPA would have operated under the IDO project?
A. We presently plan to model IDO as it's proposed in FMPA's September '89 contract, proposed contract.
Q. Do you plan to consider how it would operate under any other subsequent proposals?
A. I don't know yet.
Q. You haven't decided one way or the other?
A. Right.
Q. What data will you rely on for how FMPA would have operated under this September 1989 proposal?
A. What data? Well, we will largely rely on data that FMPA and other utilities provide through the FCG.
Q. Do you need any other types of data to make that analysis?
A. I don't believe so.
Q. Are you planning to do load flow analyses only, or are you going to include an analysis of

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

PLAINTIFF,

v.

FLORIDA POWER & LIGHT COMPANY,

DEFENDANT.

Southeast Financial Center
Miami, Florida 33131
Tuesday, November 10, 1992
1:37 p.m. - 5:30 p.m.

DEPOSITION OF WILLIAM ROBERT SCHONECK

Taken before BRIAN GARY BERKOWITZ, Shorthand Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

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CERTIFIED COPY

does travel over the path of least resistance, and it flows over lines, and it is constrained by the amount of power that you can push over those lines.

So, in reference to, I guess, footnote number one, I would have to agree with that.

Q. Would you, please, turn to page 10, the second full paragraph, which reads, "In fact, while some planning is coordinated to promote reliability, FPL plans, finances, constructs, operates, utilizes and make rates for its transmission network as its network. FPC acts in the same fashion with respect to its own network." "FPC" referring to Florida Power Corporation.

From the standpoint of today, would that be a correct statement?

A. Our current practices, we do plan a transmission network, and we do have a postage stamp rate.

Q. Do you coordinate some planning to promote reliability? By "you," I mean FPL.

A. Absolutely.

Q. Does FPL plan, finance, construct, operate, utilize and make rates for FPL's transmission network as an entity?

A. What do you mean by "as an entity"?

Q. As its network.

A. Yes.

Q. What transmission planning coordination does FPL do?

Let me withdraw that question and let me ask you, do you have any reason not to -- to question the correctness of this paragraph I've just read, as of the 1983 time frame?

A. I assume that it must be true.

Q. You say you assume it must be true.

A. I don't know. I wasn't there in 1983. He didn't write this in 1983.

Q. Does it sound true to you?

A. I --

Q. But would it appear true to you?

A. FPL plans and finances and constructs a transmission network, and operates a transmission network.

Q. Mr. Schoneck, in an earlier answer, you agreed that transmission planning -- that some transmission planning is coordinated to promote reliability.

With whom do you coordinate transmission planning?

A. First of all, I'm not a transmission planner,

but overall, in the planning spectrum, the reliability is built into the transmission system, and that's handled by our planning department.

Q. Do you know with whom Florida Power & Light coordinates transmission planning?

A. There is a form at the FCG, and there's a form you put your ten year site plan, each of the utilities, of what plans they have for future expansion, that's an ongoing basis, that's published.

Q. Are those the only two areas of coordinated transmission planning that you know of, or two mechanisms?

A. To get a better answer, you would have to ask our planners, but those are the ones that I am aware of.

Q. When you said there's a form at FCG, would you describe your personal role with FCG?

A. I'm on a subcommittee, a reliability subcommittee.

Q. And for how long have you been on the reliability subcommittee?

A. Immediately after I assumed the responsibilities in July of '91.

Q. Is that your only role with FCG?

A. That is correct.

Q. What is your position on the reliability subcommittee?

A. I'm a member of the subcommittee.

Q. A representative of Florida Power & Light?

A. Florida Power & Light.

Q. What does the subcommittee do?

A. The subcommittee reviews reliability criteria agreed to by the individual utilities within the state.

Q. And it is the reliability subcommittee of what?

A. Of the FCG operating committee.

Q. Of the FCG operating committee.

You referred earlier, I'm not going to quote you exactly, because I don't remember your exact terminology, to Florida Power & Light's attempting to achieve economies by coordinating or integrating its generation. Is that correct?

A. That's correct.

Q. Essentially, Florida Power & Light uses its transmission system to attempt to supply load by operating the least expensive generation or power supply mix available to it. Is that correct?

A. Yes, it is.

Q. Virtually every other utility attempts to do the same. Is that correct?

A. I would think so.

Q. Indeed, a purpose of the FMPA IDO project is to allow FMPA to coordinate its generation in the same way that FPL does. Is that your understanding?

MR. ROSS: Can you just clarify what you mean by "its generation"?

BY MR. JABLON:

Q. Let me ask another question.

Is it your understanding that a purpose of the IDO project is to permit the Florida Municipal Power Agency to coordinate its owned or contracted power supply resources on an economic basis?

A. Yes.

Q. Is it your understanding that the Florida Municipal Power Agency would like to integrate a combination of wholesale power purchases, its interests in generating plants, such as Stanton, and some of the units which are currently owned by its members?

A. Yes.

Q. For how long have you known that FMPA would like to integrate its power supply resources?

A. I guess, with their initial letter of request, sometime in late '89.

Q. Did you either have any discussions with people at FMPA or hear about any discussions or

ATTACHMENT 13

OFFICIAL TRANSCRIPT
BEFORE THE

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

v.

Case No.
92-35-Civ-Orl-22

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation,

Defendant.

Washington D.C.
Friday, January 8, 1993

Continued deposition of WILLIAM LOCKE

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202) 289-2260

the statement, or the clause, "with higher priority than FPL's native load requirements" contained on Exhibit 59?

A. This is a -- I want to make sure I'm very clear in this response, so if you will give me a minute to make sure, we can go through this step by step.

Q. Certainly.

A. Okay. As we finally -- and I emphasize, as we finally understood and FMPA had finally clarified what they intended to do, what FMPA had requested from Florida Power & Light is to be able to dispatch their units through the Florida Power & Light system, to be able to move generation from one source to one delivery point, from another source to another delivery point, delivery point to delivery point, utilizing the FPL system.

The proposal that FMPA put on the table did not recognize, one, did not recognize the way that FPL has to operate its own system. It has to operate its generation in concert with its transmission. It has to operate its generation in concert with constraints that are on its system, and it operates it with the intendant cost of altering economic dispatch in order to accommodate serving its load.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

PLAINTIFF,

v.

FLORIDA POWER & LIGHT COMPANY,

DEFENDANT.

Southeast Financial Center
Miami, Florida
November 19, 1992
9:30 a.m. - 11:30 p.m.

DEPOSITION OF STEPHEN FRANK

Taken before THOMAS R. NEUMANN, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

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Q. Don't reveal the substance of any conversation.

A. Okay.

Q. Do you understand that FMPA desires to purchase transmission services from Florida Power and Light in order to integrate its power supply resources and to use them to supply certain of its members on a least cost basis?

A. Yes.

Q. FPL coordinates its power supply resources to operate on a least cost basis; is that correct?

A. Yes.

Q. And essentially FMPA wants to do the same thing.

A. Is that a question?

Q. Yes. Is that your understanding?

A. Yes. I assume that's what they want to do.

Q. Would you agree that Florida Power & Light has a transmission monopoly in its area of service?

MR. DAVIS: Object to the question, calls for a legal conclusion. The witness is not qualified.

MR. JABLON: He just told you he escaped law school.

THE WITNESS: I don't know.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

v.

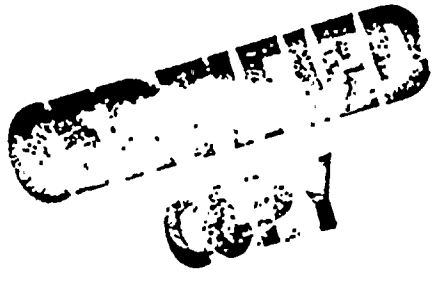
FLORIDA POWER & LIGHT COMPANY,

Defendant.

200 South Biscayne Boulevard
Miami, Florida
November 17, 1992
9:45 a.m. - 5:15 p.m.

DEPOSITION OF RICHARD LARRY TAYLOR

Taken before RICHARD BURSKY, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, pursuant to notice issued in the above cause.



built generation rather than the transmission?

Q. Yes.

A. It would reduce the ability, yes.

Q. Does Florida Power & Light attempt to operate its generating resources on a least cost basis?

A. On a marginal cost basis.

Q. And by a marginal cost basis, if loads increase during the day will FPL add generation or purchase power from the next cheapest source in terms of the marginal cost of operation?

A. In terms of the marginal costs, yes.

Q. All utilities try to do this?

A. I don't know.

Q. Would you describe it that it is good utility practice to try and do this?

A. I would say it is good utility practice to try to do that, yes.

Q. And FPL uses its transmission network to integrate its power supply resources, is that correct?

A. Yes, we do.

Q. Is it your understanding that with regard to IDO, that basically FMPA is trying to do the same thing?

A. That's what I understand, yes.

Q. To do so FMPA has to use the Florida Power & Light owned transmission network, is that correct?

A. They want to use it, yes. They have to --

Q. To accomplish --

A. I don't know if they have to. There are other facilities in the state other than our transmission and whether they would need the use of that also, I don't know.

Q. It may also have to use Florida Power Corporation owned transmission facilities, is that correct?

A. In addition, possibly to others too.

Q. But do you understand that among the FMPA members who have said they would like to join the IDO project are Key West or the City Electric System of Key West, the Lake Worth utilities, Lake Worth, Fort Pierce, Vero Beach, Jacksonville Beach, Green Cove Springs and Clewiston or their utility authorities?

A. Yes.

Q. Is it feasible for FMPA to implement IDO for the benefit of these cities without using the FPL owned transmission network?

A. They would need the FPL network, yes.

Q. FMPA cannot practically duplicate the FPL

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION

CASE NO. 92-35-CIV-ORL-18

FLORIDA MUNICIPAL POWER AGENCY,

PLAINTIFF,

v.

FLORIDA POWER & LIGHT COMPANY,

DEFENDANT.

Southeast Financial Center
Miami, Florida 33131
Wednesday, November 4, 1992
9:45 a.m. - 4:10 p.m.

DEPOSITION OF JUAN E. ENJAMIO

Taken before BRIAN GARY BERKOWITZ, Shorthand Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

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A. It's true that we looked at a scenario, that looked at total shutdown of generation at Key West, during the -- during our study of the pool arrangement.

Q. If the shutdown took place with an IDO arrangement in place, as you were studying, versus a shutdown taking place under existing contractual arrangements, would the power that would flow into Key West travel over the same facilities in other Keys?

A. There's only one transmission line to Key West, so, yes, it would have to.

Q. I believe you said a little while ago, and correct me if I'm wrong, that you don't know -- you didn't have information on how the FMPA pool would operate.

A. We were not provided any studies or anything that would indicate how the pool would operate. FMPA never provided anything, that I recall, or that I'm aware of.

Q. When you say "operate," what do you mean?

A. Well, how the pool would be dispatched, how it would be -- how the generation units would be controlled, what impact that would have on the transmission system.

Q. Did you understand that FMPA sought to operate its units according to economic dispatch?

A. I believe everybody operates their units according to economic dispatch.

Q. Do you believe that the FMPA cities operate their units, together, according to economic dispatch?

A. I assume everybody operates according to economic dispatch. Whether they operate them together or not, I'm not sure how they operate them now.

Q. Did you understand that the IDO project was seeking to enable FMPA to operate its units together, according to economic dispatch?

A. That's as stated by FMPA, yes.

Q. Did you understand what FMPA meant by that request?

A. Only in very general terms, but we didn't know the specifics of what actually would happen, what dispatch would result out of that. We didn't have the data that would show us any impacts or any results. Sure, FMPA told us that we wanted to operate under economic dispatch, together, but that was it.

Q. Is economic dispatch an understood term in your business?

A. Generally, yes.

Q. What does it mean?

A. That the units are dispatched in the most economic manner.

Q. Can you clarify what that means, in terms of what unit is dispatched, when?

A. Normally, you would try to reduce fuel and other costs of operating your generation system.

Q. Did FMPA request a computer model of your system to perform its own studies?

A. FMPA had the computer system of -- computer model of our system. In fact, they had the same model that we had, because it was the FCG model, and we all have access to it.

Q. Did FMPA ask for the assumptions that you used in your studies?

A. We presented to FMPA the only -- the assumptions, the load forecast assumptions that were used for some of their systems, which were the only assumptions, I believe, that were changed from the original FCG data bank cases, and those assumptions had come from FMPA in another form. So we did show them, yes.

Q. How about assumptions regarding the FPL system? Did you show FMPA those assumptions?

A. We explained to them how we dispatched the system in the studies we did.

Q. You explained, but did you show them the assumptions?

WP 1.0

WHOLESALE POWER MARKET

524015

CHANGES EFFECTING WHOLESALE MARKET

1972	1973	1977	1978	1982	1984
FPL UNDER FERC JURISDICTION/ 1ST INTERCHANGE AGREEMENTS	FPL'S FERC ELECTRIC TARIFF	1ST TRANSMISSION AGREEMENT CRYSTAL RIVER #3 (NEW SMYRNA BEACH)	FLORIDA BROKER (ECONOMY BROKER)	ST. LUCIE LICENSE CONDITIONS	TRANSMISSION AGREEMENT SEMINOLE (600 mw)

1986	1987	1988-1989
TRANSMISSION AGREEMENT FMPA ALL REQUIREMENTS	SHORT TERM SALES AGREEMENTS	TRANSMISSION ACCESS IPP'S CO-GEN SELF SERVICE WHEELING NOPR

524016

APPENDIX C
ANTITRUST CONDITIONS
LICENSE NO. NPF-16

INTERCONNECTIONS

- The Company shall interconnect at any technically feasible point on its system and operate in parallel pursuant to a written agreement with any neighboring entity requesting such interconnection..

- Interconnection agreements shall not embody provisions which impose limitations upon the use or resale of capacity and energy except as may be necessary to protect the reliability of the Company's system.

RESERVE COORDINATION AND EMERGENCY POWER

- The Company shall sell emergency power to any neighboring entity with which it is interconnected, provided that the neighboring entity has applied good utility practices to plan, operate and maintain a reasonable installed reserve margin for the load that it is meeting with its own resources.

TRANSMISSION SERVICES

- The Company shall transmit power: (1) between Company power sources and neighboring entities or neighboring distribution systems with which Company is connected; (2) between two or among more than two neighboring entities.

- Company shall provide transmission service only if the services can reasonably be accommodated from a technical standpoint without significantly jeopardizing Company's reliability or its use of transmission facilities.

- Company's provisions of transmission service under this section shall be on the basis which compensates for its costs of transmission reasonable allocable to the service in accordance with a transmission agreement, transmission tariff or on another mutually agreeable basis.

WHOLESALE FIRM POWER SALES

- The Company shall sell firm wholesale power on a full or partial requirements basis to any neighboring entity up to the amount required to supply electric service to its retail customers, to those previously existing wholesale customers, and to those wholesale customers previously supplied by FPL but now served by the neighboring utility.

APPENDIX D
ANTITRUST CONDITIONS
LICENSE NO. NPF-16

- The Company shall facilitate the delivery of each participant's share of the output of the facility to that participant, on terms which are reasonable and will fully compensate it for the use of its facilities, to the extent that subject arrangements reasonably can be accommodated from a functional and technical standpoint.

- The Company shall not refuse to operate in parallel to the extent that it is technically feasible to do so with the participants and shall provide emergency and maintenance power to participants as required when such power is or can be made available without jeopardizing power supply to the Company's customers or its other power supply commitments.

WHOLESALE REQUIREMENTS SERVICE

FPL has an obligation to provide wholesale requirements electric service to certain other Florida utilities under a Tariff on file with the FERC. The service falls into two categories: 1) Full Requirements Service and 2) Partial Requirements Service.

- Full Requirements Service.
  - FPL is obligated to plan and build facilities to meet the total load of the users.

- Partial Requirements Service.
  - FPL provides a portion of the generation requirement of the user.
  - The user has an option to increase or decrease these purchases by a percentage from year to year in accordance with the terms and conditions of the Tariff.
  - Priority of the service is the same as retail service.

- The total requirements sales - 729,116,908 kWH (1988).

- Total revenue - $53,243,641 (1988)

- Total peak requirements - 415 MW (1988).

TRANSMISSION SERVICE

FPL presently provides transmission service to users (other utilities) based on a contractual basis (not a Tariff). FPL provides the service based on the contract path (ie. source - destination, quantity and duration). FPL applies a charge for each separate and distinct service (no substitution permitted).

The service consists of two basic types, long-term transmission service and short-term transmission service.

- Long-term transmission service
  - provides for deliveries of unit power purchases
  - provides long-term entitlements to generation resources
  - FPL provided 4,214,456,000 kWH of long-term transmission service (1988).
- Short-term transmission service
  - provides for interchange services. Under existing FERC precedent.
  - FPL provided 1,193,752,000 kWH of short-term transmission service (1988).

The transmission services that FPL provides are generally priced as if the user is purchasing the transmission component of requirements service (a bundle of service).

- Total revenues - $20,891,087 (1988).
- Total peak requirements - 826 MW (1988).

INTERCHANGE SERVICE

FPL has interchange arrangements with other electric utilities in the State of Florida: 1) for reserve sharing and 2) for economic transactions for the purpose of improving the overall economic efficiency in the State of Florida. The initial intent of interchange arrangements was that they would be reciprocal in nature and both parties would benefit. The current services are provided on a contractual basis between utilities. Under interchange contracts there exists among others the following interchange service schedules:

Schedule A - Emergency Energy Service

Schedule B - Short Term Capacity and Energy Service

Schedule C & X - Economic Energy Service

Total FPL interchange sales for Schedules A, B, C & X - 1,332,968,000 kWH (1988)

1988 TRANSMISSION AND WHOLESALE SALES

WHOLESALE SALES

	KWH	TOTAL REV.	TOTAL PEAK MW	LOAD FACTOR
FKEC	448,043,590	23,118,293	81	62.64%
FMPA	41,419,000	6,057,055	37	14.78%
SEC	10,262,707	9,410,846	239	0.49%
OTHER	109,727,000	7,747,872	31	42.42%
TOTAL PR	609,452,297	46,334,066	388	
TOTAL FR	119,664,611	6,909,575	27	
TOTAL REQUIREMENTS SERVICE	729,116,908	53,243,641	415	

TRANSMISSION SERVICE

	KWH	TOTAL REV.	TOTAL PEAK MW
SEC	3,161,383,000	14,165,261	610
FMPA	445,714,000	1,473,556	84
NSB	29,736,000	78,277	5
SL-2	577,623,000	1,665,281	127
OTHER (INTERCHANGE)	1,193,752,000	3,508,712	NA
TOTAL TRANSMISSION SERVICE	5,408,208,000	20,891,087	826

FLORIDA POWER CORPORATION

FPC TRANSMISSION SERVICE

- FPC has a general transmission tariff - Florida Power Corporation Transmission Service Resale Rate Schedule T-1 For Municipalities and Other Electric Utilities. Additionally, FPC has an Agreement Between Florida Power Corporation and Seminole Electric Cooperation, Inc. For Supplemental Resale Service, Transmission/Distribution and Load Following Service.

WHOLESALE REQUIREMENTS SERVICE

- FPC has an "All Requirements Resale Service Rate Schedule RS-2 For Municipalities and Rural Electric Cooperatives" electric tariff rate. and a Partial Requirements Resale Service Rate Schedule RS-2A For Municipalities and Other Electric Utilities.

TAMPA ELECTRIC COMPANY

TRANSMISSION SERVICE

- TEC has no transmission service rate, except for Royster ("QF").

524024

WHOLESALE REQUIREMENTS SERVICE

- TEC has no wholesale service tariff. There are no municipalities or cooperatives located within TEC's system.

WHERE ARE WE TODAY?

WHOLESALE POWER SITUATION

- It has been FPL's policy not to pursue wholesale requirements sales pursuant to the Tariff. Nor does FPL pursue long-term capacity and energy contract sales to wholesale users.

- FPL has not pursued changes to the terms and conditions of the Tariff. Therefore, the Tariff does not have sufficient notice requirements and current pricing signals which protect FPL's business interest (i.e. the Tariff was designed for base load sales; it is being to a large extent utilized as peaking service.

TRANSMISSION SERVICE SITUATION

- FPL's current transmission rate is an average embedded cost approach and as such is a component of FPL's bundled requirements service. This current pricing method does not adequately compensate FPL for the service provided.
  - FPL has to incur incremental cost of new facilities and is allowed to recover embedded cost.
  - FPL is not able to collect the attendant generation costs of providing the service from the user and therefore this cost is incurred by FPL's retail customers.

- FPL is currently studying a number of transmission pricing alternatives in lieu of its traditional average embedded cost approach.
  - Changing the traditional way FPL has priced its transmission service has not been a priority because transmission service is not a large part of FPL's total business and the current method used to calculate return for this service has shown a reasonable return for FPL. This mistakenly assumes wholesales transmission service is the same as a component of requirements transmission service (retail).

- Due to the rising concern regarding open access of the transmission system more and more emphasis on transmission pricing is evolving.

- An example of a recent request for transmission service is the FMPA Power Pool. This particular request will more than likely force FPL into a new and different approach to providing transmission service. Therefore, FPL needs to take more of a proactive role to insure that its business interest is protected.

INTERCHANGE SITUATION

Under the existing interchange arrangements there are inequities among utilities.

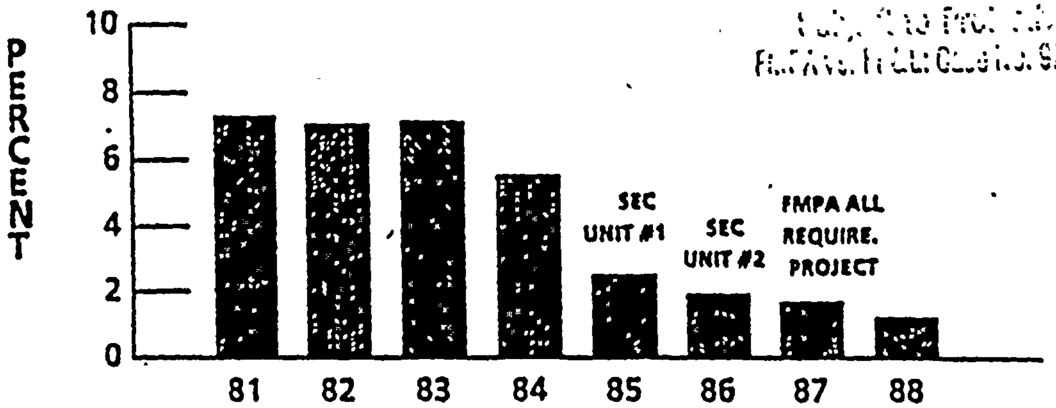
- A number of utilities are leaning on other utilities for reserves and are using these arrangements to shift costs from themselves to others such as FPL.

- Interchange arrangements are no longer reciprocal in nature.
  - FPL being the State's largest utility has the greatest exposure.

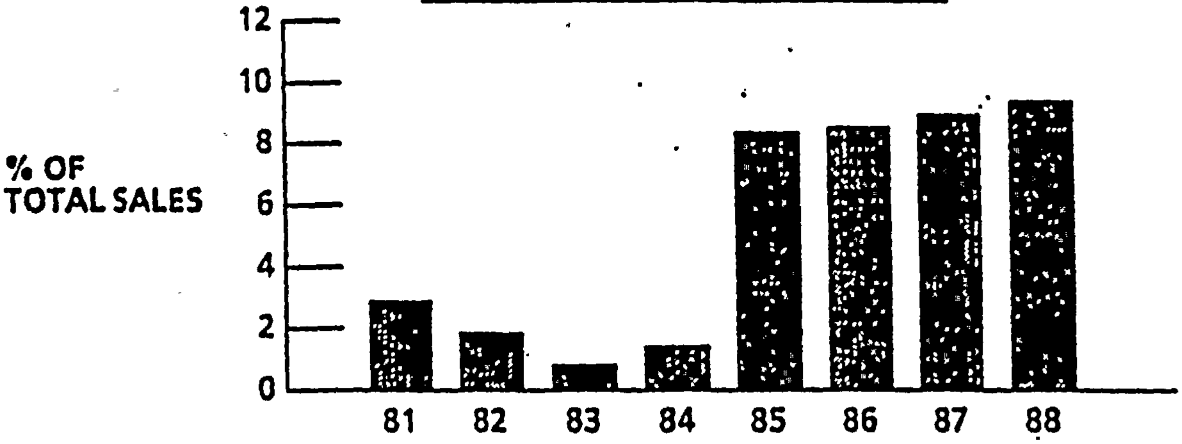
- As the competitive market has increased among utilities, FPL's current interchange agreements do not allow for it to respond and send the appropriate price signals to the users of these services.

- These inequities will continue unless FPL takes corrective action to mitigate these occurrences.

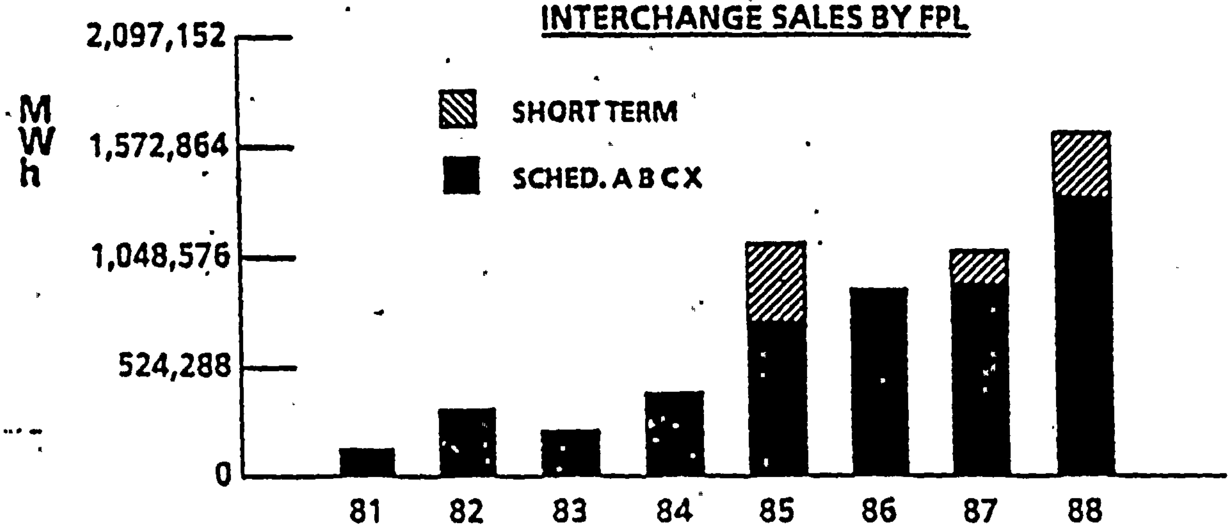
WHOLESALE SHARE OF FPL'S TOTAL ENERGY SALES



TRANSMISSION SERVICE PERCENT OF TOTAL ENERGY SALES



INTERCHANGE SALES BY FPL



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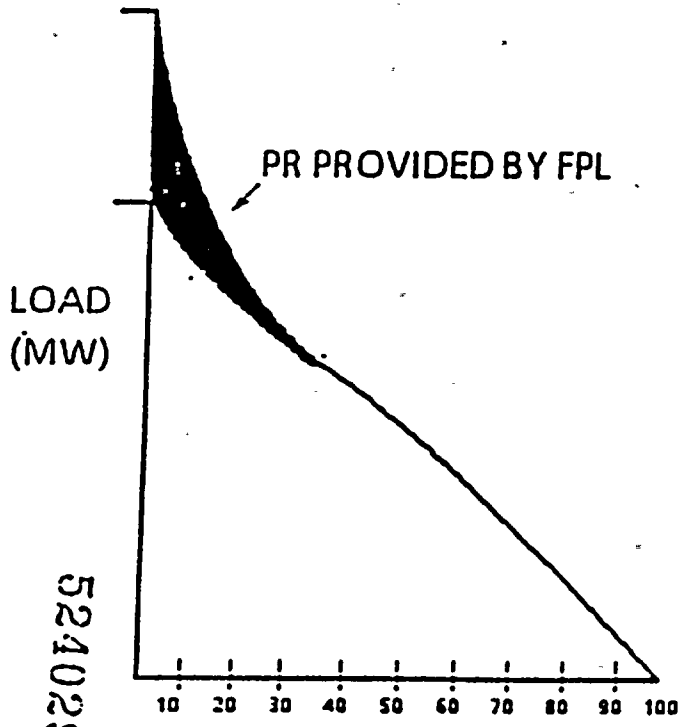
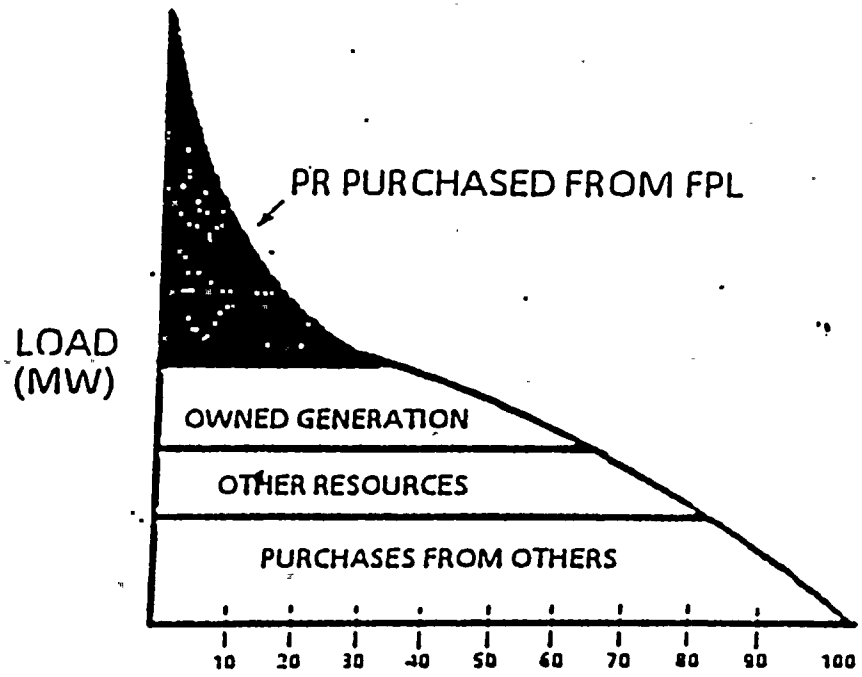
WHOLESALE CUSTOMERS CONTRIBUTION TO FPL LOAD



TYPICAL PR CUSTOMER LOAD PROFILE



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1988 AVERAGE LOAD FACTORS

12 Month Load Factor = 12 Month Total Energy / 8760 * 12 Highest Demand

CUSTOMER	HIGHEST DEMAND MONTH	HIGHEST DEMAND	12 MONTH TOTAL ENERGY	12 MONTH LOAD FACTOR
FMPA	2/88,12/88	32000	41,419,000	14.78%
FKE	8/88,9/88	81650	448,043,590	62.64%
SEC	2/88	238636	10,262,707	0.49%
PRC #7	3/88	828	2,832,200	39.06%
PRC #2	3/88	1651	4,489,800	31.04%
GEC #4	3/88	3941	17,099,600	49.53%
C #1 Clewiston	10/88	17091	83,478,734	55.76%
CEC #7	10/88	2799	11,764,277	47.98%
CNS #1 NSB	ALL	10000	67,368,000	76.90%
CS #3 Starke	ALL	1000	4,450,000	50.80%
FPU #1 FTP	ALL	8000	14,360,000	20.49%
CVB #1 Vero Beach	ALL	6000	13,375,000	25.45%
CU #1 Homestead	ALL	4000	9,542,000	27.25%
		407,596	728,484,908	

Load Factor	Average Load Factor EXCLUDING FMPA, FKE, SEC	30.64% 42.49%

524030

1988 TRANSMISSION AND WHOLESALE SALES

WHOLESALE SALES

	KWH	TOTAL REV.	TOTAL PEAK MW	LOAD FACTOR
FKEC	448,043,590	23,118,293	81	62.64%
FMPA	41,419,000	6,057,055	37	14.78%
SEC	10,262,707	9,410,846	239	0.49%
OTHER	109,727,000	7,747,872	31	42.42%
TOTAL PR	609,452,297	46,334,066	388	
TOTAL FR	119,664,611	6,909,575	27	
TOTAL REQUIREMENTS SERVICE	729,116,908	53,243,641	415	

TRANSMISSION SERVICE

	KWH	TOTAL REV.	TOTAL PEAK MW
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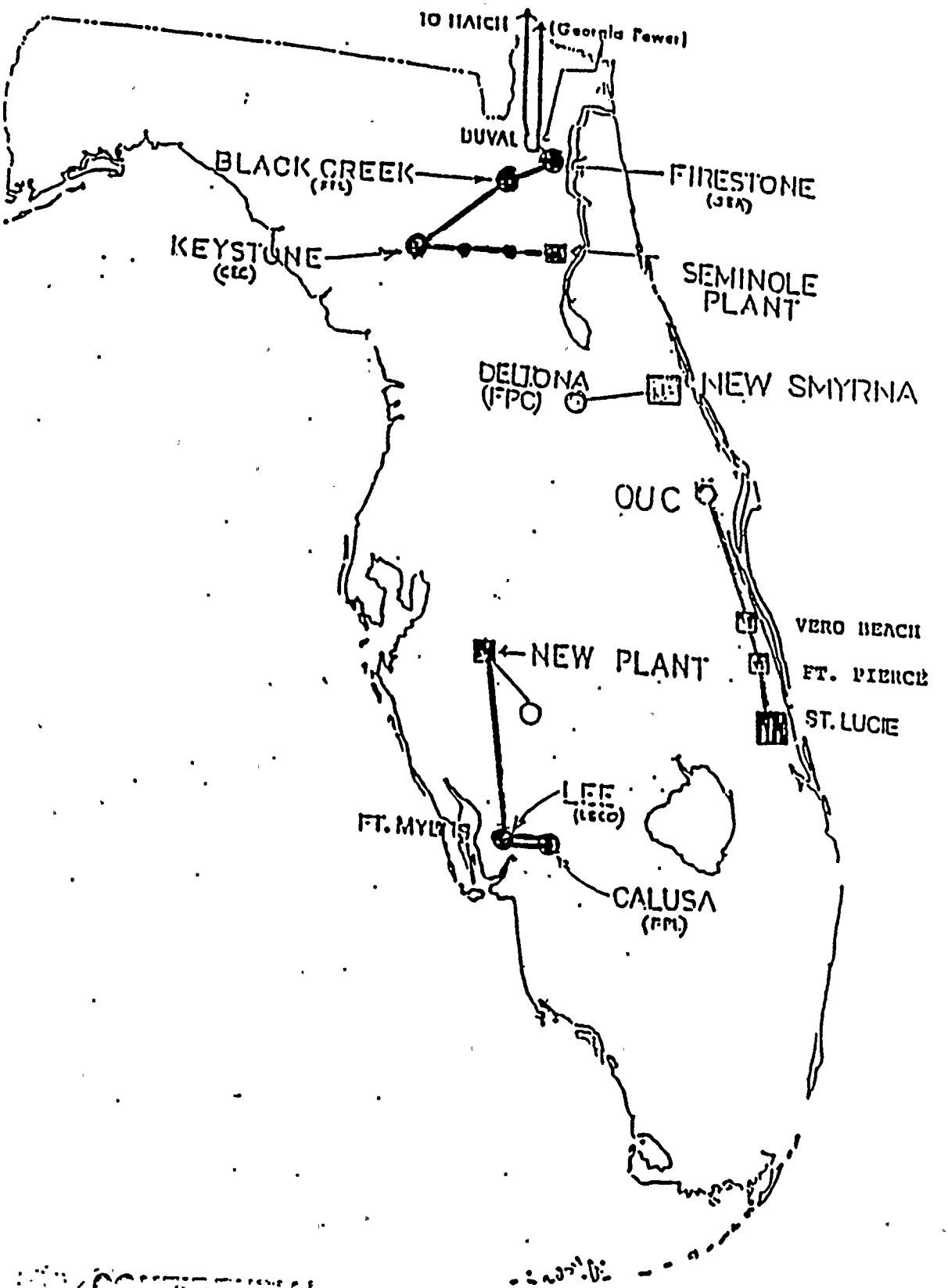
NSB	29,736,000	78,277	5
SL-2	577,623,000	1,665,281	127
OTHER (INTERCHANGE)	1,193,752,000	3,508,712	NA
TOTAL TRANSMISSION SERVICE	5,408,208,000	20,891,087	826

TRANSMISSION LINE OVERVIEW



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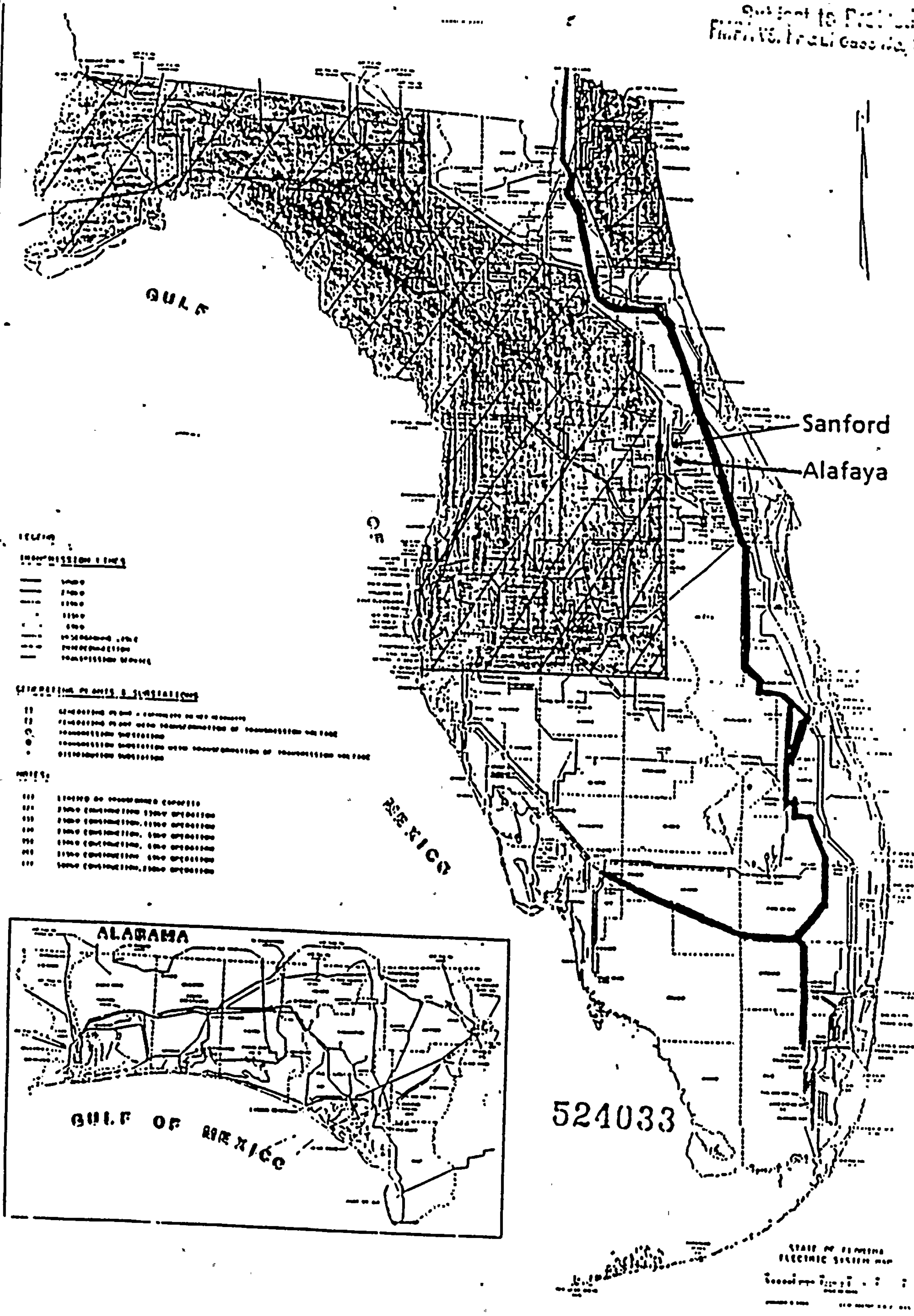
Subject to Protective Order
03-GRL-18



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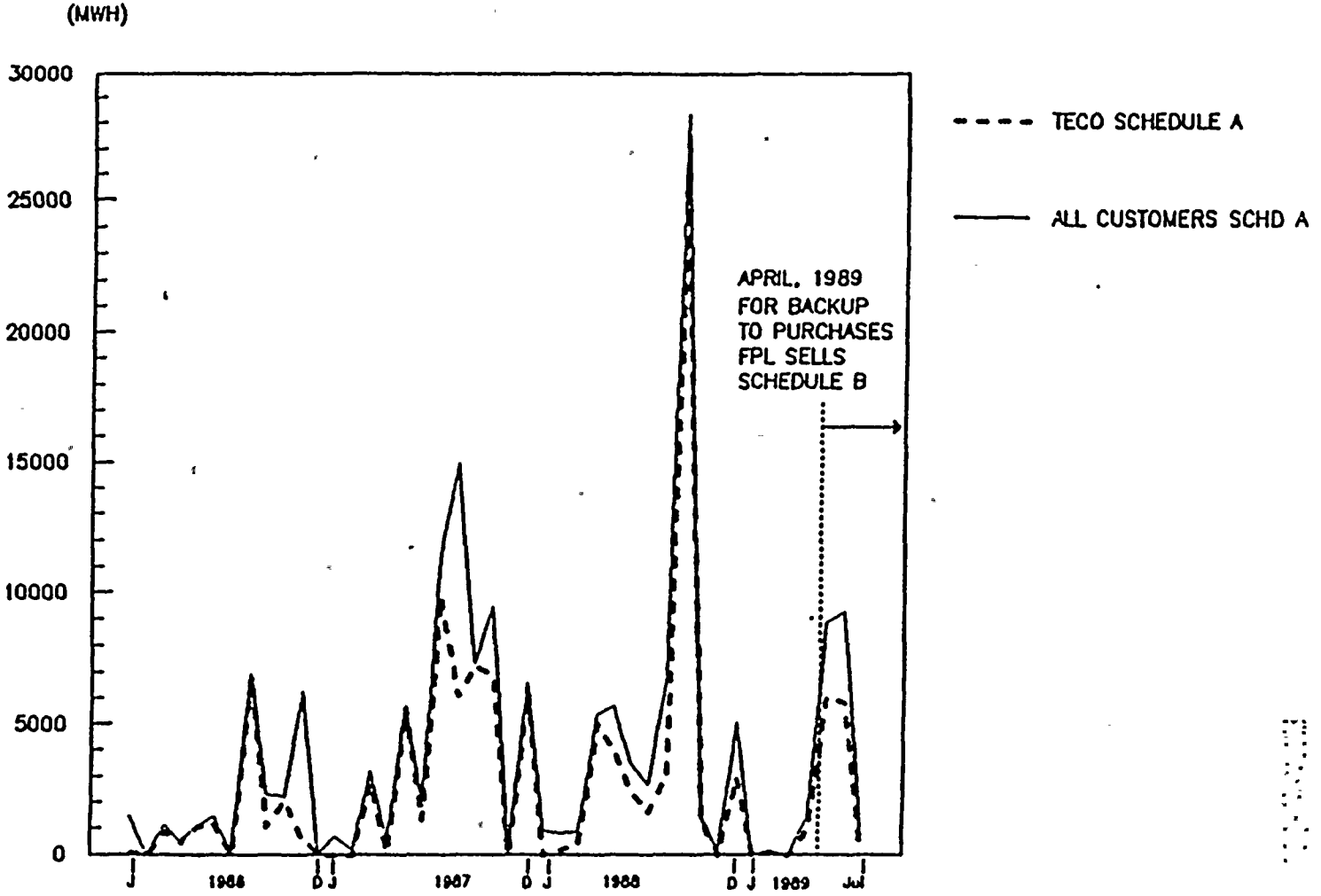
SCHEDULE A SALES TO TECO vs. ALL CUSTOMERS
1986 – 1989

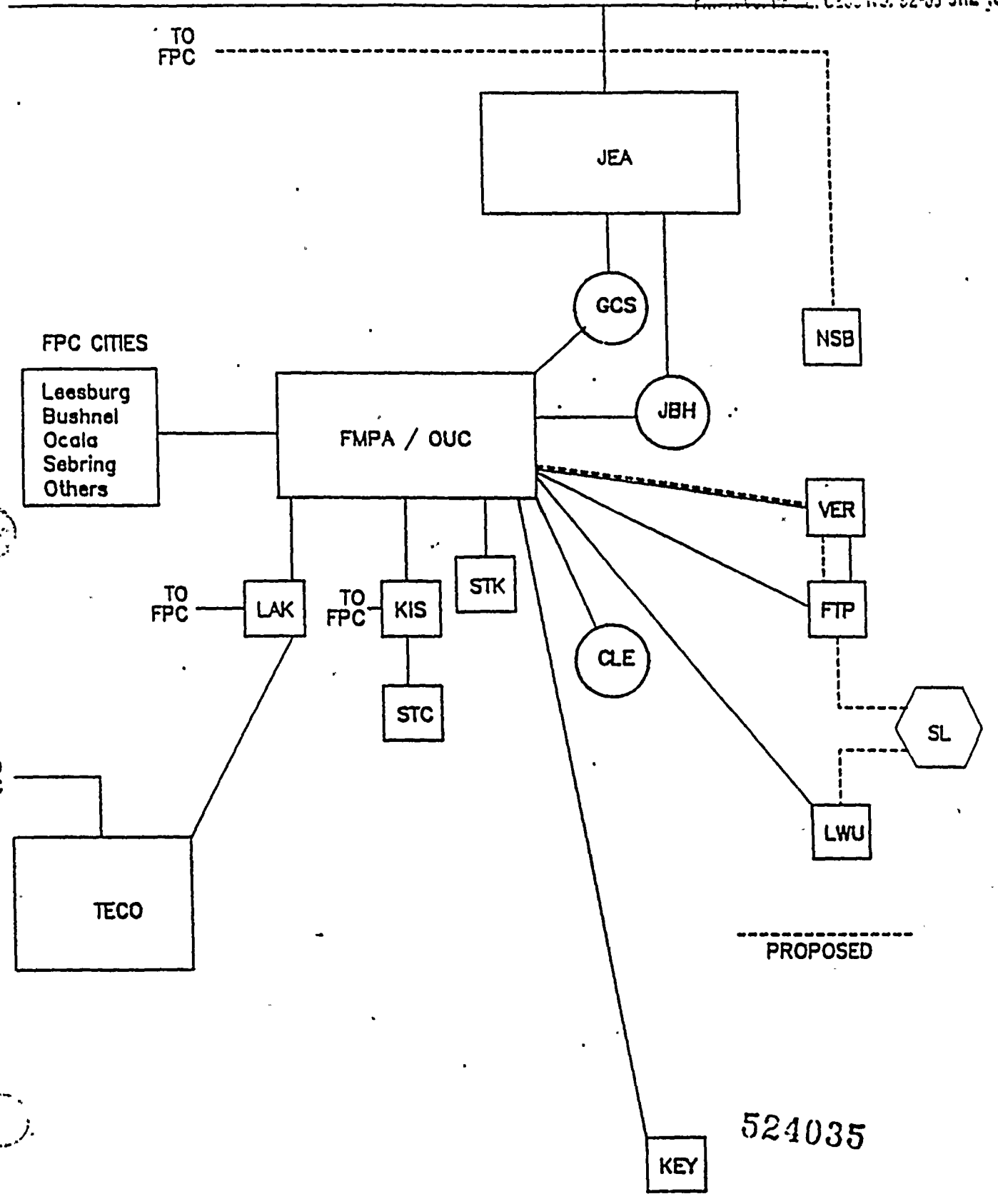


TECO SALES / OFFERS: (1988 – 1989)

- FMPA 40 MW
- NSB 5 MW
- KEY WEST 23 MW (Offer)

564034

PROPOSED FMPA POOLING ARRANGEMENT



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FMPA PROPOSED POOL ARRANGEMENT

FMPA proposes to pool the generation resources of the following FMPA member cities: City of Clewiston, City of Jacksonville Beach, City of Green Cove Springs, Ft. Pierce Utilities Authority, City of Lake Worth, City of Vero Beach, Utility Board of the City of Key West and others indirectly connected FPL Cities, by contracting the use of FPL's transmission system to accomplish this objective. FMPA's intent is to share reserves among other municipal systems and maximize the economic generation dispatch among pool members.

WHOLESALE REQUIREMENTS SERVICE

- FPL still will have the obligation to provide requirements service even though FMPA pool members have access to economies of scale by pooling their generation resources which was one of the main reasons why the Cities argued for Requirements Service from FPL initially.

- FMPA will be able to increase and decrease their Requirements Service with little notice creating a planning problem for FPL.

- FPL continues to be obligated to provide Requirements Service at system average cost.

CONTRACT RATE

- If FPL had a competitive long-term contract rate to offer these Cities the possibility that some of the Cities that intend to participate in the FMPA pool arrangement would not do so but remain antonomous and purchase from FPL.

- A contract rate offered by FPL may prevent other Cities or utilities from joining the FMPA pool arrangement in the future.

- A contract rate by FPL would most likely reduce FPL's obligation under Requirement Service of the Tariff and FPL would have a better ability to plan its system.

INTERCHANGE

- As a result of the FMPA pool, FPL's operating reserve requirement will increase and FMPA as a pool operating reserve requirement will decrease thus shifting the burden to FPL.

- FMPA will economically dispatch its pool members generation prior to calculating its quotation to the broker system - Schedule C. This results in FMPA pool members receiving an extra benefit because the concept of the broker was to match the highest cost generating unit (decremental cost) with the lowest cost unit (incremental cost) on the basis that these respective utilities would share in the saving derived. The FMPA pool, therefore, is a suboptimization of this concept.

TRANSMISSION SERVICE

- FMPA has requested FPL provide a firm long-term transmission service that provides FMPA with all the advantages of a transmission system with very few of the real planning, operating and maintenance problems associated with a transmission system.

- FMPA's proposal requests that the transmission service by FPL be provided on an adjusted total net and aggregated basis based on the sum of the Cities tie point demands. This concept is not acceptable to FPL and does not comport in any way to FPL's current transmission pricing practices nor does it in anyway fit with the pricing transmission service alternatives currently being studied by FPL.

- FPL's transmission system is designed for efficient operation with its generation resources. When used as part of FMPA's power pool, FPL will be left to incur any generation related costs on FPL's system as a result of FMPA's dispatch.

- FPL is forced to construct incremental transmission facilities and not be totally compensated for these expenditures.

FPL, FPC & TEC PROJECTED WHOLESALE 10 YEAR AVERAGE

	FPL	FPC	TEC
DEMAND $/KW-M	13.38	9.82	6.66
ENERGY $/MWH	42.16	38.68	23.92
TRANSMISSION SERVICE $/KW-M	2.37	1.90	—

524039

FMPA Ex. FF&L Case No. 92-35-GRL-19

FPL & FPC PROJECTED BY R W BECK FOR FMPA

RETURN ON EQUITY

WHOLESALE REQUIREMENTS SERVICE

Under the existing accepted method of cost allocation the high load factor user gets allocated more cost than the low load factor users (12 month coincident peak method). This method of allocation of cost has a tendency to send the wrong price signal to the users. Additionally, FPL has the obligation to meet the capacity requirement for this low load factor user the same as the high load factor user but receives less revenues as a result of the way the service is utilized.

An example would be to compare Seminole Electric Cooperative with a total PR peak requirement in 1988 of 239 MW, total revenues of $9,410,846, load factor of 0.49% and ROE of 13.12% to Florida Keys Electric Cooperative with PR peak demand requirement in 1988 of 81 MW, total revenues of $23,118,293, load factor of 62.64% and ROE of 19.52%.

TRANSMISSION SERVICE

FPL currently uses a average embedded cost methodology to allocate its transmission system. This method does not send the appropriate price signals to the other wholesale users of the service because FPL's retail customers are subsidizing the cost to those wholesale users. Even though the ROE which was calculated at 19.56% for 1988 would seem to be a reasonable return, it does not truly reflect the cost and value of the service being provided. The main reason is this service is presently priced as a component of bundled requirements service and additionally does not reflect the attending generation cost of providing the service (ie. economic dispatch, lost opportunities, etc.). Moreover, additional transmission facilities must be built at marginal cost to provide firm service over long periods.

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CONFIDENTIAL - SCUSSION PURPOSES ONLY

lorida Power & Light Company
omparison of Rates of Return & Return on Equity
ased on FERC Methodology (Statement BK Format)
988 Actual Unadjusted Tax Savings Filing Data (000)

Rate Class	(1) Base Revenues	(2) % Contrib	(3) Rate Base	(4) % Contrib	(5) Total Return Earned (NOI)	(6) % Contrib	(7) Rate of Return	(8) Return On Equity
artial Requirements	$23,292	43.74%	$48,919	35.77%	$6,912	37.94%	14.13%	19.90%
ull Requirements	$4,335	8.14%	$10,191	7.45%	$1,115	6.12%	10.94%	12.69%
eminole ASPRSA	$9,206	17.29%	$23,286	17.03%	$2,592	14.23%	11.13%	13.12%
ransmission Service	$16,418	30.83%	$54,368	39.75%	$7,600	41.71%	13.98%	19.56%
tal FERC	$53,251	100.00%	$136,764	100.00%	$18,219	100.00%	13.32%	18.07%

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CONFIDENTIAL - FOR DISCUSSION PURPOSES ONLY

orida Power & Light Company
Comparison of Rates of Return & Return on Equity by FERC Point of Delivery
Estimated FERC Point of Delivery Data
Based on FERC Methodology (Statement 8K Format)
1988 Actual Unadjusted Tax Savings Filing Data (000)

Point of Delivery	(1) Base Revenues	(2) % Contrib	(3) Rate Base	(4) % Contrib	(5) Total Return Earned (NOI)	(6) % Contrib	(7) Rate of Return	(8) Return On Equity
Partial Requirements								
New Smyrna Beach	$1,977	8.49%	$4,120	8.42%	$556	8.04%	13.49%	18.46%
Florida Keys Elec Coop	$13,449	57.74%	$27,667	56.56%	$3,863	55.88%	13.96%	19.52%
City of Ft.Pierce	$1,189	5.10%	$2,597	5.31%	$375	5.43%	14.44%	20.61%
City of Homestead	$695	2.98%	$1,338	2.74%	$239	3.46%	17.88%	28.39%
City of Vero Beach	$951	4.08%	$2,085	4.26%	$291	4.20%	13.94%	19.47%
City of Starke	$198	0.85%	$433	0.89%	$53	0.77%	12.30%	15.76%
Lake Worth Utilities	$85	0.36%	$172	0.35%	$27	0.39%	15.81%	23.71%
Green Cove Springs (FMPA)	$758	3.25%	$1,737	3.55%	$227	3.28%	13.05%	17.46%
Jacksonville Beach (FMPA)	$3,989	17.13%	$8,862	18.12%	$1,258	18.20%	14.20%	20.06%
Subtotal Partial Requirements	$23,291	100.00%	$49,013	100.19%	$6,889	99.67%	14.06%	19.75%
Reconciliation of Load Data to Savings Filing	$1	0.00%	($96)	-0.19%	$23	0.33%		
Total Partial Requirements	$23,292	100.00%	$48,919	100.00%	$6,912	100.00%	14.13%	19.90%
Full Requirements								
Johnson CEC #7	$482	32.90%	$1,216	35.62%	$112	29.48%	9.24%	8.84%
Brighton CEC # 4	$641	43.75%	$1,374	40.25%	$185	48.48%	13.46%	18.39%
Arcadia PRC #7	$129	8.81%	$298	8.72%	$34	8.82%	11.30%	13.50%
Ft Winder PRC #2	$213	14.54%	$526	15.41%	$50	13.22%	9.58%	9.61%
Subtotal Seminole Distribution	$1,465	33.79%	$3,415	33.51%	$381	34.21%	11.17%	13.20%
City of Clewiston (Transmission)	$2,870	66.21%	$6,110	59.96%	$825	73.99%	13.50%	18.48%
Subtotal Full Requirements -	$4,335	100.00%	$9,525	93.46%	$1,206	108.20%	12.67%	16.60%
Reconciliation of Load Data to Tax Savings Filing	$0	0.00%	$666	6.54%	($91)	-8.20%		
Total Full Requirements	$4,335	100.00%	$10,191	100.00%	$1,115	100.00%	10.94%	12.69%
Total Seminole ABPASA	$9,206		$23,286		$2,592		11.13%	13.12%
Transmission Service	$16,418		$54,368		$7,600		13.98%	19.56%
Total FERC	$53,251		$136,764		$18,219		13.32%	18.07%

THE STAKEHOLDERS

WHOLESALE REQUIREMENTS SERVICE

Users

- Requirements Service results in an insurance policy for capacity at average embedded cost for the user FPL is left with the obligation to provide service with little notice at average embedded cost.

Competitors

- Other suppliers of electric service see benefit in selling long term capacity and energy to the wholesale users.

- FPL's strategy is to offer a long-term contract for capacity in lieu of requirements service thus mitigating its obligation to serve under the Tariff and managing sales pursuant to contractual provisions.

FERC

- FERC objective is to protect the users of requirements service and provide them access to capacity.

- FPL will retain the obligation to serve.

TRANSMISSION SERVICE

Users

- Users of FPL's transmission system desire open access with the same rights as FPL.

- Users are not willing to share in the operational costs of providing the service.
- Users want ownership rights of the transmission system at average embedded cost price.

Competitors

- Other suppliers can build a single transmission line in FPL's area for minimal cost to avoid paying FPL for transmission service. FPL would be the back-up or the reliability for the service without compensation.

- Other utilities could enter into new arrangements (FMPA pool arrangement) which result in circumventing our transmission service practices (i.e. source - destination, quantity and duration)

FERC

- FERC's agenda perceives the transmission system as a bottleneck to the competitive market and is actively encouranging open access. FERC indicates a willingness to accept creative pricing for access.

FPSC

- The FPSC is interested in statewide planning for transmission and the efficient use of transmission facilities.

INTERCHANGE

Users

- Some utilities (users) are leaning on other utilities and are misusing the service to their own advantage.

Competitors

- Some utilities are leveraging themselves and offering firm sales of capacity and energy to others while depending on interchange service to back-up these sales.

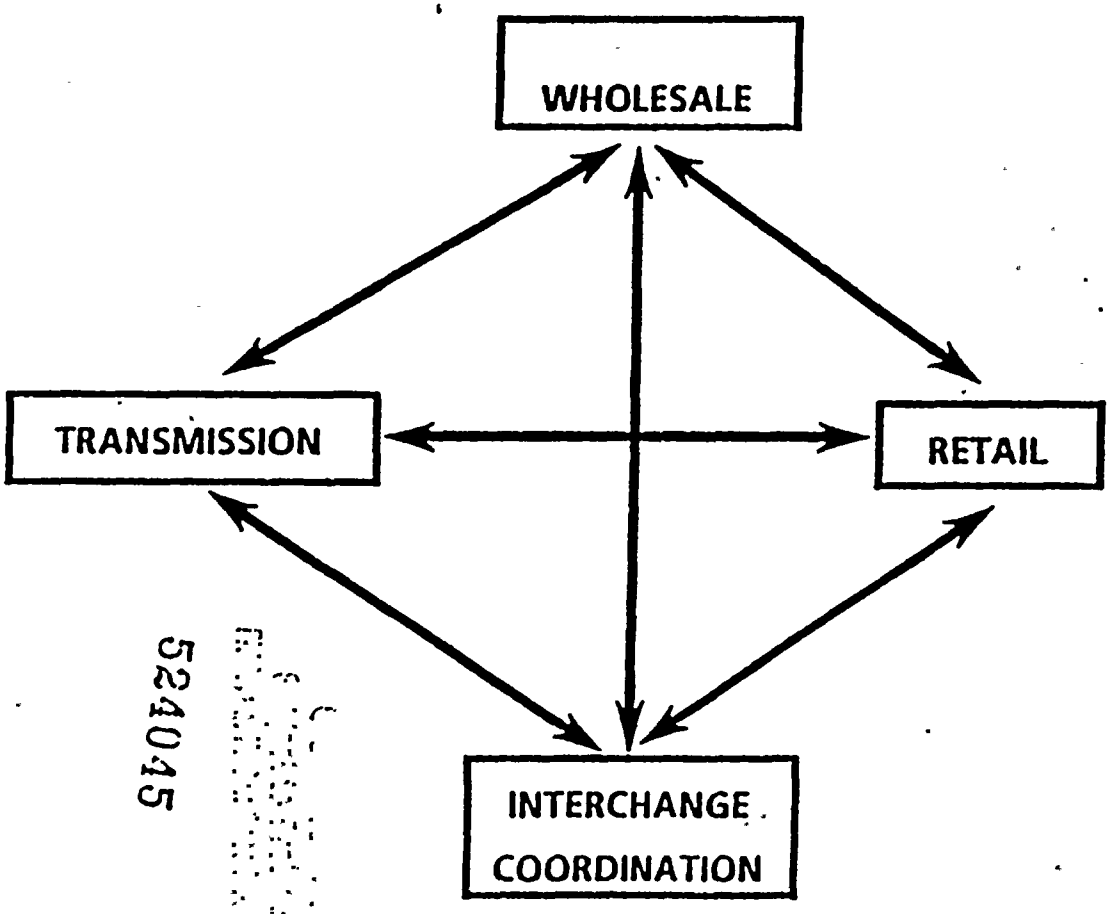
FERC

- Increased competition in the wholesale power market is not consistent with the original objective and the existing terms and conditions for interchange service.

FPSC

- FPSC objective is to encourage reserve sharing and pooling of resources with the overall objective of maximizing the generating efficiency in the State of Florida.

INTERRELATIONSHIPS
WHOLESALE POWER MARKET



RECOMMENDATIONS

- FERC ELECTRIC TARIFF
- PROPOSED CONTRACT RATE SERVICE
- TRANSMISSION SERVICE ARRANGEMENTS
- INTERCHANGE/INTERCONNECTED OPERATIONS

524045

RECOMMENDATIONS

WHOLESALE REQUIREMENT SALES

- Rewrite terms and conditions of existing FERC Electric Tariff.
  - Notice provisions which require users to plan better and allow FPL ample time to construct generation (i.e. long notice to commence service).
  - Notice provision which mitigate effects of "stranded" investment (i.e. longer notice to terminate service)
  - Terms and conditions should be clarified to address responsibility for cost of construction of new facilities.
- Existing pricing structure of the Tariff should be modified to reflect cost of providing service for on-peak and off-peak periods.

CONTRACT RATE

- Investigate the development of a "competitive" long-term service contract rate. Evaluate market clearing price; ability of FPL to compete; evaluate expected value of retaining sales and increasing sales.

TRANSMISSION SERVICE

1. FPL should become pro-active in the transmission debate.
   - FPL needs to attend industry meetings addressing transmission issues.
   - FPL needs to open a dialogue with the FERC regarding transmission issues.

2. FPL needs to visit corporate practices regarding transmission service at FPL. (i.e. recognition that there is a need to change current philosophy and dedicate the proper resources to do it)

3. The existing transmission service study needs to be reactivated.
   - The study should be split into two phases.
     a) Phase I - Short-Term Transmission Service. Short-term services are less complex and appear to be much easier to develop methodologies that the group can agree and act on.
     b) Phase II - Long-Term Transmission Services. Long-term services are more complex, potentially more critical to FPL and as such should be studied in greater detail separately.

INTERCHANGE

1. Revise all Interchange Agreements to better reflect the evolution in the industry to a more competitive environment.
   - Change the terms and conditions of emergency service that currently allow other utilities to "lean" on FPL (i.e. TEC).
   - Change the terms and conditions of short-term capacity and energy service to allow more pricing flexibility and compensatory rates.
   - Change the terms and conditions of economy energy service to allow FPL more flexibility in a competitive environment.

2. Develop a short-term market plan. Allow FPL to price short-term sales at a market price during time it has excess capacity.

VIEW OF THE REPOSITIONED WHOLESALE MARKET

In general, the repositioned wholesale market (while not perfect) could result in a more equitable and compensatory arrangement between FPL and its competitor utilities. FPL would be provided with the tools to better manage the direction of changes which may affect us. It should be noted that FPL will be forced to respond to changes in this marketplace in any event. Specific proposals; requests for service which have been received; and actions by our competitors mandate action and decisions.

In our view the recommendations and action plan will result in the following.

INTERCHANGE

- Emergency service would be provided for "real" emergencies.
- For instances where utilities should have: 1) bought capacity; or 2) built capacity, more equitable charges would be levied.
- Incentives created for building Operating Reserves (i.e. Peaking Capacity)
- More interchange power reciprocity among utilities.

- Buyer's who purchased lower quality service from others would more appropriately compensate FPL for reliability when lower quality service not available.

- Under Short-Term Power Agreement, as market dictates FPL could make sales to benefit stockholder/customer.

TRANSMISSION SERVICE

- Provide efficient price signal to the generation supplier and the purchaser. Transmission Service pricing would result in decisions being made by others on a basis similar to FPL's decision-making process regarding planning and operation of transmission. (i.e. What are the real costs associated with siting generation removed from the load to be served?

- Provide incentives to transmission owners to wheel (more compensatory rates).

- Provide more incentive for FPL to build transmission when demand exceeds supply (more closely approach the value of service provided and the cost of marginal construction).

- Achieve equity between native load and wheeling customers (less cross-subsidy between native load customers and wheeling customers).

CONTRACT RATE

Optimize revenues produced from generation resources (i.e. high load factor service; FPL selling base load capacity.

- Assurance to the purchaser (through formulary rate) as to basis for pricing.

- Allow FPL to better plan; more assurance of MW to be served as wholesale.

- By offering an alternative to the service under the Tariff, utilities have less vested interest in opposing changes to the Tariff; mitigates FERC opposition to Tariff changes because access to base load capacity is still being provided.

- Provides mechanism to retain "best" customers. Helps FPL position as a "seller" rather than a transmitter of power.

WHOLESALE REQUIREMENTS SERVICE

- Better notice provisions would mitigate the problem of the prodigal son. For those systems that had not planned well, FERC may be persuaded that marginal cost is appropriate.

- Overall improvement in terms and conditions in the Tariff as to whom is responsible for the cost of construction of new facilities would reduce FPL's construction cost exposure.

- New "time of use" rate design would encourage off-peak usage and encourage users which only have on-peak usage to construct peaking generation.

524051

WHOLESALE ACTION PLAN

INTERCHANGE

- Revise all Interchange Agreements to be completed by April 1990.

- File Revised Interchange Agreements with FERC by the date to be determined by FPL's executive management.

- Develop short-term market agreement. Allow FPL to quickly provide short-term capacity at market base prices during times FPL has excess capacity.

CONTRACT RATE

- If investigation determines FPL can compete in this market, develop a long term contract rate for use in the wholesale market to be completed by March 1990.

- Get approval from FPL's executive management to offer contract rate to wholesale market by April 1990.

- Negotiate with potential users: Execute agreement and file with FERC, as necessary.

WHOLESALE REQUIREMENTS SERVICE

- Rewrite terms and conditions of FERC Electric Tariff (i.e. notice provisions, cost of construction of new facilities, pricing structure) to be completed by June 1990.

524052

TRANSMISSION OFFER BY SENATOR JOHNSTON

Conference Committee on H.R. 776
September 9, 1992

RELIABILITY

(1) On page 323, line 19, of the House bill strike "would maintain the reliability of any electric utility system to which the order applies" and insert in lieu thereof:

"would maintain the reliability of any electric utility materially affected by the flows of electricity resulting from the ordered transmission services as measured by conformance with generally applicable and consistently applied utility, regional and national reliability criteria, standards and guides".

(2) On page 325, lines 24 and 25, and page 326, line 1, strike "(1) unduly impair the reliability of any transmitting utility, public utility, or electric utility, affected by the order;".

STREAMLINING OF REQUIREMENTS UNDER SECTION 211 OF THE FEDERAL POWER ACT

(1) On page 323, line 20, strike everything through page 324, line 12, and insert "and would otherwise be in the public interest."." in lieu thereof.

PRIOR NEGOTIATIONS

(1) On page 324 before line 13 insert:

"(3) Strike subsection (b) and insert in lieu thereof--

'(b) No order may be issued under subsection (a) of this section unless the applicant has made a bona fide request for transmission services to the transmitting utility that would be the subject of such order at least sixty days prior to its filing of an application for such order.'".

EXCUSAL OF ORDERED TRANSMISSION FOR INABILITY TO ENLARGE CAPACITY

(1) On page 325, lines 10 and 11, strike "the order to provide such transmission services requires" and insert "the ordered transmission services require" in lieu thereof.

(2) On page 325, line 14, insert "or property rights" after "approvals".

(3) On page 325, line 15, strike "environmental and siting".

PRICING

(1) On page 326, line 1, strike "unduly".

(2) On page 326, line 2, strike everything after "customers" through "order" on line 4.

(3) On page 326, line 12, strike everything after "SERVICES.--" through page 327, line 18 and insert the following in lieu thereof:

"Any order under this Act accepting or approving a transmission rate or requiring or conditioned upon the provision of transmission services shall require the transmitting utility subject to the order to provide wholesale transmission services at rates and charges which permit the recovery by such utility of all legitimate and verifiable costs incurred in connection with providing the ordered transmission services including , but not limited to:

(1) the appropriate share of the costs (including a reasonable rate of return on investment) of existing facilities and of any enlargement, advancement or alteration of facilities, necessary for the provision of the ordered services;

(2) any increased costs resulting from the curtailment, displacement, redispatch or other

alteration of the transmitting utility's use of its generation or transmission system caused by the provision of the ordered services;

(3) any reasonably ascertainable uncompensated economic burden to the transmitting utility or its existing customers caused by non-recovery of the costs of generation, transmission and distribution facilities that, but for the provision of the ordered service, were reasonably attributable to the recipient of the electric energy to be transmitted; and

(4) the costs of necessary associated services. Such rates, terms and conditions shall not be unjust, unreasonable, unduly discriminatory or preferential."."

SAVINGS PROVISIONS

(1) On page 327, line 24, insert ", except as provided," after "law, or".

(2) On page 328, line 5, strike "the operation of".

TECHNICAL CORRECTION: REINSTATEMENT OF ABILITY OF QFs THAT DO NOT SELL POWER TO OBTAIN INTERCONNECTION

(1) On page 322, line 20, strike everything after "geothermal power producer" through line 23 and insert "(including a producer which is not an electric utility)," in lieu thereof.

RETAIL WHEELING/SHAM TRANSACTIONS

(1) On page 324 strike lines 18 and 19 and insert in lieu thereof: "(C) Strike out paragraphs (3) and (4).".

(2) On page 328 strike lines 13 through 16, insert the following in lieu thereof and reletter the subsections accordingly:

"'(g) PROHIBITION ON ORDERS INCONSISTENT WITH RETAIL MARKETING AREAS.--No order may be issued under this Act which is inconsistent with any State law which governs the retail marketing areas of electric utilities.

"'(h) PROHIBITION ON MANDATORY RETAIL WHEELING AND SHAM WHOLESALE TRANSACTIONS.-- No order issued under this Act shall be conditioned upon or require the transmission of electric energy:

"'(1) directly to an ultimate consumer, or

"'(2) to, or for the benefit of, an entity if such electric energy would be sold by such entity to an ultimate consumer, unless such entity:

"'A) is a Federal power marketing agency; the Tennessee Valley Authority; a State or any political

subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision); a corporation or association that has ever received a loan for the purposes of providing electric service from the Administrator of the Rural Electrification Administration under the Rural Electrification Act of 1936; a person having an obligation arising under State or local law (exclusive of an obligation arising solely from a contract entered into by such person) to provide electric service to the public; or any corporation or association which is wholly owned, directly or indirectly, by any one or more of the foregoing; and

"'B) would utilize transmission or distribution facilities owned or controlled by such entity to deliver all such electric energy to such electric consumer.".

(3) On page 334 strike lines 11 through "energy." on line 21.

DELETION OF SECTION 213

(1) On page 334, line 22, strike everything through page 336, line 14.

DELETION OF PENALTY PROVISIONS

(1) On pages 339 through 342 strike section 726 of the House bill.

DELETION OF SECTION 215

(1) On pages 338 and 339 strike section 725 of the House bill.

INFORMATION REQUIREMENTS UNDER

NEW SECTION 214 OF THE FEDERAL POWER ACT

(1) On page 336, line 22, of the House bill strike "requests" and insert "makes a bona fide request to" in lieu thereof.

(2) On page 337, line 1, after "ices" strike everything through line 6 and insert the following in lieu thereof:

> "at rates, charges, terms and conditions acceptable to such person, the transmitting utility shall, within 60 days of its receipt of the request or other mutually agreed upon period, provide such person with a detailed, written explanation, with specific reference to the facts and circumstances of the request, stating (1) the transmitting utility's basis for the proposed rates, charges, terms and conditions for such services, and (2) its analysis of any physical or other constraints affecting the provision of such services.".

(3) On page 337, line 9, strike everything after "that" through page 338, line 3, and insert the following in lieu thereof:

> "information be submitted annually to the Commission by transmitting utilities which is adequate to inform

potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints.".".

REMOVAL OF REQUIREMENT FOR MANDATORY PURCHASE OF POWER BY ELECTRIC UTILITIES FROM QFs FOR POWER TRANSMITTED UNDER SECTION 211 OF THE FEDERAL POWER ACT

(1) Insert at the appropriate place with an appropriate section number:

"SEC.____REMOVAL OF REQUIREMENT FOR MANDATORY PURCHASE OF POWER BELECTRIC UTILITIES FROM QFs FOR POWER TRANSMITTED UNDER SECTION 211 OF THE FEDERAL POWER ACT

"Notwithstanding any other provision of law, no electric utility shall be required to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility by reason of the requirements of section 210 of the Public Utility Regulatory Policies Act of 1978 if such electric energy has been transmitted to such electric utility pursuant to an order issued under section 211 of the Federal Power Act; Provided, That this section shall not apply in instances where: (1) a State regulatory authority or nonregulated electric utility has, wholly or partly under the authority of section 210, implemented a procedure for the acquisition of new supplies of electric energy using competitive mechanisms in which wholesale sources of electric energy in addition to qualifying cogeneration facilities and qualifying small power production facilities are permitted to compete; and (2) electric energy is

to be sold by a qualifying cogeneration facility or qualifying small power production facility pursuant to such procedure.".

REGIONAL TRANSMISSION GROUPS

Insert the following at the appropriate point:

"The Federal Power Act is amended by inserting the following at the appropriate point:

"'Section 216. Regional Transmission Groups

"'(a) Commission Certification -- (1) On application, the Commission shall certify any regional transmission group ("RTG") under this section if it determines, after notice and opportunity for public comment, that such RTG's governing agreement (and any revision thereof) meets the following requirements:

"'(A) The agreement provides for membership of sufficient scope, and a region of sufficient size, to provide transmission services consistent with this part and with reliable, efficient and competitive wholesale power markets.

"'(B) Any entity which is subject to, or eligible to apply for, an order under section 211 and which has a reasonable interest in transmission services in the region, may join the RTG.

"'(C) The agreement requires (i) members that are transmitting utilities to assume an affirmative obligation pursuant to the agreement to provide transmission services to other members, and to make good faith efforts to enlarge transmission capacity when needed to provide requested transmission service, on a basis that is consistent with sections 211 and 212; (ii) members to agree to coordinate their individual transmission planning and, on request, share transmission planning information, in order to assist in ensuring that needs of all members are dealt with reasonably and efficiently and to ensure efficient utilization and expansion of interconnected transmission systems; and (iii) members to maintain electric system reliability, as measured by continued conformance with applicable and generally recognized guidelines. A governing agreement may provide for reciprocal transmission services that extend beyond the RTG's region and for other arrangements consistent with sections 211 and 212.

"'(D) Governance and decision-making procedures under the agreement may not be unduly discriminatory or preferential and shall be otherwise consistent with this part. The agreement shall make available to members one or more dispute resolution procedures which provide due process for all members, which establish a reasonable time for resolution of any dispute, and which may consist of binding

arbitration by an arbitrator who is independent, objective and has engineering, technical or other expertise necessary to resolve the dispute (or by a panel that includes at least one such arbitrator), non-binding arbitration, mediation, negotiation or other procedures.

"'(2) The Commission, in certifying an RTG, may impose such terms and conditions as it finds necessary to ensure the RTG's governing agreement conforms with paragraph (1).

"'(b) Commission Authority Over RTGs -- (1) On complaint or on its own motion, the Commission may at any time (A) require an RTG or a member thereof to submit such information as the Commission determines by rule or order to be necessary or appropriate to carry out this section; (B) modify or revoke the certification of an RTG if it finds that the RTG or its operations or practices no longer meet the requirements of subsection (a); and (C) investigate any action purportedly taken under a certified RTG's governing agreement (including the resolution of any dispute) and, after giving substantial deference to such action, set aside such action if it is determined to be beyond the scope of such agreement or materially inconsistent with subsection (a).

"'(2) Notwithstanding paragraph (1)(C), if after becoming a member of an RTG, an entity consents to finally

resolve a matter relating to the requirements of subsection (a)(3) in accordance with a dispute resolution procedure specified in a certified RTG's governing agreement, then the Commission may not, on the basis of a complaint or protest filed by or on behalf of such entity, set aside any agreement (or arbitration award) that resolves such matter in accordance with such procedure, except on the grounds that a court having jurisdiction over the matter could under applicable contract law (or sections 9 and 10 of title 9, United States Code in the case of an arbitration award).

"'(3) A member of a certified RTG may not apply for an order under section 211 requiring another member of such RTG to provide transmission services within the RTG's region, unless the certified RTG's dispute resolution mechanism has failed to resolve a dispute related to such services within a reasonable time specified in the RTG's agreement. A transmitting utility that is a member of a certified RTG is exempt from the application of sections 213 and 214(a) with respect to other members of the RTG within the RTG's region. The Commission may not compel any entity to participate in an RTG. No person shall be subject to other provisions of this Act solely by reason of compliance with a certified RTG's agreements approved by the Commission.

"'(4) Except insofar as paragraph (3) modifies the application of sections 211, 213, and 214(a), nothing in this section shall affect the Commission's jurisdiction under sections 203, 205, or 206, or other sections of this Act, but any Commission action under such sections shall be consistent with subsection (a) and with the limitations on review under paragraphs (1) and (2) of this subsection. However, Commission certification of an RTG whose governing agreement does not contain specific transmission rates or a specific ratemaking methodology does not affect the Commission's ratemaking authority under section 205 or 206 of this Act.

"'(c) Federal Entities -- A Federal agency or instrumentality to which section 211 applies may be a member of an RTG and may subject itself to the RTG's dispute resolution mechanism, except that (1) the establishment and review of rates and other terms of transmission service to be provided by the Federal Columbia River Transmission System shall be consistent with section 212(h), and (2) notwithstanding subsection (b)(2), the Commission shall review and may set aside any binding arbitration decision concerning rates for transmission service, or which imposes an obligation to expand or upgrade transmission facilities, of such System to insure that such decision is in accordance with other Federal law. Such review shall be in lieu of transmission rate proceedings otherwise required by Federal law.

"'(d) Other Law -- (1) A certified RTG, its members, and their employees and agents shall not be subject to the antitrust laws (as defined in section 212(e)(2)) with respect to carrying out a certified RTG's agreements approved by the Commission, except that this paragraph does not prohibit issuance of an order to prevent or restrain a violation of the antitrust laws under section 4 of the Sherman Act.

"'(2) Certification of an RTG under this section shall not affect State authority that could otherwise be lawfully exercised over members of such RTG.'.".

CONFORMING CHANGES

Make appropriate conforming changes to the House bill and existing law as made necessary by the offer.

NEWMAN & HOLTZINGER, P.C.
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J.A. BOUKNIGHT, JR
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March 29, 1993

APR 1 1993.

SPIEGEL & McDIARMID

Robert A. Jablon, Esquire
Spiegel & McDiarmid
1350 New York Avenue, N.W.
Washington, D.C. 20005-4798

Re: Florida Municipal Power Agency v. Florida Power & Light Company, Case No. 92-35-Civ-Orl-22

Dear Bob:

I have received your letter of March 25, 1993, which appears to be an effort to manufacture facts as we go along. Discovery is over in this case, and the evidence is in as to what FMPA did and did not communicate to FPL during the course of the negotiations, which came to an abrupt halt in December 1991, when FMPA filed the suit. It is far too late for you to think of something that you wish FMPA had done while the negotiations were still going on. And, suffice it to say, we do not necessarily accept Mr. Guarriello's version of the facts.

Apart from that, you conveniently ignore the existence of a number of transmission service contracts between FPL and FMPA and its individual members -- contracts executed after the St. Lucie license conditions took effect. The dispute in this case is not about service. The existing contracts offer transmission service that would permit FMPA's member Cities, if they choose, to operate their generating resources as a "network". However, FMPA appears to be dissatisfied with some provisions of these contracts, particularly the pricing provisions, which have been accepted by the FERC.

On one point we do agree. Disputes over whether the pricing provisions of existing transmission service contracts should be changed should be brought before FERC, and not the district court. However, it appears to be your view that, whenever FMPA becomes unhappy with its existing contracts, FPL is obliged to abandon its rights under the contracts and file a new

contract with FERC to replace them. That defies common sense and certainly is not required by the St. Lucie license conditions.

As Alvin Davis and I have both told you in the past, letters written by trial counsel in an effort to posture their clients for litigation add nothing to the evidentiary record -- which is doubly true when the letters are written on the eve of filing of summary judgment motions. They simply waste everyone's time.

Sincerely,

J.A. Bouknight, Jr.

JAB/ar

cc: Alvin Davis, Esq.

SPIEGEL & McDIARMID

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March 25, 1993

PRIVILEGED AND CONFIDENTIAL

J.A. Bouknight, Esq.
Newman and Holtzinger
Suite 1000
1615 L Street, N.W.
Washington, D.C. 20036

Re: Florida Municipal Power Agency v. Florida Power & Light Company, Case No. 92-35-Civ-Orl-22

Dear Lon:

Section X(b) of the St. Lucie Unit 2 licence conditions states:

> "In the event that the Company and a requesting entity are unable to agree regarding transmission services required to be provided under this section X, Company shall, upon the request of such entity, immediately file a service agreement at the Federal Energy Regulatory Commission or its successor agency providing for such service.

It is clear that FMPA and FPL are unable to agree as to the transmission services which are required to be provided by the licence conditions for FMPA's IDO project. The level of the parties' disagreement goes beyond rate questions of the nature of the appropriate rate of return or depreciation for a given transmission service. FMPA believes that FPL is required to provide terms under which FMPA can buy service over FPL's transmission system or network as a whole; FPL maintains that it can limit FMPA's use of the network so as to provide transmission access limited to specifically authorized power receipt and delivery points.

In some recent depositions FPL appears to be taking the position that it has not filed for a network transmission rate at FERC because FMPA has not asked it to do so. If this is FPL's position, it is incorrect. From the beginning, FMPA proposed a transmission contract to be filed at FERC. As Nick Guarriello made clear, FMPA has repeatedly asked FPL to do so orally. However, to remove any conceivable question on this subject, by this letter FMPA specifically requests that FPL file a rate at FERC for transmission service among FMPA's power supply resources and delivery points for the IDO project, that is, network service.

We want to be clear: We believe that FPL has not filed heretofore because it takes the position that it is not required to provide FMPA or others transmission access on a network basis. FMPA is not requesting that FPL file for point-to-point service; that is not the service FMPA is requesting, within the meaning of Section X(b) of the License Conditions. For example, FPL's recent FERC transmission filing does not provide FMPA with access to FPL's transmission on a system basis. Such point-to-point service is inadequate for the IDO Project. However, if FPL purports to be willing to offer transmission service for IDO on a network basis, but believes that there is a difference between FMPA and itself on the appropriate pricing for such service, then it should file a tariff or service agreement for network service at FERC and allow FERC to determine the appropriate pricing for such service.

Sincerely,

Robert A. Jablon
Attorney for FMPA

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY,

PLAINTIFF,

VS. CASE NO.: 92-35-CIV-ORL-18

FLORIDA POWER & LIGHT COMPANY,

DEFENDANT.
_____/

CONTINUATION DEPOSITION

OF

CALVIN R. HENZE

TAKEN BY:	COUNSEL FOR THE DEFENDANT
LOCATION:	RADISSON PLAZA HOTEL ORLANDO 60 SOUTH IVANHOE BOULEVARD ORLANDO, FLORIDA 32802
DATE:	TUESDAY, NOVEMBER 3, 1992
TIME:	COMMENCING AT 9:30 A.M.

ACE REPORTERS, INC.
1450 EAST ROBINSON STREET
ORLANDO, FLORIDA 32802
(407) 895-5226

NOT UNDERSTANDING APPARENTLY THE TERM "WRONGFUL ACTS", AND HE WAS SEEKING CLARIFICATION FROM ME, AND I'VE ASKED HIM TO ASK THE QUESTIONER WHAT HE MEANS BY WRONGFUL ACTS, WHICH IS SIMPLY AN HONEST RESPONSE TO THE QUESTION TO TRY TO BE TRUTHFUL.

THE QUESTION, ALTHOUGH PERHAPS NOT INTENTIONAL, WAS SOMEWHAT TRICKY AND MISLEADING AND CAN BE TAKEN OUT OF CONTEXT AT A LATER TIME.

MR. HENZE IS JUST TRYING TO SEEK CLARIFICATION OF WHAT THE QUESTIONER MEANS BY THE TERM "WRONGFUL ACTS".

BY MR. TWOMEY:

Q. MR. HENZE, I PREFERENCED THAT QUESTION, I, BELIEVE, WITH A CLAUSE THAT SAID FROM YOUR PERSONAL PROSPECTIVE.

I WAS SEEKING, AND I ASSUMED YOU ANSWERED IN THAT VEIN, UNLESS YOU TELL ME DIFFERENTLY NOW, THAT HOWEVER YOU DEFINE WRONGFUL ACTS IN YOUR OWN MIND YOU BELIEVED THAT NO ONE AT FPL HAD COMMITTED ANY SUCH ACTS OR THREATENED ANY SUCH ACTS DURING THE NEGOTIATIONS PROCESS. IS THAT A FAIR SUMMARY OF YOUR ANSWER?

A. THAT'S WHAT I SAID. THERE WAS NO THREATENED ACTION, BUT I THINK -- AND I JUST ASSUME THIS ON A VERY GENERAL BASIS, BUT WHEN YOU GO BACK AND LOOK AT OUR NEGOTIATIONS, WE ASKED FOR NETWORK TRANSMISSION, WHICH WE FEEL WE WERE ENTITLED TO UNDER THE SETTLEMENT AGREEMENT AND

THE ST. LUCIE AGREEMENT, AND THAT WE DID NOT RECEIVE THE NETWORK TRANSMISSION AGREEMENT.

THAT COULD BE, AND I WOULD HAVE TO -- I'M NOT A LAWYER. IF THAT'S CONSIDERED WRONGFUL ACTS, THEN, YES, THEN FPL HAS COMMITTED WRONGFUL ACTS IN THAT WE DID NOT RECEIVE NETWORK TRANSMISSION AGREEMENT WHICH WE HAD ASKED FOR.

Q. OKAY.

A. IF IT'S IN THAT CONTEXT OF IT.

Q. I UNDERSTAND IT WITH THAT QUALIFICATION. LET ME MAKE SURE I'M CLEAR. ARE YOU SAYING THAT IN CONTRACT NEGOTIATIONS PRIOR TO THE IDO CONTRACT NEGOTIATIONS THAT FMPA REQUESTED OF FPL THAT THEY PROVIDE NETWORK TRANSMISSION TO FMPA?

A. THAT'S CORRECT.

Q. WHAT SPECIFIC CONTRACTS ARE YOU REFERRING TO WHEN YOU STATE THAT?

A. WE HAVE REQUESTED IT ORALLY IN THE ST. LUCIE TRANSMISSION CONTRACT.

Q. ST. LUCIE DELIVERY SERVICE AGREEMENT, THE FIRST ONE THAT WE DISCUSSED?

A. YES, SIR.

Q. OKAY.

A. WE ALSO DID IN THE STANTON AND THE TRI-CITY AND, AGAIN, WE WERE TOLD NO. THEN WE PURSUED IT, I HAVE DILIGENTLY, IN THE ALL-REQUIREMENTS CONTRACT BECAUSE WE FELT

Q. NOW, I BELIEVE YOU INDICATED THAT IN YOUR OPINION THAT THE ONE THING ABOUT MR. GARDENER WAS THAT WHEN HE GAVE YOU BASICALLY HIS HANDSHAKE THAT YOU ALL HAD REACHED AN AGREEMENT HE DIDN'T GO BACK ON HIS WORD?

A. THAT'S CORRECT.

Q. WAS THAT ALWAYS TRUE WHENEVER YOU WERE NEGOTIATING WITH FPL?

A. NO, SIR.

Q. IS THAT KIND OF WHAT YOU WERE THINKING ABOUT WHEN YOU INITIALLY RESPONDED TO THIS WRONGFUL ACT QUESTION THAT WAS ASKED THIS MORNING?

A. YES, SIR.

Q. WE TALKED ABOUT THE ST. LUCIE TRANSMISSION SERVICE CONTRACT GETTING DOWN TO THE WIRE BEFORE IT WAS ACTUALLY EXECUTED.

WERE SIMILAR CIRCUMSTANCES EXISTING IN REGARDS TO THE OTHERS TRANSMISSION CONTRACTS THAT YOU EVENTUALLY SIGNED WITH FLORIDA POWER AND LIGHT?

A. THE TIME FRAME PROBABLY WASN'T QUITE THAT TIGHT AS IT WAS ON ST. LUCIE, BUT I WOULD SAY WE WERE ALSO UNDER TIME CONSTRAINTS TO SIGN A CONTRACT, YES, SIR.

Q. AND WERE THEY SELF-IMPOSED TIME CONSTRAINTS OR COULD YOU TELL US A LITTLE BIT ABOUT THOSE?

A. WELL, FOR INSTANCE, IN THE STANTON PROJECT WHERE WE SIGNED A CONTRACT TO PARTICIPATE IN ORLANDO UTILITIES

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY

Plaintiff,

v. Case No. 92-35-CIV-Orl-3A22

FLORIDA POWER AND LIGHT COMPANY

Defendant.

PLAINTIFF FLORIDA MUNICIPAL POWER AGENCY'S
MEMORANDUM IN OPPOSITION TO FPL'S
MOTION FOR SUMMARY JUDGMENT

In the early 1980s, FPL entered into settlement agreements with the Department of Justice and the Nuclear Regulatory Commission staff, and a number of Florida Cities, some of whom are members of FMPA. These agreements provide entities, including FMPA, with broad rights to purchase transmission service (including transmission "among" FMPA delivery points) and wholesale power from FPL. Through its summary judgment Motion, FPL seeks to evade enforcement of its contractual obligations, and indeed to deny their very existence. Contrast FPL's Motion and Memorandum ("Memo"):

> No "Contract" was described in the Complaint.... The "rights" FMPA seeks to enforce ... were never granted to FMPA.... (Motion at 2).
>
> It takes more than a staple gun to make a contract.
>
> ...
>
> FMPA failed to identify a single occasion on which FMPA, FPL or anyone else characterized or relied upon the "Contract" as a contract.... FMPA is unable to point to any provision of the "Contract" in which FPL committed to FMPA or anyone else to comply with the License Conditions. (FPL Memo at 20-21).

FPL's argument must fail even on the more limited point of contract damages. 43/ FMPA is not seeking as contract damages a refund of the difference between transmission rates it paid and rates it should have paid. For example, payments made by FMPA to FPL for transmission of FMPA's generating resources during the 1988-1991 period averaged more than $4 million per year. App. E, Malmsjo Aff. ¶ 13. FMPA is not asking FPL to refund one dime of those payments. Compare Taffet v. Southern Co., 967 F.2d 1483 (11th Cir. 1992), cert. denied, 113 S.Ct. 657 (1992). FMPA's damage study assumes that FPL would have received more in transmission revenues from FMPA during that period had FPL sold network service than FMPA has paid under existing arrangements. App. E, Malmsjo Aff. ¶¶ 13.

FMPA seeks damages because FPL's failure to provide network service causes adverse consequences far beyond any overpayment for transmission: FMPA has been unable to plan and operate on an integrated basis, and therefore has had to rely on more expensive sources of power. See App. E, Malmsjo Aff. ¶ 16; App. M, Malmsjo 2/16/93 Tr. 320-326. The filed rate doctrine does not prevent the Court from compensating FMPA for these business consequences of FPL's breach. See PG&E, 714 F.2d at 1050, 1054 (damage calculation should reflect that cities were entitled to purchase inexpensive northwestern energy, because transmission should have been available under PG&E's antitrust conditions). FMPA seeks nothing that is beyond the Court's authority.

43/ The Court has jurisdiction to compensate for all the injuries underlying FMPA's damage study. Even if it did not, that would be no basis for dismissal.

III. FPL CANNOT EVADE LIABILITY FOR ITS RECENT VIOLATIONS, WITHIN THE STATUTE OF LIMITATIONS PERIOD, BY POINTING TO PRIOR BREACHES

FPL touts its previous violations of its obligations to provide network transmission, claiming that these violations give it a license to commit additional violations in perpetuity. The law provides FPL no such easy escape from liability for recent violations of its continuing duties to provide network transmission for proposed FMPA projects.

A. FPL Has Defaulted on its Continuing Duties

FPL's recent refusals to provide network transmission for proposed new FMPA projects are new breaches of FPL's continuing duties. The service FMPA requested in 1989 had not previously been refused (or proposed). FMPA's IDO project required transmission of the same general character -- i.e. network transmission "among" various delivery points -- that FMPA had requested for earlier power supply projects. But the IDO project involves new resources and a new combination of delivery points not included in earlier projects. Unlike FMPA's previous projects, IDO is infeasible (not merely impeded) without network transmission, as FPL recognizes (Memo at 14 and n.29). FPL's failure to provide network transmission for IDO is a new breach of its contractual obligation under the Antitrust Conditions and a new source of antitrust injury.

The Antitrust Conditions set out a menu of services which FPL is required to sell upon request. See Conditions II(a), III(a), IV, V, IX(a), and X(a) (Appendix AA to FMPA's April 15, 1993 Motion). The Conditions make clear that FPL is required to provide requested services, even if the parties do not agree on

elements (2) and (3) is also lacking. 32/ Because an estoppel defense requires FPL to prove all three elements, summary judgment disposing of that defense should be granted.

WHEREFORE, for the foregoing reasons partial summary judgment should be granted for FMPA resolving the essential facilities doctrine and the transmission market issues raised herein and striking FPL's "waiver" and "estoppel" defenses.

RESPECTFULLY SUBMITTED this 15th day of April, 1993.

Bonnie S. Blair

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32/ See also Heckler v. Community Health Services, 467 U.S. 51, 59-63 (1984).

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff, CASE NO. 92-35-Civ-Orl-18

vs.

FLORIDA POWER & LIGHT COMPANY,

Defendant.
_____/

DEFENDANT FLORIDA POWER & LIGHT COMPANY'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S FOURTH AND FIFTH SET OF INTERROGATORIES

Pursuant to Rule 33(a), Fed. R. Civ. P., defendant, Florida Power & Light Company ("FP&L"), hereby certifies that the original of the following answers and objections to Plaintiff's Fourth and Fifth Set of Interrogatories to Defendant Florida Power & Light Company, was served by Federal Express on L. Lee Williams, Jr., Moore, Williams, Bryant, Peebles & Gautier, P.A., 306 East College Avenue, P.O. Box 1169, Tallahassee, FL 32302-1169, and a copy was served by hand delivery on Robert A. Jablon, Spiegel & McDiarmid, 1350 New York Ave., N.W., Suite 1100, Washington, D.C. 2005-4798, on this 1st day of March, 1993.

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By: _____
Alvin B. Davis
(Fla. Bar No. 218073)
James M. Grippando, P.A.
(Fla. Bar No. 383015)

Without limitation, FPL states that it may wish to call at trial any person deposed in this proceeding.

Interrogatory No. 21:

Did FMPA have rights to transmission over the FPL network before the existing FERC-filed transmission service contracts between FPL and FMPA came into existence? Identify the contract(s), statute(s), or other authority(ies), and the particular provision(s) thereof, that gave rise to those rights.

Response and Objection:

FPL objects to this interrogatory on the grounds that: (1) the use of the term "network" is both vague and undefined; and (2) the interrogatory calls for a purely legal analysis of FMPA's rights. Without waiving the foregoing objection or attempting to delineate legal rights, FPL acknowledges that the St. Lucie Unit No. 2 License Conditions, which speak for themselves, require FPL to provide transmission service for "neighboring entities" under certain circumstances, as set forth in the License Conditions.

Interrogatory No. 22:

What rights to transmission over the FPL network did FMPA waive when it entered into the existing FERC-filed transmission service contracts between FPL and FMPA? Identify the contracts(s), statute(s), or other authority(ies), and the particular provision(s) thereof, that gave rise to those rights.

Response:

FPL does not concede that FMPA ever has had "rights" to transmission service on terms different from that provided in the existing FERC-filed transmission service contracts between FPL

and FMPA. By entering into such contracts, FMPA committed itself to comply with those contracts, and thus, to forgo any opportunity or "right" that it may have had to transact on terms inconsistent with the contracted obligation undertaken by FMPA.

Interrogatory No. 23:

Identify each statement or act of FMPA that FPL claims to have understood as manifesting an intent to waive rights under the St. Lucie license conditions. For each statement or act, indicate the exact form of the statement or act, FPL's response, the names of the individuals involved, and the date, and identify all documents that relate to any such request or the response thereto.

Response:

See Response to Interrogatory No. 22. The signatures to the "existing FERC-filed transmission service contracts between FPL and FMPA" and the dates thereof are shown on the faces of such contracts and the amendments thereto.

Interrogatory No. 24:

State the date(s), if any, on which FMPA waived the right to have FPL provide transmission "between and among" FMPA's member cities. For each statement or act which FPL contends gives rise to such a waiver, indicate the exact form of the statement or act, FPL's response, the names of the individuals involved, and the date, and identify all documents that relate to any such request or the response thereto.

Response:

See Responses to Interrogatories Nos. 22 and 23.

Interrogatory No. 25:

Does there exist a single document representing the exclusive, integrated statement of the Parties' agreement

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

Florida Power & Light Company	)	Docket No. 50-389A
(St. Lucie Plant, Unit No. 2)	)	Operating License No. NPF-16

APPENDICES TO ANSWER OF FLORIDA MUNICIPAL POWER AGENCY TO FLORIDA POOWER AND LIGHT COMPANY'S RESPONSE IN OPPOSITION TO PETITION FOR ENFORCEMENT ACTION

VOLUME II OF II

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September 24, 1993

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Florida Power & Light Company) Docket No. ER93-465-000

FLORIDA CITIES' AMENDED PROTEST, MOTION TO REJECT, ALTERNATIVE REQUEST FOR PARTIAL SUMMARY DISPOSITIONS, ALTERNATIVE MOTION FOR DEFERRAL OF POWER SERVICE RESTRICTIONS, ALTERNATIVE REQUEST FOR SUSPENSION AND REQUEST FOR HEARING, CONDITIONAL MOTION TO STRIKE YACKIRA TESTIMONY, ANSWER OPPOSING WAIVER REQUESTS, AND MOTION TO REQUIRE FILING OF NRC LICENSE CONDITIONS

Volume I

[Supporting documents are included in Volume II]

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August 24, 1993

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Florida Power & Light Company) Docket No. ER93-465-000

FLORIDA CITIES' AMENDED PROTEST, MOTION TO REJECT, ALTERNATIVE REQUEST FOR PARTIAL SUMMARY DISPOSITIONS, ALTERNATIVE MOTION FOR DEFERRAL OF POWER SERVICE RESTRICTIONS, ALTERNATIVE REQUEST FOR SUSPENSION AND REQUEST FOR HEARING, CONDITIONAL MOTION TO STRIKE YACKIRA TESTIMONY, ANSWER OPPOSING WAIVER REQUESTS, AND MOTION TO REQUIRE FILING OF NRC LICENSE CONDITIONS

On July 26, 1993, Florida Power & Light Company ("FPL" or "the Company") submitted an amended filing under Section 205 of the Federal Power Act. Through this amended filing, FPL again asks the Commission to approve a comprehensive revision of the rates, terms, and conditions applicable to transmission, wholesale requirements, and interchange services, as well as a major power rate increase. FPL originally sought to initiate this docket with a March 19, 1993 submission, but the Company's filing was rejected as deficient. FPL's amended filing resubmits its proposals, with limited changes. The renewed filing fails to repair numerous deficiencies previously identified by the Commission and the parties, includes new, flawed proposals, and remains unjust, unreasonable, and unduly discriminatory.

Pursuant to Rules 211, 212, 213, and 215 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212, 385.213, and 385.215, and the Commission notice issued August 10, 1993, Florida Cities amend and renew their April 12, 1993 protest and related supplements, move to reject FPL's amended filing, alternatively move for partial summary disposition, request suspension and hearing on other

issues, conditionally move to strike Mr. Yackira's pre-filed testimony if Florida Cities' June 21, 1993 Motion for Discovery Order is not granted, answer in opposition to FPL's waiver requests, and renew their motion to require the filing of FPL's NRC License Conditions. 1/

Florida Cities include the Florida Municipal Power Agency ("FMPA") and those of its members which do business with FPL. On April 12, 1993, Florida Cities filed a timely, unopposed motion to intervene, and under Commission Rule 214(c) Florida Cities have become parties to this proceeding.

I. COMMUNICATIONS

The names, addresses and telephone numbers of the persons to whom communications concerning this matter should be addressed are as follows:

* Alan J. Roth
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1/ The deadline for filing protests is very short, compared to the size and complexity of FPL's filing and the scope of the revisions, statements, and testimony that are new to FPL's revised filing. Therefore, Florida Cities reserve their right to supplement this pleading.

References in this pleading to "Answer" mean the "Answer of Florida Power & Light Company to [Intervenors'] Motions." The Answer was filed by FPL on April 27, 1993.

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Florida Cities request waiver of Rule 203(b)(3) to allow the designation of all four of the above addresses (and the individuals who have asterisks (*) next to their names) for inclusion on the official service list in this proceeding.

II. PROTEST

A. FPL's Filing Is Anticompetitive

Consumer welfare requires equal access. In FPL's own words:

> It is Congress' and this Commission's express policy to promote a more competitive environment in the "wholesale electricity power market" and thereby secure the lowest possible costs for consumers. ...
>
> However, for the competitive market to evolve and function in a way that produces these benefits .... all utilities must be permitted to participate in the competitive process on reasonably even terms.

FPL's July 6, 193 Response to Florida Cities' Motion for Discovery Order, at 5 (citations omitted). FPL's filing, however, proposes uneven and unreasonable terms which will frustrate competition.

If approved, FPL's filing will restructure the availability, rates and terms of its sales of transmission services, wholesale power and interchange services. Although the

filed transmission tariffs are labeled as "open access," customers taking service will be restricted in their use of FPL transmission from point-of-receipt to point-of-delivery. This restriction makes it impossible for other utilities who are dependent upon use of FPL's transmission network to coordinate their power supply resources economically and operate their systems in a manner similar to FPL. In addition, FPL imposes terms, pricing, and use restrictions that preclude others, such as the Florida Cities, from using FPL's transmission to operate their power supply resources on a least cost basis.

Further, FPL proposes to block the availability of its emergency, maintenance and other scheduled coordination transactions whenever it determines that another utility does not meet revised reserve criteria that remain ill-formed and unformed. The inevitable result of such unreasonable restrictions on coordination will be to force systems to purchase more firm power from FPL, and/or to purchase more (and pay more for) firm transmission for any power purchased from others or otherwise remote from a load on the FPL system.

To complete the circle, FPL not only imposes wholesale power rate increases, but proposes virtually to eliminate the customer flexibly to increase or decrease wholesale power purchases, ostensibly because of FPL's planning needs. These needs are asserted but not proven by any of FPL's testimony, and FPL's inflexible sales terms are not otherwise justified.

FPL's filing is a comprehensive and interrelated scheme, the product of more than five years of strategic planning, aimed at using FPL's transmission rates to halt the evolution of a marketplace in which FPL would be required to compete for sales

of unbundled generation. Through discovery in a United States District Court case (Florida Municipal Power Agency v. Florida Power & Light Company Case No. 92-35-CIV-ORL-3A22 (M.D. Fla.) ("District Court case")), Florida Cities' attorneys have obtained eight ring binders of FPL strategic planning documents which demonstrate that FPL intends its tariff proposals to work together to anticompetitive effect. However, as explained in Florida Cities' June 21, 1993 Motion for Discovery Order, pending a decision on that motion only a few of those documents may be disclosed to the Commission. 2/ Even those few documents are highly revealing of what FPL expects its tariff filing to achieve. 3/

For example, the documents include notes regarding transmission access sent from FPL strategic planner William C. Locke to FPL strategic planner Dean Gosselin (with an admonition to return them once read) (Appendix 39). Mr. Locke wrote:

> Evolution of the market place will be toward greater fragmentation -- what can be done to

---

2/ As explained in Florida Cities' Motion for Discovery Order, a few strategic planning documents relevant to summary judgment and discovery motions in the District Court case have become part of the public record in that proceeding. The rest have been nominated by FPL as commercially sensitive. Pursuant to an oral agreement insisted upon by FPL, that nomination requires that the documents be held in confidence until used in the District Court case or made subject to a discovery order by the Commission.

3/ Excerpts of documents supporting the instant Florida Cities filing appear in the accompanying three-part Volume II. For the convenience of the Commission, they are organized as follows. Volumes II-A and II-B contain the same documents, in the same order, as those filed in support of Florida Cities' April 12, 1993 filing. Depositions in the District Court case are grouped at the beginning of Volume II-A, arranged alphabetically by the deponent's name. (Appendix 35 is a listing identifying the various FPL deponents; it has been updated to include additional deponents) Supporting document excerpts which were not included in the previous filing appear in Volume II-C. Volume II-C also includes additional deposition transcript excerpts from the depositions of Messrs. Enjamio, Frank, Gosselin, Locke, Malmsjo, Rey, Schoneck, and Stepenovitch.

> possibly decelerate this natural trend or conceivably halting it

The notes then list "Transmission -- key issues" which FPL must consider, including:

> Comprehensive view of how generation/ transmission integrate with one another from a competitive positioning & market opportunity perspective
>
> * * *
>
> Understanding how St. Lucie license conditions already effect FPL's position on "open access."

FPL's "Wholesale Power Market" study (Appendix 40) is also illuminating. The study begins by excerpting extensively from the Antitrust Conditions attached to FPL's St. Lucie Unit 2 nuclear license ("Antitrust Conditions"), including (at 524017) giving prominent attention to the "between and among" language relied on, e.g., in Florida Cities' Opposition at 31-37. It goes on to note that although FPL's return on equity for its transmission investment was calculated at 19.56% (on an average embedded cost basis using FERC methodology), FPL did not consider that return adequate. See Appendix 40 at 524039a-40. It states (at 524050) that FPL seeks to position itself "as a 'seller' rather than a transmitter of power." Moreover, the study shows (at 524026) that part of FPL's intent in filing transmission tariffs was to fend off FMPA's request for the transmission needed to integrate its resources.

Another strategic planning document sheds light on the basis for FPL's dissatisfaction with existing interchange arrangements and its desire to recover opportunity costs. FPL's "Transmission Service Study Situation Analysis" (Appendix 41).

This document lists "Concerns/Issues" regarding Service Schedule TC:

> Lost opportunities - most transactions take place on the broker where the Buyer and Seller share in the benefits. Often, if FPL bought the energy from the Seller and/or sold the energy to the Buyer, FPL's potential share of the benefits are much greater than what FPL receives for providing transmission service. FPL is therefore penalized for having built and paid for a complete transmission system.

Id. 522269; see also id. at 522272 (same statement regarding Schedule TX); id at 522263 ("[e]very time a Buyer elects to purchase capacity and/or energy from a Seller other than FPL and requires the use of FPL's transmission system, lost opportunity can be determined").

More generally, the documents support Florida Cities' contention that the several tariffs FPL proposes must be reviewed as an interrelated whole. They state, for example:

> Wholesale requirement services, transmission service arrangements, coordinated interchange services and retail services are all interrelated and by virtue of FPL providing all of these services, changes to any one of these services has the potential of having an offsetting reaction to another. Therefore, any strategy developed by FPL must be a comprehensive one which assures FPL compensatory rates for all wholesale services provided.

Executive Summary, Wholesale Power Market Action Plan (Appendix 42, at 532288) (emphasis added).

The documents quoted from above are but four of the numerous documents generated by FPL strategic planners that bear on FPL's filing. Beginning in 1987, FPL strategic planners undertook a comprehensive and integrated business study to "analy[ze] ... the strategic interrelationship between wholesale sales, transmission, and interchange services" and to select

"FPL's marketing and pricing strategies for those services." 4/ Discovery and a hearing are required to explore whether the effects which those marketing and pricing strategies can be expected to produce are in the public interest. This well-orchestrated effort must be evaluated comprehensively and not in isolation. "[T]he proposed tariff changes in question cannot be digested or evaluated separately from each other like individual pieces of salami." 5/ Review of each of the component parts of FPL's massive filings in a vacuum would necessarily result in a failure by the Commission to carry out its obligations under the Federal Power Act to consider the anticompetitive effects of FPL's actions. See, e.g., Gulf States Utilities Co. v. FPC, 411 U.S. 747, 758-60 (1973); FPC v. Conway Corp., 426 U.S. 271 (1976); Florida Power & Light Co., Opinion No. 57, 8 FERC ¶ 61,121 (1979).

Most importantly, FPL's filings must be viewed in light of their evident purpose. FPL's attempt drastically to restructure the basis upon which it provides transmission, coordination, and wholesale power presents a comprehensive scheme to exploit to the maximum FPL's obvious market power over transmission in its

---

4/ Fourth Affidavit of FPL's Inter-Utility Markets Manager William C. Locke, Jr., filed in the District Court case on June 7, 1993 (Appendix 43), at 2-3. See also FPL's January 15, 1993 Memorandum in Opposition to Plaintiff's Motion to Compel Discovery, with Supporting Affidavit of William C. Locke, Jr. (Appendix 17), at 5.

5/ Tapoco, Inc., 30 FERC ¶ 63,050 at p. 65,287 (1985) (Initial Decision), aff'd on reconsideration, 31 FERC ¶ 63,056 (1985), 39 FERC ¶ 61,363 (1987), rehearing granted in part, denied in part, 43 FERC ¶ 61,105 (1988), modified and settlement approved, 51 FERC ¶ 61,228, appeal dismissed in light of settlement sub nom., Tapoco, Inc. v. FERC, Nos. 88-3346, et al. (6th Cir. Sept. 29, 1990). See also Consumers Power Co. (Midland Units 1 and 2), 6 NRC 892, 914 (1977) (anticompetitive conduct cannot be "tightly comparmentaliz[ed, wiping] the slate clean after considering every piece of evidence.")

service territory 6/ in order to disadvantage competitors and restrict competition. While FPL's tariff proposals must be evaluated on their merits, their genesis is nonetheless relevant to that evaluation. Taking a hard look at FPL's view of what its tariff proposals will accomplish will help the Commission to "interpret facts and to predict consequences." See Chicago Board of Trade v. United States, 246 U.S. 231, 238 (1918). The Commission should recognize that these proposals are intended to operate together as a systematic scheme to "react to" competition. The FERC should therefore carefully consider, for example, whether the transmission proposals at the "centerpiece" of FPL's filings really "mitigate [FPL's] transmission market power," as FPL suggests (March 19 Transmittal Letter 7/ at 4), or exploit it.

In that regard, Florida Cities believe a hearing would demonstrate that in planning the instant tariff filings FPL rejected transmission alternatives which would have provided more open access to the transmission system, and instead adopted transmission policies consciously designed to provide competitive advantage to FPL generation and distribution. FPL Vice President of Power Delivery Richard Larry Taylor has testified that in the current environment, "[t]here is an advantage of owning and

---

6/ FPL owns more than 80% of the high voltage transmission facilities within its service territory.

7/ The March 19, 1993 letter from FPL Vice President William G. Walker, III transmitting FPL's original filing in this docket to the Commission will be referred to herein as the "March 19 Transmittal Letter." The July 26, 1993 letter from FPL counsel J.A. Bouknight, Jr. Esq., transmitting FPL's amended filing will be referred to herein as the "July 26 Transmittal Letter."

controlling the transmission system to all sources" 8/ and that FPL uses its transmission assets to benefit its own generation. 9/ Compare Otter Tail Power Co. v. United States, 410 U.S. 366 (1973). FPL's refusal to permit FMPA to use documents obtained in the District Court case discovery prevents FMPA from providing further evidence on these points here. 10/

The need to consider the cumulative anticompetitive effects of FPL's filings is heightened with regard to the impact of these filings on FMPA, which is transmission-dependent on FPL 11/ and competes with FPL to serve FMPA's members in and adjacent to FPL's territory. FPL deponents in the District Court case repeatedly conceded that FMPA must use FPL's transmission system to implement the IDO project 12/ and that FMPA cannot practically duplicate FPL's transmission network. 13/ FPL's refusal to provide FMPA the network transmission required to integrate economically and coordinate FMPA's resources are preventing FMPA

8/ See Mr. Taylor 's February 23, 1993 deposition transcript in the District Court case at Tr. 235 (Appendix 15).

9/ See Taylor, November 17, 1992 deposition transcript at 172 (Appendix 15).

10/ The "commercial sensitivity" restrictions placed by FPL on documents discovered in the District Court case have not been applied to deposition transcripts. However, FPL prevented deposition inquiry into the specifics of the planning underlying its tariff filings, by claiming privilege. After depositions had been taken, the District Court ruled (Appendix 18) (on March 16, 1993) that FPL's privilege claim was overbroad.

11/ See map appended to the accompanying Affidavit of Albert B. Malmsjo (Attachment 1).

12/ See Frame Tr. 228 (Appendix 5); Schmalensee Tr. 66-69 (Appendix 12); Schoneck Tr. 223 (Appendix 13); Taylor Tr. 46-47 (Appendix 15).

13/ See Frank Tr. 6-7 (Appendix 6); Gardner Tr. 19-20 (Appendix 7); Schoneck Tr. 223 (Appendix 13); Frame Tr. 229-30 (Appendix 5); Adjemian Tr. 62-63 (Appendix 2).

from economically dispatching its generation and from implementing the IDO project. See Affidavit of Albert B. Malmsjo, Attachment 1.

Furthermore, FPL clearly has exploited its ability to block the IDO project for its own competitive advantage. After FMPA's IDO project was not implemented, one of the IDO project participants (Key West) entered into a contract to purchase electricity from FPL. FPL negotiated to sell power to Key West while it was negotiating with FMPA for transmission for the IDO project, with the knowledge that Key West had contracted to participate in FMPA's IDO project if it were implemented; FPL requested that Key West keep its negotiations with FPL secret; FPL developed a rate other than the standard partial requirements rate "to be competitive with [Key West's] expectations;" and FPL agreed to upgrade the transmission facilities used to deliver power to Key West without charging Key West directly for the upgrades. Gosselin Tr. 99-104 (Appendix 9). See also, Schoneck Tr. 184-89 (Appendix 13); Locke Tr. 531-37 (Appendix 10).

By its instant filings, FPL seeks to further straightjacket Florida Cities and impede FMPA's ability to compete by not only restricting the availability and increasing the cost of transmission, but also by decreasing the availability and flexibility, and increasing the price of, critical coordination and wholesale power services. Moreover, as discussed infra, unlike in other recent "open access" cases, FPL's filings make no provision to recognize the particularly vulnerable position and special needs of captive TDUs.

These filings also must be viewed in the context of the antitrust license conditions to which FPL agreed in settlement of

the NRC's investigation into whether licensing FPL's St. Lucie Nuclear Plant Unit 2 14/ would create or maintain a situation inconsistent with the antitrust law, and FPL's prior resistance to filing these Antitrust Conditions with FERC. 15/ As detailed below, numerous aspects of FPL's filings violate FPL's obligations under its Antitrust Conditions, including the Company's obligations to: (a) provide network transmission for neighboring entities (including Florida Cities); (b) plan for the transmission needs of neighboring entities; and (c) sell wholesale power and coordination services.

Moreover, FPL's transmission filing purports to be more than a mere Transmission Service Agreement ("TSA") implementing limited aspects of the more global transmission rights provided in the Antitrust Conditions. Rather, FPL's filing purports to establish a whole new transmission regime, to which all TSAs will subsequently be conformed. See March 19 Transmittal Letter at 44. Thus, FPL seeks in a fundamental way to displace the Antitrust Conditions as the overall charter setting forth the basic rules under which FPL must enter into implementing service agreements. In this way, FPL's "open access" filing challenges and offends the Antitrust Conditions in a far more serious way than the mere filing of a TSA that implements less than all the transmission rights encompassed within the Antitrust Conditions.

As discussed in Part II.B below, FPL's filing is heedless of FPL's clear obligation to sell network transmission service.

14/ A copy of the Antitrust Conditions is included as Appendix 19.

15/ See Florida Power & Light Co., 26 FERC ¶ 63,091 (1984), vacated as moot, 30 FERC ¶ 61,230 (1985), discussed in Part VII, infra.

In spite of its contractual (and regulatory and antitrust) obligation to immediately file with the Commission a rate schedule providing for network transmission, FPL seeks the Commission's approval for rates priced on a network basis but restricted to point-to-point use. The consequences of FPL's illegal behavior include preventing FMPA and its requesting members from operating and planning on a least cost basis (as can FPL), creating inefficiencies and millions of dollars in unnecessary costs, injury to competition, and other injury to the public. FPL committed to offer network transmission, but is using every possible argument to foster delay and to avoid compliance with the obligations to which it agreed, including even denying that it has binding contracts (even though those contracts took months to negotiate and were well-understood to provide for binding rights) and seeking to evade the Commission's clear jurisdiction. Florida Cities submit that this conscious violation by FPL of its obligations should no longer be tolerated. In view of FPL's having agreed to transmit, the Commission has clear jurisdiction to hold FPL to its agreement. See infra Part II.B. The need for enforcement of FPL's promises is all the more compelling because the Justice Department, NRC, and Florida Cities accepted those promises in satisfaction of well-founded concerns that they were necessary to prevent FPL from creating or maintaining a "situation inconsistent with the antitrust laws." See Atomic Energy Act, § 105(c), 42 U.S.C. 2135(c).

Finally, the Commission should recognize that FPL makes this filing while it is in the midst of an antitrust case. In the District Court case, FMPA has alleged, among other things,

that FPL's refusal to provide FMPA with network access violates FPL's contractual obligations (its settlements with the Department of Justice and the NRC Staff, and later with Florida cities, in which it agreed to the Antitrust Conditions). FMPA has also alleged that FPL has sought to use its market power over transmission to gain a competitive advantage in bulk power markets and retail markets, in violation of Section 2 of the Sherman Act. See Eastman Kodak Co. v. Image Technical Services, Inc., 112 S. Ct. 2072, 2089, 2092 (1992). FMPA has further alleged that FPL's transmission system is an essential facility which must be shared on a non-discriminatory basis with competitors dependent on that system. See, e.g., United States v. Terminal R.R. Ass'n, 224 U.S. 383, 411 (1912); Otter Tail; MCI Communications v. American Tel. & Tel. Co., 708 F.2d 1081, 1132 (7th Cir.), cert. denied, 464 U.S. 891 (1983). FMPA has sought both injunctive relief and damages. FMPA's current estimate of damages exceeds $150 million. See accompanying Affidavit of Albert B. Malmsjo (Attachment 1). Summary judgment motions have been filed and are pending. 16/

16/ Trial had been scheduled to begin as early as September 7. However, for scheduling reasons, the Court recently sua sponte postponed the pretrial conference until December 15, 1993, and postponed trial until January 1994.

Although issues dealing with FMPA's contract rights and rights under the antitrust laws to a network service are before the District Court, these issues are also within this Commission's jurisdiction, as FPL recognizes (March 19 Transmittal Letter, at 43-44), because they affect the justness and reasonableness of FPL's transmission and other filings. Indeed, Florida Power & Light has filed a summary judgment motion with the District Court in which it claims that the Commission has exclusive jurisdiction over these transmission issues under the "filed rate doctrine." In fact, both this Commission and the District Court have jurisdiction to ensure that FPL lives up to its obligations, although this Commission may not award damages or directly enforce the antitrust laws.

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Thus, the anticompetitive effects of the whole are far greater than the sum of the parts of FPL's filings, which even taken alone are anticompetitive.

B. FPL's Proposed Transmission Tariff Terms and Conditions are Unjust, Unreasonable and Anticompetitive

1. Point-to-point Service, Instead of Network Service

This case is starkly different from cases where the Commission has approved open access tariffs, finding that they mitigated the transmitting utility's market power. The Commission must look behind the "open access" label FPL has pasted to its proposed transmission changes and see them for what they are: the centerpiece of FPL's comprehensive scheme to exploit its transmission monopoly and enhance its competitive position in bulk power markets in Florida. Specifically, FPL's transmission filing must be rejected as unjust, unreasonable and unduly discriminatory because:

1. FPL's proposal relegates TDUs to point-to-point transmission, rather than network service, and is inconsistent with recent "open access" filings.

2. Point-to-point service prevents TDUs in FPL's territory from efficiently and economically integrating their generating resources, and thus stifles rather than promotes competition in bulk power markets.

3. Point-to-point service is discriminatory and anticompetitive because it imposes costs on Florida Cities not imposed on FPL's own load centers, and effectively denies TDUs the economics of pooling that FPL enjoys internally.

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
FPL contends in their April 27, 1993 Answer at 35, that the allegations made by Florida Cities in the District Court case are "sanctionally frivolous." Florida Cities takes exception to this unwarranted, baseless accusation. The District Court has already ruled against FPL's motion to dismiss the proceeding, a certain indication that the claims are neither sanctionable nor "frivolous."

4. Point-to-point service fails to provide Florida Cities the "among" transmission to which FPL committed in agreeing to its Nuclear Regulatory Commission license conditions.

5. The transmission access proposed for TDUs is a significant step backwards, rather than a step forward, in many respects as compared with even the limited transmission FPL now provides TDUs.

6. The proposed, rigid, point-to-point service is part of a comprehensive FPL scheme to enhance its market power in bulk power markets though restrictions on transmission, coordination and wholesale power.

Rather than accept FPL's proposal as filed, the Commission should exercise its authority under Federal Power Act Sections 205 and 206 to set just and reasonable rates 17/ and to hold FPL to its legally binding commitments (the Antitrust Conditions). That is, FPL should be required to provide Florida Cities with "network" transmission service. The Commission has recognized in a recent policy statement that network transmission service is needed for a membership agency such as FMPA to integrate its resources, and that the Commission has the legal authority to require such service. In Docket No. PL93-3-000, Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities Under Sections 211(a) and 213(a) of the Federal Power Act, As Amended and Added by the Energy Policy Act of 1992, 58 Fed. Reg. 38964, 64 FERC ¶ 61,065 (July 14, 1993), the Commission stated:

> Section 211 of the FPA does not place any limit on what is meant by "transmission services," nor does the legislative history suggest any limitation on the nature of the wholesale transmission services the Commission can order under section 211. In the absence of any indication that Congress intended to limit the type of transmission services ordered, any party may request network service under section 211.

17/ See, e.g., Tapoco, Inc., 39 FERC ¶ 61,363 at pp. 62,171-74.

* * *

> "Network service," ... involves substantial flexibility in moving power between receipt and delivery points. ... An example might be the network service needed by an association of distributors to dispatch their own resources, or by an IPP to sell to multiple buyers.

58 Fed. Reg. at 38966 (footnotes omitted). See also Docket No. RM93-19-000, Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, Staff Paper at 13 (Question 18), 58 Fed. Reg. 36400 (July 7, 1993) (defining network service as "transmission service that allows the user to vary its schedule and points of delivery and receipt on the grid without paying an additional charge for each change"); Docket No. RM93-3-000, Policy Statement Regarding Regional Transmission Groups, 58 Fed. Reg. 41626, 41630 (July 30, 1993) (RTG requirements should promote "the goal of efficient use, expansion, and coordination of the interconnected electric system [transmission and generation] on a grid-wide basis"). FPL's tariff proposal should be rejected and FPL should be required to file a compliance tariff that will provide for network service.

As described in the accompanying affidavit of Albert B. Malmsjo (Attachment 1), under network transmission service, FMPA essentially would operate in the same manner as FPL. FMPA could deliver power to the transmission network from its generating resources and could deliver power from the transmission network to its loads without having to fictitiously limit the path taken by the power through "point-to-point" contract demands. FMPA would pay for its fair share of the costs of the transmission network based on its maximum coincident use of the transmission

system -- or upon its maximum right to use the system established with a single contract demand. FMPA would not be charged based on multiple, duplicate demand charges that stem from the numerous artificial "point-to-point" contract paths between various combinations and permutations of individual receipt and delivery points. Under network transmission, FMPA could transmit its power among its geographically separated resources and loads for a single charge.

a. FPL's Failure to Provide for Network Transmission for Captive TDUs is Inconsistent with Other Recent Open Access Filings

FPL's claim that its filing provides for transmission pursuant to rates, terms and conditions equivalent to those the Commission has recently deemed adequate to mitigate market power (March 19 Transmittal Letter at 4) is incorrect and misleading. As FPL's reliance on Entergy Services Inc., 58 FERC ¶ 61,234, order on reh'g, 60 FERC ¶ 61,168 (1992), for that proposition makes clear, quite the opposite is true. Specifically, in many of the "open access" tariffs approved recently, TDUs have network access (either through the tariff or otherwise).

For example, as discussed in Part V.A, infra, in the case of Entergy, power supply agencies similar to FMPA had been granted network transmission access within the individual service areas of the Entergy operating companies. Because of these separate arrangements, the Entergy tariffs do not restrict these agencies' ability to coordinate with an operating company's service area. 18/

18/ As further explained infra, the network transmission issue in the proceeding regarding the proposed merger of Entergy and Gulf States Utilities Company, Docket Nos. EC92-21-000 and

[FOOTNOTE CONTINUED ON NEXT PAGE]

Similarly, in Public Serv. Co. of Indiana, 51 FERC ¶ 61,367, reh'g denied, 52 FERC ¶ 61,260, order on clarification, 53 FERC ¶61,131 (1990), dismissed, No. 90-1528 (D.C. Cir. January 21, 1992), Indiana Municipal Power Agency and Wabash Valley Power Association each have achieved network access through their joint ownership of PSI's transmission system and therefore are not limited to point-to-point tariff terms. Moreover, in the tariffs at issue in PSI, changes in receipt and delivery points are accommodated at no additional charge if existing users are not harmed thereby. 51 FERC at pp. 62,203-04; compare FPL Tariff No. 1, Article XIII, Section 13.1, page 42 (FPL will permit reassignment only if, among other conditions, "such sale or assignment does not involve any additional quantity of service or any change in the Point of Receipt or the Point of Delivery").

Indeed, in Northeast Utils. Serv. Co., 56 FERC ¶ 61,269, at pp. 62,049-50 (1991), modified in part, 58 FERC ¶ 61,070 (1992), reh'g denied, 59 FERC ¶ 61,042, aff'd in relevant regard, Northeast Utils. v. FERC, 993 F.2d 937. (1st Cir. 1993), the Commission took into account the special needs and vulnerability of NU's TDUs and conditioned the merger on NU's willingness to make available a form of network service to these TDUs. 19/

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ER92-806-000, pertains to whether, in order to mitigate adequately the market power of a merged Entergy/GSU, the network transmission now limited to the service areas of the Entergy operating companies must be expanded to encompass the entire integrated transmission system of the merged company.

19/ The precise manner in which NU charges for this service would not be appropriate for Florida Cities in light of their significant reliance, due to FPL's restrictions on transmission, wholesale power and coordination, on local generation to serve their local loads. Particularly under these circumstances, Florida Cities should be charged for network service based on
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Finally, contrary to the impression FPL may seek to convey, there is nothing mysterious, extraordinary or burdensome about network access. In fact, Consumers Power has proposed a transmission tariff that includes network service, although the rates, terms and conditions are contested and are the subject of a hearing. Consumers Power Co., FERC Docket Nos. ER92-331 and ER92-332. Network transmission arrangements have been around for a long time. 20/ Such arrangements are becoming increasingly common and critical as joint power agencies attempt to put together economic power supply for their members from a variety of generation resources. E.g., letter order of May 12, 1992 in Pacific Gas & Elec. Co., ER90-355 et al. (accepting for filing PG&E's interconnection agreement with Northern California Power Agency, which provides network access). 21/

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their use of the network, not their total loads. This is especially true where FPL does not recognize such local generation to serve regional load, and refuses to consider pooling or centralized dispatch of units, so that such systems do not use the transmission system for their total loads.

20/ An early example of a network transmission rate filed with and approved by the Federal Power Commission in 1968 and more recently enforced by the FERC is described in Buckeye Power Inc. v. Cincinnati Gas & Elec. Co., 14 FERC ¶ 63,007, p. 65,008 (1981). This decision was affirmed by the Commission on other grounds, see Buckeye Power Co. v. Cincinnati Gas & Elec. Co., 18 FERC ¶ 61,067, reh'g denied, 18 FERC ¶ 61,269 (1982). On jurisdictional grounds, the Sixth Circuit vacated, reversed and remanded, Cincinnati Gas & Elec. Co. v. FERC, 724 F.2d 550 (6th Cir. 1984). On remand, FERC enforced the network transmission rate on alternative grounds set out in the initial decision. Buckeye Power Co. v. Cincinnati Gas & Elec. Co., 37 FERC ¶ 61,298 (1986).

21/ Other examples of network transmission arrangements include FMPA's arrangements with Florida Power Corporation; Southern Minnesota Municipal Power Agency's arrangement with Northern States Power Company; Virginia Power's agreements with Virginia Municipal Electric Association No. 1's and North Carolina Eastern Municipal Power Agency; Duke Power Company's arrangements with North Carolina Municipal Power Agency No. 1, North Carolina Electric Membership Corporation, Piedmont Municipal Power Agency
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Indeed, as demonstrated below, the Commission cannot legally accept FPL's tariff limitations of point-to-point services because they are inconsistent with the Antitrust Conditions, which are legally and contractually binding on FPL. They are also independently unjust and unreasonable, and unduly discriminatory and preferential to FPL, because they allocate costs unfavorably to Florida Cities compared with FPL, unduly restrict Florida Cities' market opportunities, and overcharge Florida Cities for the services provided.

b. The Commission Should Enforce, in This Proceeding as Elsewhere, the Antitrust Conditions in which FPL Committed to Provide Network Service

FPL's obligation to sell network transmission to neighboring entities is clear. FPL is legally bound to Antitrust Conditions which require it to sell network ("between and among") transmission service upon request, to "immediately" file a service agreement with FERC providing the requested service so that FERC may determine the price for that service, and to submit to FERC "[r]ate schedules and agreements, as required to provide for the facilities and arrangements needed to implement the bulk power supply policies herein." See Antitrust Conditions Sections X(a), X(b), and XII.

FMPA, a neighboring entity, has repeatedly requested that FPL sell it network transmission. Yet FPL adamantly refuses to do so. Indeed, in the District Court case FPL contends that its policy against selling network transmission is so unequivocal,

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and Saluda River Electric Cooperative; and the Electric Coordination Agreement between Consumers Power Company and Detroit Edison (Michigan Electric Coordinated System). See also Part V.A infra.

inflexible, and longstanding that any obligation FPL has to do so has been rendered unenforceable by statutes of limitations. See FPL's April 15, 1993 Motion for Summary Judgment in the District Court case (Appendix 44) at 4-11. FPL's tariff filings repeat FPL's failure to honor its legal obligation, this time in the context of a broadly applicable tariff that will provide a comprehensive framework for FPL's future transmission sales.

FPL's ongoing refusal costs the electricity-consuming public tens of thousands of dollars daily. As shown in the attached affidavit of Albert B. Malmsjo. The consequences mount each time TDUs incur dispatch and operating inefficiencies because they cannot economically coordinate; they leap upwards each time the inability to count on buying network transmission constrains TDUs generation planners to choose suboptimal resources.

Nevertheless, in each of the numerous fora where FMPA and its members have pressed their right to buy network transmission, FPL has taken the position that that right should be adjudicated anyplace but here, anytime but now. See infra Part II.B.1.b.iv. Most recently, FPL has sought to avoid adjudication in this proceeding on that ground that "[i]f FMPA believes that it is being denied the service under the tariffs that it is entitled to under the License Conditions, nothing in FPL's filing in this proceeding proposes to prevent it from making a request for such service." Answer at 68. FPL well knows that FMPA has made numerous requests for the network service to which it is entitled. Indeed, shortly after initiating this proceeding, FPL responded to one such request by calling it a "waste [of] ... time." See infra Part II.B.1.b.ii.bb.

In this context, it is neither permissible under the Mobile-Sierra doctrine nor consistent with the public interest to permit FPL to duck the network issue by leaving it for resolution some other day. 22/ Deciding whether FPL's tariff proposals are just and reasonable without addressing their omission of network service would delay resolution of FPL's obligations to the public's detriment, and might be mistaken as an implicit endorsement of FPL's decision to refuse network transmission.

i. The Antitrust Conditions Require FPL to Provide Transmission Over Its Network Among Receipt and Delivery Points of Neighboring Entities Without Imposing Multiple Transmission Charges

Article X of FPL's Antitrust Conditions (Appendix 19 at 24) requires FPL to provide transmission over its network "between two or among more than two neighboring entities, or sections of a neighboring entity's system which are geographically separated, with which, now or in the future, Company is interconnected." 23/ FPL's obligation under this requirement is clear. Long before the "among" requirement was agreed to by FPL, the term had been given a specific and well-established meaning by the AEC in Louisiana Power and Light Co. (Waterford Steam Generating Station Unit No. 3), 8 AEC 718 (1974), affirmed 1 NRC 45 (1975) ("LP&L"). Accordingly, the Commission should by summary disposition establish the legal effect of FPL's unambiguous contractual obligation.

22/ See United Gas Pipeline Co. v. Mobile Gas Serv. Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

23/ FMPA qualifies as a neighboring entity. See infra Part IV.C.

In LP&L, the DOJ, AEC Staff and LP&L proposed license conditions that required LP&L to transmit only "between" pairs of Louisiana entities, with a separate charge imposed for transmission in each direction. Id. at 739-40. The AEC Atomic Safety and Licensing Board 24/ held a hearing to determine whether this proposal was sufficient to overcome a situation inconsistent with the antitrust laws. Id. at 733-34. The AEC recognized that, as a matter of straight-forward mathematics, LP&L's proposed transmission "between" commitment would result, for transmission connecting multiple entities, in charges totaling many times LP&L's standard transmission rate. 25/

The AEC held that the imposition of multiple charges for transmission connecting a single group of entities was unreasonable and inadequate to accomplish the purpose of the license conditions:

> The payment of 6 to 20 or more transmission charges by a single group of entities is deemed unreasonable.

24/ The Licensing Board and the Appeal Boards exercise the delegated authority of the AEC, as testified by former NRC Commissioner Roberts, offered by FPL as an expert witness in the District Court case, and by former Commissioner Gilinsky, offered by FMPA. Roberts Tr. 15-16 (Appendix 12); Gilinsky Tr. 53-54 (Appendix 8). For convenience, we refer to the Licensing Board as the "AEC" herein.

25/ The AEC found (id. at 732):

> If two small entities wish transmission from A to B and from B to A they must execute two contracts and pay two transmission charges... . This can be expressed mathematically as two permutations taken two at the time (P 2/2) which is 2 x 1 = 2 transmission charges. For three entities -- the expression is P 3/2 -- 3 x 2 or six transmission charges. For four entities -- P 4/2 -- 4 x 3 or 12 transmission charges. For five entities -- P 5/2 -- 5 x 4 or 20 transmission charges.

> The limitation of [transmission] "between two entities" in Applicant's Commitment No. 5 is not an adequate provision designed to permit coordination (both operation and development) sufficient to overcome a situation inconsistent with the antitrust laws.

LP&L at 733-34 (emphasis added). The AEC found that because of the relatively small size of the entities in the area "coordination will require transmission among three to five or more" entities. Id. at 733. It concluded that even the commitment to provide transmission among two entities "in either direction for a single charge" was inadequate because it was "limited to two entities thus foreclosing transmission among three or more entities." Id. at 732.

In order to permit coordinated operation of generating resources controlled by smaller utilities, the AEC revised the proposed license conditions to provide for transmission "among" multiple entities, id. at 734, that is "transmission from any member of a coordinating group to any other members of such group," id. at 733. The AEC stated:

> In Schedule B [the revised conditions, reprinted at 8 AEC 740-744], Condition 5 is the same as Commitment No. 5 of Schedule A [the proposed conditions, reprinted at 8 AEC 738-740], except that "between two entities" has been changed to "among entities." The purpose of this change is to prevent multiple transmission charges for transmission of a contracted transmission entitlement among a coordinating group of two or more entities. To make the purpose of this change free from doubt, a clarifying sentence has been added.

Id. at 737 (emphasis added). The referenced "clarifying sentence" makes the meaning of the "among" requirement crystal

clear: "For each coordinating group of entities there shall be a single transmission charge." Id. at 744 (emphasis in original). 26/

Transmission "among" thus requires "network transmission." The coordinating group pays a single charge based on the amount transmitted on its behalf (at any one time) over the transmission network as a whole, without regard to the distribution of that transmission among the delivery points of the coordinating group. The proposal in LP&L to transmit only "between" locations was rejected because it left room for multiplicative transmission charges based on the number of receipt and delivery points at which power is added to and taken from the network.

The same requirement for transmission "among," with the specific meaning that it carries under LP&L, was written into the FPL Antitrust Conditions. Because Antitrust Condition X(a)(2) (Appendix 19) plainly and unambiguously requires more than transmission "between" delivery points, FPL cannot avoid summary disposition by claiming that it intended otherwise. See Hashwani v. Barbar, 822 F.2d 1038 (11th Cir. 1987). Significantly, the "among" requirement appears only in Condition X(a)(2); other Antitrust Condition provisions such as X(a)(1) (which applies to transmission of power from FPL power sources to neighboring utilities) omit the "among" language and require only transmission "between" multiple power resources and load centers and neighboring distribution systems. If "among" signified mere grammar or bare access connecting multiple points through a

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26/ Of course, the number of transmission "charges" does not depend on the number of separate bills or items on an invoice. Rather, whether it is a single or multiple charge depends on whether the coordinating group pays more for transmission of a given amount of power among multiple delivery points than it would if that same quantity were transmitted from just one point to another. LP&L was concerned with substance, not form.

concatenation of point-to-point services, it would appear in Condition X(a)(1) as well. 27/ In any event, FPL must be presumed to have understood and intended that transmission "among" means network transmission. As the Supreme Court stated in United States v. I.T.T. Continental Baking Co., 420 U.S. 223, 240 (1975): "We must assume that the parties here used the words with the specialized meaning they have in the antitrust field, since they were composing a legal document in settlement of an antitrust complaint." See also Robin v. Sun Oil Co., 548 F.2d 554, 558 (5th Cir. 1977) (lawyers who drafted settlement agreement presumed to know technical legal meaning of the words they chose).

FPL is in no position to claim otherwise. Shortly after it agreed to the Antitrust Conditions, FPL recognized that their terms were carefully chosen to reflect AEC/NRC precedent. In the November 7, 1983 Answer of Florida Power & Light Company to Staff's Motion to Require Filing, Florida Power & Light Co., 26 FERC ¶ 63,019 (1984), vacated as moot, 30 FERC ¶ 52,230 (1985) (Appendix 45), FPL (at 8) stated that "[t]he license conditions were negotiated over a long period of time with the NRC's antitrust staff. These negotiations included extensive discussion of the language of the conditions, much of which was

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27/ As a matter of grammar, "among" signifies one joint relationship as distinguished from several bilateral relationships. See, e.g., The New York Times Manual of Style and Usage 12 (1979) ("between is correct in reference to more than two when the items are related severally and individually: The talks between the three powers ended in agreement to divide the responsibility among them.") (emphasis retained); accord, William Strunk, Jr. and E.B. White, The Elements of Style 40 (3d ed. 1979). Thus, use of "among" to signify several point-to-point services would be grammatically incorrect.

honed by the NRC Staff in negotiations with other licensees over a period of years."

The transmission "among" requirement discussed in LP&L plainly falls within the category of well-honed provisions to which FPL referred. LP&L points out (at 733) that the same requirement appears in the license conditions for the Grand Gulf nuclear plant, 38 Fed. Reg. 14877 (1973), and (at 735) that "both Justice and Staff are familiar with, understand, and have agreed to such language" in the proceedings concerning that plant. Essentially identical language appears in numerous other utilities' license conditions, for example, PG&E's Stanislaus Commitments attached to its Diablo Canyon license, see 41 Fed. Reg. 20225, 20227 (1976), and the conditions attached to Florida Power Corporation's license for the Crystal River Unit 3 nuclear plant, see 37 Fed. Reg. 3782 (1972). 28/ The requirement of transmission "among" is a standard "laundry list" item in antitrust licensing conditions, whose specific meaning was widely understood long before FPL agreed to it.

FPL cannot be heard to complain now that it did not understand the Antitrust Conditions to which it agreed. Like LP&L, FPL is prohibited from multiplying transmission charges for transmission connecting receipt and delivery points of a single coordinating group. By agreeing to the Antitrust Conditions, FPL obligated itself, inter alia, to provide transmission "among" these geographically separate sections of FMPA's system for a single charge.

28/ The Federal Register publications of the Stanislaus Commitments, Grand Gulf and Crystal River transmission requirements are attached as Appendix 46.

FMPA's motion for summary disposition, see Part VI infra, seeks a declaration of this obligation, so as to prevent FPL from obfuscating any further proceedings with red herring arguments. 29/ FPL is obligated to sell network transmission service for FMPA's IDO project, and it should be ordered to comply with that obligation, as discussed in Part IX infra.

ii. FPL's Tariff Proposal Repeats FPL's Wrongful Refusal to Provide for Network Transmission

FPL has repeatedly refused to provide network transmission required by the transmission "among" requirement of its Antitrust Conditions and LP&L. FMPA has long sought a transmission arrangement that would enable it to distribute a given quantity of transmission network usage among various delivery points, without paying multiple monthly or yearly transmission charges. FPL's refusal has come through in the existing TSAs under which FPL transmits for existing FMPA power supply projects, and during more than two years of negotiations and eighteen months of ensuing litigation over transmission for FMPA's IDO project. FPL's July 26 "open access" tariff proposal is but the most recent instance where FPL has refused to provide network transmission.

29/ No issue like that set for hearing in Pacific Gas & Elec. Co., 52 FERC ¶ 61,347, p. 62,378 n.14 (1990), is presented by FMPA's motion for summary disposition. In that case, the Commission held that the rate filed by PG&E did not "on its face" conflict with PG&E's antitrust license conditions, and set that issue for hearing. Here, as demonstrated in Part IV.B below, there can be no genuine factual dispute that FPL has imposed point-to-point access restrictions that result in multiple charges. In any case, even if there were a genuine factual dispute on that issue, that would not prevent partial summary disposition declaring that FPL is obligated to sell network transmission for IDO at a single charge.

Without network transmission, if FMPA wishes to coordinate its resources economically so that on some days 50 MW of generation at point A is used to serve load at point B, on other days 50 MW of generation at point B is used to serve load at point C, and on still other days 50 MW of generation at point C is used to serve load at point A, FMPA must pay three 50 MW contract demands; FMPA must pay for 150 MW of transmission capacity, even though it will never use more than 50 MW of FPL's transmission network capacity at any one time. Indeed, if FMPA wishes to reverse the receipt- and delivery-point pairing, i.e., to transmit 50 MW of generation at point C for load to point B on some days, 50 MW of B for A on other days, and 50 MW of A for C on other days, it must reserve and pay for yet another 150 MW of transmission capacity. Thus, to transmit a maximum of 50 MW of power flexibly among points A, B and C, FMPA must pay FPL for 300 MW of transmission capacity.

The unreasonableness of this limitation is increased by the fact that FPL's transmission charges have nothing to do with the cost of transmission from points A to B, etc., but rather reflect FPL's total transmission system costs. Thus, if FMPA desires to coordinate and integrate its generation on FPL's system in an economic and efficient manner, it must pay multiples of FPL's per MW total system transmission costs for each MW of system capability actually used (i.e., six times the 50 MW maximum usage at any one time in the examples above).

FPL is thus offering to transmit only "between" the various Florida Cities' delivery points. Like LP&L, FPL seeks to impose multiples of its basic transmission charge as a function of the number of delivery points involved and a function of the maximum

possible delivery to and from each such point. In LP&L terminology, FPL is effectively offering transmission "from A to B and from B to A," with further permutations for C, D, etc., all for a separate charge. In LP&L, such directional point-to-point transmission, with multiple charges imposed, was specifically rejected as only transmission "between," not transmission "among." LP&L, 8 AEC at 732. FPL's refusal to sell network service has large and harmful practical consequences: Florida Cities does not have the same transmission access that FPL does; FMPA would have to pay multiples of what FPL charges itself and its power customers to purchase anything approaching transmission use on a par with FPL; Florida Cities are assigned a disproportionate share of transmission system costs; and ultimately, the Cities are injured in competition to the detriment of FMPA, its member cities, and all Florida ratepayers.

aa. Existing TSAs

Each of FPL's existing TSAs contains point-to-point restrictions, under which FPL provides service only "between" pairs of interconnection points where electricity is received onto and delivered from the FPL system. FPL insisted on these restrictions despite FMPA's repeated requests, in negotiating each TSA, for network transmission rights. 30/

For example, the 1990 "Restated and Revised" TSA, as amended, provides for transmission of electricity to three FMPA member cities from each of their multiple power supply sources,

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30/ As described in FMPA's July 2, 1993 Complaint, Application, and Motion for Summary Disposition in Docket Nos. EL93-51-000 and TX93-4-000 ("Complaint") at 9-12, FMPA accepted these limitations due to the economic and practical necessity to obtain timely transmission commitments from FPL, while preserving rights to obtain network transmission service.

but it does not provide for delivery of each resource among identified FMPA delivery points, as needed in a given hour. Rather, the TSA provides for transmission of each specified resource, in amounts tied to each of the participating member cities separately and in one direction only, to the specified delivery point. For example:

> FPL shall provide transmission service for the power and energy produced by each City's Stanton Resources from the point of interconnection between FPL's transmission system and OUC's transmission system to each such City's delivery point... .
>
> * * *
>
> FPL shall provide transmission service for the power and energy produced by each City's OUC System Resources from the point of interconnection between FPL's transmission system and OUC's transmission system to each such City's delivery point. This transmission service shall be termed "OUC System Transmission Service".
>
> * * *
>
> FPL shall provide transmission service for the power and energy produced by each City's OUC System II Resources from the point of interconnection between FPL's transmission system and OUC's transmission system for delivery to each such City's delivery point. This transmission service shall be termed "OUC System II Transmission Service".

Rate Schedule No. 109, as amended on May 1, 1991, at 13, §§ 3.2, 3.4.1 and 3.4.2. For each receipt-delivery point pair, FMPA must pay an additional, cumulative transmission charge. See id., Articles VII and XI. FPL recently stated that "[t]ransmission service provided by FPL to FMPA is priced on a 'point-to-point' basis." FPL's April 15, 1993 Memorandum of Law in Support of its Motion for Summary Judgment in the District Court case ("FPL Memo"), at 4 (Appendix 44). "Under point-to-point pricing, FMPA must pay separately for each 'contract demand' between each point

of receipt of power on FPL's system and each point of delivery from the FPL system." Id. at n.2 (Appendix 44).

More accurately, FPL's transmission service is priced on a network basis, but cannot be used except on a point-to-point basis. Each extra "contract demand" MW charged to transmission customers means that they pay for an extra share of the "rolled-in" cost of FPL's entire network. FPL prices transmission on a "postage stamp" basis under which transmission customers pay a share of the total cost of FPL's transmission network, not only the cost of the facilities located on a path between the receipt and delivery points involved in a given transaction. FPL described this pricing methodology, approvingly, to the D.C. Circuit Court of Appeals in FPL's brief in Ft. Pierce Utils. Auth. v. FERC, 730 F.2d 778 (D.C. Cir. 1984) (September 8, 1983, at 4, 5-6) (Appendix 30):

> As part of its business of providing its customers with a reliable supply of electric energy, Florida Power & Light Company, as herein relevant, has built and operates an electric transmission network that extends over eastern and southern Florida and is interconnected with neighboring utility systems, including certain Florida cities... .
>
> The Company recovers its transmission costs from all its wholesale and retail customers... . The specific rate design methodology by which FPL recovers transmission costs is through a "postage stamp" rate. As the term implies, all FPL customers are allocated a share of transmission costs without specifically identifying the cost of transmission facilities on which the electricity for each customer travels. This is done because the determination of what facilities are "used" by which customer in what proportions, and what these facilities cost, is not possible. 1/ FPL's transmission network is constructed to meet the peak demand of all its customers in its service area throughout the year. Therefore, allocation of costs on the basis of peak demand on its system is,

> and always has been, determined to be the fairest method of apportioning transmission capacity costs... .
>
> ---
>
> 1/ This would be true even if electricity travelled through a transmission network on a shortest-distance-between-two-points basis. But electricity does not; rather, it travels on a path of least resistance... . The path of electrons will change constantly as load conditions change.

FMPA is not contesting this "postage-stamp" design; it is a sound basis for pricing a network rate. As the Commission recently explained:

> The Commission has long held that an integrated transmission grid is a cohesive network moving energy in bulk. Because the grid operates as a single piece of equipment, the Commission has consistently priced transmission service based on the cost of the grid as a whole. The Commission has rejected the direct cost assignment of grid facilities... .
>
> * * *
>
> Nothing in the Commission's new pricing policy changes or undermines these fundamental premises. There continues to be only one service -- service over the entire grid -- and both native load and third-party customers "use" the entire grid, including any expansion.

Public Serv. Co. of Colorado, 62 FERC ¶ 61,013 at 61,061 (1993). However, the service limitations in each FPL TSA constrain transmission customers to buy extra "postage stamps" for each contract demand between two points. This postage-stamp-per-contract-demand rate design is the basis on which FMPA is being charged under each of the existing TSAs.

bb. Transmission for IDO

Throughout two years of negotiations in which FMPA pursued transmission for the IDO project, FMPA requested the ability to distribute a given quantity of transmission network usage among various receipt and delivery points, without paying multiple transmission charges. That is, FMPA sought to have its transmission contract demand measured by the coincident FMPA transmission load on the FPL transmission system (and not by the sum of the highest number of MW that could be delivered through each FMPA delivery point on a non-coincident basis). FPL never offered to transmit on that basis. FMPA did not simply propose one network transmission rate and insist that FPL accept it. Rather, FMPA suggested numerous potential network transmission arrangements, and invited FPL to propose others. However, FPL adamantly rejected the network transmission concept and each implementing FMPA proposal.

FMPA repeatedly requested FPL to file a network rate at the FERC, pursuant to FPL's express obligation to file a rate schedule in the event there is no agreement regarding requested transmission services. See Antitrust Conditions X(b) and XII (Appendix 19); see also Pacific Gas and Elec. Co. (Diablo Canyon Plant Unit Nos. 1 and 2), 31 NRC 595, 602 (1990) ("PG&E") (concurring in District Court finding that PG&E had violated a similar filing obligation). FMPA repeated that request through counsel in a March 25, 1993 letter from R. Jablon to L. Bouknight (Appendix 21). FPL's counsel responded, in a March 29, 1993 letter (Appendix 47), with a resounding no. See id. at 2 (calling FMPA's request a "waste [of]... time").

Even FPL's "hub" concept, which was floated in negotiations with FMPA, calls for multiple charges for transmission connecting a group of coordinating entities. 31/ Indeed, FPL's letter to FMPA describing the hub concept characterizes it as "modified point - point, directional service." 32/ While the hub concept may appear on the surface to be a small step towards compliance with FPL's obligation to sell network service, there is abundant evidence that it was put forward in bad faith. Numerous FPL witnesses have testified in the District Court case that the "hub" concept was never seriously studied by FPL. 33/ Moreover, FPL never told FMPA how it would develop the price for service under the hub concept. 34/

Thus, FPL has not been willing to sell FMPA transmission at a single charge reflecting FMPA's use of FPL's network. By its

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31/ The hub concept, as described in FPL's April 27, 1990 letter to FMPA (Exhibit B to Appendix 48), merely substitutes a hypothetical "FMPA hub" as one end of each separate directional transaction to and from FMPA receipt and delivery points. Thus, a transaction from B to A becomes one transaction (with one charge) from B to the hub and a second transaction (with a second charge) from the hub to A. A transaction from A to B on another day would result in two more charges. In this example, even if the maximum amount of electricity FMPA seeks to move on the FPL network at any one time is 100 MW, FPL would charge FMPA for 400 MW of transmission or four times the amount it would charge for point-to-point transmission from A to B. By contrast, in this example, transmission "among" would result in a charge for 100 MW of transmission.

32/ A copy of this letter is appended to the April 30, 1992 Affidavit of Nicholas P. Guarriello (Appendix 48) as Exhibit B. As described in ¶ 16 of the Affidavit, in oral negotiations, FPL discussed several variants of its hub concept, but never developed them in concrete terms, never proposed the rate that might apply, and ultimately took these variants off the table.

33/ Rey Tr. 17 (Appendix 49); Enjamio Tr. 122-23, 125-27 (Appendix 50); Locke Tr. 107-11 (Appendix 51); Schoneck Tr. 119-20 (Appendix 52); Stepenovitch Tr. 175-80 (Appendix 53).

34/ See Gosselin Tr. 63-65 (Appendix 54); Locke Tr. 182 (Appendix 51).

own admission, FPL has insisted on multiple charges for transmission connecting a single coordinated group -- charges that vary with the number of FMPA receipt and delivery points involved and the amount of power that can be delivered to and from each such point. FPL has not offered to charge based on FMPA's proportionate (i.e., peak demand) use of the network.

cc. "Open Access" Tariffs

The transmission tariffs at issue in this proceeding are part of a comprehensive revision of FPL's existing wholesale services (transmission, interchange, and requirements power) and the framework for future wholesale transactions. The proposed new regime would effectively govern all future FPL wholesale dealings. FPL proposes to conform its existing TSAs to this new regime. 35/ This new regime, like FPL's existing TSAs but unlike the Antitrust Conditions, would only provide for point-to-point services. See, e.g., Tariff No. 1, Article VII, Section 7.3 at 27; Tariff No. 3, Articles I and VI, Sections 1.15 and 6.1 at 4, 15. Transmission customers must reserve and pay for separate contract demands equal to the maximum amount of transmission they will use from each point of receipt to each point of delivery. Tariff No. 1, Article I, Sections 1.5, 1.19, 1.20 at 1-2, 5. Despite its obligation to provide transmission "between or among," FPL proposes to provide only "access between generation resources and bulk-power loads connected to FPL's system or [connected] to systems interconnected with FPL." March 19 Transmittal Letter at 6 (emphasis added).

35/ See March 19 Transmittal Letter at 44.

In sum, in its existing TSAs and the negotiations preceding them, in its responses to FMPA's request for transmission for the IDO project, and in its recent comprehensive tariff filing, FPL has repeatedly failed to fulfill its obligation to sell network transmission service.

iii. The Antitrust Conditions Commit FPL to Sell Required Transmission Services to FMPA

In the Joint Motion and Stipulation expressing FPL's settlement with the DOJ and the NRC Staff, FPL committed to deal with neighboring entities and neighboring distribution systems in conformance with the Antitrust Conditions (footnotes omitted, emphasis added):

> ... The joint movants request that the conditions be made effective immediately, without prejudice to this Board's authority to impose different or additional conditions after a hearing. Granting this motion will assure that, effective immediately, FPL will be committed to deal with other electric utilities in conformance with the conditions.

September 12, 1980 Joint Motion of DOJ, NRC Staff, and Applicant to Approve and Authorize Implementation of Settlement Agreement at 1-2 (Appendix 55).

> If the motion to make the license conditions in their entirety effective immediately is not granted, FPL may withdraw its agreement to accept these conditions...; if such motion is granted, however, FPL will abide by these conditions....

September 12, 1980 Stipulation between DOJ, the NRC Staff and FPL at 1-2 (Appendix 55).

This commitment requires FPL to sell defined transmission services to FMPA. FMPA qualifies as a neighboring entity under the definition set forth in Article I(c) of the FPL Antitrust

Conditions and is specifically named as a neighboring entity in Article X(d). 36/ Therefore, FPL must sell FMPA network transmission -- transmission "among...sections of a neighboring entity's system which are geographically separated, with which...company is interconnected." Article X(a)(2) (Appendix 19). The coordinated system which FMPA has been contracted to operate currently includes FMPA's power sources and the points at which it delivers power to its members. The FPL network is interconnected with the geographically separate sections of FMPA's system either directly or through another utility (at locations referred to herein for simplicity as "delivery points, or sometimes as "receipt and delivery points.") Accordingly, FMPA and its members that are neighboring entities are entitled to transmission among these separate sections.

Although it is not essential to FERC enforcement of a commitment entered into before a sister agency, it bears notice that like the municipals in PG&E, FMPA is one of the third-party contract beneficiaries of the September 12, 1980 FPL/DOJ/NRC Staff settlement and the Antitrust Conditions FPL agreed to therein. 37/ As in California, Florida law enforces contract

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36/ FPL must also sell transmission to other neighboring entities and neighboring distribution systems, including individual FMPA member cities. Individual FMPA member cities experience additional adverse impacts from the unavailability of network service.

37/ Both settlements provide that the applicant was willing to have the antitrust conditions included in its licenses; PG&E's stated willingness to connect the conditions to its Diablo Canyon license if the Stanislaus plant is not licensed does not alter the nature of its commitment. Indeed, the FPL/DOJ/NRC settlement (quoted in the text above), if anything, contains a more explicit commitment to benefit third parties than the PG&E/DOJ settlement.

rights held by third-party beneficiaries, 38/ including the intended third-party beneficiary of an agreement between a private party and the government. See Technicable Video Sys., Inc. v. Americable of Greater Miami, Ltd., 479 So.2d 180 (Fla. 3d DCA 1985) (minority business may bring third-party beneficiary action against cable operator to enforce the minority set-aside provisions of ordinance granting cable system license).

The intention to confer enforceable legal rights on neighboring entities, including FMPA, is confirmed by the FPL, DOJ, and NRC Staff pleadings in support of their settlement. FPL stated, "the settlement...provides other electric systems legal rights in addition to those which they have now" (emphasis added). 39/ In the same pleading, FPL also endorsed pleadings previously filed by the DOJ and the NRC Staff, in which the DOJ stated that "[t]he conditions confer upon beneficiary systems immediately the right to make use of increased power supply options." 40/ The NRC Staff stated that the Antitrust Conditions create "entitlements for coordination and transmission services," for which "FMPA would qualify." 41/ See also those parties' Joint Motion at 2 (Appendix 55). Indeed, Florida Cities noted that "[a]s a preliminary matter, Florida Cities assume that FMPA

38/ E.g., Florida Power & Light Co. v. Mid-Valley, Inc., 763 F.2d 1316, 1321 (11th Cir. 1985).

39/ See January 27, 1981 Answer of FPL to Cities' Reply Concerning Joint Motion at 2 (Appendix 56).

40/ See December 3, 1980 Response of the DOJ to the Florida Cities' Answer to the Joint Motion at 3 (Appendix 57) (emphasis omitted).

41/ See Staff's Response to the Florida Cities' Answer to Joint Motion to Make Effective License Conditions Proposed by the Applicant, the Staff, and the DOJ, dated December 3, 1980 at 10-11 (Appendix 58).

qualifies for all rights contained in the license conditions." 42/ No one, including FPL, disputed that FMPA qualifies as a neighboring entity and as such is entitled to Antitrust Condition transmission services.

In addition, FMPA is an intended third-party beneficiary of the Florida Cities/FPL Settlement Agreements. See, e.g., the Settlement Agreement (Appendix 36). Through these Settlement Agreements, FPL and the cities agreed to support state legislation providing for a joint power supply agency, which permitted FMPA to finance generation and otherwise engage in activities for the benefit of the cities. Finally, numerous FMPA member cities, including the IDO participants, are signatories -- direct promisees -- of those agreements. Therefore, these cities are direct promisees entitled to have FPL provide the service defined in the Antitrust Conditions.

iv. The Commission Has Authority and Responsibility to Ensure That Tariffs Accepted for Filing are Consistent with Antitrust Condition Obligations

The Commission has full authority, and indeed has a duty, to ensure that jurisdictional tariffs are consistent with Antitrust Condition obligations. See Pacific Gas and Elec. Co., 49 FERC ¶ 61,116, 61,497. The Antitrust Conditions are legally binding obligations which enforce pro-competitive bulk power supply policies integral to this Commission's statutory mission. Whatever the Antitrust Conditions' technical legal character, FPL admits that they are legally binding obligations to which FPL remains subject, and under which FPL must provide transmission

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42/ See Florida Cities' Answer to Joint Motion, corrected copy filed October 16, 1980, at 12 (Appendix 34).

service even if a would-be customer does not agree to FPL's proposed terms. See FPL's April 27, 1993 Answer at 58-60 (FPL "remains subject to its License Conditions," under which, "[i]n the absence of an agreed upon contract, FPL has an obligation to file an agreement unilaterally with the Commission, and the wheeling customer may challenge that contract"). It is unjust and unreasonable, and contrary to the public interest to permit FPL to collect rates and impose service restrictions inconsistent with those obligations.

aa. The Commission Should Consider and Give Effect to the National Policies Embodied in the Antitrust Conditions

The pro-competitive objectives of the Antitrust Conditions are closely related to this Commission's statutory mission. The Federal Power Act aims to "assur[e] an abundant supply of electric energy throughout the United States with the greatest possible economy." FPA § 202(a), 16 U.S.C. § 824a(a). This objective requires the Commission to give great weight to ensuring that jurisdictional rate schedules enhance the state of competition in the electric industry:

> Recalling the primary objectives of the Commission...one would be hard put to think of a matter of more direct and proper concern to the Commission than the state of competition in the regulated industry. By doing whatever is within its power to enhance that competition, the Commission serves the same objective as it does by direct regulation of price; indeed, Commission decisions affecting the structure of the power industry could scarcely be made rationally without regard to the impact they will have on the competitive climate.

NAACP v. FPC, 520 F.2d 432, 441 (D.C. Cir. 1975), aff'd, 425 U.S. 662, 668 (1976). Cf. Public Util. Comm'n v. FERC, 900 F.2d 269,

281 (D.C. Cir. 1990) (contrasting intellectual property concerns, in which the "Commission could never be expected to develop expertise," with antitrust concerns, which complement the rate regulatory response to monopoly, and noting that "a regulatory eye on such [antitrust-based] concerns will commonly be useful"). Accordingly, the Commission is required to consider the competitive effects of its actions and coordinate its actions with those of other agencies to promote competition beneficial to the public interest. See, e.g., FPC v. Conway Corp., 426 U.S. 271 (1976); Gulf States Utilities Co. v. FPC, 411 U.S. 747 (1973); Northern Natural Gas Co. v. FPC, 399 F.2d 953 (D.C. Cir. 1968).

Consistent with this requirement, the Commission repeatedly has held that relevant antitrust licensing conditions must be considered in determining the justness or reasonableness of jurisdictional rates. Most recently, in Entergy Services, Inc., 63 FERC ¶ 61,025 at p. 61,147 (1993), reh'g denied, final order pending (June 30, 1993), the Commission held that if a transmission customer "alleges that the terms and conditions contained in [a] service agreement do not conform to applicable requirements, the Commission will address the issue at that time based on the specific facts presented" (emphasis added). Significantly, the "applicable requirement" urged in that case was the same license condition requirement of transmission "between and among" neighboring entities' receipt and delivery points that is at issue here. Similarly, in Pacific Gas and Elec. Co., 49 FERC at 61,497 (footnote omitted), the Commission rejected PG&E's argument that the "Stanislaus Commitments"

(antitrust conditions agreed to by PG&E) are not within the Commission's purview:

> We ... disagree with PG&E that the Stanislaus Commitments are not subject to the Commission's review. PG&E correctly states that the Commitments are within the jurisdiction of the Nuclear Regulatory Commission as conditions of the Diablo Canyon Nuclear Power Plant Unit No. 1 license. However, to the extent that the Commitments affect or relate to the IRS [interconnection rate schedule], which is a rate schedule subject to our jurisdiction under the Federal Power Act, they are also subject to our review.

Accordingly, the Commission has consistently held that Antitrust Conditions must be considered where relevant to rate proceedings. See, e.g., North Carolina Eastern Municipal Power Agency v. Carolina Power & Light Co., 57 FERC ¶ 61,372 at p. 62,254 (1991); Pacific Gas and Elec. Co., 52 FERC ¶ 61,347 at p. 62,378 n.14 (1990); Florida Power & Light Co., 26 FERC ¶ 63,019 at p. 65,053 (1984) (the relevance of St. Lucie license conditions to a FERC proceeding in which a party claims that transmission service offered by FPL does not "accord with that required by the license conditions" "cannot be seriously disputed"), vacated as moot, 30 FERC ¶ 61,230, p. 61,459 (1985) (vacating on the ground that "[n]o party to the proceeding asserts that the settlement is inconsistent with the NRC license conditions"); Cleveland Electric Illuminating Co., 11 FERC ¶ 61,114 at p. 61,248 (1980). Here the Antitrust Conditions are clearly relevant to the issues presented; they establish the "basic rules" governing transmission service which the United States government, and Florida municipal governments, have considered necessary lest FPL's abuse of its monopoly power

create a situation inconsistent with the antitrust laws, and they are the primary basis for the relief requested.

That the Antitrust Conditions are not a FERC order does not diminish the Commission's duty to effectuate them in evaluating tariff proposals. It has never been an acceptable principle of administrative law that legal obligations "not invented here" may be ignored in determining whether rate provisions are just, reasonable, and in the public interest. 43/ To the contrary, the Commission has long held that "[i]n applying such criteria [just, reasonable, and not unduly discriminatory or preferential], we must also consider and give effect to national policies embodied in other statutes." 44/ Here, the Commission should consider and

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43/ See McLean Trucking Co. v. U.S., 321 U.S. 67, 79-88 (1944) (Interstate Commerce Commission, charged with regulating in the public interest and promoting reasonable rates, required to consider policies of the antitrust laws); Southern S.S. Co. v. NLRB, 316 U.S. 31, 47 (1942) ("[f]requently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without an excessive emphasis upon its immediate task").

44/ Middle South Services, Inc., 33 FERC ¶ 61,408 at p. 61,786 (1985) on rehearing, 34 FERC ¶ 61,342 (1986). In Middle South, FERC held itself constrained to recognize state regulatory commissions' determinations of avoided costs, and to ensure that FERC-jurisdictional wholesale power rates are consistent with those determinations. Id. at 61,788. The Commission concluded that, to give effect to PURPA, it was appropriate to defer to state avoided cost determinations, and found no interference with FERC jurisdiction because "in establishing avoided cost rates the State commissions act pursuant to Federal, not State law. ... The issue is whether this Commission should, in establishing just and reasonable rates, defer to the factual decisions of other agencies acting pursuant to Federal law." 33 FERC at pp. 61,788-89. The decision to defer to another regulatory agency acting under Federal law was not limited to its facts: the Commission went out of its way to "note[] that this is not the only instance where deference to the determinations of another agency is consistent with the establishment of rates under the Federal Power Act." Id. See also Ohio Power Co. v. FERC, 954 F.2d 779, 784-86 (D.C. Cir. 1992), cert. denied, 113 S.Ct. 483 (1992) (requiring FERC in light of overlapping regulatory authority to defer to SEC determination under the Public Utility Holding Company Act of the prices for inter-affiliate coal transactions).

give effect to the national policies embodied in the Antitrust Conditions.

bb. The Commission Has Ample Jurisdiction to Interpret and Enforce the Antitrust Conditions

FPL agreed to the Antitrust Conditions in settlement of, among other things, Justice Department, NRC staff, and Florida cities claims for license conditions to prevent an anticompetitive situation, and antitrust claims brought by Florida cities in federal district court in 1979. No complex jurisdictional analysis ought to be required to demonstrate that this Commission, an agency of the United States government established to protect energy consumers, can require compliance with basic pro-competitive rules which FPL agreed to at the insistence of several other government agencies working for the same goal. However, FPL has raised technical jurisdictional objections to enforcement of the Antitrust Conditions by every forum called on to consider the issue, most recently arguing that FERC has no authority to enforce or even interpret the Conditions. 45/ Therefore, FMPA will briefly state the grounds supporting this Commission's authority and obligation to enforce FPL's Antitrust Condition obligations.

45/ See Answer at 260. FPL has also prevented enforcement by the Florida state courts, by removing FMPA's suit to federal district court; has unsuccessfully sought to dismiss that case from federal district court by arguing that the NRC has exclusive jurisdiction; and has argued in the District Court case that only FERC has jurisdiction to determine whether FERC-filed rate schedules comport with the Antitrust Conditions -- necessarily implying that the NRC lacks jurisdiction. See FPL's March 20, 1992 Motion to Dismiss at 12-15 (Appendix 59), and its April 15, 1993 Motion for Summary Judgment at 15-19 (Appendix 44).

To begin with, the Antitrust Conditions are contractually binding and enforceable by this Commission. FPL chose to enter into them and received valuable consideration in return, including a license to use publicly-developed nuclear power technology and settlement of substantial claims raised in antitrust litigation before this Commission, the NRC, and the federal courts. 46/ In settling with the Department of Justice and the NRC staff in Florida Power & Light Co. (St. Lucie Plant, Unit No. 2), NRC Docket No. 50-389A, for example, FPL joined in stating that "effective immediately, FPL will be committed to deal with other electric utilities in conformance with the conditions," 47/ and stipulated that if its motion were granted, "FPL will abide by these conditions." 48/

Therefore, FPL's agreement to abide by the Antitrust Conditions is enforceable in contract (and directly, as discussed below). See United States v. Pacific Gas and Elec., 714 F. Supp. 1039 (N.D. Cal 1989):

> In addition to being NRC license conditions, the Stanislaus Commitments are part of a contract between PG&E and the Department of Justice under which the DOJ dropped its antitrust investigation of PG&E in return for PG&E's agreement to include the

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46/ FPL settled with the DOJ and NRC after the Fifth Circuit Court of Appeals ruled that FPL had illegally violated the Sherman Act, see Gainesville v. Florida Power Corp, 573 F.2d 292, (5th Cir.), cert. denied, 439 U.S. 966 (1978), and after this Commission ruled that FPL had illegally refused to deal in wholesale power sales, see Re Florida Power & Light Co., Opinion No. 57, 8 FERC ¶ 61,121 (1979). After an NRC licensing board had determined that "a situation inconsistent with the antitrust laws does exist," see Florida Power & Light Co. (St. Lucie Plant, Unit No. 2), 14 NRC 1167 (1981), vacated as moot due to settlement, 15 NRC 639 (1982), FPL settled with Florida Cities.

47/ September 12, 1980 Joint Motion of Department of Justice, NRC Staff, and Applicant to Approve and Authorize Implementation of Settlement Agreement at 2 (Appendix 55).

48/ September 12, 1980 Stipulation at 1-2 (Appendix 55).

> Commitments as part of its Diablo Canyon License.... WAPA, NCPA and the Cities are entitled to sue as third-party beneficiaries of that contract to enforce their rights under that contract.

Id. at 1051 (citations omitted)

The NRC concurred in PG&E's holding that the NRC was not the exclusive avenue for enforcement of antitrust conditions. In response to a petition seeking NRC action to enforce PG&E's license conditions, the NRC withheld action pending, and ultimately relied on, the decision of the district court. Pacific Gas and Elec. Co., 31 NRC at 601, 603-4.

Even before these PG&E decisions, a FERC Administrative Law Judge had already determined that FPL's Antitrust Conditions are contractual in nature:

> The St. Lucie License conditions are a part of and reflect a settlement agreement voluntarily entered into by FPL with the Department of Justice and the NRC Staff.... By virtue of the settlement agreement and by accepting the St. Lucie license, FPL agreed to be bound by the terms of the license conditions. Thus, the license conditions and underlying settlement agreement are in the nature of a contract.

Florida Power & Light Company, 26 FERC ¶ 63,019, at 65,054 (1984) (emphasis changed), vacated as moot, 30 FERC ¶ 61,230 (1985). In that case, FPL had argued unsuccessfully that "there is no independent consensual agreement by FPL to comply with the license conditions." Answer of FPL to Staff's Motion to Require Filing (Appendix 45 at 21 n.25). See also Pacific Gas and Elec. Co., 11 FERC ¶ 61,246, 61,484 (Stanislaus Commitments "embody an agreement" between PG&E and DOJ), reh'g denied, 12 FERC ¶ 62,097 (1980), aff'd mem., 679 F.2d 262 (D.C. Cir. 1982).

By agreeing to the Antitrust Conditions, FPL agreed to provide transmission "between and among" receipt and delivery

points of neighboring entities at a single charge. This agreement did not fix the level of that single charge, but did constrain what types of service and rate arrangements FPL may file with or support before FERC. In setting the precise rate which will henceforth apply, the Commission must give weight to that agreement. Cf. Union Elec. Co. v. FERC, 890 F.2d 1193, 1194-95 (D.C. Cir. 1989) (Mobile-Sierra doctrine extends to settlement agreements and agreements regarding ratemaking methodology).

The Antitrust Conditions are a contract affecting jurisdictional rate schedules, and must therefore be filed pursuant to FPA § 205(c). However, the Commission's jurisdiction, in fixing the just and reasonable rate, to consider the implications of what FPL agreed to in accepting the Antitrust Conditions does not depend on that agreement being filed with the Commission. See Sam Rayburn Dam Elec. Coop. v. FPC, 515 F.2d 998, 1008 (D.C. Cir. 1975) (Commission's obligation to respect integrity of contracts not limited to "such contracts as are properly filed with and recognized by the FPC"). The Antitrust Conditions' "regulatory force...arises before, and survives in the absence of, the physical filing of the document with the Commission." Borough of Lansdale v. FPC, 494 F.2d 1104, 1114 (D.C. Cir. 1974). Under Mobile-Sierra, the Antitrust Conditions set the parameters of what rate schedules FPL may lawfully keep on file with the Commission.

Leaving aside the Antitrust Conditions' contractual nature, because FPL is in any event legally committed to adhere to them for as long as it holds the St. Lucie license, the Antitrust Conditions are also "practices" affecting FPL's jurisdictional

rates and charges, which FPL is therefore obligated to file with the Commission and to follow. See Federal Power Act § 205(c); Pacific Gas and Elec. Co., 11 FERC at 61,484, 61,486. 49/ Because the Antitrust Conditions are also an NRC order incorporated in FPL's St. Lucie nuclear license, they are likewise "regulations" affecting FPL's jurisdictional rates and charges, which FPL must follow under FPA § 205(c).

Moreover, the Antitrust Conditions themselves contemplate that FERC will consider whether FPL's FERC-filed rate schedules comport with FPL's Antitrust Condition obligations (Appendix 19). Condition XII provides:

> Rate schedules and agreements, as required to provide for the facilities and arrangements needed to implement the bulk power supply policies herein, are to be submitted by the Company to the regulatory agency having jurisdiction thereof.

Similarly, Condition X(b) provides:

> In the event that the Company and a requesting entity are unable to agree regarding transmission services required to be provided under this section X, Company shall, upon the request of such entity, immediately file a service agreement at the Federal Energy Regulatory Commission or its successor agency providing for such service.

In Pacific Gas and Elec. Co, 31 NRC at 602, the Nuclear Regulatory Commission held that a provision in PG&E's license conditions "requires PG&E to file service schedules with the FERC even if the parties do not agree to all the proposed terms and conditions. The purpose of License Condition 9(a) is to resolve

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49/ Unlike the unilateral, tentative transmission policy at issue in Florida Power & Light Co. v. FERC, 660 F.2d 668 (5th Cir. Unit B, Nov. 1981), cert. denied, 459 U.S. 1156 (1983), FPL has agreed and is committed to abide by the Antitrust Conditions through April 6, 2023. Therefore, enforcing the Antitrust Conditions will not compel involuntary wheeling.

any conceptual differences in the proposed service schedule at the FERC." 50/ Clearly, the NRC considers FERC empowered to examine whether TSAs differ from what FPL has termed the "basic rules" required by license conditions.

FERC's jurisdiction to enforce FPL's Antitrust Condition duties is concurrent with, not exclusive of, the courts and NRC. Contractual obligations enforceable by this Commission may also be enforced in court. As the Commission recently reiterated at FPL's behest, "[i]ssues of contract interpretation of a rate schedule on file with the Commission are within the Commission's concurrent jurisdiction with the courts." See Florida Power & Light Co., 60 FERC ¶ 61,001, order denying rehearing, 61 FERC 61,214 (1992), order on clarification, 63 FERC ¶ 61,038 (1993). See also, International Paper Co. v. FPC, 476 F.2d 121 (5th Cir. 1973); Texasgulf, Inc. v. United Gas Pipe Line Co., 610 F. Supp. 1329 (D.D.C.), vacated as moot due to settlement, 617 F. Supp. 41 (1985). Therefore, the Commission "can decide that we can resolve a contractual dispute or we can decide that we should allow a contractual dispute to be litigated in federal or state court." Villages of Edgerton and Montpelier v. Ohio Power Co., 49 FERC ¶ 61,306, p. 62,161 (1980) reh'g denied, 50 FERC ¶ 61,165 (1990). Similarly, FERC's obligation to consider antitrust policy does not oust the courts' antitrust jurisdiction. See

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50/ PG&E's License Condition IX(a) (Appendix 46) states that "rates, charges, terms and practices are and shall be subject to the acceptance and approval of any regulatory agencies or courts having jurisdiction over them." The FPL license conditions, quoted in the text, contain even stronger provisions requiring FPL to provide requested services, and permit FERC resolution of disputes over rates.

Otter Tail Power Co. v. United States, 410 U.S. 366, 375-77 (1973). 51/

c. Even Leaving Aside the Antitrust Conditions, Point-to-Point Restrictions, as FPL Applies Them, Are Unjust, Unreasonable, Unduly Discriminatory and Contrary to the Public Interest

Even leaving aside the Antitrust Conditions, point-to-point restrictions are inappropriate when applied as they are by FPL: imposed on a would-be coordinating group paying postage stamp rates, and discriminatorily not applied to FPL's own use of its network to serve its retail customers. This misapplication of point-to-point restrictions results in exorbitant prices for the transmission service needed to permit coordination -- prices many times out of proportion to the coordinating group's real impact on the transmission network, and so high as to make coordination infeasible, effectively denying access. Unable to coordinate, members of the would-be coordinating group are constrained to make independent, less economic arrangements, causing a large net social loss in allocative efficiency. Worse, by sabotaging the coordinating group while discriminating in favor of its own sales customers, the transmission owner frustrates competition in bulk power markets, causing a long-term loss of dynamic efficiency. Moreover, network service corresponds to the reality of electricity flows more closely than does the point-to-point

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51/ The Commission has ample discretion to exercise its concurrent jurisdiction in a manner that will promote a speedy resolution of this issue. See California v. FPC, 369 U.S. 482 (1962); Kansas Power & Light Co. v. FPC, 554 F.2d 1178, 1183-86 & n.12 (D.C. Cir. 1977); Rowan v. Allied Chemical Corp., 39 FPC 64 (1968); Pan American Petroleum Corp., 32 FPC 1394 (1964).

contract path fiction. 52/ The Commission should therefore find that the point-to-point service restrictions FPL imposes on transmission dependent utilities ("TDUs") are unreasonable because they prevent efficient coordination and integration among TDUs, unnecessarily increase electricity costs, and impair competition.

i. Network Transmission Serves an Important Function Not Fulfilled by Point-to-Point Services

Point-to-point service is insufficient to permit a utility with multiple, geographically distributed generation resources and load centers to operate economically. In order to capture economies available due to the diversity of their loads and resources, coordinate their reserves, coordinate the operation of their resources to provide the lowest cost service, and plan for economic resource additions, such utilities must be able to distribute power from each resource flexibly among multiple load centers, and to deliver a changing mix of power from multiple resources to each load center. Where utilities having multiple, geographically distributed generation resources and load centers own a transmission system, that is how they use it.

Where such utilities are transmission dependent, they are no less in need of network service to operate economically. The

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52/ As described by FPL deponents in the District Court case, electricity flows through the transmission network according to the laws of physics, and not according to any predetermined "contract path." See Alfonso Tr. 23-24 (Appendix 1); Schoneck Tr. 82-83 (Appendix 13); Smith Tr. 77 (Appendix 14); Taylor Tr. 182-83 (Appendix 15). See also Fort Pierce Utils. Auth. v. Federal Energy Regulatory Comm'n, 730 F.2d 778, 782 (D.C. Cir. 1984), and FPL's September 8, 1983 brief to D.C. Circuit in that case at 5 & n.1 (electricity "travels on a path of least resistance"; determination of facilities used "is not possible") (Appendix 30).

critical economic functions served by network transmission cannot practically and economically be fulfilled through a series of independent point-to-point transactions. As the AEC recognized in LP&L, multiple point-to-point services are inadequate to permit TDUs to engage in coordinated operation and development. The AEC held that a proposed license condition providing for only multiple point-to-point services to interconnect "three to five or more" resources and load centers was "not an adequate provision designed to permit coordination (both operation and development) sufficient to overcome a situation inconsistent with the antitrust laws." LP&L, 8 AEC at 733-34.

Network service therefore serves the public interest as expressed in Section 212(a) of the Federal Power Act, as amended by the Energy Policy Act of 1992, which requires that "rates, charges, terms and conditions [for transmission ordered under Section 211]...promote the economically efficient transmission and generation of electricity" (emphasis added). FPL's point-to-point restrictions are inconsistent with this Congressional directive (and with FPA Section 202(a), see supra Part II.B.1.b.iv.aa.) See also Policy Statement, 64 FERC ¶ 61,065 58 Fed. Reg. at 38966 (discussing how provision of network service accords with the language and intent of transmission access provisions of the Energy Policy Act).

The history of FMPA's attempt to establish integrated dispatch and operations demonstrates that network transmission serves an important function not fulfilled by point-to-point services. By integrating municipally-owned generation located in the various IDO participant cities and cities' contractual power supply resources with FMPA-owned or contracted power supply

resources, FMPA can more economically use its power supply resources and achieve for these members a lower power supply cost than they can obtain from individual, isolated operation. FPL has recognized that all utilities seek (or should seek) to reduce their power supply costs by integrating the operation of their generation resources. 53/ See generally El Paso Natural Gas Co. v. FPC, 281 F.2d 567, 573 ("It is the obligation of all regulated public utilities to operate with all reasonable economies"), cert. denied, 366 U.S. 912 (1961). FPL claims to operate in this manner, and it recognizes that FMPA desires to do so. 54/

However, for FMPA and its members that are neighboring entities to be able to operate and plan their generation on an integrated basis, they must use FPL's transmission system on a network basis like FPL uses its transmission system for its own needs. 55/ FMPA has requested either that it be able to invest in the FPL transmission network to obtain network transmission rights or that it be able to purchase transmission services to permit it to use transmission on a network basis. Because FPL has refused to sell network transmission, FMPA has not been able to coordinate the power supply for its members under its IDO project. 56/ FPL's refusals to sell network transmission are

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53/ Frank Tr. 5 (Appendix 6); Taylor Tr. 46-47, 106-107, 244 (Appendix 15); Schoneck Tr. 86-87 (Appendix 13); Enjamio Tr. 105-07 (Appendix 4).

54/ Id.

55/ See April 12, 1993 Affidavit of Albert B. Malmsjo at ¶ 7 (Attachment 1).

56/ FPL's claim (March 19 Transmittal Letter at 43) that its existing point-to-point TSAs permit FMPA to integrate its generation resources should be summarily rejected as an assault on common sense. See attached April 12, 1993 Affidavit of Albert B. Malmsjo (Attachment 1).

causing or will cause unnecessary electricity costs to FMPA of more than $150 million. See April 29, 1993 Affidavit of Albert B. Malmsjo (Appendix 60).

ii. The Point-to-Point Service FPL Provides TDUs is Unjust, Unreasonable and Unduly Discriminatory as Compared With the Transmission Service FPL Provides Itself

The accumulation of transmission charges that would result if FMPA and its members attempted to use point-to-point FPL transmission to coordinate its generation are described above. Not only are these duplicative charges unreasonable for the reasons set forth in LP&L, but they are unduly discriminatory as compared with the basis on which FPL uses and charges itself for use of its transmission system. This discrimination gives FPL a substantial competitive advantage in bulk power markets. FPL's point-to-point transmission tariffs thus undermine, rather than serve, the competitive purposes of the Federal Power Act, as amended by the Energy Policy Act of 1992.

In contrast to the hypothetical described in Part II.B.1.b.ii above, where FMPA must pay for 300 MW of transmission capacity to move a maximum of 50 MW of power among points A, B and C on FPL's system, FPL has full use of its network to coordinate and integrate its own generation to maximize economies and efficiencies to serve retail and wholesale customers. FPL charges itself (through its wholesale and retail customers) for this service on the basis of 12 CP usage of the total system. Thus, if FPL wishes to transmit 50 MW from generator A to point B at the time of the monthly peak and from generator C to point B on the next day, it charges its sales customers for a maximum of 50 MW. In effect, FPL enjoys the

flexibility and economic efficiency of an internal pool, but denies those benefits to others. 57/ This discrimination is baseless. FPL's high-voltage transmission facilities are integrated into a "cohesive network moving energy in bulk," which "operates as a single piece of equipment." Public Serv. Co. of Colorado, 62 FERC ¶ 61,013 at 61,061 (1993). Whether it is FMPA et al. or FPL that seeks to coordinate its resources by transmitting over that integrated grid, such transmission represents "only one service -- service over the entire grid -- and both native load and third-party customers 'use' the entire grid." Id.; see also Public Serv. Elec. & Gas Co., 63 FERC ¶ 61,200 at 62,549 (1993) (same; traditional average cost pricing recovers a "pro rata share of the cost of its [the transmission owner's] existing system"). Neither of the cost measures discussed in Colorado and PSE&G, incremental grid expansion costs 58/ and average embedded costs, cumulates as a function of the number of receipt-and-delivery-point pairs involved in a transmission transaction. FPL's insistence on so multiplying its transmission charges results in a price many times in excess of the lowest reasonable cost-based rate.

57/ Compare Schoneck Tr. 139 (Appendix 13) (FPL does not schedule power between each of its load centers and each of its generating plants). Of course, point-to-point transmission is a fiction, whether the transmission is performed for FPL or for Florida Cities. In the hypothetical above, FPL (or Florida Cities) would simply be dispatching generation at various locations to meet load.

58/ Grid expansion costs are separate from incremental interconnection facility costs, e.g. additional step-down transformers needed to remove a local constraint at a point of delivery, that are not used by or useful to other transmission users. Such costs have long been directly assigned to transmission customers.

The competitive disadvantage at which TDUs are placed by FPL's discrimination is obvious. As discussed above, this discrimination eliminates FMPA's ability to compete with FPL to provide integrated power supply to the IDO Participants.

The competitive disadvantage caused by this discriminatory treatment is highlighted when new market entrants are considered. For example, if FPL wishes to purchase 50 MW from an economic project constructed by an IPP on its system to displace more expensive FPL generation, FPL will charge itself (and its customers) nothing additional to transmit the power. 59/ On the other hand, if FMPA wishes to purchase 50 MW from this same IPP to displace 50 MW of more expensive generation of its own, it must pay FPL at least 50 MW of additional transmission charges (above and beyond the 300 MW paid in the earlier hypothetical), even though FMPA's maximum system usage is still 50 MW. If FMPA wants to use this 50 MW of generation with any flexibility (e.g., to be able to use it to serve loads at points A, B and C on different days), it must pay another set of multiple transmission charges for that right. Thus, what costs FPL (and its customers) nothing on an incremental basis would result in 150 MW of additional transmission charges to FMPA in this hypothetical. Not only does this discrimination foreclose FMPA from economic power resources and impair FMPA's ability to compete with FPL, but it deprives new entrants of a competitive market for their generation.

Point-to-point transmission is plainly unduly discriminatory as compared with how FPL uses and charges itself

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59/ Assuming there is no need to enhance local facilities to reliably bring the IPP's power onto the grid.

for the system to serve its wholesale and retail customers. The discriminatory treatment of FPL loads, as compared with those of its TDUs, is also apparent from the fact that while loads served by FPL get the benefit of full use of the network for their 12 CP allocation of FPL's total transmission costs, transmission customers enjoy use of only a fictional "contract path" for bearing an even greater share of FPL's total transmission system costs. 60/

This discrimination was highlighted by the deposition testimony in the District Court case of Joseph P. Cresse, former Chairman of the Florida Public Service Commission, whom FPL has designated as an expert witness. Although on deposition cross-examination by FPL he advocated charging transmission customers on the basis of "reserved" paths (Cresse Tr. at 86-88, 93-94 and Exh. 1 (Appendices 1 and 20)), i.e., point-to-point service, on redirect he conceded that transmission customers that pay for transmission on a "rolled-in" or total transmission system cost basis should be charged not on the basis of the number of paths they might want to use from time to time, but on their use of the system as a whole:

> Q [Assume] A is a retail customer; it's a town. Okay?
>
> A Okay, a retail customer.
>
> Q D and B are FP&L generators. And on some days the power is flowing from B to A for the 100 megawatts this town needs, and on some days it's flowing from D to A for 100 megawatts.
>
> Are...the retail customers in town A going to pay to reserve 100 megawatts here on line A to D and 100 megawatts on line A to B, or

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60/ If FPL is permitted to restrict service to point-to-point, its allocator should be changed to sum-of-the-pairs. See infra Parts II.B.1.e and II.E.4.iii.

are they paying towards the total -- 100 megawatts of the total system transmission costs?

A They are paying for 100 megawatts of the total system, which includes A to B and A to D.

Q If A is a wholesale transmission customer and some days they want to bring 100 megawatts in from point D, and on some days they want to bring in 100 megawatts from point B, are you saying that they should pay 200 megawatts worth towards -- of the transmission capacity of this system?

A No. I'm saying, they have to pay 100 from here to here and 100 from here that you're going to reserve. You're paying 100 megawatts of the entire cost of all the system.

Q So, in both cases, the transmission customer and the retail customer should be paying for 100 megawatts worth of the system transmission costs?

A If that's what you're reserving, correct, and if that's what they're reserving.

Q If they wanted to -- like the retail customer, if they want to be able to bring in the 100 megawatts from along several paths, they should pay 100 megawatts, not for each special path?

A They have to pay 100 megawatts of the total system cost.

Q Right, total system transmission cost.

A Yeah. To make it very simple, if the retail customer is using 100 megawatts of the total system, and the wholesale customer is using 100 megawatts of the total system, retail customers ought to pay 50 percent and the wholesale customers ought to pay 50 percent of the cost of the total system.

Q And that's regardless of the specific number of paths each of them might be using?

A You could make an exception in terms of cost causation. If one customer was using selected paths, you could -- if the regulators wanted to establish a selected path tariff, maybe they could price selected paths.

Q But so long as everybody is paying this rolled-in cost, it wouldn't be related to selected paths?

A My earlier illustration was 50 percent of the total.

See Cresse Tr. 96-98 (Appendix 3).

In sum, FPL provides transmission customers only point-to-point service, with multiple charges for service at multiple points. This service does not enable transmission customers to integrate and coordinate their generation, or buy and sell capacity and energy off-system in competition with FPL. FPL's point-to-point service is not equivalent to the network service FPL provides itself to coordinate and to engage in bulk power transactions and integrate its system. Yet, FPL charges transmission customers at least a full share of total system transmission costs for the unnecessarily limited service. FPL's proposed point-to-point service is therefore unduly discriminatory and anticompetitive.

iii. FPL's Discriminatory Point-To-Point Transmission Effectively Sabotages Competition In Bulk Power Markets, Thus Thwarting the Competitive Purposes of the Act

By providing transmission to others only on terms and prices less favorable than it enjoys, FPL effectively denies or limits transmission and severely distorts the generation market. FPL Vice President of Power Delivery Richard Taylor has testified that in this environment, "[t]here is an advantage of owning and controlling the transmission system to all sources" 61/ and that FPL uses its transmission assets to benefit its own generation. 62/

61/ See Taylor Tr. 235 (Appendix 15).

62/ See id. at 172 (Appendix 15).

Absent a requirement of equal transmission access and pricing, relaxation of generation pricing regulation will simply intensify the motive and increase the opportunity for transmission owners such as FPL to capitalize on their substantial market power. As FPL's "open access" filings amply illustrate, transmission owners will be able to "negotiate" (or impose) higher prices for power sales and coordination services, leveraging transmission advantage into false competitive advantage for generation sales. 63/ In addition, as discussed above, cumulative point-to-point transmission "tolls" stunt the development of competitive generation markets by effectively excluding market participants, preventing economic integration of resources, and destroying the economic feasibility of power supply options that otherwise would reduce regional power costs. Discriminatory point-to-point restrictions thus subvert competition on the merits, and instead tend to suppress or eliminate competitors. As FPL recently stated, "for the competitive market to evolve and function in a way that produces these [consumer] benefits .... all utilities must be permitted to participate in the competitive process on reasonably even terms." FPL's July 6, 1993 Response to Florida Cities' Motion for Discovery Order, at 5 (citations omitted).

The monopolizing tendency that results from unequal access is not merely hypothetical. By refusing to sell network transmission and thereby blocking IDO, FPL has already constrained one FMPA member (the City Electric System of Key

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63/ Cf. David W. Penn and Rodney Stevenson, For Competition's Sake -- Transmission Access First, in Competition in Electricity: New Markets and New Structures 443 (James Plummer and Susan Troppman eds., 1990).

West) to purchase wholesale power from FPL instead. See Malmsjo Tr. 297-301, 305-15, 336-40 (Appendix 61). More generally, FPL's expansionist intent is evident in its thinly-veiled proposal to acquire the municipal electric system of Homestead, Florida, made almost immediately after Hurricane Andrew devastated that city. See April 28, 1993 Affidavit of Robert W. Brush, submitted in the District Court case (Appendix 62). FPL documents produced in discovery in the District Court case evidence that FPL has recently considered other acquisitions. 64/ For transmission to operate as the medium through which competition can occur, access of non-owners must be equal, in terms of both price and quality, to that enjoyed by transmission owners. In Public Serv. Co. of Indiana, 51 FERC ¶ 61,367, 62,201 reh'g denied, 52 FERC ¶ 61,260, order on clarification, 53 FERC ¶ 61,131 (1990), dismissed, No. 90-1528 (D.C. Cir. January 21, 1992), the Commission recognized that to prevent PSI from exercising an "unfair competitive advantage" in marketing bulk power, it must serve itself under the same transmission tariff terms to which other eligible utilities are subject. In this way, the transmission owner would compete for generation purchases or sales on an equal footing with transmission dependent utilities and IPPs. See also Order 636, 57 Fed. Reg. 13,267 (1992).

In the case of transmission dependent systems, such equality means full network access to the transmission system of the surrounding transmission owner(s), priced so that the retail customers of all those who depend on the system share equally in

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64/ Confidentiality restrictions applicable to that discovery prevent FMPA from identifying here the targets of those potential acquisitions or attaching those documents. See Florida Cities June 21, 1993 Motion for Discovery Order.

the cost of that system. Compare Northeast Utils. Serv. Co., 56 FERC ¶ 61,269, at pp. 62,049-50 (1991), modified in part, 58 FERC ¶ 61,070 (1992), reh'g denied, 59 FERC ¶ 61,042, aff'd in pertinent part, Nos. 92-1165, et al. (1st Cir. May 19, 1993).

Competitive bulk power markets require that TDUs be able to purchase and use transmission on the network basis now enjoyed only by FPL. Active coordination services and secondary power markets, where entitlements are bought and sold for a variety of terms, are essential components of a vigorously competitive bulk power market. 65/ Transmission dependent systems must be able to use transmission flexibly if the transmission owner is to be prevented from severely distorting those markets. FPL's point-to-point service limitations, and its other existing or proposed limitations (unnecessarily inflexible dispatching and scheduling requirements, unnecessary and discriminatory reservation requirements and penalty provisions, and the treatment of each distinct firm or non-firm use of the system as a separate transaction engendering separate charges), severely impede the ability of transmission dependent systems to participate in bulk power markets and can preclude a secondary market in generation.

In light of the Commission's new authority to order transmission under the Energy Policy Act and Congress' clear intent to promote competitive generation markets, there is no longer any basis for the Commission to accept discriminatory

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65/ This secondary market -- in which generation is resold on a long-term basis, as well as a short-term and hourly basis -- is important because the ability to resell generation reduces the risk of buying generation in the primary generation market -- the market for new generation. The ability to resell generation also allows for matching of needs and resources on a much more efficient basis than can be accomplished through the primary generation market alone.

point-to-point transmission service for TDUs who request network service. Cf. Entergy Services, Inc., 63 FERC ¶ 61,156 (1993) (Energy Policy Act removed statutory basis for discrimination against QFs, requiring Commission to exercise ratemaking authority under Section 205 in a nondiscriminatory manner). 66/

d. FPL's Basic Obligation to Sell Networking Should Not Be Left for Resolution During the Negotiation of a Service Agreement

As demonstrated above, FPL's responses to FMPA's requests have made abundantly clear that FPL will not sell FMPA or its members network transmission. Absent an order establishing that the "basic rules" by which FPL must (and has agreed to) abide include the obligation to sell network transmission, negotiating for network service in a service agreement would be futile. Indeed, as discussed in Part __ above, FPL's proposed tariffs include terms which would prevent FPL from selling network transmission under a Service Agreement implementing those tariffs. And while such futile negotiations proceeded, the injury to the public interest caused by the unavailability of network service would continue to mount. In this case, justness and reasonableness delayed is justness and reasonableness denied.

In Entergy Services, Inc., 63 FERC at 61,147, the Commission postponed consideration of a claim for network transmission beyond the service areas of the individual Entergy operating companies, stating that "any customer that is eligible

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66/ For example, the Commission's stated view that it was without authority to order expanded service was the express predicate for the Commission's enforcement of the terms of a point-to-point transmission arrangement in Wisconsin Elec. Power Co., 40 FERC ¶ 63,007, at pp. 65,057-62, aff'd in pertinent part and modified in part, 46 FERC ¶ 61,019, pp. 61,112-13, reh'g denied, 48 FERC ¶ 61,247, pp. 61,859-60 (1989), petition for review denied per curiam, 918 F.2d 225 (D.C. Cir. 1990).

for different terms and conditions due to an NRC license condition may be separately accounted for in a service agreement." The Commission recognized its obligation to consider whether Entergy's transmission terms and conditions conform to Antitrust Condition requirements, but concluded that the issue was not ripe for consideration in that proceeding: "If the customer alleges that the terms and conditions contained in the service agreement do not conform to applicable requirements, the Commission will address the issue at that time based on the specific facts presented by the customer and Entergy." Id. at 61,147.

Such a postponement would not be justified in this case. FPL's adamant refusal to sell network transmission to FMPA makes clear that postponing consideration will not narrow the dispute. And unlike in Entergy, clear language in FPL's proposed tariffs make plain that FPL cannot sell network transmission under those tariffs. This proceeding concerns tariff proposals which represent yet another instance where FPL has failed to "immediately" file "[r]ate schedules and agreements, as required to provide for the facilities and arrangements needed to implement the bulk power supply policies" under which FPL is obligated to sell network transmission "among" neighboring entities. See Antitrust Conditions Sections X(a), X(b), and XII (Appendix 19). That failure should not go unremedied here.

Moreover, network rights must be addressed now to achieve proper cost allocation. If transmission contract demands continue to be charged on a point-to-point basis (contrary to the arguments for network rights being pressed here) the allocator should be system capability transfers between all points by FPL

and others (including FPL's own internal deliveries to distribution). This sum-of-the-pairs method, at minimum, is required to avoid a mismatch between the demand allocator and billing determinants. The Commission recently confirmed the importance of proper matching. See Northeast Utilities Service Co. (Re Pub. Serv. Co. of New Hampshire), 62 FERC ¶ 61,294 at 62,907 (1993), reh'g pending. ("Northeast Utilities"). Here, proper matching requires that if FMPA is to be charged on the basis of paths, costs be allocated on that same pair-by-pair basis. Such an allocator would, in general, recognize each point at which FPL's transmission system receives power from FPL generating resources, or steps power down to FPL's distribution voltages. The large number of these points, see, e.g., FPL's FERC Form 1 at pages 426A-426S, and the multitude of resulting point-to-point combinations, makes clear that it is unreasonable to charge Florida Cities on a network basis while imposing point-to-point restrictions on their use. 67/

2. Opportunity Cost Pricing and Facility Charges

FPL proposes under Tariff Nos. 1 and 2 to recover "opportunity costs" from long term and short term firm wheeling customers. Tariff No. 1, Article VIII, Section 8.3, pp. 29-31; Tariff No. 2, Article VIII, Section 8.3 p. 21. 68/ These provisions identify an unlimited range of potential charges which

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67/ Florida Cities are willing to pay rates and bear obligations in connection with network service equivalent to economic costs borne and obligations incurred by FPL. FMPA has made numerous proposals for such arrangements, but FPL has spurned them.

68/ Florida Cities assume that FPL proposes no opportunity cost pricing for non-firm service. Should the Commission interpret Tariff No. 3 as providing for the imposition of opportunity cost charges, Florida Cities reserve their rights to oppose the imposition of such charges.

meeting their load variations. FPL's current and proposed PR rates fully recover that cost, for example by recovering the costs of building and maintaining FPL's spinning reserves. Florida Cities thus pay their pro-rata share of the cost of meeting their own load variations, and of meeting FPL's larger load variations. FPL ignores these payments when it contends that "no specific provision is made in FPL's current PR Rate Schedule" for the cost of meeting PR customers' load variations. Answer at 170, emphasis added.

3. Restriction Against Resale

FPL has sought a waiver of the Commission's prohibitions against restricting resales. See March 19 Transmittal Letter at 50-51. The Commission should summarily deny FPL's proposed restriction as contrary to both established Commission policy and FPL's NRC License Conditions (Section IX). See also Argument VI below, opposing FPL's request for waiver of the prohibition against resale restrictions.

The NRC antitrust license conditions to which FPL has agreed expressly provide (Appendix 19):

> Wholesale power sales agreements shall not restrain use or resale of power sold pursuant to such agreements except as may be necessary to protect the reliability of Company's system.

This prohibition is absolute. As a jurisdictional matter, FPL is bound under the Mobile-Sierra doctrine.

FPL ignores that prohibition and wrongly seeks to preclude resale of a customer who has paid a demand charge. Moreover, even if some limitation on Florida Cities' resale rights were justified, there can be no justification for a limitation against a customer using wholesale power to sell energy to a third party.

It is true that sometimes the energy cost of the wholesale power will be below the incremental cost of energy on the market, and sometimes it will be above it. However, FPL's rates will be designed to afford the Company a profit on its wholesale power sales.

Although FPL has a professed concern that the resale of wholesale power can sometimes result in the use of generation at a higher incremental cost than alternative generation (FPL witness Stepenovitch at 17-18, Volume 2(c), FPL often acts to prevent the use of the lowest cost generation, when it deems such action to be beneficial. FPL supports FCG rules which give a priority to use of its own generation over generation sales by third parties, which may have a lower incremental cost or may have a lesser impact on constraint areas. Moreover, FPL has opposed centralized dispatch which would result in the lowest cost provision of power. And in its insistence on limiting transmission availability to point-to-point service, FPL blocks the use of the lowest cost energy available. 120/

Antitrust Condition IX provides that "[w]holesale power sales agreements shall not restrict use or resale of power sold pursuant to such agreements except as may be necessary to protect the reliability of Company's system" (see also Antitrust Condition II(d)). FPL's proposed resale restriction is not necessary to that purpose, and accordingly violates the Antitrust Conditions. In this regard, FPL's characterization of the Conditions before the NRC Atomic Safety and Licensing Board is

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120/ FMPA notes that by agreement, it may be willing to consider a limited restriction such as the one which is now in effect on the broker. However, jurisdictionally, the Commission cannot impose such a restriction.

telling. Under the license conditions, FPL stated, "[t]he net result is that the wholesale customer may use or resell the power supplied by FPL, and any other resources available to it, in any manner that it sees fit;" because "the settlement license conditions (Section IX(e)) expressly provide that FPL may not restrict the 'use or resale of power sold' at wholesale." 121/ Given that adjustments to hourly deliveries of PR energy just before each delivery hour have been allowed since the commencement of PR service, it cannot be argued that such adjustments jeopardize the reliability of the FPL system. Thus, the Commission should summarily disallow these proposed restrictions because there is no technical basis for them, and because the provisions violate the requirements of the Antitrust Conditions.

Finally, this restriction is forbidden per se by Commission order. See Argument VI below, opposing FPL's request for waiver of the restriction.

4. Restrictions on Service; Minimum Demands

In its proposed new PR rate schedule, FPL seeks to change the determination of PR billing demands both to limit severely the effective use by PR customers of their PR purchases and to increase unjustifiably the costs of those purchases. Under FPL's currently effective PR rate, a customer's billing demand for each month is the actual maximum demand for that month, down to 85 percent of the customer's then effective Contract Demand and up

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121/ See FPL's August 7, 1981 Response to Cities' Motion to Establish Procedures, for a Declaration that a Situation Inconsistent with the Antitrust Laws Presently Exists and for Related Relief, Florida Power & Light Company (St. Lucie Plant, Unit No. 2), NRC Docket No. 50-389A at 66 & n.2. (Appendix 38).

on the FPL system, because they ignore seasonal and monthly use patterns and diversities.

For these and other reasons, FPL's proposed billing demand and service restriction should be summarily rejected. At the very least, they should be fully addressed in an evidentiary hearing.

5. Restrictions On Delivery Points

FPL's proposed PR rate schedule (including its associated General Terms and Conditions) requires separate purchases for each delivery point of each customer. While FPL's currently effective PR rate is similar to the proposed rate in this regard, Florida Cities submit that this is no longer reasonable, for a number of reasons.

First, under both the present and proposed PR rate, existing customers and potential PR customers, including entities (like FMPA) with more than one delivery point, will be unable to integrate their PR purchases with other resources and to take advantage of load and resource diversities on different parts of their systems, like FPL itself is able to do. This is discriminatory and places PR customers at a competitive disadvantage with FPL.

Second, the point-by-point provisions of FPL's PR rate should be viewed in the light of all of the other terms and conditions of the existing rate schedule as well as FPL's proposed new schedule. In combination, the contract demand notice provisions, billing demand provisions (the 85-115% band discussed previously) and the excess or "Peak Demand" provisions of the currently effective PR rate schedule provide at least a nominal ability for customers to move load among delivery points.

Taken together, the provisions of FPL's proposed PR rate have the cumulative effect of "bottling up" PR into small, discrete blocks. By definition, partial requirements service should be intended to supplement customers' other generation sources. Yet, FPL's proposed PR rate schedule, and to a lesser degree even the existing rate schedule, make it impossible for customers to integrate effectively and economically their other resources with PR purchases from FPL.

6. Other Terms and Conditions

In addition to FPL's proposed restrictions on changes in contract demand, scheduling, etc., for requirements service, the following terms and conditions are unjust and unreasonable and, taken together, are anticompetitive.

i. Five-year Notice for New Requirements Customers and New Delivery Points

FPL's proposal requires five years' notice for customers to get new requirements service or new delivery points. 123/ The notice period seems far longer than necessary, especially for customers with small requirements needs. Florida Cities submit that three years' notice is sufficient. Even one year is sufficient for small loads. If three years or less is not ordered summarily, Florida Cities request that the issue be heard, so FPL may prove, if it can, that five years is necessary. Antitrust Condition No. IX states (Appendix 19):

> Company may require such advance notice of the intention to take service and of the service contract demands as is reasonable for Company's power supply planning, and may

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123/ See Wholesale Electric Service Tariff, Rate Schedule FR, Sections 3 and 4, original sheet No. 4; Rate Schedule PR, Sections 4 and 5, original sheet No. 13; General Terms and Conditions, Section 4, original sheet No. 23.

> impose reasonable limitations upon the increases in such service contract demands, provided that no such limitations shall be imposed to prevent a neighboring entity or neighboring distribution system from assuming a load which has been served directly by the Company or a load which Company has sought to serve.

(Emphasis supplied). The license condition goes on to state,

> the Company shall not establish, rates, terms or conditions . . . for the sale of firm wholesale power which differentiate among customers on the basis of whether or not an entity has historically been a wholesale firm power customer of the Company.

Florida Cities recognize, and the license condition provides, that the Company may require reasonable advance notice and may limit increases on service contract demand. However, reasonable advance notice relates to a real planning need of the Company. FPL asserts (Locke testimony at 30-31, in Volume 2(a)), but has not demonstrated, that five years is reasonably required. 124/ In fact, FPL has recently entered into two new long-term power supply agreements to serve the City Electric System of Key West and the Florida Keys Electric Cooperative, Inc. There is no evidence that FPL is limiting its promotion of new retail business. Under the circumstances, a notice provision of five years cannot be demonstrated to be necessary for planning

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124/ In its Answer (at 177-178) FPL cites two resource acquisitions, by FMPA and by Seminole, which involved lead times of more than five years. However, these examples do not establish what lead time FPL reasonably requires. FMPA and Seminole planned ahead, and could have planned to bring resources on line more quickly had there been a need to do so. Moreover, FMPA's and Seminole's planning efforts have been complicated by the need to obtain transmission from FPL.

purposes, and will merely work to force potential wholesale customers off the tariff and to contract with FPL separately. 125/

ii. Curtailment

Under Section 10 of the General Terms and Conditions of FPL's Wholesale Electric Service (at Original Sheet Nos. 28-29), FPL is requiring that PR customers curtail their retail customers' loads during FPL emergency conditions. If a PR customer can reduce its PR purchase from FPL in proportion to FPL's firm load reductions by using alternative resources, the PR customer should not be required to curtail any of its retail loads. FPL should not penalize PR customers beyond the amount of PR service the customer is purchasing. The Commission should summarily disallow FPL's exaggerated requirement. However, Florida Cities are willing to curtail their interruptible customers and switchable DSM customers to the extent necessary to help FPL avoid or mitigate interruption of its firm loads. (FPL has not offered to curtail its firm retail loads pro rata with curtailments by Florida Cities.)

FPL claims (Answer at 180-181) that it should be allowed to require PR customers to shed retail load rather than switch to alternative generation because, in light of transmission constraints at that time, such a switch may not contribute to solving the emergency. FPL cites the unexpectedly high loads of

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125/ It would be impossible for FPL to justify the severe restrictions it imposes as necessary, when, for example, FPL anticipates normal planning errors in the range of 3 percent of system load or close to 500 MW (see Taylor Tr. 138-39, Appendix 15); when weather variations and other factors are far greater than the load at issue (see Schoneck Tr. 164, Appendix 13); and where there is no factual evidence whatsoever that FPL needs a five year notice period to commence service. The limitations are plainly contrary to FPL's wholesale power obligations and can have only an anticompetitive intent.

requested waiver to the extent that the required data would be duplicative.

H. Funding of PBOPs

With regard to post-employment benefits other than pensions under FAS 106, FPL has asked for waiver of the external funding mechanism which would otherwise be required by Post-Employment Benefits Other Than Pensions, 61 FERC ¶ 61,330 (1992). FPL argues that the $71,000 at issue is too small to require external funding, in that the cost of fund administration would be substantial in comparison to the $71,000. Florida Cities are dubious about the calculation of the $71,000, but they would not oppose the waiver request, on two conditions. First, the amount allowed by formula for this cost component should be $71,000 or less per year. Cf. March 19 Transmittal Letter at 53 ("FPL proposes to include within its formula rates the prudently incurred costs."). Second, FPL should be required to present an audit within three years, showing its accounting treatment of funding of these benefits.

VII. RENEWED MOTION TO REQUIRE FILING OF NRC LICENSE CONDITIONS

Consistent with Pacific Gas & Elec. Co., 11 FERC ¶ 61,246 at 61,484, 61,486 (1980), aff'd mem., 679 F.2d 262 (D.C. Cir. 1982), the Commission should require FPL to file NRC antitrust license conditions as rate schedules especially because the license conditions have an important bearing on FPL's filing and the services affected by the filing. 160/

160/ See also Cleveland Electric Illuminating Co., Opinion No. 84, 11 FERC ¶ 61,114 (1980); Florida Power & Light Co., 26 FERC ¶ 63,019 (1984), vacated as moot, 30 FERC ¶ 61,230 (1985).

This Commission has jurisdiction to interpret and enforce NRC antitrust license conditions. Pacific Gas & Electric Co., 49 FERC ¶ 61,116 at 61,497 (1989) ("to the extent that the [NRC antitrust license conditions] affect or relate to ... a rate schedule subject to [the Commission's] jurisdiction under the Federal Power Act, they are also subject to our review"). 161/ Cf. United States v. Pacific Gas & Elec. Co., 714 F. Supp. 1039, 1051 (N.D. Cal. 1989) (since license conditions were also a contract between PG&E and the Department of Justice, they could be enforced in the courts by a third-party beneficiary). By vigorously enforcing such conditions -- conditions to which utilities expressly agreed in return for the special privilege of obtaining nuclear power plant licenses -- the Commission should substantially increase transmission access for at least some utilities.

In addition to its power to enforce NRC antitrust license conditions, the Commission can strengthen them if necessary to make them just, reasonable, and non-discriminatory. 162/ Under Sections 205 and 206, the Commission is obligated to eliminate undue discrimination; and it has broad discretion to adopt policies and procedures necessary to carry out the purposes and

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161/ See also Florida Power & Light Co., 26 FERC at 65,056 ("that the NRC may have jurisdiction to interpret its own license conditions does not oust this Commission from jurisdiction" under Sections 205 and 206 of the FPA); Pacific Power & Light Co., 26 FERC ¶ 63,048 at 65,206 (1984), vacated on account of failure to settle, 55 FERC ¶ 61,046 (1991) reh'g pending (licensing conditions "are within the Commission's jurisdiction and might be the subject of Commission investigation and general modification if the Commission so directed").

162/ Because it has no jurisdiction to modify an NRC license, this Commission cannot release utilities from obligations imposed by the NRC. It can, however, strengthen those obligations or modify transmission practices consistent with its jurisdiction under the FPA.

provisions of the Federal Power Act. In Cleveland Electric Illuminating Co., 11 FERC ¶ 61,114 at 61,248 (1980) reh'g denied, 18 FERC ¶ 61,030 (1982), the Commission recognized its authority under Section 205 to modify agreements filed with it pursuant to NRC license conditions. Finally, there is no reason to treat antitrust license conditions differently from other filed rate schedules. See Pacific Gas & Elec. Co., 49 FERC ¶ 61,116 (1989), and the vacated initial decisions in Florida Power & Light Co., 26 FERC at 65,056, and Pacific Power & Light Co., 26 FERC at 65,205.

FPL has previously been ordered, by a FERC Administrative Law Judge, to file the Antitrust Conditions with the Commission. See Florida Power & Light Co., 26 FERC ¶ 63,091 (1984). FPL took exception to that decision, arguing among other things that filing was unnecessary because "there is ... no reason for concern that the license conditions will not be enforced so long as they remain part of the license issued by the NRC." FPL Brief on Exceptions at 17. FPL subsequently settled that proceeding, and the Initial Decision ordering filing was vacated as moot. Florida Power & Light Co., 30 FERC ¶ 61,230 (1985). The Commission held:

> The license conditions are public information and our action herein does not change FPL's obligation to abide by them. Furthermore, dismissal at this point on the basis of mootness should pose no prejudice to any entity. Thus, it appears that no immediate purpose would be served by addressing the specific findings of the initial decision at this time.

Id. at 61,459.

It is now clear that the license conditions should be filed at the FERC. First, FPL has refused to provide requested service

in circumstances when the Antitrust Conditions required it do so, most notably FMPA's request for network transmission access. See supra Part II.B.1. Second, the instant tariff filing attempts to erect a comprehensive regime governing FPL's transmission, coordination, and wholesale service offerings, one which would supplant and in many respects conflict with the "basic rules" contained in the Antitrust Conditions. See supra Part II. Yet nowhere in its voluminous transmittal letters, pleadings and testimony does FPL so much as mention the license conditions, except in its Answer which contends that the license conditions are irrelevant at FERC. Indeed, FPL even mischaracterizes the claims asserted by FMPA in the District Court case (March 19 Transmittal Letter at 44), by not mentioning FMPA's court claims based on the Conditions. Third, FPL President and Chief Operating Officer Stephen Frank testified in a November 19, 1992 deposition in the District Court case that he had never read the Antitrust Conditions or had them explained to him, has not issued policy statements, directives, guidelines, or the like to attempt to ensure compliance, and that to his knowledge no FPL employee had conducted an audit to ascertain FPL's license condition obligations. Frank Tr. at 10-14 (Appendix 63). 163/ Requiring FPL to file the Antitrust Conditions would help ensure future compliance.

Furthermore, the comprehensive nature of FPL's tariff filings adds force to the concern that the Antitrust Conditions be kept on file with the Commission, "the official repository of jurisdictional transmission rate schedules -- so that all

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163/ The relevant portion of this deposition, which was inadvertently omitted from Florida Cities' April 12, 1993 filing, is in Appendix 63

interested parties can have ready access to them." See FPL, 30 FERC at 61,459 (Commissioner Stalon, dissenting). Otherwise, neighboring entities -- particularly new market entrants, if there are to be such -- may not be aware of their Antitrust Condition rights.

FPL argues (Answer at 256-259) that Florida Cities' motion to require filing of the Company's St. Lucie nuclear plant license conditions should be rejected because Cities fail to meet the "rule of reason" approach stated in North Carolina Eastern Municipal Power Agency v. Carolina Power & Light Co., 57 FERC ¶ 61,372.(1991). Relying upon that case, FPL argues that Cities have not shown the requisite "'close nexus' between the license conditions and FPL's present filing." Answer at 258. This contention is untenable, given Cities extensive argument on the relationship between FPL's "open-access" filing and the Company's obligations under the license conditions. While FPL contends that Cities' arguments are "too general and inexact" (Answer at 258-59), Cities have in fact demonstrated in detail the obvious and direct relevance of the license conditions to the matters at issue here. 164/

In these circumstances, requiring that the Antitrust Conditions be filed is well within the Commission's remedial and regulatory authority, and is appropriate and necessary.

164/ Finally, to be clear, the North Carolina Eastern case sets no hard-and-fast rule against the filing of NRC license conditions at FERC. At most, the case stands for the proposition that the movan there -- unlike FLorida Cities here -- had not established a sufficient nexus. In fact, the Commission did not foreclose renewal of the motion, stating that "[n]othing in our decision is intended to prevent [North Carolina Eastern] from renewing its motion to compel filing under different circumstances." 57 FERC at 62,254.

VIII. CONCLUSION

For the reasons stated above, the Commission should:

(a) consider the protests of Florida Cities and others;

(b) reject FPL's filing as contrary to contract and contrary to law, as explained above;

(c) if the filing is not rejected, grant Florida Cities' motions for partial summary dispositions;

(d) if the Commission does not summarily disallow FPL's proposed restrictions on availability of interchange power services and on changes in amount of requirements power services, grant Florida Cities' motion for an interim deferral of those restrictions;

(e) if Florida Cities' pending motion for a discovery order is not granted, strike the testimony of Michael Yackira;

(f) grant Florida Cities' request for a five-month suspension of FPL's proposals;

(g) grant Florida Cities' request for a hearing on all aspects of FPL's filing, to the extent FPL's proposals are not summarily rejected or disallowed;

(h) deny FPL's requests for waivers, as explained above; and

(i) grant Florida Cities' motion to require FPL to file its Antitrust Conditions at the FERC.

Respectfully submitted

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By: Alan J. Roth /by DEP

Attorneys for Florida Cities

August 24, 1993

ATTACHMENT 1

(Original Filed on April 12, 1993)

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. ER-93-465-000

FLORIDA POWER AND LIGHT COMPANY

_____/

AFFIDAVIT OF ALBERT B. MALMSJO
ON BEHALF OF THE FLORIDA CITIES

ORLANDO, FLORIDA) SS:

BEFORE ME, the undersigned authority, personally appeared Albert B. Malmsjo, who, after being by me first duly sworn, deposes and says that the facts stated herein are true based on personal knowledge:

1. My name is Albert B. Malmsjo. I am a Partner with R. W. Beck and Associates, 800 North Magnolia Avenue, Orlando, Florida.

2. I am a registered professional engineer in Florida and several other states. My professional experience and education are summarized in Appendix A hereto.

3. For more than ten years, I have been assisting Florida Municipal Power Agency ("FMPA") and other municipal utilities included in the Florida Cities in their efforts to acquire and efficiently use bulk power resources in order to provide electricity to their customers. My work has included assisting FMPA in connection with its Integrated Dispatch and Operations Project ("IDO Project").

4. Under the IDO Project FMPA would supply the all-requirements power supply needs of the project members using generating resources that are owned or contractually controlled by FMPA.

5. The IDO Project members include the Cities of Ocala, Bushnell, Leesburg, Jacksonville Beach, Green Cove Springs, Clewiston, Lake Worth and Vero Beach; the Fort Pierce Utilities Authority and the Utility Board of the City of Key West. All ten of the cities that are FMPA IDO Project members are either directly or indirectly interconnected with the Florida Power & Light ("FPL") network. Seven are located in or adjacent to the FPL network. Three are connected to the FPL transmission network through the facilities of Florida Power Corporation.

6. All of FMPA's generation resources for the IDO Project are located within the State of Florida and are either directly or indirectly interconnected with the FPL transmission network. Most are located in or adjacent to the service territory of FPL and are directly connected to the FPL transmission network. The others are connected to the FPL network through the facilities of Florida Power Corporation and other Florida utilities.

7. FMPA's IDO Project generation resources and load centers comprise a well defined utility system that can be readily operated and coordinated in a single control area. Like FPL, FMPA's generation resources and its load centers are geographically dispersed. The IDO Project must use FPL's transmission network to integrate the FMPA and IDO Project member resources to provide economic electricity for these members. That is, FMPA seeks to integrate its generation and purchases from multiple supply sources to serve its total load at multiple load points, as does FPL. Thus, FMPA needs the ability to use transmission in a way that allows it to import and deliver the power among the multiple sections of its system. It cannot do this confined by the "point-to-point" restrictions contained in FPL's current filing.

8. Exhibit B hereto is a map that was prepared under my supervision. The map shows the general location of the ten FMPA members that are participants in the IDO Project and the generating resources owned by FMPA or the IDO Project participants that are committed to the IDO Project. The resources depicted on the map include only resources owned, in full or in part, by FMPA or the IDO Project participants. FMPA's purchases of capacity and energy from various utilities in the state, such as purchases from Tampa Electric Company and Florida Power Corporation, are not depicted. The map provided as Exhibit B also generally highlights the FPL service area. The FPL transmission network is essentially located within the FPL service area shown.

9. In negotiations commencing in late 1989, FMPA has asked FPL to provide the "network transmission" necessary for the IDO Project. With few exceptions, a utility's individual transmission lines are not used on an independent stand-alone basis. The transmission lines are interconnected and integrated together to operate on a "network" basis. For a utility with multiple, geographically distributed generation resources and load centers, transmission on a network basis is a necessity to provide reliable service at a reasonable cost. The ability to use transmission on a network basis allows a utility to benefit from the diversity of its loads and resources, allows for the coordination of reserves, and allows for the coordinated operation of resources to provide the lowest cost service.

These critical network functions cannot practically and economically be achieved through a series of independent "point-to-point" transactions. The unreasonableness of forcing a utility to integrate its dispersed loads and generation resources through isolated, point-to-point transmission between load and delivery points was recognized

in the antitrust license conditions to FPL's St. Lucie Nuclear Plant, Unit No. 2 (the "License Conditions"). Under the License Conditions, FPL is required to transmit power "between two or among more than two . . . sections of a neighboring entity's system which are geographically separated. . . ." (See Condition X(a)(2), emphasis added.) I have no doubt that the term "among" was used to prevent FPL from precluding other utilities from obtaining the benefits afforded by a network transmission system through the unreasonable imposition of multiple charges on a point-to-point (between) basis.

Under network transmission service, FMPA would operate in the same manner as FPL. FMPA could deliver power to the transmission network from its generating resources and could deliver power from the transmission network to its loads without having to fictitiously limit the path taken by the power through "point-to-point" contract demands. FMPA would pay for its fair share of the costs of the transmission network based on its maximum coincident use of the transmission system -- or upon its maximum right to use the system established with a single contract demand. FMPA would not be charged based on multiple, duplicate demand charges that stem from the numerous "point-to-point" contract paths between individual receipt and delivery points. Under network transmission, FMPA could transmit its power among its geographically separated resources and loads for a single charge.

10. FPL has refused to sell network transmission service to FMPA and, as a result, FMPA has not been able to implement the IDO Project. FPL has only offered various forms of "point-to-point" transmission service for implementing the IDO Project. The excessive, multiple charges that result from the "point-to-point" transmission service proposed by FPL make it economically impossible to implement the IDO Project.

11. I have performed extensive studies for FMPA on the economic harm and damages that FMPA has or will incur as a result of FPL's refusals to sell FMPA network transmission service, and FPL's refusal to allow FMPA to purchase wholesale partial requirements service from FPL for delivery to multiple delivery points.

On a cumulative present value basis (in 1993 using a 7.25% discount rate) for the historic and projected period 1988 through 2006, current analyses show that FMPA has or will suffer more than $152 million of economic harm as a result of FPL's denials. After the year 2006, economic damages would continue at a level of $7-8 million per year (based on 1993 dollars).

12. FPL has argued that one of its reasons for denying FMPA network transmission is its efforts to protect its retail customers from additional costs that would be caused by the IDO Project transmission service. According to FPL, these additional costs would result from FMPA's increased use of the FPL transmission system for power deliveries to serve load in the southern part of the State. This argument is not valid for several reasons. First, to support this argument, FMPA must be assumed to be the incremental customer on the FPL transmission system, even though FMPA has been using and paying for transmission service for many years. Second, FPL assumes that FMPA's relatively small transmission requirements, not FPL's significant power imports from Georgia to serve its load and displace generation in South Florida, are the incremental cause of the constraints on the FPL transmission system. Both of these assumptions are unreasonable and discriminatory.

Moreover, FMPA currently uses more than 130 MW of FPL transmission system capability to serve its member loads in north Florida during peak load times. After implementation of the IDO Project FMPA would still be required to serve this significant amount of load in north Florida using the FPL transmission network. Based on FMPA's current estimates, implementation of the IDO Project under network transmission should not significantly increase the amount of member system load served in south Florida by FMPA resources in north Florida during peak times, as compared to the situation without the IDO Project. In fact, if FMPA is permitted to implement the IDO Project, it is entirely possible that it could reduce north-south power flows during peak periods in many years, thus reducing peak loads in the transmission network.

FURTHER AFFIANT SAYETH NAUGHT.

Albert B. Malmsjo
Affiant

State of Florida
County of Orange

Subscribed and sworn to before me by Mr. Albert B. Malmsjo, who is known to me this 12th day of April, 1993.

Lee Ann Merritt
Notary Public

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP.OCT. 18,1995
BONDED THRU GENERAL INS. UND.

My Commission expires _____

EXHIBIT A

Albert B. Malmsjo

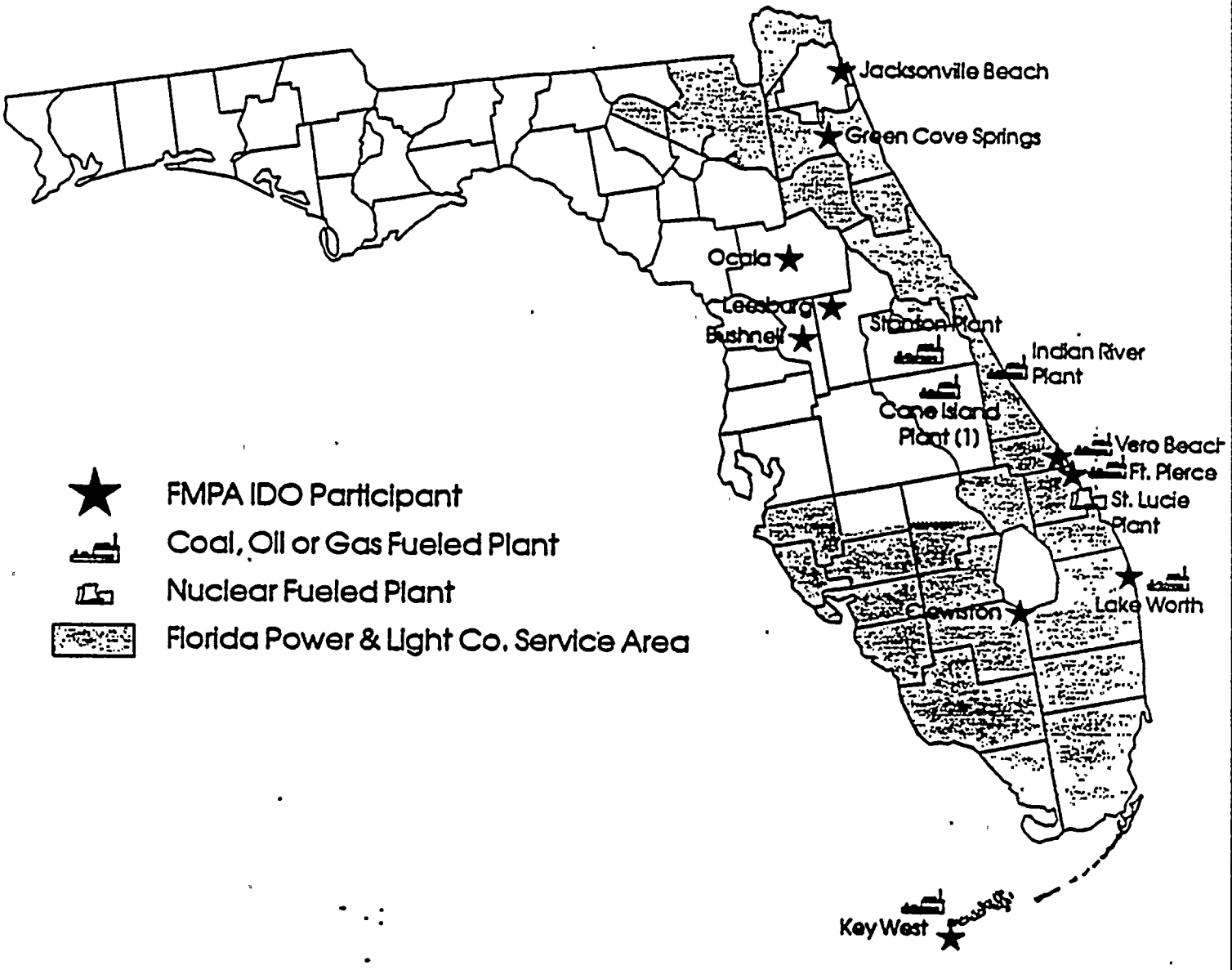
Albert B. Malmsjo is a Partner and a Senior Director with the Firm of R. W. Beck and Associates, Engineers and Consultants, and works in the firm's office at 800 North Magnolia Avenue, Orlando, Florida 32853, (407) 422-4911. He is a registered professional engineer in the States of Florida, North Carolina, South Carolina, Massachusetts and Michigan, and is a member of the American Society of Mechanical Engineers (A.S.M.E.). In 1972, Mr. Malmsjo received a B.S. in Mechanical Engineering from the University of Pennsylvania. In 1974, he was awarded a Master of Engineering in Nuclear Engineering from the University of Virginia.

Since joining R. W. Beck and Associates in 1981, Mr. Malmsjo has prepared and directed the preparation of (i) power supply and planning studies for individual municipalities and for joint action agencies; (ii) cost and feasibility assessments of ownership or joint participation in generating facilities planned, under construction, or in operation; and (iii) Consulting Engineer's Reports for financing utility projects. He has also participated in rate case settlement negotiations with several utilities, has submitted testimony before the Federal Energy Regulatory Commission, and has served as an expert witness. A major portion of Mr. Malmsjo's experience while at R. W. Beck and Associates has been working for Florida municipalities and the Florida Municipal Power Agency, a joint action agency comprising most of the municipal utilities in the State of Florida. From this work he has obtained first-hand knowledge of historical, current, and planned power supply resources and alternatives and rates of these utilities and other electric utilities in the State of Florida.

Prior to joining R. W. Beck and Associates, Mr. Malmsjo was associated with a major mid-Atlantic utility, Duke Power Company (Duke Power) for seven years. Mr. Malmsjo was an engineer in Duke Power's Design Engineering Department and also served as Staff Assistant to the Executive Vice President. His experience at Duke covered a wide range of utility functions and included engineering design, plant operations, power supply, contract negotiations, economic analyses, financing, rate case preparation, budgeting and planning activities.

EXHIBIT B

Florida Municipal Power Agency
IDO Project Participants and Resources



(1) Cane Island Plant is Currently Under Development

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing "Florida Cities' Amended Protest, Motion To Reject, Alternative Request For Partial Summary Dispositions, Alternative Motion For Deferral Of Power Service Restrictions, Alternative Request For Suspension And Request For Hearing, Conditional Motion To Strike Yackira Testimony, Answer Opposing Waiver Requests, And Motion To Require Filing Of NRC License Conditions" and supporting document Volumes II-A, II-B, and II-C to be served upon the persons designated on the Secretary's Service List in this proceeding.

Dated at Washington, D.C. this 24th day of August, 1993.

David E. Pomper

Law offices of:
Spiegel & McDiarmid
Suite 1100
1350 New York Avenue N.W.
Washington, D.C. 20005-4798
(202) 879-4000

APPENDIX 13

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Florida Power & Light Company) Docket No. ER93-922-000

FLORIDA MUNICIPAL POWER AGENCY'S
MOTION TO INTERVENE, PROTEST, MOTION TO REJECT,
ALTERNATIVE REQUEST FOR PARTIAL SUMMARY DISPOSITION,
ALTERNATIVE REQUEST FOR SUSPENSION AND REQUEST FOR HEARING,
AND ANSWER OPPOSING WAIVER REQUESTS

On September 1, 1993, Florida Power & Light Company ("FPL") tendered for filing extensive revisions to seven transmission service agreements ("TSAs"), including four TSAs for service to the Florida Municipal Power Agency ("FMPA"). The revisions are part of FPL's attempt to comprehensively restructure its transmission, wholesale power, and interchange services. In Docket No. ER93-465-000, FPL is proposing restrictive transmission tariffs which will frustrate competition; ill-formed and unformed limitations on interchange services; and unjustified restrictions on requirements power usage and on changes in contract demand, coupled with proposed rate increases. Here, FPL is proposing to apply to existing TSAs the formula rate provisions of its "open access" tariff filing in Docket No. ER93-465-000, causing among other things a major TSA rate increase (of 20% based on Period I data and 13% based on Period II data).

Pursuant to Rules 211, 212, 213, 214, and 217 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385, and the Commission notice issued September 7, 1993, FMPA moves to intervene, protests, moves to reject the filing, alternatively moves for partial summary disposition, requests suspension and

hearing (if the filing is not rejected or summarily resolved against FPL), and answers in opposition to FPL's waiver requests.

The deadline for filing protests is very short, compared to the size and complexity of FPL's filing. Moreover, Commission orders in the numerous other ongoing Commission proceedings concerning FPL may soon affect the issues here. Therefore, FMPA reserves its right to supplement this pleading.

I. MOTION TO INTERVENE

FMPA purchases transmission from FPL under four of the seven rate schedules at issue in this proceeding: FPL's FERC Electric Rate Schedules Nos. 72, 92, 93 and 109.

FMPA was created in 1978, in accordance with the provisions of the Florida Constitution, Chapter 361, Florida Statutes (the "Joint Power Act") and various other interlocal Agreements executed and delivered in accordance with the provisions of Section 163, Florida Statutes (the "Florida Interlocal Cooperation Act"). As a joint action agency, FMPA provides power supply and other project services for 26 member electric systems through individual projects as approved by the members. To date, FMPA has created five power supply projects, including joint ownership with FPL of St. Lucie Unit No. 2 (involving 75 MW for 16 -- now 15 -- members), and joint ownership with the Orlando Utilities Commission ("OUC") of Stanton Energy Center Unit No. 1 (involving 110 MW in three separate projects for 12 members). FMPA has also contracted (in two projects) to own 120 MW of OUC's Stanton Energy Center Unit No. 2.

FMPA owns and contracts for the complete power supply of six member systems in the FMPA All-Requirements Power Supply Project, which began operation in May of 1986. Three of these

member systems are located in the FPL system and three in the Florida Power Corporation ("FPC") system. The All-Requirements Project owns coal and combustion turbine capacity and has contracts with FPL as well as FPC, Tampa Electric Company ("TECO"), OUC, the City of Lake Worth and the City of Homestead for the firm power supply necessary to serve the All-Requirements Project's 450 MW peak demand. FPL transmission is essential to all of the above transactions, for which transmission is presently sold under the four FPL-FMPA rate schedules at issue in this proceeding.

FMPA's and its members' interests are adversely affected by FPL's filing. Their interests will not be adequately protected by any other participant in this proceeding. FMPA is therefore entitled to intervene and to participate in this proceeding.

The names, addresses and telephone numbers of the persons to whom communications concerning this matter should be addressed are as follows:

* Robert A. Jablon
Alan J. Roth
Spiegel & McDiarmid
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Washington, DC 20005-4798
(202) 879-4000

* Frederick Bryant
Moore, Williams, Bryant, Peebles
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306 E. College Avenue
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(904) 222-5510

Claude L'Engle
* Robert Williams
Florida Municipal Power Agency
Suite 100
7201 Lake Ellenor Drive
Orlando, FL 32809
(407) 859-7314

* Joe Linxwiler
R.W. Beck & Associates
Suite 300
800 North Magnolia Avenue
P.O. Box 6817
Orlando, FL 32853
(407) 422-4911

FMPA requests waiver of Rule 203(b)(3) to allow the designation of all four of the above addresses (and the individuals who have asterisks (*) next to their names) for inclusion on the official service list in this proceeding.

II. PROTEST

A. FPL's Filing Is Anticompetitive and Contrary to Antitrust Conditions Agreed to by FPL

Consumer welfare requires equal access. In FPL's own words:

> It is Congress' and this Commission's express policy to promote a more competitive environment in the "wholesale electricity power market" and thereby secure the lowest possible costs for consumers. ...
>
> However, for the competitive market to evolve and function in a way that produces these benefits .... all utilities must be permitted to participate in the competitive process on reasonably even terms.

FPL's July 6, 1993 Response to Florida Cities' Motion for Discovery Order in Docket No. ER93-465-000, at 5 (emphasis added, citations omitted). FPL's filing, however, is proposing uneven and unreasonable terms which will frustrate competition. In this proceeding, FPL proposes to extend the application of its unreasonable proposals to encompass FPL's existing TSAs.

FPL's latest filing is part of a comprehensive and interrelated scheme, the product of more than five years of strategic planning, aimed at using FPL's transmission rates to halt the evolution of a marketplace in which FPL would be

required to compete for sales of unbundled generation. See Florida Cities' June 21, 1993 Motion for Discovery Order in Docket No. ER93-465-000. Of particular importance, FPL proposes rate increases and formula rates measured on a network basis, for service that is limited to point-to-point use. This proposal is unjust, unreasonable, discriminatory against the public interest, and contrary to contract.

In settlement of several proceedings including antitrust proceedings before the federal courts and the Nuclear Regulatory Commission, FPL agreed to conditions attached to its St. Lucie Unit 2 nuclear license ("Antitrust Conditions"). 1/ The Antitrust Conditions require FPL to "immediately" file "[r]ate schedules and agreements, as required to provide for the facilities and arrangements needed to implement the bulk power supply policies" under which FPL is obligated to sell network transmission "among" neighboring entities. See Antitrust Conditions Sections X(a), X(b), and XII (Appendix 1). This proceeding concerns rate change proposals which represent yet another instance where FPL has failed to fulfill its this obligation. That failure should not go unremedied here.

FPL's failure to file a network rate is blocking FMPA from integrating its generation dispatch and planning, costing the public dearly. FMPA has entered into contracts to provide the electrical requirements of Lake Worth, Vero Beach, Fort Pierce, and Key West, subject to FMPA obtaining transmission from FPL. These four member cities, together with the six existing All-Requirements members, were to be served through FMPA's Integrated Dispatch and Operations ("IDO") Project. Under the IDO project,

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1/ A copy of the Antitrust Conditions is included as Appendix 1.

FMPA would integrate the local generation in these four member cities with its other generation, so that all FMPA generation could be planned and dispatched economically. For nearly two years, FMPA sought through negotiations to obtain from FPL the network transmission necessary to integrate its generation and implement the IDO project, but FPL refused to provide the service. Ultimately, FMPA filed suit to enforce its rights under contract and the antitrust laws to network access, as well as to purchase wholesale power as a block (to be dispatched as needed to meet the power requirements of the IDO participants). That suit is currently pending before the Federal District Court for the Middle District of Florida. Florida Municipal Power Agency v. Florida Power & Light Company, Case No. 92-35-Civ-Orl-3A22 ("District Court case"). 2/

FMPA has also (a) filed a Section 206 Complaint and Section 211 Application seeking network transmission in Docket Nos. ER93-51-000 and TX93-4-000; (b) intervened (jointly with its members doing business with FPL) in Docket No. ER93-465-000 to contest unjustified provisions at issue there, including FPL's proposal to restrict usage of its "open access" tariff by

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2/ Trial had been scheduled to begin this month. However, for scheduling reasons, the Court recently sua sponte postponed the pretrial conference until December 15, 1993, and postponed trial until January 1994.

Although issues dealing with FMPA's contract rights and rights under the antitrust laws to purchase network transmission are before the District Court, these issues are also within this Commission's jurisdiction, as FPL recognizes, because they affect the justness and reasonableness of FPL's transmission filings. Indeed, FPL has filed a summary judgment motion with the District Court in which it claims that the Commission has exclusive jurisdiction over these transmission issues under the "filed rate doctrine." In fact, both this Commission and the District Court have jurisdiction to ensure that FPL lives up to its obligations, although this Commission may not award damages or directly enforce the antitrust laws.

disfavored customers to point-to-point usage, while charging for system-wide transmission costs; and (c) petitioned the Nuclear Regulatory Commission to enforce nuclear license conditions in which FPL agreed to provide network transmission service "among" resources and loads of neighboring entities.

In these proceedings, FPL has taken the position that it need not sell network transmission because the TSAs have become the final statement of FPL's transmission to FMPA. For example, in its August 23, 1993 Answer to FMPA's Complaint, Application, and Motion in Docket Nos. EL93-51-000 and TX93-4-000, FPL proclaims:

> It is the existing TSAs, executed by FMPA, after the effectiveness of the License Conditions, that govern FPL's transmission obligations at this point, not the License Conditions themselves.

Id. at 60. In addition to being completely unsupported by the TSAs, see, e.g., the St. Lucie DSA § 13 ("notwithstanding the execution of this Agreement, FMPA shall have the right at any time to make application to such regulatory authority for a change in the service, terms, conditions and charges provided for herein" 3/), FPL's position in these proceedings is fatally undermined by its filing here. FPL has unilaterally filed for extensive revisions to these same TSAs -- while ignoring, once

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3/ See also FMPA's July 3, 1993 Complaint, Application and Motion for Summary Disposition in Docket Nos. EL93-51-000 and TX93-4-000 (Appendix 2) at 11-12 (reviewing reopener clauses in the other TSAs); Gosselin Tr. 42-43 (Appendix 3) (reopener provision added to the All-Requirements TSA when it was restated and revised in 1990 was included "in contemplation of a transmission service agreement for the integrated dispatch operation project," so that "[i]n the event that a transmission service arrangement was negotiated which included the all-requirements cities, that this agreement would be able to be revised to accommodate such understanding that may have been reached").

again, its obligation to sell FMPA network transmission on request.

As one such revision, FPL proposes to change three of its TSAs to require transmission customers to purchase unwanted FPL generation, rather than supply their own power to make up losses. FPL is now in the contorted position of contending simultaneously that (1) FPL need not sell FMPA network transmission, as FPL committed to do in its Antitrust Conditions, because the TSAs constitute the final word on what FPL must sell, but that (2) FMPA must purchase its loss make-up generation from FPL under the TSAs, because they do not constitute the final word on what FMPA must buy. The contradiction is manifest. FMPA submits that both its request to purchase network transmission and FPL's request to sell loss make-up generation should be evaluated on their merits, i.e. for consistency with the just and reasonable and undue discrimination standards of the Federal Power Act, with the Antitrust Conditions, and with antitrust policy. There can be no genuine dispute that FMPA's request meets these standards, and FPL's does not. 4/

In Docket Nos. EL93-51-000 and TX93-4-000, FPL has represented that it is willing to sell FMPA network transmission. FPL should be held to its word and ordered to file. 5/ However,

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4/ As will be demonstrated below, FPL's proposal is not just and reasonable, but rather is anticompetitive, because it ties an unwanted product (FPL generation) to a monopoly product (FPL transmission).

5/ FPL can institute network transmission, among other ways, by agreeing to modify its "open access" tariffs in Docket No. ER93-465-000 to remove point-to-point restrictions; by filing under Section 205 to remove point-to-point restrictions from the TSAs at issue here; or by agreeing to credit payments under those various remedies requested in FMPA's July 3, 1993 Complaint, Application, and Motion for Summary Disposition (Appendix 2), at 86-92.

the fact that FPL has filed to modify the very TSAs under which it is providing transmission service without filing for changes that would institute network transmission shows FPL's representations to be no more than a tactical ploy.

In view of the numerous proceedings already before the Commission in which FMPA's right to purchase network transmission is at issue, FMPA will simply incorporate and attach FMPA's July 3, 1993 Complaint, Application, and Motion in Docket Nos. EL93-51-000 and TX93-4-000, and FMPA's September 9, 1993 Response to FPL's Motions to Dismiss or Reject that filing, which explain why FPL should have filed either a superseding network transmission rate or rate changes that would enable provision of network service under the TSAs. See Appendix 2 and Appendix 4.

In addition to being contrary to contract, FPL's proposal is anticompetitive. FMPA is transmission-dependent on FPL 6/ and competes with FPL to serve FMPA's members in and adjacent to FPL's territory. FPL deponents in the District Court case repeatedly conceded that FMPA must use FPL's transmission system to implement the IDO project 7/ and that FMPA cannot practically duplicate FPL's transmission network. 8/ Network transmission is required to integrate economically and coordinate FMPA's resources, and FPL's refusal to sell it to FMPA is preventing

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6/ See map appended to the accompanying Affidavit of Albert B. Malmsjo (Appendix 5).

7/ See Frame Tr. 228 (Appendix 6); Schmalensee Tr. 66-69 (Appendix 7); Schoneck Tr. 223 (Appendix 8); Taylor Tr. 46-47 (Appendix 9).

8/ See Frank Tr. 6-7 (Appendix 10); Gardner Tr. 19-20 (Appendix 11); Schoneck Tr. 223 (Appendix 8); Frame Tr. 229-30 (Appendix 6); Adjemian Tr. 62-63 (Appendix 12). FPL owns more than 80% of the high voltage transmission facilities within its service territory.

FMPA from economically planning and dispatching its generation and from implementing the IDO project -- causing detriments that mount by tens of thousands of dollars daily. See Affidavit of Albert B. Malmsjo, Appendix 5. Furthermore, FPL clearly has exploited its ability to block the IDO project for its own competitive advantage. 9/ Through its instant filing, FPL seeks to further straightjacket FMPA's ability to compete by increasing the cost of transmission and requiring FMPA to buy loss make-up power from FPL.

In the context of the bulk power transmission market in peninsular Florida, the TSAs that are the subject of this proceeding and FPL's proposed open access tariffs filed in Docket No. ER93-465-000 can only be seen to comprise an elaborate obstacle course constructed by FPL to maintain and further FPL's market dominance. Transmission-dependant utilities seeking competitive bulk power supplies from suppliers other than FPL must attempt to navigate FPL's maze of restrictive service conditions and submit to FPL's punitive pricing terms. In the end, transmission-dependent utilities can obtain only second-class service at first-class prices. By contrast, FPL itself would continue to benefit from full, unrestricted and preemptive

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9/ After FMPA's IDO project was not implemented due to FPL's unwillingness to sell network transmission, one of the IDO project participants (Key West) entered into a contract to purchase electricity from FPL. FPL negotiated to sell power to Key West while it was negotiating with FMPA for transmission for the IDO project, with the knowledge that Key West had contracted to participate in FMPA's IDO project if it could be implemented; FPL required that Key West keep its negotiations with FPL secret; FPL developed a rate other than the standard partial requirements rate "to be competitive with [Key West's] expectations;" and FPL agreed to upgrade the transmission facilities used to deliver power to Key West without charging Key West directly for the upgrades. Gosselin Tr. 99-104 (Appendix 3). See also, Schoneck Tr. 184-89 (Appendix 8); Locke Tr. 531-37 (Appendix 13).

transmission access for its own bulk power transactions (both internal and external) at favorable, discriminatory rates.

As articulated well by Tampa Electric Company in its August 19, 1993 Protest in Docket No. ER93-465-000, FPL's filings "would result in third-party transmission service on the FP&L system that is more expensive, riskier, and less flexible than the transmission service embedded in FPL's competing sales services." Tampa Electric's Protest at 21. Tampa Electric went on to propose that, to mitigate the unfair competitive advantages FPL seeks, the Commission should require FPL's bulk power sales services to be "unbundled" so that FPL would be required to "play by its own rules." Id. at 23. See also Tampa Electric's September 13, 1993 Response to FPL's Answer at 2-12. FMPA submits that FPL's filing in this docket provides further justification (if any is needed) for this unbundling remedy.

FMPA further submits that the unbundling of FPL's services, in order to be effective, should extend to FPL's bulk power purchases from other utilities and its internal transactions. That is, access to FPL's transmission system, and the costs of that system, should be apportioned to all users. For example, if FPL's transmission customers are to be charged for service on a point-to-point, contract demand basis, all transmission customers (including FPL itself) should be charged on that basis. Similarly, all interchange transactions (including interchange purchases by FPL) should be subject to the same limitations (if and when there are limitations). More particularly, all non-firm opportunity purchases (including FPL's purchases) should receive equal priority, and FPL's own short-term, non-firm transactions should not be afforded a higher priority than the long-term, firm

transactions of transmission-dependent utilities. Unless FPL's discriminatory pricing terms and service conditions are corrected, this type of complete unbundling may be the only way for this Commission to ensure an equal, level playing field for transmission dependent utilities.

If the Commission does not order unbundling, it should at least remove discriminatory provisions from FPL's proposed rates. Most significantly, if transmission contract demands continue to be charged on a point-to-point basis (contrary to FMPA's arguments for network rights) the allocator should be system capability transfers between all points by FPL and others (including FPL's own internal deliveries to distribution). This sum-of-the-pairs method, at minimum, is required to avoid a mismatch between the demand allocator and billing determinants. The Commission recently confirmed the importance of proper matching. See American Electric Power Service Corp., Docket No. ER93-540-000 (September 3, 1993), slip. op. at 13-16; Northeast Utilities Service Co. (Re Pub. Serv. Co. of New Hampshire), 62 FERC ¶ 61,294 at 62,907 (1993), reh'g pending. ("Northeast Utilities"). Here, proper matching requires that if FMPA is to be charged on the basis of paths, costs be allocated on that same pair-by-pair basis. Such an allocator would, in general, recognize each point at which FPL's transmission system receives power from FPL generating resources, or steps power down to FPL's distribution voltages. The large number of these points, see, e.g., FPL's FERC Form 1 at pages 426A-426S, and the multitude of resulting point-to-point combinations, makes clear that it is unreasonable to charge FMPA a rate calculated on a network basis

while imposing point-to-point restrictions against usage on a network basis. 10/

B. FPL's Proposed Rate Changes are Unjust, Unreasonable, Unduly Discriminatory, and Anticompetitive

FPL is proposing to extend to its existing TSAs formula rate provisions proposed unilaterally by FPL, for application to future services, in Docket No. ER93-465-000. See September 1 Transmittal Letter at 3. FPL essentially repeats here the presentation it made in that docket. FMPA therefore responds to both FPL's presentation here and to arguments made by FPL in Docket No. ER93-465-000. 11/

1. The Overall Problem with FPL's Proposed Formula Rates

FPL is proposing to substitute "formula rates" for stated rates, at a time when doing so gives FPL a major rate increase. The Company proposes to bill based on estimated rates derived from the application of its formulas to estimates of its costs,

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10/ FMPA is willing to pay rates and bear obligations in connection with network service equivalent to economic costs borne and obligations incurred by FPL. FMPA has made numerous proposals for such arrangements, but FPL has spurned them.

11/ In particular, FMPA will refute relevant portions of FPL's March 19, 1993 letter transmitting its original filing to the Commission ("March 19 Transmittal Letter"); FPL's July 26 letter transmitting its amended filing ("July 26 Transmittal Letter"); and FPL's April 27, 1993 and September 8, 1993 pleadings (respectively, FPL's "April 27 Answer" and "September 8 Answer"). The witnesses FPL presents here (see Volumes IX and X, dated September 1, 1993) filed largely identical testimony in Docket No. ER93-465-000 (dated July 26, 1993). For ease of reference, FMPA will cite their testimony by date. FMPA will also refer to Florida Cities' August 24, 1993 filing ("Amended Protest"). In that filing, FMPA and its members doing business with FPL gave ample reasons, restated here in part, why the formulas FPL is proposing should not be approved. FPL had a full opportunity in its presentation here to take account of arguments made in that pleading, but has not succeeded in answering them.

point basis, then the allocator should be system capability transfers to all points by FPL and others. See supra Part II.A. If the Commission does not decide summarily in favor of sum-of-the-pairs, FMPA urges the Commission to set the matter for hearing, where FMPA will present further explanations and proofs.

7. Supplying Losses

FMPA and its members currently purchase power to provide for transmission losses on the FPL system from various utilities or generate the losses using their own resources. FPL is proposing to change the St. Lucie DSA, Stanton TSA and Tri-Cities TSA to require that all transmission losses be purchased only from FPL. See September 1 Transmittal Letter at 10-13; see also, e.g., FPL's proposed amendments to the FMPA St. Lucie DSA, Volume VI, page 3, § 6.3. This forced purchase will be uneconomical for FMPA and its members and will further limit wholesale competition. The Commission should summarily order that transmission customers may supply the losses, instead of being required to pay FPL for the losses, just as the Commission requires pipelines to allow customers to supply the gas losses (fuel) incurred to move the gas.

FPL has contended in Docket No. ER93-465-000 (April 27 Answer at 66; March 19 Transmittal Letter at 38-39), but has never shown that allowing customers to supply losses will complicate FPL's scheduling decisions. FPL supplies no evidence that a scheduling problem has ever arisen due to a transmission customer supplying its own losses. Indeed, no FPL witness supplies any justification for requiring customers to purchase their loss-makeup power from FPL. In their September 1 testimony, FPL witnesses Birkett, Locke and Schoneck all describe

FPL's proposal but are conspicuously silent on this point. 20/ Given that (like numerous other utilities) FPL has delivered power net of losses for years, FPL's inability to point to a real-world scheduling problem is telling. If there were a scheduling problem, it could be solved by requiring transmission customers to determine one day in advance whether to supply their own losses or to purchase them from FPL. There is no justification for requiring transmission customers to purchase all their losses from FPL.

As discussed in Part II.A above, FPL's proposal that the TSAs be modified to foist this additional purchase on FMPA undermines FPL's oft-stated excuse for not selling FMPA network transmission: FPL contends that the TSAs are the final word on what FPL must sell, but proposes that they be modified to increase what FMPA must buy. FPL's self-contradiction is unavailing, because the proposal is wrong on the merits.

8. Transmission System Functionalization

FPL's formula rates for transmission service improperly reflect the costs of transmission facilities that are not used and useful in providing transmission service and that should, therefore, be excluded from the costs to be recovered through such rates. FPL is proposing to reallocate to the transmission function costs booked to production accounts, e.g. plant that produces reactive power. Inconsistently, FPL maintains that plant booked to transmission accounts is ipso facto chargeable to

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20/ If FPL is correct that making up losses with FPL generation relieves scheduling difficulties and FPL's proposal is accepted, then transmission customers should be permitted to reduce or interrupt scheduled transactions on shorter notice than presently applies.

VII. CONCLUSION

For the reasons stated above, the Commission should:

(a) allow FMPA to intervene and participate in this proceeding with full rights as a party;

(b) consider the protests of FMPA and others;

(c) reject FPL's filing as contrary to contract and contrary to law, as explained above;

(d) if the filing is not rejected, grant FMPA's motions for partial summary dispositions;

(e) grant FMPA's request for a five-month suspension of FPL's proposals to the extent FPL's proposals are not summarily rejected or disallowed;

(f) grant FMPA's request for a hearing on all aspects of FPL's filing, to the extent FPL's proposals are not summarily rejected or disallowed; and

(g) deny FPL's requests for waivers, as explained above.

Respectfully submitted

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By: Alan J. Roth

Attorneys for FMPA

September 21, 1993

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing Florida Municipal Power Agency's Motion to Intervene, Protest, Motion to Reject, Alternative Request for Partial Summary Disposition, Alterntive Request for Suspension and Request for Hearing, and Answer Opposing Waiver Requests, and supporting appendices (Volume II) to be served upon:

William G. Walker III
Vice President - Regulatory Affairs
Florida Power & Light Company
9250 West Flagler Street
Miami, FL 33174

and

J. A. Bouknight, Jr., Esq.
Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, DC 20036

Dated at Washington, D.C. this 21st day of September, 1993.

David E. Pomper
Attorney for FMPA

Law offices of:
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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Florida Power & Light Company) Docket No. ER93-465-000

AFFIDAVIT OF ALBERT B. MALMSJO

ORLANDO, FLORIDA) ss:

BEFORE ME, the undersigned authority, personally appeared Albert B. Malmsjo, who after being by me first duly sworn, deposes and says that the facts stated herein are true based on personal knowledge:

1. My name is Albert B. Malmsjo. I am a Partner with R.W. Beck and Associates, 800 North Magnolia Avenue, Orlando, Florida.

2. I have been a professional engineer for almost twenty years. I received a B.S. degree in Mechanical Engineering from the University of Pennsylvania in 1972 and a M.E. degree in Nuclear Engineering from the University of Virginia in 1974. I am a registered professional engineer in Florida, North Carolina, South Carolina, Massachusetts and Michigan.

3. From June, 1974 to June, 1981 I was employed by Duke Power Company. Following several assignments in design engineering, I served as staff assistant to Duke Power's Executive Vice President of Engineering and Construction for several years. During this time I was a member of the negotiating team that represented Duke Power in negotiations with joint municipal power agencies and cooperative utilities

concerning ownership in a nuclear plant and related arrangements. Following the negotiations I was Duke's project manager for activities related to the sale.

4. Since joining R.W. Beck and Associates in 1981, I have directed or participated in numerous projects involving electric, gas, and solid waste utility systems and projects. My involvement has included: planning and feasibility studies; economic and engineering assessments; evaluations of alternatives; contract negotiations; forecasting and projections; licensing; mergers and acquisitions; sales of systems and equipment; annual engineer's reports; testimony as an expert witness; and consulting engineer's reports for major bond financings. Many of these projects involved consulting services to large joint action agencies.

5. My experience in power supply planning has involved the development and evaluation of numerous short term and long term power supply plans for utilities that range in size from a few thousand customers to several million customers. These studies have involved detailed economic and reliability analyses of combinations of new and existing generating technologies, purchased power and transmission arrangements and demand side alternatives. I played a key role in the development and implementation of completely new power supply programs for two large utilities in the Southeast. These new programs have saved utility customers millions of dollars since their initiation. I

also served as project manager on several studies that evaluated unit retirement and conversion options.

6. I also have served as both technical advisor and negotiator in the development of contractual arrangements involving electric, gas, and solid waste utility systems and projects. My experience includes supply contracts, operating contracts, transmission and transportation arrangements, interconnection arrangements, and joint ownership arrangements. As a part of my contract negotiations experience, I have performed various types of analyses to evaluate the risks and benefits of alternatives or strategies to be used in the negotiations.

7. Among other activities, I have been assisting Florida Municipal Power Agency ("FMPA") for more than ten years in its efforts to acquire and efficiently use bulk power resources in order to provide electricity to its members. My work has included assisting FMPA in connection with its "All-Requirements Project" and its Integrated Dispatch and Operations Project ("IDO Project"). Specifically, I directed the feasibility analyses for FMPA's IDO Project and participated in the negotiations with Florida Power & Light Company ("FPL") regarding FMPA's requests for network transmission service for the IDO Project. I also have made an analysis of the economic damages FMPA has suffered and will suffer as a result of FPL's denial of network transmission service for the IDO Project.

8. This Affidavit addresses four principal matters in support of FMPA's opposition to FPL's arguments that FMPA's Complaint in this proceeding should be rejected or dismissed. First, I explain why FPL already has received more than enough information to evaluate the impact on its transmission system of selling FMPA network transmission service to implement the IDO Project. Second, I discuss the reasonableness of FMPA's September 1989 IDO Project transmission service proposal to FPL, as well as subsequent proposals. Third, I respond to certain mischaracterizations by FPL concerning the operational characteristics of the existing transmission service agreements ("TSAs") between FMPA and FPL. Fourth, I describe the significant economic benefits that the IDO Project can be expected to produce if FPL is required to sell FMPA network transmission service on reasonable terms and conditions.

INFORMATION GIVEN TO FPL BY FMPA

9. Contrary to FPL's arguments, FMPA already has given FPL more than enough information to evaluate the impact on FPL's transmission system of selling FMPA network transmission service to implement the IDO Project. FMPA gave FPL all necessary information during the unsuccessful 1989-1991 negotiations for transmission for the IDO Project. A portion of this information is and has been available to FPL in data bases maintained by the Florida Coordinating Group ("FCG"), of which FPL is a member.

FMPA also has given FPL information or access to information in its damages analysis for the pending litigation between FMPA and FPL in the United States District Court for the Middle District of Florida, Case No. 92-35-CIV-ORL-3A22. The information FMPA already has given FPL includes virtually all of the data FPL claims in its Answer it needs and also satisfies the substantive provisions of the guidelines for good faith requests for transmission service issued recently by the Commission.

10. The following is a chronology and specification of the information FMPA furnished to FPL during the 1989-1991 negotiations:

A. September 8, 1989 Letter to W.C. Locke from Bob Williams - FMPA submitted a detailed proposed contract to FPL. (See Appendix A). Contract contained (among other items):

(a) List of the specific systems involved (Sections 1.4, 1.5)

(b) Provision for identifying specific resources to be transmitted (Section 2.7 and Attachment A).

(c) Provisions for adding new resources (Section 5.2)

(d) Provisions for identifying specific delivery points (Attachment B)

(e) Provisions for adding new system delivery points (Section 3.2)

B. October 13, 1989 meeting - FPL said it would evaluate FMPA's request using FCG transmission model and data base. FPL requested additional data needed to perform analysis of impact of FMPA's request on FPL system.

C. November 2, 1989 letter from Bob Williams to Bill Locke - FMPA transmitted data requested at October 13, 1989 meeting. (See Appendix B). Information

was provided for all IDO systems interconnected to FPL (East Systems) and included:

(1) Projected monthly loads for each system for the year 1990

(2) Projected summer, winter, and annual peak demands and energy requirements for each system for the ten year period 1990 through 1999.

(3) A list of and information on the specific generating units and resources to be transmitted including:

  (a) Resource names/unit no.

  (b) Location

  (c) Type of Unit

  (d) Fuel Type

  (e) In-Service Date

  (f) Retirement Date

  (g) Summer and Winter Net Capacity

  (h) Method of Fuel Transportation

(4) Information on the specific generating units and capacity resources expected to be used to meet the systems' summer peak demands and reserve requirements annually for the ten year period 1990 through 1999

(5) Projected loads on FPL system interconnections with each IDO East System during summer and winter peak conditions for the ten year period 1990 through 1999 under the following conditions:

  (a) All internal generating resources operating normally (normal conditions);

  (b) Largest internal generating resources of each system off-line;

  (c) All internal generating resources off line; and

(d) All internal generating resources on-line at full output during system minimum load conditions.

(6) Projected operation of each East System resource during the summer peak hour and during the winter peak hour for each year of the ten year period 1990 through 1999.

D. FPL called Bob Williams and asked for additional data and information for its analysis.

E. November 14, 1989 letter from Bob Williams to Bill Locke (see Appendix C) - FMPA transmitted additional data requested by FPL including:

(1) Projected monthly loads for the IDO systems not interconnected with FPL (the "West Systems") for the year 1990;

(2) Projected West System summer and winter peak demands for the ten year period 1990 through 1999;

(3) Information on the generating units and resources expected to be used to meet the West Systems' load and reserve requirements (same as items C(3) and C(4) for the East Systems as discussed above); and

(4) Heat rate information on each East System and West System resource.

F. FPL called Bob Williams and requested that the load data provided in the November 14, 1989 letter for the West Systems be provided for each individual West System.

G. December 14, 1989 letter from Bob Williams to W.R. Schoneck - FMPA transmitted additional information requested by FPL. (See Appendix D). Letter ended with:

"Please let me know if you need any additional information for your studies."

H. January 22, 1990 meeting with FPL - FPL presented the first version of its study document entitled "Impact of Proposed FMPA Integrated Dispatch Arrangement on FPL Transmission System". FPL explained the analysis and stated additional work was needed. Document showed dispatch of IDO

project resources, IDO system loads, and impacts on FPL transmission constraints under various conditions. FPL also stated that analysis of local transmission impacts was needed.

I. February 21, 1990 meeting with FPL - FPL provided FMPA with a revised copy of its draft report entitled "Impact of Proposed FMPA Dispatch Arrangement on FPL Transmission System (Rev. 02/21/90)". (See Appendix E). During the meeting FPL concentrated on the "Worst Case Scenario" where all FMPA generation south of Orlando was assumed to be off line, and FMPA took exception to this case.

FPL also furnished a draft report to FMPA entitled "Impact of Proposed FMPA Integrated Dispatch on FPL Regional Transmission Facilities, Preliminary Findings," dated February 21, 1990. (See Appendix F). This report presented a detailed list of potential problems that could occur on FPL's local transmission facilities under the "Worst Case Scenario".

FPL stated that to finalize the studies it would need to determine modifications that would be needed to FPL's transmission system to eliminate any possible impacts of the IDO arrangement. FPL stated that it would start this process.

As can be seen from the above chronology, FMPA was responsive in providing FPL with any requested information, and FPL had sufficient information to evaluate the impact of the proposed transmission service on its transmission system. Indeed, FPL performed the analysis of purported impacts on its transmission system and reported the results to FMPA, although FPL chose not to complete the analysis of possible modifications to its system.

11. In February of this year, FMPA gave FPL my analysis of the economic damages that FMPA has incurred and will incur as a result of FPL's refusal to sell FMPA network transmission service

for the IDO Project. Among other elements, my analysis of FMPA's damages uses the MULTISYM production cost model to model hourly dispatch of the IDO Project resources for the years 1988 through 2006. My damages analysis was the first time FMPA had modelled the operation of IDO Project resources on an hourly basis. FMPA gave FPL the summary results of the MULTISYM analysis, twenty-three hard-copy volumes of results and back-up data, and some of the calculations and data in electronic form. (See Appendix G). I expressly offered to furnish hourly data for any period FPL specified, but FPL never requested hourly data.

12. The information that FMPA already has furnished to FPL, as described in Paragraphs 10 and 11 above, covers virtually all of the information that FPL claims it needs at pages 4-5 of its Answer and certainly all of the listed information that is reasonably necessary. The following correlates the information FPL claims it needs at pages 4-5 of its Answer with the information FMPA already has furnished:

Item 1 of FPL's list - already provided in 1989 as specified in Paragraph 10C(2) above and also included in back-up data for damages analysis

Item 2 of FPL's list - already provided in 1989 as specified in Paragraph 10C(3) above and also included in back-up data for damages analysis. Although the data previously furnished do not include every detail specified in FPL's Attachment 2, such detail is not reasonably necessary, because (a) necessary information is included in the FCG data base, which is available to FPL; (b) most of the IDO resources are existing resources, and FPL is familiar with their operating characteristics; and (c) for small units, i.e. less than 75 mw, FPL does not even use the information for transmission analysis purposes, because the loss of a unit less than 75 mw would not create a system disturbance. See the deposition testimony of Karabet Adjemian, attached as Appendix H.

Item 3 of FPL's list - already provided in 1989 as specified in Paragraph 10C(4) and 10C(3) above and also included in back-up data for damages analysis.

Item 4 of FPL's list - already provided in 1989 as specified in Paragraph 10C(5) and 10C(6) above and also included in back-up data for damages analysis.

Item 5 of FPL's list - to the extent the information is necessary it is available now (and was available in 1989) to FPL in the FCG data base.

13. The information that FMPA already has furnished to FPL, as described in Paragraphs 10 and 11 above, also satisfies the substantive requirements of the Commission's guidelines for a good faith request for transmission service, even though the guidelines obviously were published long after FMPA made its request to FPL. Most fundamentally, the information that FMPA already has provided to FPL is more than adequate to permit FPL to model the impact on its transmission system of selling FMPA network transmission service for the IDO Project. In fact, as described in Paragraphs 10H and I, FPL did model the impact on its transmission system of selling network transmission service for the IDO Project, although, as FPL's witness Smith later acknowledged, FPL's "worst case scenario" was premised on unreasonable assumptions.

14. FPL's claim that FMPA refused to furnish scheduling information is misleading. "Scheduling" is a term of art that applies to power supply transactions between control areas, not within a control area, as would have been the case for the IDO Project. FMPA offered to furnish FPL its daily unit commitment

plans and to install equipment that would provide FPL real-time monitoring data for FMPA's resources and loads. In other words, FMPA offered to furnish FPL on a daily, hourly, and instantaneous basis exactly the same information that FPL has available with respect to its own resources and loads.

REASONABLENESS OF FMPA'S INITIAL AND SUBSEQUENT PROPOSALS

15. The contract proposal that FMPA sent to FPL on September 8, 1989, was developed in parallel with a contract between Florida Power Corporation ("FPC") and Reedy Creek Improvement District ("Reedy Creek") entitled "Agreement for Partial Requirements Resale Service and Transmission/Distribution Service." The major concepts in FMPA's September 8, 1989 proposal to FPL were similar to those agreed to by FPC in the contract with Reedy Creek, which was signed on September 15, 1989, and filed with and approved by this Commission.

16. FMPA did modify its proposals significantly during the two-year negotiation period that followed its September 8, 1989 proposal. These modifications, however, represented an attempt to negotiate a solution by being responsive to concerns that FPL had expressed and positions that FPL had taken during the negotiations, not to subject FPL to a moving target. Among the most significant modifications that FMPA offered were: (a) to agree to a specified contract demand for network transmission service, subject to changes on an annual basis within specified

amounts; (2) to provide four years notice for any additions of long-term firm capacity resources to the IDO Project; (3) to accept short-term firm and interruptible transmission service on the same terms and conditions as FPL Schedules TA, TB and TC on file at the time of the negotiations.

CHARACTERISTICS OF EXISTING TSAS

17. Contrary to FPL's assertions, the existing TSAs between FPL and FMPA cannot be used to plan and operate the resources for the IDO Project members on an integrated basis in a manner similar to that which can be achieved with network service.

18. The existing TSAs are point-to-point and cannot be used to plan and operate on a network basis unless multiple combinations of point-to-point service are purchased and multiple charges are paid. For example:

A. Under the Stanton and Tri-City TSAs, contract demands (i.e., deliveries) can only be reallocated or reassigned among delivery points if a participant permanently defaults (see Sections 5.1 and 7.2).

B. Under the St. Lucie TSA, delivery points and delivery allocations can only be changed with one year notice (Section 7.3). In addition, replacement service is not available for any planned outages or for any unplanned outages of ten days or less (Section 5.2).

C. The All-Requirements TSA requires the establishment of point-to-point contract demands between each resource and each delivery point, and once established, these contract demands cannot be reallocated (Article VII).

D. Replacement transmission service under the Stanton, Tri-City and All-Requirements TSAs is essentially provided on a limited, "as-available" basis. In practice, FPL has denied requests for replacement transmission service in toto if there would be even a very minor adverse impact on its system, and has refused to provide partial replacement service up to the point at which the impact would occur.

E. The interchange TSA only provides for short-term service.

19. As a result of the above limitations FMPA has only three options regarding planning and operating under the existing TSAs:

A. FMPA can purchase the long-term transmission service that is needed to insure its ability to meet its long-term obligations. However, once purchased, FMPA loses its ability to operate in an integrated manner because of the point-to-point and replacement service limitations.

B. FMPA can attempt to operate on an integrated basis by limiting itself to very short-term transmission service. However, FMPA cannot assure meeting its long-term obligations with only short-term purchases.

C. FMPA can purchase multiple combinations of short-term and long-term point-to-point service and pay multiple charges to achieve the planning and operational benefits of network service. The multiple transmission charges, however, would wipe out any benefits FMPA might otherwise achieve from integrated planning and operation.

ECONOMIC BENEFITS OF IDO PROJECT

20. If FPL is required to sell network transmission service to FMPA on terms and conditions that compensate FPL for the reasonably allocable costs of providing such service, the IDO Project can be expected to produce substantial economic benefits, not only for FMPA and the participants in the IDO Project, but

also for the overall economy. My damages analysis shows that FMPA can be expected to save approximately $138 million over the period 1994-2006 if FPL is required to sell network transmission service on reasonable terms and conditions, and could have been expected to save approximately $225 million if FPL had been willing to sell network transmission service to permit FMPA to implement the IDO Project beginning in 1988. A majority of these savings is attributable to reduced capacity requirements which FMPA can expect to achieve if it is able to plan and operate the IDO Project resources on an integrated basis. Contrary to FPL's arguments, there will be an overall reduction in capacity requirements for Florida if FMPA can maximize the efficiency of capacity additions through integrated planning and operations. In fact, I believe my damages analysis is conservative and likely understates the economic benefits of the IDO Project. Moreover, the damages analysis does not attempt to quantify all impacts of FMPA's inability to implement the IDO Project, such as potential environmental and competitive impacts.

21. FPL also is incorrect in claiming that the IDO Project would not lead to increased operating efficiencies. The hourly dispatch model that was part of my damages analysis demonstrated that integrated dispatch of the IDO Project resources would result in increased use of FMPA's generating units, thus lowering their average-heat rates and leading to overall improvements in operating efficiencies. Through a more efficient use of existing resources in the IDO Project, FMPA would be able to eliminate or

defer the addition of intermediate or base capacity, which capacity would have had relatively low energy costs. Thus, although total energy costs increase in the IDO Project case, existing resources are used more efficiently, total costs (energy and capacity) are lower, and unneeded capacity is deferred or eliminated. The Florida broker system that is currently in place does not capture these potentially available economies.

[The next page is the signature page]

FURTHER AFFIANT SAYETH NAUGHT.

Albert B. Malmsjo
Affiant

State of Florida
County of Orange

Subscribed and sworn to before me by Mr. Albert B. Malmsjo, who is known to me this 7th day of September, 1993.

Lee Ann Merritt
Notary Public

My Commission expires

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. OCT. 18,1995
BONDED THRU GENERAL INS. UND.

APPENDIX A

Williams Exh. 6

7201 Lake Ellenor Drive
Orlando, Florida 32809-5769
(407) 859-7310

POWER SUPPLY CONTRACTS & ADM.
SEP 1 1989

ROUTE TO:			COPY TO:
RAB	WAG	WFR	
FLC	IMH	CMR	
SAC	KPH	WRS	
MSC	GAL	TGS	
RRD	WCL	DMS	
BMG	RCM	DEW	

FILE NO. 6-7.13; 3.5

RECEIVED
SEP 12 1989
POWER SUPPLY CONTRACTS

September 8, 1989

Mr. W.C. Locke
Manager, Power Supply Contracts
Florida Power & Light Company
P.O. Box 029100
Miami, FL 33102

Re: Additional Cities for
All-Requirements Project

Dear Bill:

As you may be aware, several of the Florida Municipal Power Agency ("FMPA") member systems that currently supply their system requirements through a combination of on-system generating resources and purchased power have recently entered into contracts with FMPA to become members of FMPA's All-Requirements Power Supply Project (the "All-Requirements Project"). The new members include Fort Pierce Utilities Authority, the City of Vero Beach, the City of Lake Worth Utilities and Key West City Electric System. The contractual arrangements between FMPA and these new participants in the All-Requirements Project include an All-Requirements Power Supply Contract, under which they will purchase all of their requirements above certain excluded resources from FMPA, and a Capacity and Energy Sales Contract, under which they will sell the output of their resources to FMPA for use in meeting the All-Requirements Project requirements.

To allow FMPA to initiate service to the new All-Requirements Project participants located on the Florida Power & Light ("FPL") transmission system, the existing transmission arrangements between FMPA and FPL for the All-Requirements Project need to be modified. Our review of the current "Transmission Service Agreement between Florida Power & Light Company and the Florida Municipal Power

101270

Williams Exh. 6

Agency" has determined that this Agreement cannot provide for the addition of new All-Requirements Project participants that have on-system generating resources. Since the economic benefits of participating in the All-Requirements Project cannot be realized by the new participants until a suitable transmission agreement is in place, in order to expedite the initiation of service to them, we have drafted a new transmission agreement for your consideration and are enclosing it herein.

Please review the enclosed agreement and arrange to meet with us to discuss it. Since time is of the essence with regard to the economic benefits that are being lost by the new All-Requirements participants, we would appreciate your scheduling a meeting within the next two weeks.

If you have any questions, please feel free to call.

Sincerely,

Robert C. Williams
Director of Engineering.

RCW/sl
Enclosure

cc: All-Requirements Participants w/o enclosure
Fred M. Bryant w/enclosure
Nick Guarriello w/o enclosure

101271

August 25, 1989.

ALL-REQUIREMENTS PROJECT TRANSMISSION SERVICE AGREEMENT BETWEEN FLORIDA POWER & LIGHT COMPANY AND THE FLORIDA MUNICIPAL POWER AGENCY

This All-Requirements Project Transmission Service Agreement between Florida Power & Light Company and the Florida Municipal Power Agency ("Agreement") is made and entered into this ____ day of _____, 19___, by and between Florida Power & Light Company ("FPL") and the Florida Municipal Power Agency ("FMPA"), collectively called the "Parties."

ARTICLE I
RECITALS

This Agreement is made with reference to the following facts, among others:

Section 1.1: FPL is an investor-owned utility which owns and operates electric generation, transmission, and distribution facilities in the State of Florida.

Section 1.2: FMPA is a legal entity organized under the laws of the State of Florida, authorized and empowered, among other things, to make and execute contracts for transmission service and other instruments necessary or convenient in the exercise of the powers and functions of FMPA.

Section 1.3: In order to supply capacity and energy requirements of certain FMPA member systems which have entered into All-Requirements Power Supply Contracts with FMPA (the "All-Requirements Contracts"), FMPA has undertaken to sell to such members, and such members have agreed to purchase from FMPA, electric capacity and energy in accordance with the terms and conditions set forth therein (the "All-Requirements Project").

Section 1.4: The City of Clewiston ("Clewiston"), the City of Green Cove Springs ("Green Cove Springs") and the City of Jacksonville Beach ("Jacksonville Beach") are public agencies of the State of Florida and members

of FMPA which have each entered into All-Requirements Contracts with FMPA with the result that FMPA has been responsible for transmission service arrangements and for supplying the capacity and energy requirements of certain of these Cities since May 1, 1986.

Section 1.5: Other public agencies of the State of Florida that are members of FMPA and that are located within the area served by the FPL transmission system have each entered into All-Requirements Contracts with FMPA, including the City of Vero Beach ("Vero Beach"), the City of Lake Worth ("Lake Worth"), the Fort Pierce Utilities Authority ("Fort Pierce"), and the Utility Board of the City of Key West ("Key West") (all collectively the "New Systems," all collectively with Clewiston, Green Cove Springs and Jacksonville Beach the "Systems," and individually a "System").

Section 1.6: Pursuant to the All-Requirements Contracts each of the Systems has authorized FMPA to take all actions necessary to supply them with electric capacity and energy as required by the All-Requirements Contracts. Such authorization empowers FMPA, among other things, (1) to acquire generating resources to serve a portion of such System's Native Load and to provide Regulation Service for such System's Native Load; (2) to commit and dispatch any such generating resources acquired by FMPA, (3) to acquire fuel for generating resources, and (4) to obtain, negotiate, and enter into any necessary transmission service agreement(s).

Section 1.7: The Fort Pierce, Key West, Lake Worth, and Vero Beach Systems have each entered into a Capacity and Energy Sales Contract with FMPA. Under the Capacity and Energy Sales Contract, each System agrees, among other things, (1) to sell and make available to FMPA, and FMPA agrees to purchase capacity and energy associated with certain System Internal Resources and other power resources that are specifically identified therein, and (2) to allow FMPA to determine the manner in which each such resources will be dispatched or otherwise used for the purposes of the All-Requirements Project.

Section 1.8: FMPA owns an 8.806 percent undivided ownership interest in St. Lucie Unit No. 2, a nuclear generating facility constructed and operated by FPL. Pursuant to a St. Lucie Nuclear Reliability Exchange Agreement between

Florida Power & Light Company and the Florida Municipal Power Agency ("Reliability Exchange Agreement"), dated March 26, 1982, FMPA exchanged one-half of FMPA's capacity rights to available net generating capability and associated energy from St. Lucie Unit No. 2 for the capacity rights to an equivalent portion of the available net generating capability and associated energy from FPL's St. Lucie Unit No. 1. Pursuant to a St. Lucie Replacement Power Agreement between Florida Power & Light Company and the Florida Municipal Power Agency ("Replacement Power Agreement"), dated February 11, 1982, FPL provides, in certain instances, replacement power and energy to FMPA when St. Lucie Unit No. 1 or St. Lucie Unit No. 2 operate at or below certain levels.

Section 1.9: Pursuant to a St. Lucie Unit Delivery Service Agreement between Florida Power & Light Company and the Florida Municipal Power Agency ("St. Lucie Delivery Service Agreement"), dated June 27, 1983, FPL delivers, from the St. Lucie Plant to FMPA at the delivery points specified by FMPA, the aggregate of FMPA's power and energy entitlements resulting from its ownership interest in St. Lucie Unit No. 2, the Replacement Power Agreement, and the Reliability Exchange Agreement (such aggregate power and energy called the "FMPA St. Lucie Nuclear Power Resources"). Such deliveries made to the specified delivery points are based on the allocation depicted on Exhibit II to the St. Lucie Delivery Service Agreement.

Section 1.10: Pursuant to Stanton Unit No. 1 Participation Agreements between Orlando Utilities Commission ("OUC") and the Florida Municipal Power Agency, FMPA has purchased three undivided ownership interests in the Curtis H. Stanton Energy Center Unit One, a coal fired steam-electric power plant being operating by OUC. These three undivided ownership interests include (1) a 14.8193% undivided ownership interest purchased for five of its member systems, including Fort Pierce, Lake Worth, and Vero Beach (the "Stanton Project"), (2) a 5.3012% undivided ownership interest purchased for three of its member systems, including Fort Pierce and Key West (the "Tri-City Project"), and (3) a 6.0560% undivided ownership interest purchased for the All-Requirements Project.

Section 1.11: Pursuant to Stanton Delivery Service Agreements between Orlando Utilities Commission and the Florida Municipal Power Agency, OUC provides transmission service over OUC's transmission facilities for the portion of the output of the Curtis H. Stanton Energy Center Unit One owned by FMPA for delivery to the interconnection points of OUC.

Section 1.12: Pursuant to the Stanton Transmission Service Agreement between FPL and FMPA and the Stanton Tri-City Transmission Service Agreement between FPL and FMPA, FPL has agreed, among other things, to provide long-term transmission service and replacement transmission service for FMPA's Stanton Project and Tri-City Project, respectively.

Section 1.13: Pursuant to Partial Requirements Service Agreements among FPL, FMPA, and Clewiston; among FPL, FMPA, and Jacksonville Beach; among FPL, FMPA, and Green Cove Springs; among FPL and Fort Pierce; and among FPL and Vero Beach, FPL currently provides wholesale electric service to each of these Systems under Rate Schedule PR-3 and FPL's FERC Electric Tariff.

Section 1.14: Pursuant to a Partial Requirements Service Agreement between FPL and FMPA, FPL has agreed to simultaneously terminate the existing Partial Requirements Service Agreements with the Systems and provide wholesale electric service to FMPA under Rate Schedule PR-3 (or its successor) of FPL's FERC Electric Tariff.

Section 1.15: Pursuant to a Contract for Dispatching Service for Florida Municipal Power Agency by Orlando Utilities Commission ("Dispatching Contract"), originally dated March 22, 1985 and as amended, FMPA has contracted with OUC, among other things, to (1) incorporate the power flows at each System's Interconnection Delivery Points into OUC's automatic generation control system as if these delivery points were direct interconnections between FPL and OUC, (2) provide Regulation Service, (3) commit and dispatch sufficient capacity and energy to meet FMPA's Native Load from FMPA's Resources, from Alternate Resources from the Systems' allocated share of the FMPA St. Lucie Nuclear Power Resources, and from Partial Requirements Service, (4) schedule, as necessary, (a) capacity and energy from FMPA's Resources and from the FMPA St. Lucie Nuclear Power Resources, (b) Alternative Resources (as

defined in Section 2.25), (c) hourly purchases from FPL of Partial Requirements Service and (d) power and energy purchased under Interchange Agreements, (5) implement the provisions of this Agreement as necessary to transmit the output of FMPA's Resources, including the hourly scheduling of transmission losses to FPL, (6) schedule, as necessary, all Capacity and Energy Transactions from FPL to FMPA and from FMPA to FPL, and (7) make any other arrangements necessary to provide for FMPA's Native Load and provide Regulation Service for FMPA's Load.

Section 1.16: FMPA has entered into contracts for interchange service ("Interchange Agreements") with FPL and with other utilities, which Interchange Agreements permit FMPA to replace capacity and/or energy from its generating resources during emergency conditions or for economic reasons with generating capacity and/or energy from such other utilities or to purchase interchange capacity and energy from such other utilities. FMPA has made or will make all arrangements necessary to deliver any interchange purchases to the point of interconnection between FPL's transmission system and the transmission system of the appropriate utility, if and when these purchases are to be used.

Section 1.17: Pursuant to a Transmission Service Agreement between Florida Power & Light and the Florida Municipal Power Agency dated March 30, 1985, as amended, (the "Original Transmission Agreement"), FPL currently provides various types of transmission service to the Cities of Clewiston, Jacksonville Beach, and Green Cove Springs for the All-Requirements Project.

Section 1.18: Among other things, the Original Transmission Agreement does not provide for (1) the addition of the New Systems to the All-Requirements Project, (2) generating resources located within a System (System's Internal Resources), (3) serving the combined loads of the Systems with FMPA's wholesale purchases from FPL and FMPA's Resources, and (4) the pooled dispatch of FMPA's resources to allow the most efficient use of available resources.

Section 1.19: FPL, in its St. Lucie Nuclear Plant licensing conditions, has committed to transmit power from FPL sources and neighboring systems and between neighboring systems which will be necessary for them to pool resources and thus promote the efficient use of resources...

Section 1.20: In order to add the New Systems to the All-Requirements Project, to serve the combined load of all of the Systems, and to utilize its resources in the most efficient manner, FMPA has requested that the Original Transmission Agreement for the All-Requirements Project be terminated and desires to enter into a new transmission service agreement with FPL.

Section 1.21: Now, therefore, in consideration of the foregoing and of the mutual covenants contained herein, FPL agrees to provide such new transmission services under this Agreement, subject to and in accordance with the following terms and considerations:

ARTICLE II
DEFINITIONS

For purposes of this Agreement, the terms defined in this Article II shall have the following meanings. Except where the context otherwise requires, definitions and other terms expressed in the singular number shall include the plural number and vice versa, and definitions and other terms identifying persons shall include firms, associations, corporations, districts, agencies, and bodies.

Section 2.1 - St. Lucie Project Contract Demand: For each System, the product of (1) that System's allocation of FMPA St. Lucie Nuclear Power Resources, expressed as a decimal, as depicted on Exhibit II to the St. Lucie Delivery Service Agreement, as amended from time to time, and (2) the Contract Demand specified in the St. Lucie Delivery Service Agreement based on the winter rating, as amended from time to time.

Section 2.2 - Stanton Project Contract Demand: For each System, such System's designated Contract Demand as specified on Attachment A to the Stanton Transmission Service Agreement between FPL and FMPA, as amended from time to time.

Section 2.3 - Tri-City Project Contract Demand: For each System, such System's designated Contract Demand as specified in Attachment A to the Stanton Tri-City Transmission Service Agreement between FPL and FMPA, as amended from time to time.

Section 2.4 - Capacity and Energy Transaction: Any transfer or exchange of power and energy from one Control Area to another.

Section 2.5 - Control Area: A power system or combination of power systems to which a common automatic generation control scheme is applied. The basic objectives of a Control Area are (1) to match, at all times, (a) the power output of the generators within such Control Area and (b) capacity and energy purchased from utilities outside such Control Area, to the prevailing load, (2) to maintain, within limits generally accepted by the electric utility industry, scheduled interchange with other Control Areas, (3) to help maintain the system frequency within reasonable limits, and (4) to provide sufficient generating capacity to maintain Operating Reserves in accordance with practices generally accepted by the electric utility industry.

Section 2.6 - FERC: The Federal Energy Regulatory Commission or its successor.

Section 2.7 - FMPA Resources: Those generating resources owned or purchased by FMPA for use by FMPA in fulfilling its obligations to the Systems under the All-Requirements Contract as are specified on Attachment A hereto and new FMPA resources which may, in the future, be added to Attachment A in accordance with Section 5.2.

Section 2.8 - Operating Reserve: That generating capacity above firm load required to provide for (1) regulation within any hour to cover instantaneous demand variations caused by normal load and generation changes, (2) load forecasting errors, (3) sudden loss of equipment, and (4) local area protection, all in accordance with practices generally accepted by the electric utility industry. The Parties recognize that Operating Reserves shall not mean installed reserves.

Section 2.9 - Partial Requirements Service: Wholesale electric service purchased from FPL pursuant to FMPA's Partial Requirements Service Agreement.

Section 2.10 - Partial Requirements Service Agreement: The FMPA Partial Requirements Service Agreement with FPL.

Section 2.11 - Qualifying Facility: A cogeneration or small power production facility pursuant to Section 210 of the Public Utilities Regulatory Policy Act of 1978 (PURPA) and certified by the FERC pursuant to its regulations implementing Section 210 of PURPA, or certified by the Florida Public Service Commission as a cogeneration or small power production facility under any applicable statute, regulation, or order.

Section 2.12 - Regulation Service: The control of that portion of the Operating Reserves which is responsive to automatic generation control actions with the objective of supplying the instantaneous variations caused by normal load and generation changes.

Section 2.13 - System's Internal Resources: Generating resources located on the System's side of an Interconnection Delivery Point and generating resources delivered to the System through direct interconnection with utilities other than FPL.

Section 2.14 - System's Internal Resource KW: The total sum of a System's Internal Resources capability in kW based on the SERC winter rating for generating units and the kW of capacity available from resources delivered through direct interconnection with utilities other than FPL.

Section 2.15 - Interconnection Delivery Point: A point of interconnection between FPL's transmission system and the electrical facilities of any System. Interconnection Delivery Points are specified on Attachment B.

Section 2.16 - Generation Delivery Point: The point at which Internal Resources are metered and delivered to FMPA.

Section 2.17 - System's Load: At any time, the net kW power flow from the FPL transmission system into the Interconnection Delivery Point(s) of any System.

Such power flow results when such System's Native Load is greater than the output of all Internal Resources and the output of all Qualifying Facilities located on such System's side of Interconnection Delivery Point the output of which is not used by that System or FMPA to meet that System's Native Load.

Section 2.18 - System's Native Load: At any time, the total amount of power and energy required to supply electric service to customers in those areas being served by any System. The System's Native Load shall be determined by the metering equipment which records the net power and energy flows at such System's Interconnection Delivery Points, Generation Delivery Points, and any other interconnection points.

Section 2.19 - FMPA's Load: At any time, the summation of the individual System's Loads.

Section 2.20 - FMPA's Native Load: At any time, the summation of the individual System's Native Loads.

Section 2.21 - FMPA's Monthly Peak Load: The maximum 60-minute integrated coincident demand established by FMPA's Load during a calendar month.

Section 2.22 - FMPA's Monthly Peak Native Load: The maximum 60-minute integrated coincident demand established by FMPA's Native Load during a calendar month.

Section 2.23 - System's Monthly Peak Load: The 60-minute integrated value of the System's Load established at the time of FMPA's Monthly Peak Load.

Section 2.24 - System's Monthly Peak Native Load: The 60-minute integrated value of the System's Native Load established at the time of FMPA's Monthly Peak Native Load.

Section 2.25 - Alternative Resource: A generating resource which is not a FMPA Resource.

Section 2.26 - PR Billing Demand: The total kW of demand billed for service provided under the Partial Requirements Service Agreement in a calendar month.

ARTICLE III

TRANSMISSION SERVICE PROVIDED

Section 3.1 - Transmission Service: Service under this Agreement ("Transmission Service") shall be provided by FPL, subject to and in accordance with the provisions of this Agreement, for the transmission of all of the power and energy produced by FMPA's Resources (or by Alternate Resources) and delivered to and received by FPL for transmission to the Systems.

Section 3.2 - Delivery Points: Transmission Service provided under this Agreement shall be provided to the Interconnection Delivery Points specified on Attachment 2 hereto and shall be 60 cycle alternating current of the phase and standard nominal voltage desired by FMPA at each Interconnection Delivery Point. Upon agreement of the Parties, new Interconnection Delivery Points may be added and existing Interconnection Delivery Points may be deleted from Attachment 2.

Section 3.3 - Transmission Service Provided at Time of Receipt by FPL: Transmission Service under this Agreement shall be limited to times during which power is actually received by FPL from FMPA's Resources (or Alternative Resources) for transmission and further delivery to the Systems.

Section 3.4 - Transmission Service for Alternate Resources: FPL shall provide Transmission Service for Alternate Resources only if, and to the extent that, FPL determines, at the time of the request, that it can accommodate the Alternate Resources without jeopardizing the reliability of the FPL system, as compared with the situation that FPL determines would have existed had transmission service been provided for FMPA's Resources (or, if applicable, from a System's share of the FMPA St. Lucie Nuclear Power Resources). FMPA shall use its best efforts, taking into account the circumstances prevailing at the time, to notify (or have OUC, pursuant to the Dispatching Contract, notify) the FPL System Control Center by telephone or teletype message of any commitments by FMPA to purchase power and energy from Alternate Resources so that FPL may determine whether or not it can provide the requested Transmission Service. Such notice shall describe (1) the source of the Alternate Resource, and (2) the amount (expressed in MW) and duration (start

and stop times) of the requested Transmission Service for the Alternate Resource. FPL shall use its best efforts, taking into account the circumstances prevailing at the time, to inform FMPA on a timely basis whether it can accommodate the requested Alternate Resource.

Section 3.5 - Pre-Specified Alternate Resources: Subject to the provisions of Section 3.4, Alternate Resources shall only be obtained from a list of utilities from which FPL has previously determined that it can accommodate Alternate Resources under anticipated normal operating conditions. This list shall be established by correspondence between FPL and FMPA. FMPA shall initiate a request for such list. Following a request by FMPA, additional sources of Alternate Resources may be added to such list by mutual agreement between FPL and FMPA, subject to FPL's ability to provide such Transmission Service for the Alternate Resource under anticipated normal operating conditions (using the criteria described in Section 3.4). FPL may, by providing written notice to FMPA, delete any number of sources from such list whenever FPL determines that it can no longer, under anticipated normal operating conditions, accommodate Alternate Resources from those sources identified in such list. FPL shall place deleted sources back on such list whenever it determines that it can again accommodate Alternate Resources from any such source under normal operating conditions and shall so notify FMPA.

Section 3.6 - Other Transmission Service for Alternate Resources: FMPA shall make all necessary arrangements with the utility providing an Alternate Resource, and with any other intervening utilities which provide transmission service for such Alternate Resource, as applicable, for FPL to receive such power and energy at the point of interconnection between FPL and the appropriate utility for further transmission by FPL. FPL shall not be responsible for any transmission charges and transmission losses imposed by any intervening utility for the transmission of power and energy from Alternate Resources.

ARTICLE IV

EFFECTIVE DATES AND TERM OF SERVICE

Section 4.1 - This Agreement: This Agreement shall become effective when executed by the Parties and accepted for filing by the FERC. Upon filing by FPL, which filing shall be made no later than 60 days after execution of this Agreement, FMPA shall intervene in support of this Agreement and shall request that it be accepted for filing without modification or condition; provided, however, if upon filing the FERC enters into a hearing to determine whether or not this Agreement is just and reasonable, FMPA shall continue to receive transmission service under the Original Transmission Agreement until such time as a final appealable order has been issued by the FERC. Once effective, this Agreement shall remain in effect until December 31, 2025, unless terminated prior to that date as provided herein. Upon termination or expiration of this Agreement, all contractual transmission service obligations hereunder shall terminate. This Section 4.1 and Articles VIII and XVI shall survive termination of this Agreement.

ARTICLE V

CHANGES IN FMPA RESOURCES

Section 5.1 - Existing FMPA Resources: Commencing September 1, 1990, and by September 1 of each year, FMPA will provide FPL with changes, if any, to the information contained on Attachment A regarding the resources specified thereon, and Attachment A shall be revised at such time to reflect the changes. In addition, if the capability of a FMPA Resource specified on Attachment A changes, and such change is expected to be in effect for in excess of one year, FMPA will notify FPL of such change within 60 days of its becoming known to FMPA, and Attachment A will be revised to reflect the change at such time.

Section 5.2 -New FMPA Resources: In the event that FMPA desires to obtain new resources to meet the load of the Systems or to displace Partial Requirements Service (subject to the provisions of the Partial Requirements Agreements) during the term of this Agreement, and it desires Transmission Service from FPL to deliver the output of such new resources, it shall submit a written request to FPL at least 60 days in advance of the proposed date of

commencement of the Transmission Service for such new FMPA Resource. Such written request shall specify the source, amount, and duration of the requested additional service and shall state that the request for additional service is made pursuant to this Section 5.2. Upon receipt of FMPA's written request, FPL shall have 30 days to determine whether it can accommodate such new FMPA Resource without jeopardizing the reliability of FPL's system. If FPL determines that it cannot accommodate FMPA's request, then FPL shall not provide transmission service for such new resource under this Agreement, but shall offer transmission service for such new resource under a special compensatory contract filed promptly with FERC. Such compensatory contract shall have reasonable terms and conditions and, to the extent appropriate in the circumstances, would follow the provisions of this Agreement. If FPL determines that it can accommodate FMPA's request, then the Parties shall amend Attachment A, "FMPA Resources," to this Agreement by adding such new resource.

Section 5.3 - FMPA Responsibility For Operating Reserves and Regulation Service: FMPA has assumed the responsibility to incorporate FMPA's Native Load in a Control Area other than FPL's Control Area during the term of this Agreement. As such, FMPA assumes the responsibility of providing Operating Reserves and Regulation Service for FMPA's Native Load. To meet the responsibility of providing Operating Reserves, FMPA has entered or will enter into various contracts for generating capacity, and to meet the responsibility for providing Regulation Service, FMPA has entered into the Dispatching Contract with OUC. If FMPA terminates the Dispatching Contract, FMPA shall either enter into a new contract for similar services or shall implement itself the provisions of the Dispatching Contract.

Section 5.4 - Operating Flexibility: Notwithstanding any other provision of this Agreement, FPL's and FMPA's system operators (including OUC operators pursuant to the Dispatching Contract) may agree to reasonable procedures for day-to-day administration of the provisions of this Agreement; provided, however, FPL and FMPA shall both determine in advance that the use of such procedures will not affect any of the substantive rights and obligations of the Parties hereunder, including, but not limited to, the amount of money owed to FPL for Transmission Service.

ARTICLE VI

TRANSMISSION LOSSES

Section 6.1 - Adjustment of Deliveries: FPL shall, during each hour in which it provides Transmission Service, transmit the power delivered to and received by FPL at the interconnections between FPL's transmission system and other transmission systems to the Systems, less an amount attributed to transmission losses on FPL's system. Such transmission losses shall be the product of (a) the applicable FPL loss percentage ("L") determined in accordance with Section 6.2 and expressed as a decimal, and (b) the hourly amount of power and energy received by FPL for transmission to the Systems.

Section 6.2 - Applicable Loss Percentages: FPL's applicable loss percentage for transmission losses associated with Transmission Service hereunder shall be FPL's transmission system average losses, expressed as a percentage of FPL's load. Such applicable loss percentage shall be computed by FPL prior to May 1 of each year, using available data from the most recent calendar year, and shall be applied to transmission service provided by FPL as of May 1st each year.

Section 6.3 - Transmission Service Losses: The Parties recognize that, because the Systems are part of a single Control Area and are currently part of OUC's Control Area, any Transmission Service provided for a System's Internal Resources or for power and energy received by FPL at the point of interconnection between FPL's transmission system and OUC's transmission system for delivery to the Systems is not accomplished by the scheduling of such transfers. As a result, to compensate FPL for transmission losses associated with Transmission Service on its system, FMPA (or OUC pursuant to the Dispatching Agreement) shall schedule to FPL (in whole MW quantities) for each hour that FPL provides Transmission Service an estimated amount of power and energy which closely approximates the transmission losses associated with all of the Transmission Service during such hour. Such amount shall be determined in accordance with Section 6.1. The final determination of transmission losses associated with Transmission Service shall be computed monthly for the preceding calendar month after the amount of power and energy which actually was received at the Interconnection Delivery Points is

determined from the metering equipment located at each such delivery points. Such final losses shall be determined by multiplying (a) the factor [L divided by (1 - L)], where L is the applicable FPL loss percentage expressed as a decimal times (b) the difference between (i) the energy recorded each month from the metering equipment utilized to determine FMPA's Load, minus (ii) the scheduled deliveries of Partial Requirements Service and/or St. Lucie Nuclear Power Resources and/or purchases from FPL under the FPL Interchange Agreement, which were used to provide for FMPA's Native Load. Any differences between the estimated transmission losses originally scheduled and the transmission losses determined in accordance with this Section 6.3 for each calendar month will be corrected as soon as possible, which is normally during the following calendar month.

ARTICLE VII
CHARGES

Section 7.1 - Monthly Charges: For any calendar month, the charges for Transmission Service shall be the sum of the Peak Transmission Charge and the Transmission Use Charge.

Section 7.2 - Peak Transmission Charge: The Peak Transmission Charge shall be equal to the product of (a) the monthly transmission rate per kW specified in Attachment C, and (b) FMPA's Peak Transmission kW.

7.2.1 - FMPA's Peak Transmission kW: During each calendar month, FMPA's Peak Transmission kW shall equal (a) the sum of the System Peak Transmission Requirements in kW, less (b) the FR Billing Demand in kW for such calendar month.

7.2.2 - System Peak Transmission Requirements: For each System, the System Peak Transmission Requirement in kW shall equal (a) the System's Monthly Peak Native Load, less (b) the System's Internal Resource kW, less (c) the System's St. Lucie Project Contract Demand, less (d) the System's Stanton Project Contract Demand, and less (e) the System's Tri-City Project Contract Demand, all expressed in kW. In no case shall the System Peak Hour Transmission Requirement for any System be less than zero.

Section 7.3 - Transmission Use Charge: The Transmission Use Charge shall be calculated on an hourly basis for each hour of the calendar month and shall equal the product of (a) the transmission use rate per MWh specified in Attachment C, and (b) FMPA's Transmission Use in MW's during each hour.

7.3.1 - FMPA's Transmission Use: During each hour, FMPA's Transmission Use in MW's shall equal the sum of the System Transmission Use in MW's.

7.3.2 - System Transmission Use: During each hour, the System Transmission Use in MW's for each System shall equal (a) the System's Load, less (b) the System's St. Lucie Contract Demand, less (c) the System's Stanton Project Contract Demand, less (d) the System's Tri-City Project Contract Demand, less (d) the System's Peak Transmission Requirement for the calendar month, all expressed in MW. In no case shall the System Transmission Use in MW's be less than zero in any hour.

Section 7.4 - Interconnected Systems: For purposes of the calculations contained in this Section VII, any Systems that are directly interconnected shall be treated as a single System.

ARTICLE VIII
BILLING AND PAYMENT

Section 8.1 - Billing and Payment for Transmission Service: Bills for Transmission Service provided under this Agreement shall be rendered monthly by FPL and paid monthly by FMPA. All such bills shall be due and payable within 10 days from the date of mailing as determined by postmark. Any amounts due and unpaid after the due date shall be termed delinquent and interest shall be added to such delinquent amount at the then current rate specified by the FERC for refunds under the Federal Power Act. FPL shall make available to FMPA billing records to support the billed amounts.

Section 8.2 - Billing and Payment for Work Performed by FPL: Any work performed by FPL pursuant to this Agreement shall be billed to FMPA in accordance with FPL's regular procedures and practices for such services.

Bills for such service shall be due in full when rendered and payable within ten (10) calendar days from the date of invoice. If the bill is not paid in full on or before the "past due" date, the unpaid balance shall bear interest at the rate specified from time to time by the FERC as being applicable to refunds under the Federal Power Act. FPL shall make available to FMPA adequate documentation on a monthly basis by the 20th of each month describing the reason for the work performed and the detailed charges supporting the billed amount.

Section 8.3 - Disputed Bills: In case of a disputed bill, payment of the entire billed amount shall be made within the 10-day period, but the disputed portion of the bill may be paid under protest. Payments made and designated "Paid Under Protest" shall be accompanied by the reasons therefor. Any refunds due FMPA resulting from the settlement of the dispute will include interest at the then current rate specified by the FERC for refunds under the Federal Power Act.

Section 8.4 - No Reductions: Payments due under this Agreement shall not be subject to any reduction by offset or otherwise.

Section 8.5 - Discontinuance of Transmission Service: FPL shall have the right to discontinue Transmission Service under this Agreement in the event that FMPA fails to pay any sum due, or in the event that FMPA otherwise intentionally violate this Agreement. FPL shall give FMPA at least 60 days' written notice of its intention to discontinue Transmission Service. FMPA shall have such 60-day period to pay such sum or cure such default.

ARTICLE IX

INTERRUPTIONS OF TRANSMISSION SERVICE

Section 9.1 - Interruption by FPL: FPL shall provide Transmission Service except (1) for interruptions or reductions due to a Force Majeure, (2) for interruptions or reductions due to action instituted by automatic or manual control resulting in disconnection for the purpose of maintaining overall reliability and continuity of FPL's transmission system or for the purpose of protecting its generation or transmission facilities, (3) for temporary

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interruptions or reductions which, in the opinion of FPL, are necessary or desirable for the purpose of maintenance, repairs, replacements, or installation of equipment, or investigation and inspection, or (4) for intentional failure of FMPA to comply with the provisions of this Agreement. FPL does not warrant or guarantee that Transmission Service will be free from interruption or impairment, and FPL shall not be liable to FMPA or to any of the Systems for damages resulting from any such interruptions or impairment, unless due to FPL's wrongdoing or negligence. FPL will give FMPA reasonable advance notice of any scheduled temporary interruptions or impairment of Transmission Service. FPL will make its best effort to notify the other party by telephone of any unscheduled interruption or impairment of Transmission Service, and will make its best efforts to confirm such notice by teletype or letter on the same date such notice was given. FPL will use due diligence to remove all causes of such interrupted or impaired service which are under FPL's control.

Section 9.2 - Interconnections between FPL and Other Utilities: Since FMPA has assumed the responsibility at all times for supplying FMPA's Native Load and for providing Regulation Service for FMPA's Native Load, FMPA shall, at its own cost consummate and maintain any transmission arrangements necessary to effect the deliveries of the power and energy of any FMPA Resources to FPL for transmission by FPL in the event that any of the interconnections between FPL and the utility which normally delivers power to FPL (whether or not scheduled) for further delivery is out of service. Under these circumstances, FPL will accommodate such alternate transmission service through alternate interconnections only if it determines that it is able to do so for the duration of the outage without jeopardizing the reliability of FPL's system, as compared to the situation that FPL determines would have existed had such interconnection not been out of service. Except as provided in this Section 9.2, such alternate transmission service shall be subject to the provisions of this Agreement as if any affected transmission service were to be provided at the interconnection(s) normally utilized for providing transmission service.

ARTICLE X

REACTIVE POWER

Section 10.1 - Interconnection Delivery Points: By June 1, 1991, for Jacksonville Beach and Green Cove Springs, and by June 1, 1995 for the New Systems, FMPA shall provide sufficient reactive compensation and control on the System's side of its Interconnection Delivery Point(s) for the System's Native Load and System's Internal Resources to maintain a power factor range from 100% to 95% lagging at all times measured at each such Interconnection Delivery Point, provided however, that FMPA shall extend its best efforts to phase in a program of improved reactive compensation and control beginning upon the effective date of this Agreement. Upon FPL's request, FMPA shall provide a report describing the status of such program. The power factor shall be determined on the basis of the total real and reactive flows metered at such Interconnection Delivery Point(s), regardless of the original source of the power and energy received by any System.

Section 10.2 - Points of Receipt of Power by FPL: FMPA shall make its best efforts to ensure that the voltage level within the utilities providing power to FPL for transmission are maintained within acceptable ranges to permit the provision of transmission service in a manner which does not adversely affect the operation of the FPL system.

ARTICLE XI

FORECASTS AND PLANNING INFORMATION

Section 11.1 - Forecasts: Commencing September 1, 1990, for each System FMPA shall provide to FPL by September 1 of each year FMPA's best forecast of the following for the succeeding five calendar years (e.g., the forecasts for calendar years 1991, 1992, 1993, 1994, and 1995 will be provided to FPL by September 1, 1990):

11.1.1 - The projected System's Monthly Peak Native Load, expressed in kW, for each month of the five-year period.

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11.1.2 - The projected energy requirements expressed in kWh, for each month of the five-year period, as such energy would be measured by the metering equipment utilized to determine such System's Native Load.

11.1.3 - The projected System's Internal Resource kW for each month of the five-year period.

11.1.4 - The projected System's Monthly Peak Load, expressed in kW, for each month of the five-year period.

11.1.5 - The projected largest hourly System Peak Load, expressed in kW, for each month of the five-year period.

ARTICLE XII

CONTROL AREAS, SCHEDULED DELIVERIES, AND INADVERTENT INTERCHANGE

Section 12.1 - Control Area: FMPA agrees at all times during the term of this Agreement to (1) include FMPA's Native Load in a Control Area other than FPL's Control Area by incorporating each System's Native Load into the automatic generation control system of a third party utility (or FMPA's) as if the flows in the interconnections between the FPL transmission system and each such System's facilities were flows on the interconnections between FPL's transmission system and the transmission system of such other third party utility; (2) provide Operating Reserves and Regulation Service in accordance with standard electric utility practices; (3) load follow FMPA's Native Load; (4) commit and dispatch sufficient capacity and energy to meet FMPA's Native Load; (5) as required, schedule all Capacity and Energy transactions between FPL and other utility systems, and (6) make any other arrangements necessary to meet FMPA's Native Load and to provide Regulation Service at all times.

Section 12.2 - Scheduled Deliveries and Inadvertent Interchange: The Parties recognize that the actual flow of power and energy between FPL's Control Area and the Control Area in which the Systems are located (which is currently the OUC Control Area) may differ from the scheduled values. Therefore, any Transmission Service from utilities other than those within the Control Area

in which the Systems are located shall be in accordance with the amount of power scheduled to be delivered, and shall be determined from scheduling logs in lieu of recording devices. Any differences between scheduled deliveries and actual flow of power and energy shall be determined at the end of each hour of scheduled delivery and such difference shall be classified as inadvertent interchange energy. This inadvertent interchange energy includes the intentional inadvertent interchange energy resulting from the use of frequency bias as well as the unintentional inadvertent interchange energy resulting from human or equipment error. Inadvertent interchange energy shall be returned in kind in accordance with standard electric utility practices.

Section 12.3 - Deliveries not Scheduled: The Parties recognize that each System's Native Load, as well as each System's Internal Resources and certain other FMPA Resources shall be within a common Control Area and shall be within OUC's Control Area during the time of the Dispatching Contract. As such, any Transmission Service that involves resources located within the Control Area of which the Systems are a part cannot be provided on the basis of scheduled deliveries, but rather, the transfer of power and energy from any resource within such Control Area shall result from the automatic generation control actions of the dispatcher. Upon FPL's request, FMPA (or OUC pursuant to the Dispatching Contract) shall notify the FPL System Control Center of the amount of the Transmission Service originating from resources within the Control Area of which the Systems are a part.

Section 12.4 - Whole MW and MWh: All scheduled receipts and deliveries of power and energy by FPL shall be scheduled on a clock-hour basis, respectively, in whole MW and MWh quantities.

ARTICLE XIII
METERING

Section 13.1 - Metering Equipment: The term "Metering Equipment" as used in this Agreement shall include kW, kVAR, kWh, kQh, or any other meters, metering cabinets, metering panels, metering units, conduits, cabling, current transformers and potential transformers providing input directly or indirectly to meters, loss compensating equipment, meter recording devices (e.g., Solid

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State Data Receivers), telephone circuits necessary to transmit metering data to remote locations, signal or pulse dividers, transducers, pulse accumulators, and any other equipment necessary at the Interconnection Delivery Points to implement the provisions of this Agreement. All new Metering Equipment installed in accordance with this Article XIII shall conform to FPL's standards for similar installations. All existing Metering Equipment in service at Interconnection Delivery Points as of the effective date of this Agreement shall be considered acceptable for purposes of this Article XIII.

Section 13.2 - Prerequisite for Transmission Service: The implementation of the provisions of this Article XIII shall be a prerequisite to the commencement of Transmission Service hereunder.

Section 13.3 - FMPA's Obligations: FMPA shall:

13.3.1 - Design and engineer, at its own expense, any modifications to Metering Equipment necessary to implement the provisions of this Agreement in accordance with FPL's standards or practices for similar installations. FMPA shall provide to FPL the documentation describing the engineering design of each such modifications in a timely manner to permit FPL's review of such design prior to FMPA's approval of such design.

13.3.2 - When neccessary, repair, replace, relocate, or remove, at its own expense, any Metering Equipment in accordance with the practices used by FPL for similar installations.

13.3.3 - Purchase at its own expense, and install at its own expense and in accordance with FPL's standards or practices for similar installations, any new Metering Equipment required pursuant to Sections 13.3.1 and Section 13.3.2; provided, however, that FMPA shall not, while this Agreement remains in effect, remove, relocate, repair, replace, or modify, without FPL's prior written consent (which consent shall not be unreasonably withheld), any Metering Equipment owned by FMPA.

Section 13.4 - FPL's Rights and Obligations: Subject to the provisions of Section 18.12, FPL shall:

13.4.1 - Own all its previously installed Metering Equipment as of the effective date of this Agreement necessary to determine, record, and telemeter the real and reactive energy flows at each Interconnection Delivery Point. FMPA shall not be charged for such existing Metering Equipment.

13.4.2 - Have the right to review and approve the engineering design and installation plans of any new Metering Equipment required pursuant to Section 13.3 for the purpose of ensuring that such engineering design and/or installation plans conform to FPL's standards for similar installations and perform the functions as intended. FMPA shall conform with any reasonable recommendations by FPL to modify the engineering design and/or installation plans, so long as these recommendations conform to FPL's standards for all similar installations.

13.4.3 - In order to minimize the necessity for additional spare parts and specialized personnel training, have the right to specify the manufacturer, vendor, and model of any new Metering Equipment required pursuant to Section 13.3. FMPA shall conform with any such specification.

13.4.4 - Test and calibrate, on an on-going basis, the Metering Equipment. Upon FMPA's request, FPL will provide FMPA a copy of the test and calibration records of the Metering Equipment.

13.4.5 - Have the right to monitor the factory acceptance test, the field acceptance test, and the installation of any new Metering Equipment required pursuant to Section 13.3 and have final approval of such factory acceptance test, field acceptance test, and installation.

13.4.6 - Verify and validate the meter readings or any other data provided by the Metering Equipment.

Section 13.5 - Sealed Meters: All kWh and kQh meters recording flows at each Interconnection Delivery Point shall be sealed by FPL and shall be opened only by FPL representatives.

Section 13.6 - Notification Prior to Commencement of Work: FMPA shall notify FPL prior to the commencement of any work performed by FMPA, any System, or contractors or agents performing on behalf of either or both, which may directly or indirectly have an adverse effect on the Metering Equipment or meter readings therefrom.

Section 13.7 - Access: FMPA shall provide FPL access to the premises of FMPA to implement the provisions of this Article XIII.

Section 13.8 - Costs: FMPA shall be responsible for all costs required of FMPA to implement the provisions of this Article XIII, including, but not limited to, normal engineering, administrative, material, and labor expenses associated with the specifications, design, review, approval, purchase, installation, maintenance, repair, operation, replacement, checkout, testing, calibration, removal or relocation of equipment by FPL. Any work performed by FPL pursuant to this Article XIII shall be billed in accordance with the provisions of Section 8.2.

Section 13.9 - Routine Maintenance: At FMPA's written request, subject to the provisions of Section 18.12, for any Metering Equipment, FPL will provide routine inspections and maintenance in accordance with FPL's regular procedures and practices. Upon FMPA's written request, FPL will extend its best efforts to provide FMPA with an estimate of annual expenses for budgeting purposes. FMPA shall reimburse FPL for all the costs incurred, including all normal expenses for renewal and replacement of items in rendering such maintenance and inspection services.

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ARTICLE XIV

AUTOMATIC GENERATION CONTROL EQUIPMENT

Section 14.1 - Data Acquisition Equipment and Automatic Generation Control Equipment: FMPA shall be responsible, at its own expense, for the purchase, installation, maintenance and replacement of all Data Acquisition Equipment and Automatic Generation Control Equipment, and of any other additional facilities not presently installed, whether owned by FPL or FMPA, at each System's delivery point(s) or at facilities remote from any such System's delivery point(s) which may be required by any Party in the implementation of the provisions of Article XII, or as thereafter may reasonably be required in accordance with good, modern electric utility practice. Data Acquisition Equipment and Automatic Generation Control Equipment, as defined in this Article XIV, shall be required to include the System's Native Load in a Control Area other than FPL's.

Section 14.2 - Data Acquisition Equipment: As used in this Agreement, the term "Data Acquisition Equipment" means all the equipment required to provide telemetry to a location remote from each Interconnection Delivery Point. The data acquisition equipment shall monitor analog and digital signals deemed desirable by FPL or FMPA to implement the provisions of this Agreement. Such Data Acquisition Equipment shall be state-of-the-art at the time when it is purchased, be compatible at all times with the computer master equipment receiving the telemetry signals, and supply status information, kWh, MW, and MVAR analog information, as well as any other data required by FPL or FMPA from time to time. The term "Data Acquisition Equipment" shall include remote terminal units (RTU), cabinets, panels, metering units, conduits, cabling, current transformers and potential transformers providing input directly or indirectly to transducers, meters providing kWh signals, loss compensating equipment, telephone equipment and leased telephone circuits necessary to transmit data to remote locations, signal or pulse dividers, transducers, pulse accumulators, and any other equipment or service necessary to provide for the telemetry requirements of FPL or FMPA under this Agreement.

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14.2.1 FPL RTU:

An RTU ("FPL RTU") shall be available to exclusively provide telemetry to the FPL System Control Center. This RTU shall be in addition to any other RTU's which are now or in the future may be installed at each Interconnection Delivery Point to supply data to any other party.

14.2.1.1 FMPA's Responsibilities: The FPL RTU shall be owned by FMPA and shall be for FPL's exclusive use. As required, FMPA shall purchase and install the FPL RTU at its own expense. Upon FPL's request, FMPA shall, at its own expense and within a reasonable time, repair, replace, relocate, or remove the FPL RTU. The engineering design of, installation of, repairs of, or any other work associated with, the FPL RTU performed by or on behalf of FMPA shall be done in accordance with FPL's standards for similar installations. FMPA shall provide sufficient notice to FPL before commencing any acquisition and/or design of the FPL RTU to allow FPL to exercise its rights under this Section.

14.2.1.2 FPL's Responsibilities: In order to minimize the necessity for additional spare parts and specialized personnel training, and subject to the provisions of Section 18.12, if an existing RTU is not available in accordance with Section 14.2.1, FPL shall have the right to specify the manufacturer, vendor, and model of the new FPL RTU, and shall have the right to review and approve the engineering design and installation plans for the new FPL RTU. FPL shall have the right to monitor and have final approval of the factory acceptance test, field acceptance test, and installation of the new FPL RTU.

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14.2.2 FMPA RTU: An RTU ("FMPA RTU") shall be available to exclusively provide telemetry to the control center of the utility which incorporates the System's Load in its Control Area. During the term of the Dispatching Contract, the FMPA RTU shall provide the required data acquisition functions to the OUC Energy Control Center. Such FMPA RTU shall perform the functions necessary to implement the provisions of this Agreement.

14.2.3 Routine Maintenance: Subject to the provisions of Section 18.12, for any Data Acquisition Equipment installed by FMPA for the purposes of providing data acquisition required by FPL, including the FPL RTU, FPL will provide routine inspections and maintenance in accordance with FPL's regular procedures and practices. Upon FMPA's written request, FPL will extend its best efforts to provide FMPA with an estimate of annual expenses for budgeting purposes. FMPA shall reimburse FPL for all the costs incurred including all normal expenses for renewal and replacement of items in rendering such service.

Section 14.3 - Automatic Generation Control Equipment: FPL and FMPA shall each incorporate the information obtained from the FPL RTU and the FMPA RTU, respectively, into an automatic generation control system capable of implementing the provisions of Article XII. FMPA shall be responsible for all telephone service charges associated with new or additional leased telephone circuits from the Interconnection Delivery Points to the FPL System Control Center. FMPA shall be responsible for any costs associated with changes in computer software and for any additional computer hardware initially required to accommodate the provisions of this Agreement at the FPL System Control Center.

Section 14.4 - Access: FMPA shall provide FPL access to the premises of FMPA to implement the provisions of this Article XIV.

Section 14.5 - Costs: FMPA shall be responsible for all costs required to implement the provisions of this Article XIV, including, but not limited to, normal engineering, administrative, material, and labor expenses associated

with the specifications, design, review, approval, purchase, installation, maintenance, repair, operation, replacement, checkout, testing, calibration, removal or relocation of equipment by FPL. Any work performed by FPL pursuant to this Article XIV shall be billed in accordance with the provisions of Section 8.2.

ARTICLE XV
FORCE MAJEURE

Section 15.1 In case any Party hereto shall be delayed in or prevented from performing or carrying out any of the agreements, covenants and obligations made by, and imposed upon, said Parties by this Agreement by reason of or through any cause reasonably beyond its control and not attributable to its neglect, including strike, stoppage in labor, failure of contractors or suppliers of materials, riot, fire, flood, ice, invasion, civil war, commotion, insurrection, military or usurped power, order of any court granted in any bona fide adverse legal proceedings or action, or of any civil or military authority (either de facto or de jure), explosion, act of God or the public enemies; the, and in such case or cases, such Party shall not be liable to another Party for or on account of any loss, damage, injury or expense (including consequential damage and cost of replacement power) resulting from or arising out of such delay or prevention from performing; provided, however, that the Party suffering such delay or prevention shall use due and, in its judgment practicable diligence to remove the cause(s) thereof; and provided, further, that no Party shall be required by the foregoing provisions to settle a strike or bona fide adverse legal proceeding except when, according to its own best judgment, such settlement seems advisable; and provided, further, that nothing in this Article XV shall excuse non-performance of the obligations incurred under Articles XII or XVI, or the payment of obligations incurred under Article VIII of this Agreement.

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ARTICLE XVI

INDEMNITY AND LIABILITY

Section 16.1 - Responsibility and Indemnification: For the purposes of this Section 16.1 the parties are defined as FMPA and Florida Power & Light Company, its parent, its subsidiaries, affiliates and their officer, directors, agents and employees. Each party hereto expressly agrees to indemnify, save harmless, and defend the other party against all claims, demands, costs, or expense for loss, damage, or injury to or death of person(s) or property, in any manner directly or indirectly connected with or growing out of the generation, transmission, or use of electric capacity and energy or performance of any provision under this Agreement, whether or not due to or caused by negligence of the other party, when such injury or damage occurs on its own system. Each party further agrees to waive all rights against and release the other party from any liability it may incur for payment, if any, of benefits to its own employees under any statutory obligation.

ARTICLE XVII

UNILATERAL CHANGES AND MODIFICATIONS

Section 17.1 - Unilateral Changes and Modifications: Nothing in this Agreement shall be construed as affecting in any way the right of FPL unilaterally to make application to the FERC for a change in the rates, charges, terms and conditions of service provided in this Agreement, or for termination of such service, pursuant to Section 205 of the Federal Power Act and the rules and regulations of the FERC promulgated thereunder, or the rights of FMPA to make application under Section 206 of the Federal Power Act, provided that, in either case, no application or other request for such change or termination, except for a change in the rates for Transmission Service provided in Attachment C, may be filed earlier than three years after the effective date of this Agreement.

101301

ARTICLE XVIII
MISCELLANEOUS

Section 18.1 - Regulations and Approvals: This Agreement is subject to the regulatory authority of the FERC.

Section 18.2 - Waivers: Any waiver at any time by either Party hereto of its rights with respect to the other Party or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.

Section 18.3 - Successors and Assigns: This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors and assigns, and shall not be assignable by either Party without the written consent of the other Party, except as to a successor in the operation of properties by reason of a merger, consolidation, reorganization, sale or foreclosure, where substantially all such properties are acquired by such successor.

Section 18.4 - Effect of Section Headings: Article and section headings appearing in this Agreement are inserted for convenience of reference only and shall in no way be construed to be interpretations of the text of this Agreement.

Section 18.5 - Attachments: As used throughout this Agreement, the term "Agreement" shall include Attachments A, B, and C.

Section 18.6 - Relationship of the Parties: Nothing contained in this Agreement shall be construed to create an association, joint venture, partnership, or any other type of entity between FPL and any other party.

Section 18.7 - Independent Rights: Nothing in this Agreement shall be construed as a waiver by FMPA of any of its rights independent of this Agreement, including the right to seek legally to compel FPL to continue providing transmission service to FMPA upon and following expiration or termination of the Agreement.

101302

Section 18.8 - Special Billing Systems: The development and administration costs of any modifications to the existing special billing systems necessary to implement the provisions of this Agreement shall be borne by FMPA. By execution of this Agreement, FMPA agrees to execute a work order obligating it to reimburse FPL, on a monthly basis, for FPL's actual time and out-of-pocket expenses (including employee compensation, overhead, hardware, and software costs) expended in preparing and administering any arrangements which FPL determines are necessary to implement the provisions of this Agreement. The total amount to be paid by FMPA under this Section 18.8 shall not exceed $50,000.

Section 18.9 - Notices: Any notice contemplated by this Agreement shall be made in writing and shall be delivered either in person, by prepaid telegram, by telex or facsimile transmission, or by deposit in the United States mail, first class, postage prepaid, in the case of FPL, to Florida Power & Light Company, P.O. Box 029100, Miami, Florida 33102, Attention: Manager, Power Supply Contracts and Administration; in the case of FMPA, to Florida Municipal Power Agency, 7201 Lake Ellenor Drive, Orlando, Florida 32809, Attention: General Manager, or to such other person(s) as may be designated by FPL or FMPA. Any Party's designation of the person to be notified or the address of such person may be changed by such Party at any time, or from time to time, by similar notice.

Section 18.10 - Contracts between FMPA and Systems: FMPA covenants that the All-Requirements Contracts between FMPA and each System will not be rescinded, amended, supplemented, or altered in any material way that would lessen, release, or alter the rights of FPL without the express written consent of FPL. FPL shall have the right to intervene in any legal action or arbitration proceeding involving any one or more of the Systems concerning the contractual arrangements between FMPA and any one or more of the Systems which is expected to affect compliance with this Agreement.

Section 18.11 - Complete Agreement: This Agreement is intended as the exclusive, integrated statement of the Parties' agreement regarding Transmission Service. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Agreement.

101303

Section 18.12 - Exclusive Responsibility of FMPA: In no event shall any FPL statement, representation, or lack thereof, either express or implied, relieve FMPA of its responsibilities for any equipment required for implementation of this Agreement. Specifically, (1) any inspection of any equipment and facilities by FPL, (2) any specification, purchase, installation, testing or approval of equipment by FPL, or (3) any review, verification, or approval of any engineering design or of work associated with any facility or equipment, shall not be construed as FPL confirming or endorsing any engineering design or operation, maintenance, or installation procedures, or as a warranty or guarantee as to the safety, reliability or durability of any equipment. FPL's inspection, installation, specification, purchase, verification, testing, review, approval, acceptance, or its failure to inspect, install, specify, purchase, verify, test, review, approve or accept any engineering design shall not be deemed an endorsement by FPL of any equipment, design, or procedure.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be executed in duplicate in their names by their respective duly authorized officials, as of the day and year first above written.

ATTEST:

FLORIDA POWER & LIGHT COMPANY

BY: _____
Secretary

BY: _____
Senior Vice President

ATTEST:

FLORIDA MUNICIPAL POWER AGENCY

BY: _____

BY: _____
General Manager

101304

ATTACHMENT A

FMPA RESOURCES

1. CAPACITY AND ENERGY SALES CONTRACT RESOURCES

A. System's Internal Resources

System	KW*
Clewiston	
Fort Pierce/Vero Beach	
Green Cove Springs	
Jacksonville Beach	
Key West	
Lake Worth	

B. Other Resources

System	KW*
Clewiston	
Fort Pierce/Vero Beach	
Green Cove Springs	
Jacksonville Beach	
Key West	
Lake Worth	

2. OTHER FMPA RESOURCES

A. Owned Resources

Description	KW*

B. Purchased Power Resources

Description	KW*

* Capability of the resource in kW based on the SERC winter rating for generating units or the kW of capacity available from resources involving multiple units.

101305

ATTACHMENT B

INTERCONNECTION DELIVERY POINTS

101306

ATTACHMENT C

TRANSMISSION SERVICE RATES

The monthly rate per kW (expressed in dollars per kW) for Transmission Service shall be equal to the annual rate per MW of Contract Demand in effect for the St. Lucie Delivery Service Agreement, divided by 12,000.

The transmission use rate per MWh (expressed in dollars per MWh) for Transmission Service shall be equal to the annual rate per MW of Contract Demand in effect for the St. Lucie Delivery Service Agreement, divided by 8,760.

(fmpa64)

101307

APPENDIX B

FEDERAL EXPRESS

7201 Lake Ellenor Drive
Orlando, Florida 32809-5799
(407) 859-7310

November 2, 1989

Mr. W. C. Locke
Manager, Power Supply Contracts
Florida Power & Light Company
P. O. Box 029100
Miami, FL 33102

Re: Information Requested on the
All-Requirements Project

Dear Bill:

During our meeting of October 13, 1989 regarding the addition of new participants to Florida Municipal Power Agency's ("FMPA") All-Requirements Power Supply Project, Florida Power & Light Company ("FPL") requested certain information on the effect of adding the generating systems to the project for use in its evaluations. Enclosed are the following tables that provide the requested information:

Table 1 - Projected summer, winter, and annual peak demands and annual energy requirements of each All-Requirements Project participant located on the FPL transmission system (the "East Systems").

Table 2 - Information on generating resources expected to be available to serve the combined loads of the East Systems.

Table 3 - Summary of the capacity resources expected to be available to serve the East Systems' combined loads during each year of the ten-year period 1990 through 1999.

Table 4 - Projected loads on FPL interconnections with each of the East Systems under both expected and maximum requirements conditions, and a summary of power supply resources expected to be operated during the East Systems' summer and winter peak demands.

The projected loads on the FPL interconnections provided on Table 4 reflect the net power flows into or out of each East System, and therefore would include the net effects of power generated on each system for export, if any, and deliveries to each system from the St. Lucie Project (totaling 52 MW), the Stanton Project (totaling 45 MW), and the Tri-City Project (totaling 17 MW).

The maximum loads on the FPL interconnections shown on Table 4 for the generating systems (Fort Pierce/Vero Beach, Key West, and Lake Worth) are based on conditions that are currently considered unlikely during normal operations. For the projected maximum flow into each East System, the assumption was made that no on-system generating resources ("Internal Resources") would be operated during the system's peak hours. For the maximum flow out of each East System, the assumption was made that all Internal Resources would be operated during the system's minimum load conditions.

As we agreed to at our last meeting, in order to provide for a timely initiation of service to the new All-Requirements Project participants, FPL's evaluation of the data provided is to be done concurrently with discussions regarding the transmission contract terms and conditions. I will therefore be calling you to schedule a meeting to discuss the transmission contract. Hopefully the meeting can be scheduled to occur within the next two weeks.

If you have any questions, please feel free to call.

Sincerely,

Robert C. Williams

Robert C. Williams
Director of Engineering

Enclosures

cc: All-Requirements Participants w/enclosures
Fred M. Bryant w/enclosures
Nick Guarriello w/enclosures

TABLE 1

FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED EAST SYSTEMS
PROJECTED DEMAND AND ENERGY REQUIREMENTS [1]

Projected monthly NCP demands for 1990 (MW)

System	January	February	March	April	May	June	July	August	September	October	November	December
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Clewiston	17.1	16.9	13.8	13.7	15.7	16.9	17.3	17.3	18.1	16.4	15.0	15.9
Green Cove Springs	17.7	16.1	14.6	14.2	15.2	16.9	17.1	18.0	17.3	16.1	13.9	15.8
Jacksonville Beach	116.7	96.1	85.3	68.1	82.1	96.1	103.6	108.0	98.3	90.7	72.4	92.9
Fort Pierce/Vero Beach	224.0	211.0	199.0	168.0	177.0	186.0	188.0	191.0	188.0	180.0	159.0	182.0
Key West	65.0	63.0	70.0	70.0	70.0	74.0	76.0	78.0	74.0	72.0	71.0	66.0
Lake Worth	85.0	78.0	71.0	53.0	56.0	68.0	69.0	71.0	69.0	69.0	66.0	57.0
All Requirements East [2]	525.5	481.1	453.7	387.0	416.0	457.9	471.0	483.3	464.7	444.2	397.3	429.6

Projected winter NCP demands for 1990 through 1999 (MW) [3]

System	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Clewiston	17.1	17.0	17.9	17.9	17.9	18.8	18.8	18.8	19.8	19.8
Green Cove Springs	17.7	18.2	18.8	19.3	19.9	20.4	21.0	21.5	22.1	22.7
Jacksonville Beach	116.7	120.7	124.9	129.0	133.1	137.2	141.4	145.5	149.6	153.8
Fort Pierce/Vero Beach	224.0	229.0	233.0	239.0	242.0	247.0	253.0	257.0	262.0	267.0
Key West	72.0	72.9	73.8	75.6	76.6	77.5	78.4	79.3	80.3	81.2
Lake Worth	85.0	89.0	91.0	94.0	97.0	99.0	102.0	104.0	107.0	110.0
All Requirements East [4]	525.5	539.8	552.4	567.7	579.1	592.5	607.1	618.6	633.1	646.7

Projected summer NCP demands for 1990 through 1999 (MW) [5]

System	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Clewiston	18.1	18.0	19.0	19.0	19.0	20.0	20.0	20.0	21.0	21.0
Green Cove Springs	18.0	18.6	19.2	19.7	20.3	20.8	21.4	21.9	22.5	23.1
Jacksonville Beach	107.9	111.6	115.5	119.3	123.1	126.9	130.8	134.6	138.4	142.3
Fort Pierce/Vero Beach	191.0	195.2	198.6	203.8	206.4	210.6	215.8	219.3	223.5	227.7
Key West	78.0	79.0	80.0	82.0	83.0	84.0	85.0	86.0	87.0	88.0
Lake Worth	71.0	74.3	76.0	78.5	81.0	82.6	85.2	86.8	89.3	91.8
All Requirements East [6]	483.3	496.0	507.6	521.6	532.2	544.3	557.5	567.8	580.9	593.1

See page 2 of 2 for footnotes.

TABLE 1

FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED EAST SYSTEMS
PROJECTED DEMAND AND ENERGY REQUIREMENTS [1]

Projected annual NCP demands for 1990 through 1999 (MW)

System	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Clewiston	18.1	18.0	19.0	19.0	19.0	20.0	20.0	20.0	21.0	21.0
Green Cove Springs	18.0	18.6	19.2	19.7	20.3	20.8	21.4	21.9	22.5	23.1
Jacksonville Beach	116.7	120.7	124.9	129.0	133.1	137.2	141.4	145.5	149.6	153.8
Fort Pierce/Vero Beach	224.0	229.0	233.0	239.0	242.0	247.0	253.0	257.0	262.0	267.0
Key West	78.0	79.0	80.0	82.0	83.0	84.0	85.0	86.0	87.0	88.0
Lake Worth	85.0	89.0	91.0	94.0	97.0	99.0	102.0	104.0	107.0	110.0
All Requirements East [4]	525.5	539.8	552.4	567.7	579.1	592.5	607.1	618.6	633.1	646.7

Projected annual energy requirements for 1990 through 1999 (GWh) [7]

System	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Clewiston	88.5	90.1	92.0	93.0	95.0	97.0	98.0	100.0	102.0	103.0
Green Cove Springs	96.5	99.5	102.5	105.4	108.4	111.4	114.4	117.3	120.3	123.3
Jacksonville Beach	485.8	503.0	520.2	537.4	554.6	571.8	589.0	606.3	623.4	640.6
Fort Pierce/Vero Beach	981.0	999.0	1,021.0	1,043.0	1,062.0	1,081.0	1,102.0	1,122.0	1,140.0	1,158.0
Key West	461.0	468.0	479.0	485.0	493.0	500.0	506.0	512.0	519.0	526.0
Lake Worth	349.0	359.0	368.0	379.0	389.0	399.0	410.0	421.0	432.0	443.0
All Requirements East [8]	2,461.8	2,518.6	2,582.7	2,642.8	2,702.0	2,760.2	2,819.4	2,878.6	2,936.7	2,993.9

Footnotes:
[1] Based on information reported in the 1989 FCG IE 411 submittals.
[2] Combined monthly loads of East Systems.
[3] Projected peak load occuring in the period January through March, November, and December.
[4] Combined January loads of each East System.
[5] Projected peak load occuring in the period April through October.
[6] Combined August loads of each East System.
[7] Projected net energy for load.
[8] Combined net energy requirements of East Systems.

TABLE 2
FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED EAST SYSTEMS
PROJECTED GENERATING RESOURCES INFORMATION [1]

Plant Name	Unit No.	Location	Unit Type	Fuel Pri.	Fuel Alt.	Commercial In-Service Month/Year	Reported [8] Retirement Month/Year	Net Capability Summer MW	Net Capability Winter MW	Fuel Transport Pri.	Fuel Transport Alt.
ST. LUCIE [2]	2	St. Lucie County	N	UR	---	08/83	Unknown	50.510	51.566	TK	---
STANTON COAL [3]	1	Orange County	FS	C	---	07/87	Unknown	79.000	79.000	RR	---
STANTON COAL [3]	2	Orange County	FS	C	---	01/97	Unknown	75.000	75.000	RR	---
INDIAN RIVER CT1 [5]	1	Brevard County	CT	NG	FO2	06/89	Unknown	6.320	7.980	PL	TK
INDIAN RIVER CT2 [5]	2	Brevard County	CT	NG	FO2	07/89	Unknown	6.320	7.980	PL	TK
H.D.KING	6	St. Lucie County	FS	NG	FO6	12/58	12/94	16.500	16.500	PL	WA
H.D.KING	7	St. Lucie County	FS	NG	FO6	01/62	Unknown	33.000	33.000	PL	WA
H.D.KING	8	St. Lucie County	FS	NG	FO6	05/76	Unknown	56.100	56.100	PL	WA
H.D.KING	9	St. Lucie County	CCT	NG	FO2	01/89	Unknown	22.500	22.500	PL	TK
H.D.KING	1	St. Lucie County	CCW	---	---	02/89	Unknown	2.500	2.500	---	---
H.D.KING	2	St. Lucie County	D	FO2	---	02/70	Unknown	2.720	2.720	TK	---
STOCK ISLAND STEAM	1	Stock Island	FS	FO6	---	12/72	Unknown	2.750	2.750	TK	---
KEY WEST CT	1	Key West	CT	FO2	---	12/78	Unknown	34.000	34.000	WA	---
BIG PINE KEY DIESEL	1	Big Pine Key	D	FO2	---	03/69	Unknown	19.000	19.000	WA	---
STOCK ISLAND DIESEL	1	Stock Island	D	FO2	---	02/65	Unknown	2.500	2.500	TK	---
STOCK ISLAND DIESEL	2	Stock Island	D	FO2	---	02/65	Unknown	1.800	1.900	TK	---
STOCK ISLAND DIESEL	3	Stock Island	D	FO2	---	02/65	Unknown	1.800	1.900	TK	---
STOCK ISLAND DIESEL	4	Stock Island	D	FO2	---	02/65	Unknown	1.900	1.900	TK	---
STOCK ISLAND DIESEL	5	Stock Island	D	FO2	---	02/92	Unknown	6.800	6.800	TK	---
CUDJOE KEY DIESEL	2	Cudjoe Key	D	FO2	---	09/62	Unknown	6.800	6.800	TK	---
CUDJOE KEY	3	Cudjoe Key	D	FO2	---	03/69	Unknown	5.200	5.200	TK	---
SMITH STEAM	3	Palm Beach County	FS	NG	FO6	11/67	01/96	22.000	24.000	PL	TK
SMITH STEAM	4	Palm Beach County	FS	NG	FO6	03/69	01/97	33.000	33.000	PL	TK
SMITH STEAM	5	Palm Beach County	CCW	--	---	03/69	Unknown	8.900	8.900	---	---
SMITH CGT	2	Palm Beach County	CCT	NG	FO2	03/69	Unknown	20.700	22.000	PL	TK
SMITH CGT	1	Palm Beach County	CT	FO2	---	03/69	Unknown	26.000	31.000	TK	---
SMITH HU	1	Palm Beach County	D	FO2	---	03/69	01/91	1.800	2.000	TK	---
SMITH HU	2	Palm Beach County	D	FO2	---	03/69	01/91	1.800	2.000	TK	---
SMITH HU	3	Palm Beach County	D	FO2	---	03/69	01/91	1.800	2.000	TK	---
SMITH HU	4	Palm Beach County	D	FO2	---	03/69	01/91	1.800	2.000	TK	---
SMITH HU	5	Palm Beach County	D	FO2	---	03/69	01/91	1.800	2.000	TK	---
VERO HU PLANT STM	1	Indian River County	FS	NG	FO6	11/61	Unknown	12.500	12.500	PL	TK
VERO HU PLANT STM	2	Indian River County	FS	NG	FO6	08/64	01/95	16.500	16.500	PL	TK
VERO HU PLANT STM	3	Indian River County	FS	NG	FO6	09/71	Unknown	33.000	33.000	PL	TK
VERO HU PLANT STM	4	Indian River County	FS	NG	FO6	10/76	Unknown	52.000	52.000	PL	TK
VERO HU PLANT CC [6]	5	Indian River County	CC	NG	FO2	01/92	Unknown	46.000	46.000	PL	TK
VERO HU DIESEL	1	Indian River County	D	FO2	---	01/47	Unknown	1.000	1.000	TK	---
VERO HU DIESEL	2	Indian River County	D	FO2	---	01/35	Unknown	0.700	0.700	TK	---
VERO HU DIESEL	3	Indian River County	D	FO2	---	01/50	Unknown	2.800	2.800	TK	---
VERO HU DIESEL	5	Indian River County	D	FO2	---	01/51	Unknown	2.800	2.800	TK	---
VERO HU DIESEL	6	Indian River County	D	FO2	---	01/58	Unknown	4.900	4.900	TK	---
Unit Purchases:											
INDIAN RIVER	1,2,3							40.000	40.000		
GAINESVILLE	2							See Annual Generating Resources			
System Purchases:											
FPL PR PURCHASE								See Annual Generating Resources			
FPL ST PURCHASE [7]								See Annual Generating Resources			
OUC LONG TERM C&E PURCHASE								7.000	7.000		

Notes:
[1] Based on information reported in the 1989 FCG 1E 411 submittals.
[2] Total capability is 837.703/855.226 MW. FMPA's East Systems portion is 6.0296%.
[3] Total net continuous capability is 415 MW. FMPA's East Systems portion is 19.0361%.
[4] Total planned net continuous capability is 415 MW. FMPA's assumed East Systems portion is 75 MW for planning purposes.
[5] Total capability is 38/48 MW. FMPA's East Systems portion is 16.6316%.
[6] Assumed conversion of existing steam unit to combined cycle for planning purposes.
[7] Key West Short Term minimum purchase through May 1992.
[8] Actual retirements may differ from reported information.

Unit Type Abbreviations:
- CC - Combined Cycle
- CCT - CC Turbine Portion
- CCW - CC Waste Heat Portion
- CT - Combustion Turbine
- FS - Fossil Steam
- N - Nuclear
- D - Diesel

Fuel Type Abbreviations:
- C - Coal
- HO2 - No. 2 Fuel Oil
- HO6 - No. 6 Fuel Oil
- UR - Uranium
- NG - Natural Gas

Fuel Transportation Abbreviations:
- WA - Water Transportation
- TK - Truck
- RR - Railroad
- PL - Pipe Line

TABLE 3

FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED EAST SYSTEMS
PROJECTED ANNUAL CAPACITY RESOURCES

Plant Name	Unit No.	Internal [1] Resource	Net Summer Capability (MW) 1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
ST. LUCIE [2]	2	No	50.51	50.51	50.51	50.51	50.51	50.51	50.51	50.51	50.51	50.51
STANTON COAL [3]	1	No	79.00	79.00	79.00	79.00	79.00	79.00	79.00	79.00	79.00	79.00
STANTON COAL [4]	2	No								75.00	75.00	75.00
INDIAN RIVER CT1 [5]	1	No	6.32	6.32	6.32	6.32	6.32	6.32	6.32	6.32	6.32	6.32
INDIAN RIVER CT2 [5]	2	No	6.32	6.32	6.32	6.32	6.32	6.32	6.32	6.32	6.32	6.32
H.D.KING	6	Yes	16.50	16.50	16.50	16.50	16.50					
H.D.KING	7	Yes	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00
H.D.KING	8	Yes	56.10	56.10	56.10	56.10	56.10	56.10	56.10	56.10	56.10	56.10
H.D.KING CC	5,8	Yes	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00
H.D.KING	1	Yes	2.75	2.75	2.75	2.75	2.75	2.75	2.75	2.75	2.75	2.75
H.D.KING	2	Yes	2.75	2.75	2.75	2.75	2.75	2.75	2.75	2.75	2.75	2.75
STOCK ISLAND STEAM	1	Yes	37.00	37.00	37.00	37.00	37.00	37.00	37.00	37.00	37.00	37.00
KEY WEST CT	1	Yes	19.00	19.00	19.00	19.00	19.00	19.00	19.00	19.00	19.00	19.00
BIG PINE KEY DIESEL	1	Yes	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50
STOCK ISLAND DIESEL	1	Yes	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90
STOCK ISLAND DIESEL	2	Yes	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90
STOCK ISLAND DIESEL	3	Yes	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90	1.90
STOCK ISLAND DIESEL	4	Yes			0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80
STOCK ISLAND DIESEL	5	Yes			0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80
CUDJOE KEY DIESEL	2	Yes	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20	2.20
CUDJOE KEY DIESEL	3	Yes	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50
SMITH STEAM	3	Yes	25.00	25.00	25.00	25.00	25.00	25.00	25.00			
SMITH STEAM	2	Yes	36.00	36.00	36.00	36.00	36.00	36.00	36.00			
SMITH CC	5,2	Yes	29.60	29.60	29.60	29.60	29.60	29.60	29.60	29.60	29.60	29.60
SMITH CGT	1	Yes	26.00	26.00	26.00	26.00	26.00	26.00	26.00	26.00	26.00	26.00
SMITH MU	1	Yes	1.80									
SMITH MU	2	Yes	1.80									
SMITH MU	3	Yes	1.80									
SMITH MU	4	Yes	1.80									
SMITH MU	5	Yes	1.80									
VERO MU PLANT STM	1	Yes	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
VERO MU PLANT STM	2	Yes	16.50	16.50	16.50	16.50	16.50					
VERO MU PLANT STM	3	Yes	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00	33.00
VERO MU PLANT STM	4	Yes	56.00	56.00	56.00	56.00	56.00	56.00	56.00	56.00	56.00	56.00
VERO MU PLANT CC [6]	5	Yes						46.00	46.00	46.00	46.00	46.00
VERO MU DIESEL	1	Yes	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
VERO MU DIESEL	2	Yes	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70
VERO MU DIESEL	4	Yes	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80
VERO MU DIESEL	5	Yes	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80	2.80
VERO MU DIESEL	6	Yes	4.90	4.90	4.90	4.90	4.90	4.90	4.90	4.90	4.90	4.90
Purchases for East Systems:												
INDIAN RIVER	1-3	No	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
OUC LONG TERM C&E PURCHASE		No	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00
GAINESVILLE		No	10.00	7.00	3.00							
FPL PR Purchase		No	52.00	52.00	54.00	56.00	57.00	59.00	60.00	62.00	67.00	81.00
FPL ST Purchase [7]		No	15.00	15.00	15.00							
Projected Total East Systems Resources			721.75	709.75	727.35	711.35	712.35	727.35	728.35	751.35	756.35	770.35

Smith 1 -7.5 MW

Notes:
[1] If "Yes", resource is considered an Internal Resource under FMPA's proposed transmission agreement.
[2] Total summer capability is 837.703 MW. FMPA's East Systems portion is 6.02962.
[3] Total net summer capability is 415 MW. FMPA's East Systems portion is 19.0361%.
[4] Total planned net summer capability is 415 MW. FMPA's assumed East Systems portion is 75 MW for planning purposes.
[5] Total summer capability is 38 MW. FMPA's East Systems portion is 16.6316%.
[6] Assumed conversion of existing steam unit to combined cycle for planning purposes.
[7] Key West Short Term minimum purchase through May 1992.

TABLE 4

FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED EAST SYSTEMS
PROJECTED LOADS ON FPL SYSTEM INTERCONNECTIONS*

Line	Fort Pierce/Vero Beach (MW)	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
	Projected Peak Loads										
1	Summer	191.0	195.2	198.6	203.8	206.4	210.6	215.8	219.3	223.5	227.7
2	Winter	224.0	229.0	233.0	239.0	242.0	247.0	253.0	257.0	262.0	267.0
3	Total Internal Resources	271.1	271.1	271.1	271.1	271.1	284.1	284.1	284.1	284.1	284.1
	Internal Resources Projected To Be Operating At FMPA's Peak										
4	Summer	208.1	208.1	208.1	208.1	224.6	254.1	254.1	221.1	221.1	221.1
5	Winter	224.6	224.6	224.6	241.1	241.1	259.6	259.6	254.1	259.6	259.6
	Expected Load On FPL Interconnection At FMPA Peak [(Into), Out Of]										
	All Internal Resources Available										
6	Summer	17.1	12.9	9.5	4.3	18.2	43.5	38.3	1.8	(2.4)	(6.6)
7	Winter	0.6	(4.4)	(8.4)	2.1	(0.9)	12.6	6.6	(2.9)	(2.4)	(7.4)
	Largest Internal Resource Off Line										
8	Summer	(39.0)	(43.2)	(46.6)	(51.8)	(37.9)	(12.6)	(17.8)	(54.3)	(58.5)	(62.7)
9	Winter	(55.5)	(60.5)	(64.5)	(54.0)	(57.0)	(43.5)	(49.5)	(59.0)	(58.5)	(63.5)
	Maximum Power Flow (Into) System										
10	Summer	(191.0)	(195.2)	(198.6)	(203.8)	(206.4)	(210.6)	(215.8)	(219.3)	(223.5)	(227.7)
11	Winter	(224.0)	(229.0)	(233.0)	(239.0)	(242.0)	(247.0)	(253.0)	(257.0)	(262.0)	(267.0)
	Maximum Power Flow Out Of System										
12	Summer	198.5	196.9	195.6	193.7	192.7	204.1	202.1	200.8	199.2	197.6
13	Winter	210.6	209.3	208.2	206.6	205.8	217.4	215.8	214.7	213.4	212.0

* See page 7 of 7 for notes on each line.

TABLE 4

FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED EAST SYSTEMS
PROJECTED LOADS ON FPL SYSTEM INTERCONNECTIONS*

Line	Key West (MW)	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
	Projected Peak Loads										
1	Summer	78.0	79.0	80.0	82.0	83.0	84.0	85.0	86.0	87.0	88.0
2	Winter	72.0	72.9	73.8	75.6	76.6	77.5	78.4	79.3	80.3	81.2
3	Total Internal Resources	65.9	65.9	85.5	85.5	85.5	85.5	85.5	85.5	85.5	85.5
	Internal Resources Projected To Be Operating At FMPA's Peak										
4	Summer	34.0	34.0	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6
5	Winter	34.0	34.0	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6
	Expected Load On FPL Interconnection At FMPA Peak [(Into), Out Of]										
	All Internal Resources Available										
6	Summer	(44.0)	(45.0)	(26.4)	(28.4)	(29.4)	(30.4)	(31.4)	(32.4)	(33.4)	(34.4)
7	Winter	(38.0)	(38.9)	(20.2)	(22.0)	(23.0)	(23.9)	(24.8)	(25.7)	(26.7)	(27.6)
	Largest Internal Resource Off Line										
8	Summer	(78.0)	(79.0)	(60.4)	(62.4)	(63.4)	(64.4)	(65.4)	(66.4)	(67.4)	(68.4)
9	Winter	(72.0)	(72.9)	(54.2)	(56.0)	(57.0)	(57.9)	(58.8)	(59.7)	(60.7)	(61.6)
	Maximum Power Flow (Into) System										
10	Summer	(78.0)	(79.0)	(80.0)	(82.0)	(83.0)	(84.0)	(85.0)	(86.0)	(87.0)	(88.0)
11	Winter	(72.0)	(72.9)	(73.8)	(75.6)	(76.6)	(77.5)	(78.4)	(79.3)	(80.3)	(81.2)
	Maximum Power Flow Out Of System										
12	Summer	30.8	30.4	49.5	48.6	48.2	47.7	47.3	46.8	46.4	45.9
13	Winter	33.5	33.1	52.3	51.4	51.0	50.6	50.2	49.8	49.4	48.9

* See page 7 of 7 for notes on each line.

TABLE 4

FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED EAST SYSTEMS
PROJECTED LOADS ON FPL SYSTEM INTERCONNECTIONS*

Line	Lake Worth (MW)	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
	Projected Peak Loads										
1	Summer	71.0	74.3	76.0	78.5	81.0	82.6	85.2	86.8	89.3	91.8
2	Winter	85.0	89.0	91.0	94.0	97.0	99.0	102.0	104.0	107.0	110.0
3	Total Internal Resources	118.6	109.6	109.6	109.6	109.6	109.6	109.6	55.6	55.6	55.6
	Internal Resources Projected To Be Operating At FMPA's Peak										
4	Summer	29.6	29.6	29.6	61.6	61.6	29.6	29.6	29.6	29.6	29.6
5	Winter	61.6	61.6	61.6	61.6	61.6	61.6	83.6	29.6	29.6	29.6
	Expected Load On FPL Interconnection At FMPA Peak [(Into), Out Of]										
	All Internal Resources Available										
6	Summer	(41.4)	(44.7)	(46.4)	(16.9)	(19.4)	(53.0)	(55.6)	(57.2)	(59.7)	(62.2)
7	Winter	(23.4)	(27.4)	(29.4)	(32.4)	(35.4)	(37.4)	(18.4)	(74.4)	(77.4)	(80.4)
	Largest Internal Resource Off Line										
8	Summer	(71.0)	(74.3)	(76.0)	(48.9)	(51.4)	(82.6)	(85.2)	(86.8)	(89.3)	(91.8)
9	Winter	(55.4)	(59.4)	(61.4)	(64.4)	(67.4)	(69.4)	(50.4)	(104.0)	(107.0)	(110.0)
	Maximum Power Flow (Into) System										
10	Summer	(71.0)	(74.3)	(76.0)	(78.5)	(81.0)	(82.6)	(85.2)	(86.8)	(89.3)	(91.8)
11	Winter	(85.0)	(89.0)	(91.0)	(94.0)	(97.0)	(99.0)	(102.0)	(104.0)	(107.0)	(110.0)
	Maximum Power Flow Out Of System										
12	Summer	88.1	77.6	76.9	75.8	74.8	74.0	73.0	18.2	17.2	16.1
13	Winter	99.9	90.0	89.6	88.9	88.3	87.8	87.2	32.7	32.1	31.4

* See page 7 of 7 for notes on each line.

TABLE 4

FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED EAST SYSTEMS
PROJECTED LOADS ON FPL SYSTEM INTERCONNECTIONS*

Line	Clewiston (MW)	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
	Projected Peak Loads										
1	Summer	18.1	18.0	19.0	19.0	19.0	20.0	20.0	20.0	21.0	21.0
2	Winter	17.1	17.0	17.9	17.9	17.9	18.8	18.8	18.8	19.8	19.8
3	Total Internal Resources	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Internal Resources Projected To Be Operating At FMPA's Peak										
4	Summer	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
5	Winter	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Expected Load On FPL Interconnection At FMPA Peak [(Into), Out Of]										
	All Internal Resources Available										
6	Summer	(18.1)	(18.0)	(19.0)	(19.0)	(19.0)	(20.0)	(20.0)	(20.0)	(21.0)	(21.0)
7	Winter	(17.1)	(17.0)	(17.9)	(17.9)	(17.9)	(18.8)	(18.8)	(18.8)	(19.8)	(19.8)
	Largest Internal Resource Off Line										
8	Summer	(18.1)	(18.0)	(19.0)	(19.0)	(19.0)	(20.0)	(20.0)	(20.0)	(21.0)	(21.0)
9	Winter	(17.1)	(17.0)	(17.9)	(17.9)	(17.9)	(18.8)	(18.8)	(18.8)	(19.8)	(19.8)
	Maximum Power Flow (Into) System										
10	Summer	(18.1)	(18.0)	(19.0)	(19.0)	(19.0)	(20.0)	(20.0)	(20.0)	(21.0)	(21.0)
11	Winter	(17.1)	(17.0)	(17.9)	(17.9)	(17.9)	(18.8)	(18.8)	(18.8)	(19.8)	(19.8)
	Maximum Power Flow Out Of System										
12	Summer	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
13	Winter	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

* See page 7 of 7 for notes on each line.

TABLE 4

FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED EAST SYSTEMS
PROJECTED LOADS ON FPL SYSTEM INTERCONNECTIONS*

Line	Green Cove Springs (MW)	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
	Projected Peak Loads										
1	Summer	18.0	18.6	19.2	19.7	20.3	20.8	21.4	21.9	22.5	23.1
2	Winter	17.7	18.2	18.8	19.3	19.9	20.4	21.0	21.5	22.1	22.7
3	Total Internal Resources	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Internal Resources Projected To Be Operating At FMPA's Peak										
4	Summer	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
5	Winter	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Expected Load On FPL Interconnection At FMPA Peak ((Into), Out Of)										
	All Internal Resources Available										
6	Summer	(18.0)	(18.6)	(19.2)	(19.7)	(20.3)	(20.8)	(21.4)	(21.9)	(22.5)	(23.1)
7	Winter	(17.7)	(18.2)	(18.8)	(19.3)	(19.9)	(20.4)	(21.0)	(21.5)	(22.1)	(22.7)
	Largest Internal Resource Off Line										
8	Summer	(18.0)	(18.6)	(19.2)	(19.7)	(20.3)	(20.8)	(21.4)	(21.9)	(22.5)	(23.1)
9	Winter	(17.7)	(18.2)	(18.8)	(19.3)	(19.9)	(20.4)	(21.0)	(21.5)	(22.1)	(22.7)
	Maximum Power Flow (Into) System										
10	Summer	(18.0)	(18.6)	(19.2)	(19.7)	(20.3)	(20.8)	(21.4)	(21.9)	(22.5)	(23.1)
11	Winter	(17.7)	(18.2)	(18.8)	(19.3)	(19.9)	(20.4)	(21.0)	(21.5)	(22.1)	(22.7)
	Maximum Power Flow Out Of System										
12	Summer	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
13	Winter	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

* See page 7 of 7 for notes on each line.

TABLE 4

FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED EAST SYSTEMS
PROJECTED LOADS ON FPL SYSTEM INTERCONNECTIONS*

Line	Jacksonville Beach (MW)	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
	Projected Peak Loads										
1	Summer	107.9	111.6	115.5	119.3	123.1	126.9	130.8	134.6	138.4	142.3
2	Winter	116.7	120.7	124.9	129.0	133.1	137.2	141.4	145.5	149.6	153.8
3	Total Internal Resources	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Internal Resources Projected To Be Operating At FMPA's Peak										
4	Summer	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
5	Winter	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Expected Load On FPL Interconnection At FMPA Peak [(Into), Out Of]										
	All Internal Resources Available										
6	Summer	(107.9)	(111.6)	(115.5)	(119.3)	(123.1)	(126.9)	(130.8)	(134.6)	(138.4)	(142.3)
7	Winter	(116.7)	(120.7)	(124.9)	(129.0)	(133.1)	(137.2)	(141.4)	(145.5)	(149.6)	(153.8)
	Largest Internal Resource Off Line										
8	Summer	(107.9)	(111.6)	(115.5)	(119.3)	(123.1)	(126.9)	(130.8)	(134.6)	(138.4)	(142.3)
9	Winter	(116.7)	(120.7)	(124.9)	(129.0)	(133.1)	(137.2)	(141.4)	(145.5)	(149.6)	(153.8)
	Maximum Power Flow (Into) System										
10	Summer	(107.9)	(111.6)	(115.5)	(119.3)	(123.1)	(126.9)	(130.8)	(134.6)	(138.4)	(142.3)
11	Winter	(116.7)	(120.7)	(124.9)	(129.0)	(133.1)	(137.2)	(141.4)	(145.5)	(149.6)	(153.8)
	Maximum Power Flow Out Of System										
12	Summer	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
13	Winter	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

* See page 7 of 7 for notes on each line.

TABLE 4

FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED EAST SYSTEMS
PROJECTED LOADS ON FPL SYSTEM INTERCONNECTIONS*

Line		1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
	Expected Resources Operated During FMPA Summer Peak By Location (MW)										
14	Ft. Pierce/Vero Bch. Internal Res.	208.1	208.1	208.1	208.1	224.6	254.1	254.1	221.1	221.1	221.1
15	Key West Internal Resources	34.0	34.0	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6
16	Lake Worth Internal Resources	29.6	29.6	29.6	61.6	61.6	29.6	29.6	29.6	29.6	29.6
17	Clewiston Internal Resources	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
18	Green Cove Springs Internal Res.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
19	Jacksonville Beach Internal Res.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
20	FPL St. Lucie Plant	48.8	48.8	48.8	48.8	48.8	48.8	48.8	48.8	48.8	48.8
21	FPL Partial Requirements	38.0	38.0	40.0	41.0	42.0	44.0	45.0	46.0	50.0	60.0
22	FPL Partial Short Term	7.0	15.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
23	OUC Stanton Plant	75.6	75.6	75.6	75.6	75.6	75.6	75.6	147.4	147.4	147.4
24	OUC Indian River Plant	32.6	40.5	48.7	32.9	26.0	38.6	50.8	21.3	30.4	32.6
25	Gainesville System	9.6	6.4	3.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
26	Total	483.3	496.0	507.6	521.6	532.2	544.3	557.5	567.8	580.9	593.1
	Expected Resources Operated During FMPA Winter Peak By Location (MW)										
27	Ft. Pierce/Vero Bch. Internal Res.	224.6	224.6	224.6	241.1	241.1	259.6	259.6	254.1	259.6	259.6
28	Key West Internal Resources	34.0	34.0	53.6	53.6	53.6	53.6	53.6	53.6	53.6	53.6
29	Lake Worth Internal Resources	61.6	61.6	61.6	61.6	61.6	61.6	83.6	29.6	29.6	29.6
30	Clewiston Internal Resources	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
31	Green Cove Springs Internal Res.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
32	Jacksonville Beach Internal Res.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
33	FPL St. Lucie Plant	48.8	48.8	48.8	48.8	48.8	48.8	48.8	48.8	48.8	50.8
34	FPL Partial Requirements	37.0	38.0	38.0	40.0	42.0	43.0	44.0	45.0	46.0	50.0
35	FPL Partial Short Term	7.0	15.0	15.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
36	OUC Stanton Plant	75.6	75.6	75.6	75.6	75.6	75.6	75.6	147.4	147.4	147.4
37	OUC Indian River Plant	27.3	35.8	32	46.9	56.4	50.3	41.9	40.1	48.1	55.7
38	Gainesville System	9.6	6.4	3.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
39	Total	525.5	539.8	552.4	567.6	579.1	592.5	607.1	618.6	633.1	646.7

Notes on information provided:

Lines 1 and 2 - Projected summer (April through October) and winter (January through March, November, and December) peak demand for the system.

Line 3 - Total net summer capability of generating resources located on the system (Internal Resources).

Lines 4 and 5 - Internal Resources located on the system that are expected to be operating during FMPA summer and winter peaks.

Lines 6 and 7 - Projected load on FPL interconnection expected to occur during FMPA's summer and winter peak demands, assuming all Internal Resources are available to operate.

Lines 8 and 9 - Projected load on FPL interconnection expected to occur during FMPA's summer and winter peak demands, assuming that the largest Internal Resource expected to operate is forced out and no other Internal Resources are used to replace it.

Lines 10 and 11 - Projected maximum interconnection flow required to deliver power into the system, assuming no Internal Resources are operated during the system summer and winter peaks.

Lines 12 and 13 - Projected maximum interconnection flow required to deliver power out of the system, assuming all Internal Resources are operated during the system summer and winter minimum load hours.

Lines 14 Thru 39 - Resources expected to be operated at East Systems summer and winter peak demands.

APPENDIX C

(1)

7201 Lake Ellenor Drive
Orlando, Florida 32809-5788
(407) 859-7310

File:
EF 5186-8G1AB
① Documents
② IDO-FPL TRANS Mtg File

November 14, 1989

Mr. W. C. Locke
Manager, Power Supply Contracts
Florida Power & Light Company
P. O. Box 029100
Miami, FL 33102

Re: Additional Information Requested on the All-Requirements Project

Dear Bill:

As you are aware, the current transmission arrangement that Florida Municipal Power Agency's ("FMPA") is requesting of Florida Power & Light Company ("FPL") for the All-Requirements Project involves only those participants located on FPL's transmission system (the "East Systems"). The other participants in the All-Requirements Project, which include the current participants -- Cities of Bushnell, Leesburg and Ocala -- and the Sebring Utilities Commission (the "West Systems"), are interconnected with the Florida Power Corporation ("FPC") transmission system and will be included in transmission arrangements developed with FPC.

Since transmission arrangements are being developed independently for the participants included in the East and West Systems, we question your need for information on the participants in the West Systems. However, in order to keep the contract development process moving ahead as quickly as possible, we are providing the following requested information on the West Systems as a supplement to the information provided in my November 2, 1989 letter:

Table 5 - Projected energy and coincident peak demands of the West Systems.

Table 6 - Information on generating resources expected to be available to serve the combined loads of the West Systems.

Table 7 - Summary of the capacity resources expected to be available to serve the West Systems' combined loads during each year of the ten-year period 1990 through 1999.

The current partial requirements power and transmission arrangements with FPC are based on serving the combined load of the West Systems and not the individual systems (similar to the proposal that we have provided to FPL).

Therefore, the information provided on Table 5 is the total West Systems' loads and not individual system information.

With regard to your request for heat rate and projected fuel costs for the East Systems, we have included a revised Table 2 that provides the estimated heat rates for the various resources. The projected fuel costs that we have been using in our evaluations are the FCG base case projections used in the 1989 Planning Hearing Generation Expansion Planning Studies.

If you have any questions on the information provided, please feel free to call me. I look forward to meeting with you to discuss transmission contract terms and conditions.

Sincerely,

Robert C. Williams
Director of Engineering

RCW/sl
Enclosures

cc: All-Requirements Participants w/enclosures
Fred M. Bryant w/enclosures
Nick Guarriello w/enclosures

TABLE 5

FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED WEST SYSTEMS
PROJECTED DEMAND AND ENERGY REQUIREMENTS [1]

PROJECTED 1990 MONTHLY ENERGY (GWH)

Jan-90	Feb-90	Mar-90	Apr-90	May-90	Jun-90	Jul-90	Aug-90	Sep-90	Oct-90	Nov-90	Dec-90	Total
125.397	109.727	107.886	106.113	117.452	135.308	146.056	151.216	137.431	115.636	105.797	113.164	1,471.183

PROJECTED ANNUAL ENERGY (GWH)

	TOTAL
1991	1,522.330
1992	1,576.476
1993	1,629.622
1994	1,682.768
1995	1,734.913
1996	1,787.059
1997	1,839.206
1998	1,890.351
1999	1,941.497

PROJECTED 1990 MONTHLY PEAK (MW)

Jan-90	Feb-90	Mar-90	Apr-90	May-90	Jun-90	Jul-90	Aug-90	Sep-90	Oct-90	Nov-90	Dec-90
327.6	290.0	259.2	238.8	261.4	307.4	317.6	322.7	310.6	276.1	227.5	265.2

PROJECTED SEASONAL PEAK DEMAND (MW) [2]

	SUMMER	WINTER
1991	335.1	340.3
1992	346.5	352.2
1993	358.0	364.9
1994	370.4	376.7
1995	382.9	388.4
1996	394.3	401.1
1997	406.8	414.0
1998	417.2	427.7
1999	428.7	440.5

Note:
[1] Projected coincident peak demand and combined energy requirements for the Cities of Bushnell, Leesburg, Ocala and the Sebring Utilities Commission.
[2] Projected coincident peak demand of the West Systems in the summer (April through October) and winter (January through March, November and December) seasons.

TABLE 6

FLORIDA MUNICIPAL POWER AGENCY

ALL-REQUIREMENTS PROJECT

PROPOSED WEST SYSTEMS

PROJECTED GENERATING RESOURCES INFORMATION

Plant Name	Unit No.	Location	Unit Type	Fuel Pri.	Fuel Alt.	In-Service Month/Year	Reported Retirement Month/Year	Net Capability Summer MW	Net Capability Winter MW	Fuel Transport Pri.	Fuel Transport Alt.	Average Full Load Heat Rate Btu/Kwh
CRYSTAL RIVER [1]	3	Citrus County	N	UR	---	07/77	Unknown	18.700	20.600	TK	---	10,500
STANTON COAL [2]	1	Orange County	FS	C	---	07/87	Unknown	10.000	10.000	RR	---	9,762
STANTON COAL [3]	2	Orange County	FS	C	---	01/97	Unknown	50.000	50.000	RR	---	9,762
INDIAN RIVER CT [4]	1	Brevard County	CT	NG	FO2	06/89	Unknown	8.500	10.740	PL	TK	14,000
INDIAN RIVER CT [4]	2	Brevard County	CT	NG	FO2	07/89	Unknown	8.500	10.740	PL	TK	14,000
DINNER LAKE	1	Highlands County	FS	NG	FO6	12/66	Unknown	11.000	12.000	PL	TK	14,564
PARK STREET	3	Highlands County	D	FO2	---	01/56	Unknown	1.000	1.000	TK	---	11,500
PARK STREET	4	Highlands County	D	FO2	---	01/57	Unknown	0.500	0.500	TK	---	12,000
PARK STREET	6	Highlands County	D	FO2	---	01/57	Unknown	2.000	2.000	TK	---	11,423
PARK STREET	7	Highlands County	D	FO2	---	01/58	Unknown	2.000	2.000	TK	---	11,280
PARK STREET	8	Highlands County	D	FO2	---	01/58	Unknown	2.000	2.000	TK	---	10,918
PARK STREET	9	Highlands County	D	FO2	---	01/58	Unknown	2.500	2.500	TK	---	11,097
PHILLIPS	1	Highlands County	D	FO6	FO2	06/83	Unknown	19.500	19.500	TK	TK	9,000
PHILLIPS	2	Highlands County	D	FO6	FO2	06/83	Unknown	19.500	19.500	TK	TK	9,000
PHILLIPS CC	CC	Highlands County	CCW	--	---	06/83	Unknown	3.000	3.000	---	---	----
PHILLIPS D [5]	D	Highlands County	D	FO2	---	01/56	Unknown	1.000	1.000	TK	---	----
Unit Purchases:												
INDIAN RIVER	1,2,3							96.000	96.000			9,840
GAINESVILLE								See Annual Generating Resources				10,800
System Purchases:												
FPC PR PURCHASE								See Annual Generating Resources				
OUC LONG TERM C&E PURCHASE								13.000	13.000			

Note: [1] Excluded Resource Capacity from participants' ownership interest in Crystal River Unit 3.
[2] Total net continuous capability is 415 MW. FMPA's West Systems portion is 2.4%.
[3] Total planned net continuous capability is 415 MW. FMPA's assumed West Systems portion is 50MW for planning purposes.
[4] Total capability is 38/48 MW. FMPA's West Systems portion is 22.4%.
[5] Black start unit, not available to serve load.

Unit Type Abbreviations:

- CC - Combined Cycle
- CCT - CC Turbine Portion
- CCW - CC Waste Heat Portion
- CT - Combustion Turbine
- FS - Fossil Steam
- N - Nuclear
- D - Diesel

Fuel Type Abbreviations:

- C - Coal
- FO2 - No. 2 Fuel Oil
- FO6 - No. 6 Fuel Oil
- UR - Uranium
- NG - Natural Gas

Fuel Transportation Abbreviations:

- WA - Water Transportation
- TK - Truck
- RR - Railroad
- PL - Pipe Line

TABLE 7

FLORIDA MUNICIPAL POWER AGENCY

ALL-REQUIREMENTS PROJECT

PROPOSED WEST SYSTEMS

PROJECTED ANNUAL CAPACITY RESOURCES

Net Winter Capability MW

Plant Name	Unit No.	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
CRYSTAL RIVER [1]	3	20.600	20.600	20.600	20.600	20.600	20.600	20.600	20.600	20.600	20.600
STANTON COAL [2]	1	10.000	10.000	10.000	10.000	10.000	10.000	10.000	10.000	10.000	10.000
STANTON COAL [3]	2								50.000	50.000	50.000
INDIAN RIVER CT [4]	1	10.740	10.740	10.740	10.740	10.740	10.740	10.740	10.740	10.740	10.740
INDIAN RIVER CT [4]	2	10.740	10.740	10.740	10.740	10.740	10.740	10.740	10.740	10.740	10.740
DINNER LAKE	1	11.000	11.000	11.000	11.000	11.000	0.000	0.000	0.000	0.000	0.000
PARK STREET	3	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
PARK STREET	4	0.500	0.500	0.500	0.500	0.500	0.500	0.500	0.500	0.500	0.500
PARK STREET	6	2.000	2.000	2.000	2.000	2.000	2.000	2.000	2.000	2.000	2.000
PARK STREET	7	2.000	2.000	2.000	2.000	2.000	2.000	2.000	2.000	2.000	2.000
PARK STREET	8	2.000	2.000	2.000	2.000	2.000	2.000	2.000	2.000	2.000	2.000
PARK STREET	9	2.500	2.500	2.500	2.500	2.500	2.500	2.500	2.500	2.500	2.500
PHILLIPS	1	19.500	19.500	19.500	19.500	19.500	19.500	19.500	19.500	19.500	19.500
PHILLIPS	2	19.500	19.500	19.500	19.500	19.500	19.500	19.500	19.500	19.500	19.500
PHILLIPS CC	CC	3.000	3.000	3.000	3.000	3.000	3.000	3.000	3.000	3.000	3.000
Purchases for West System:											
INDIAN RIVER	1-3	96.000	96.000	96.000	96.000	96.000	96.000	96.000	96.000	96.000	96.000
OUC LONG TERM C&E PURCHASE		13.000	13.000	13.000	13.000	13.000	13.000	13.000	13.000	13.000	13.000
GAINESVILLE		20.000	13.000	7.000							
FPC PR Purchase		147.000	142.000	160.000	178.000	190.000	211.000	224.000	195.000	208.000	221.000
Projected Total WEST Sytems Resources		391.080	379.080	391.080	402.080	414.080	424.080	437.080	458.080	471.080	484.080

Note: [1] Excluded Resource Capacity from participants' ownership interest in Crystal River Unit 3.
[2] Total net winter continuous capability is 415 MW. FMPA's West Systems portion is 2.4%.
[3] Total planned net continuous capability is 415 MW. FMPA's assumed West Systems portion is 50 MW for planning purposes.
[4] Total winter capability is 48 MW. FMPA's West Systems portion is 22.4%.

REVISED TABLE 2
FLORIDA MUNICIPAL POWER AGENCY
ALL-REQUIREMENTS PROJECT
PROPOSED EAST SYSTEMS
PROJECTED GENERATING RESOURCES INFORMATION (1)

Plant Name	Unit No.	Location	Unit Type	Fuel Pri.	Fuel Alt.	Commercial In-Service Month/Year	Reported [8] Retirement Month/Year	Net Capability Summer MW	Net Capability Winter MW	Fuel Transport Pri.	Fuel Transport Alt.	Estimated Full Load Heat Rate Btu/KWh
ST. LUCIE [2]	2	St. Lucie County	N	UR	---	08/83	Unknown	50.510	51.566	TK	---	9,900
STANTON COAL [3]	1	Orange County	FS	C	---	07/87	Unknown	79.000	79.000	RR	---	9,762
STANTON COAL [4]	2	Orange County	FS	C	---	01/97	Unknown	75.000	75.000	RR	---	9,762
INDIAN RIVER CT1 [5]	1	Brevard County	CT	NG	FO2	06/89	Unknown	6.320	7.980	PL	TK	14,000
INDIAN RIVER CT2 [5]	2	Brevard County	CT	NG	FO2	07/89	Unknown	6.320	7.980	PL	TK	14,000
H.D.KING	6	St. Lucie County	FS	NG	FO6	12/58	12/94	16.500	16.500	PL	WA	13,750
H.D.KING	7	St. Lucie County	FS	NG	FO6	01/64	Unknown	33.000	33.000	PL	WA	12,620
H.D.KING	8	St. Lucie County	FS	NG	FO6	05/76	Unknown	56.100	56.100	PL	WA	11,920
H.D.KING	2	St. Lucie County	CCT	NG	FO2	01/89	Unknown	22.500	22.500	PL	TK	9,980
H.D.KING	1	St. Lucie County	CCW	---	---	02/89	Unknown	7.500	7.500	---	---	---
H.D.KING	2	St. Lucie County	D	FO2	---	04/70	Unknown	2.750	2.750	TK	---	10,600
H.D.KING	3	St. Lucie County	D	FO2	---	04/70	Unknown	2.750	2.750	TK	---	10,600
STOCK ISLAND STEAM	1	Stock Island	FS	FO6	---	12/72	Unknown	34.000	37.000	WA	---	12,800
KEY WEST CT	1	Key West	CT	FO2	---	12/78	Unknown	10.000	10.000	WA	---	12,000
BIG PINE KEY DIESEL	1	Big Pine Key	D	FO2	---	03/69	Unknown	2.500	2.500	TK	---	13,200
STOCK ISLAND DIESEL	1	Stock Island	D	FO2	---	02/62	Unknown	1.900	1.900	TK	---	13,500
STOCK ISLAND DIESEL	2	Stock Island	D	FO2	---	02/65	Unknown	1.900	1.900	TK	---	13,500
STOCK ISLAND DIESEL	3	Stock Island	D	FO2	---	02/65	Unknown	1.900	1.900	TK	---	13,500
STOCK ISLAND DIESEL	4	Stock Island	D	FO2	---	02/92	Unknown	0.800	0.800	TK	---	0,800
STOCK ISLAND DIESEL	5	Stock Island	D	FO2	---	02/92	Unknown	0.800	0.800	TK	---	0,800
CUDJOE KEY DIESEL	2	Cudjoe Key	D	FO2	---	09/68	Unknown	2.200	2.200	TK	---	13,500
CUDJOE KEY	3	Cudjoe Key	D	FO2	---	03/69	Unknown	2.500	2.500	TK	---	13,500
SMITH STEAM	3	Palm Beach County	FS	NG	FO6	11/67	01/96	22.000	22.000	PL	TK	14,200
SMITH STEAM	4	Palm Beach County	FS	NG	FO6	03/69	01/97	33.000	33.000	PL	TK	14,400
SMITH STEAM	5	Palm Beach County	CCW	--	---	03/69	Unknown	8.900	8.900	---	---	---
SMITH CGT	2	Palm Beach County	CCT	NG	FO2	03/69	Unknown	20.700	22.900	PL	TK	10,100
SMITH CGT	1	Palm Beach County	CT	FO2	---	03/69	Unknown	26.000	31.000	TK	---	12,800
SMITH MU	1	Palm Beach County	D	FO2	---	03/69	01/91	1.800	2.000	TK	---	12,600
SMITH MU	2	Palm Beach County	D	FO2	---	03/69	01/91	1.800	2.000	TK	---	12,600
SMITH MU	3	Palm Beach County	D	FO2	---	03/69	01/91	1.800	2.000	TK	---	12,600
SMITH MU	4	Palm Beach County	D	FO2	---	03/69	01/91	1.800	2.000	TK	---	12,600
SMITH MU	5	Palm Beach County	D	FO2	---	03/69	01/91	1.800	2.000	TK	---	12,600
VERO MU PLANT STM	1	Indian River County	FS	NG	FO6	11/61	Unknown	12.500	12.500	PL	TK	12,900
VERO MU PLANT STM	2	Indian River County	FS	NG	FO6	08/62	01/95	16.500	16.500	PL	TK	13,650
VERO MU PLANT STM	3	Indian River County	FS	NG	FO6	09/71	Unknown	33.000	33.000	PL	TK	13,000
VERO MU PLANT STM	4	Indian River County	FS	NG	FO6	10/76	Unknown	56.000	56.000	PL	TK	11,440
VERO MU PLANT CC [6]	5	Indian River County	CC	NG	FO2	01/92	Unknown	46.000	46.000	PL	TK	9,980
VERO MU DIESEL	1	Indian River County	D	FO2	---	01/47	Unknown	1.000	1.000	TK	---	13,500
VERO MU DIESEL	2	Indian River County	D	FO2	---	01/35	Unknown	0.700	0.700	TK	---	13,500
VERO MU DIESEL	4	Indian River County	D	FO2	---	01/50	Unknown	2.800	2.800	TK	---	13,500
VERO MU DIESEL	5	Indian River County	D	FO2	---	01/51	Unknown	2.600	2.600	TK	---	13,500
VERO MU DIESEL	6	Indian River County	D	FO2	---	01/58	Unknown	4.900	4.900	TK	---	13,500
Unit Purchases:												
INDIAN RIVER	1,2,3							40.000	40.000			9,840
GAINESVILLE	2							See Annual Generating Resources				10,800
System Purchases:												
FPL PR PURCHASE								See Annual Generating Resources				---
FPL ST PURCHASE [7]								See Annual Generating Resources				---
OUC LONG TERM C&E PURCHASE								7.000	7.000			---

Notes: [1] Based on information reported in the 1989 FCG IE 411 submittals.
[2] Total capability is 837.703/855.226 MW. FMPA's East Systems portion is 6.0296%.
[3] Total net continuous capability is 415 MW. FMPA's East Systems portion is 19.0361%.
[4] Total planned net continuous capability is 415 MW. FMPA's assumed East Systems portion is 75 MW for planning purposes.
[5] Total capability is 38/48 MW. FMPA's East Systems portion is 16.6316%.
[6] Assumed conversion of existing steam unit to combined cycle for planning purposes.
[7] Key West Short Term minimum purchase through May 1992.
[8] Actual retirements may differ from reported information.

Unit Type Abbreviations:
- CC - Combined Cycle
- CCT - CC Turbine Portion
- CCW - CC Waste Heat Portion
- CT - Combustion Turbine
- FS - Fossil Steam
- N - Nuclear
- D - Diesel

Fuel Type Abbreviations:
- C - Coal
- HO2 - No. 2 Fuel Oil
- HO6 - No. 6 Fuel Oil
- UR - Uranium
- NG - Natural Gas

Fuel Transportation Abbreviations:
- WA - Water Transportation
- TK - Truck
- RR - Railroad
- PL - Pipe Line

APPENDIX D

(2)

File:
BF-5186 601 AAB
Docs
IDO Trans Neg F. c
Copy to Abin

December 14, 1989

Mr. W. R. Schoneck
Coordinator
Power Supply Contracts & Administration
Florida Power & Light Company
P. O. Box 029100
Miami, FL 33102

Dear Bob:

Enclosed is a breakdown of the load forecast for the West All-Requirements Project. The monthly demand and energy projections are shown for 1990, as well as the annual forecast through 1999.

Please let me know if you need additional information for your studies.

Sincerely,

Robert C. Williams
Director of Engineering

RCW/ae
Enclosure

PROPOSED WEST SYSTEMS

PROJECTED DEMAND AND ENERGY REQUIREMENTS [1]

PROJECTED 1990 MONTHLY ENERGY (GWH)

	Jan-90	Feb-90	Mar-90	Apr-90	May-90	Jun-90	Jul-90	Aug-90	Sep-90	Oct-90	Nov-90	Dec-90	Total
Bushnell	1.533	1.264	1.263	1.125	1.358	1.390	1.438	1.549	1.427	1.329	1.205	1.287	16.168
Leesburg	29.695	24.661	25.764	25.071	28.637	31.324	33.426	35.648	30.525	27.793	24.733	27.248	344.525
Ocala	79.169	68.802	67.859	66.917	74.457	88.594	95.192	98.019	90.479	73.514	67.859	71.629	942.490
Sebring	15.000	15.000	13.000	13.000	13.000	14.000	16.000	16.000	15.000	13.000	12.000	13.000	168.000
Total	125.397	109.727	107.886	106.113	117.452	135.308	146.056	151.216	137.431	115.636	105.797	113.164	1,471.183

PROJECTED ANNUAL ENERGY (GWH)

	Bushnell	Leesburg	Ocala	Sebring	Total
1991	16.655	355.329	979.346	171.000	1,522.330
1992	17.143	366.134	1,016.199	177.000	1,576.476
1993	17.630	376.940	1,053.052	182.000	1,629.622
1994	18.118	387.745	1,089.905	187.000	1,682.768
1995	18.605	398.550	1,126.758	191.000	1,734.913
1996	19.093	409.355	1,163.611	195.000	1,787.059
1997	19.581	420.161	1,200.464	199.000	1,839.206
1998	20.068	430.966	1,237.317	202.000	1,890.351
1999	20.556	441.771	1,274.170	205.000	1,941.497

PROJECTED 1990 MONTHLY PEAK (MW)

	Jan-90	Feb-90	Mar-90	Apr-90	May-90	Jun-90	Jul-90	Aug-90	Sep-90	Oct-90	Nov-90	Dec-90
Bushnell	3.9	3.2	3.3	2.8	2.9	3.3	3.4	3.7	3.4	3.3	2.8	3.0
Leesburg	70.3	60.3	49.9	54.3	60.3	72.9	73.7	74.4	72.9	66.2	49.1	58.0
Ocala	190.4	171.5	159.1	148.7	165.3	194.2	202.5	204.5	196.3	173.5	142.5	161.1
Sebring	63.0	55.0	47.0	33.0	33.0	37.0	38.0	40.0	38.0	33.0	33.0	43.0
Total	327.6	290.0	259.2	238.8	261.4	307.4	317.6	322.7	310.6	276.1	227.5	265.2

PROJECTED SEASONAL PEAK DEMAND (MW) [2]

	Bushnell	Leesburg	Ocala	Sebring	Total Summer	Bushnell	Leesburg	Ocala	Sebring	Total Winter
1991	3.8	76.8	212.5	42.0	335.1	4.0	72.5	197.8	66.0	340.3
1992	3.9	79.1	220.5	43.0	346.5	4.2	74.7	205.3	68.0	352.2
1993	4.1	81.4	228.5	44.0	358.0	4.3	76.9	212.7	71.0	364.9
1994	4.2	83.8	236.5	46.0	370.4	4.4	79.1	220.2	73.0	376.7
1995	4.3	86.1	244.5	48.0	382.9	4.5	81.3	227.6	75.0	388.4
1996	4.4	88.4	252.5	49.0	394.3	4.6	83.5	235.0	78.0	401.1
1997	4.5	90.8	260.5	51.0	406.8	4.8	85.7	242.5	81.0	414.0
1998	4.6	93.1	268.5	51.0	417.2	4.9	87.9	249.9	85.0	427.7
1999	4.7	95.4	276.5	52.0	428.7	5.0	90.1	257.4	88.0	440.5

Note:

[1] Projected coincident peak demand and combined energy requirements for the Cities of Bushnell, Leesburg, Ocala and the Sebring Utilities Commission.

[2] Projected coincident peak demand of the West Systems in the summer (April through October) and winter (January through March, November and December) seasons.

APPENDIX E

EF-5186 EPY-1113

Handed out by FPL at 2/21/90 meeting

IMPACT OF PROPOSED FMPA INTEGRATED DISPATCH ARRANGEMENT ON FPL TRANSMISSION SYSTEM

REV 02/21/90

- THIS REVISION INCLUDES AN ADDITIONAL 15 MW TRANSACTION FROM LAKE WORTH TO GREEN COVE SPRINGS/JACKSONVILLE BEACH IN THE NORMAL DISPATCH CASES

- IN 1999 PEAK, THERE IS NOT ENOUGH GENERATION IN LAKE WORTH TO EFFECT THIS TRANSACTION. AT 80% LOAD, THE MAXIMUM TRANSACTION IS 11 MW

STUDY CASES - NORMAL DISPATCH

UNIT POWER + PR AT FT. PIERCE, VERO, LK WORTH AND KEY WEST BUSES

			YEAR 1991		YRS 1995 AND 99	
	STANTON	ST LUCIE	PR	NET INT	PR	NET INT
FT PIERCE	20.0	11.2	2.7	33.9	1.0	32.2
VERO	20.0	11.2	2.3	33.5	1.0	32.2
LK WORTH	10.0	18.4	0.0	13.4*	0.0	13.4*
KEY WEST	12.0	0.0	0.0	12.0	0.0	12.0

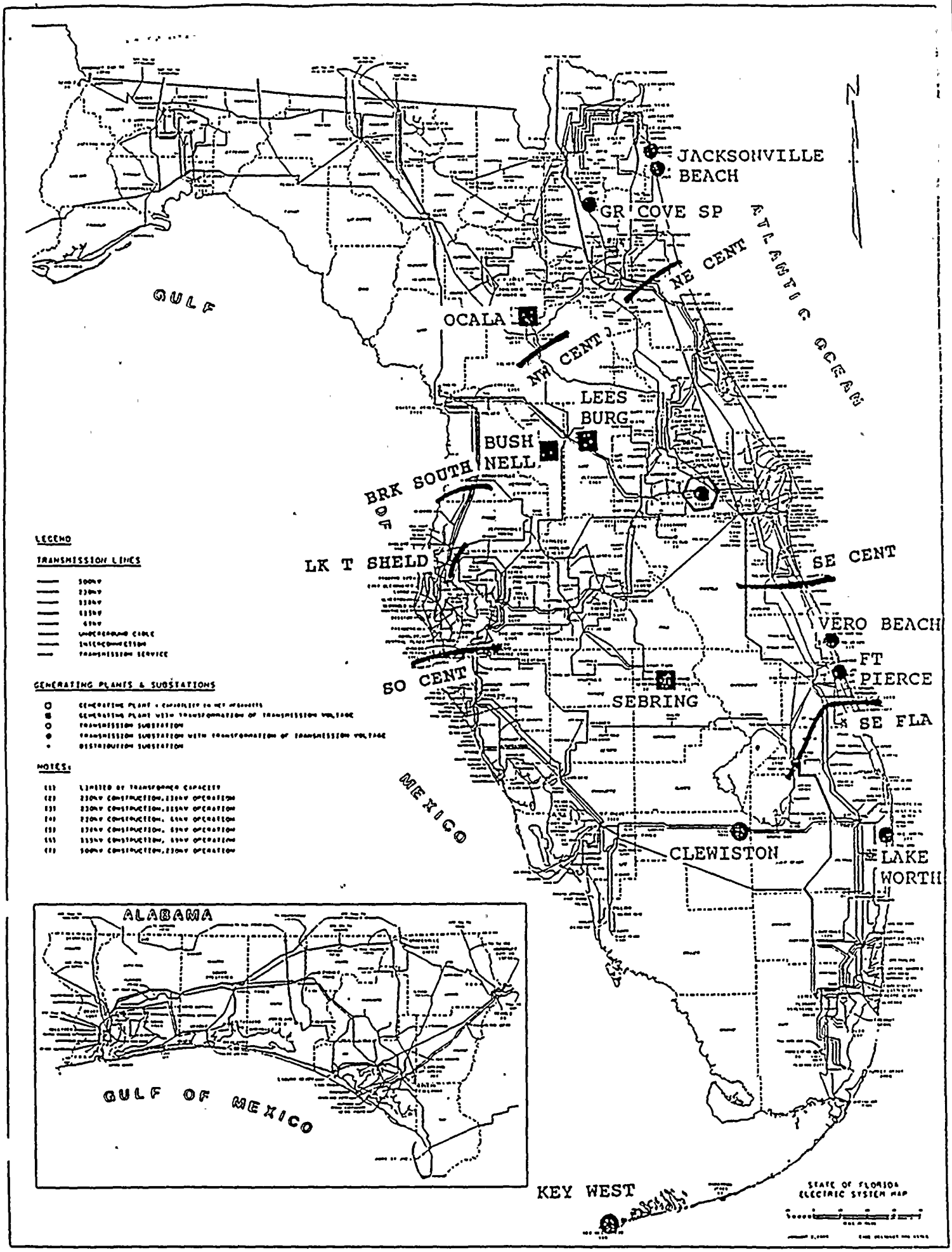
1991 PEAK						1995 PEAK				1999 PEAK			
SYSTEM	ZONE	GEN	LOAD	N.I.	LOSS	GEN	LOAD	N.I.	LOSS	GEN	LOAD	N.I.	LOSS
OUC	42	868.0*	724.0	127.7*	16.3	986.5*	837.0	128.0*	21.5	1094.1	928.0	143.8	22.4
EAST:													
CLEWSTON	85	0.0	18.0	-18.0	0.0	0.0	20.0	-20.0	0.0	0.0	21.0	-21.0	0.0
GREENCOV	86	0.0	18.6	-19.1	0.5	0.0	20.8	-20.8	0.0	0.0	23.1	-23.1	0.0
JAX BCH	87	0.0	111.6	-112.0	0.4	0.0	126.9	-127.4	0.5	0.0	142.3	-142.9	0.6
FP/VERO	88	127.4	195.2	-68.0	0.3	145.8	210.6	-65.3	0.5	162.9	227.7	-65.6	0.8
KEY WEST	89	66.8	79.0	-12.2	0.0	71.8	84.0	-12.2	0.0	75.8	88.0	-12.2	0.0
LK WORTH	90	60.8*	74.3	-13.5*	0.0	69.1*	82.6	-13.5*	0.0	63.3	91.8	-28.5	0.0
		255.0	496.7	-242.8	1.2	286.7	544.9	-259.2	1.0	302.0	593.9	-293.3	1.4
WEST:													
BUSHNELL	92	0.0	3.8	-3.8	0.0	0.0	4.3	-4.3	0.0	0.0	4.7	-4.7	0.0
LEESBURG	93	0.0	76.8	-77.3	0.5	0.0	86.1	-86.8	0.7	0.0	95.4	-96.2	0.8
OCALA	94	0.0	212.5	-214.1	1.5	0.0	244.5	-246.6	2.1	0.0	276.5	-279.3	2.8
SEBRING	95	64.0	42.0	21.9	0.1	64.0	48.0	15.9	0.1	64.0	52.0	11.9	0.1
		64.0	335.1	-273.3	2.1	64.0	382.9	-321.8	2.9	64.0	428.6	-368.3	3.7

1991 80% LOAD						1995 80% LOAD				1999 80% LOAD			
SYSTEM	ZONE	GEN	LOAD	N.I.	LOSS	GEN	LOAD	N.I.	LOSS	GEN	LOAD	N.I.	LOSS
OUC	42	721.0*	579.2	130.4*	11.4	860.0*	669.6	175.1*	15.3	934.3*	742.4	177.0*	15.0
EAST:													
CLEWSTON	85	0.0	14.4	-14.4	0.0	0.0	16.0	-16.0	0.0	0.0	16.8	-16.8	0.0
GREENCOV	86	0.0	14.9	-15.4	0.5	0.0	16.6	-16.6	0.0	0.0	18.5	-18.5	0.0
JAX BCH	87	0.0	89.3	-89.5	0.2	0.0	101.5	-101.8	0.3	0.0	113.8	-114.2	0.4
FP/VERO	88	88.3	156.2	-68.0	0.2	103.7	168.5	-65.0	0.2	117.4	182.2	-65.2	0.5
KEY WEST	89	51.0	63.2	-12.2	0.0	55.0	67.2	-12.2	0.0	58.2	70.4	-12.2	0.0
LK WORTH	90	45.9*	59.4	-13.5*	0.0	52.6*	66.1	-13.5*	0.0	55.6*	73.4	-17.8*	0.0
		185.2	397.4	-213.0	0.9	211.3	435.9	-225.1	0.5	231.2	475.1	-244.7	0.9
WEST:													
BUSHNELL	92	0.0	3.0	-3.0	0.0	0.0	3.4	-3.4	0.0	0.0	3.8	-3.8	0.0
LEESBURG	93	0.0	61.4	-61.8	0.3	0.0	68.9	-69.3	0.4	0.0	76.3	-76.9	0.5
OCALA	94	0.0	170.0	-171.0	0.9	0.0	195.6	-196.9	1.3	0.0	221.2	-222.9	1.7
SEBRRING	95	64.0	33.6	30.3	0.1	64.0	38.4	25.5	0.1	64.0	41.6	22.3	0.1
		64.0	268.0	-205.5	1.3	64.0	306.3	-244.1	1.8	64.0	342.9	-281.3	2.3

1991 60% LOAD						1995 60% LOAD				1999 60% LOAD			
SYSTEM	ZONE	GEN	LOAD	N.I.	LOSS	GEN	LOAD	N.I.	LOSS	GEN	LOAD	N.I.	LOSS
OUC	42	471.0*	434.4	29.5*	7.1	611.0*	502.2	99.9*	8.9	703.0*	556.8	137.0*	9.3
EAST:													
CLEWSTON	85	0.0	10.8	-10.8	0.0	0.0	12.0	-12.0	0.0	0.0	12.6	-12.6	0.0
GREENCOV	86	0.0	11.2	-11.7	0.6	0.0	12.5	-12.5	0.0	0.0	13.9	-13.9	0.0
JAX BCH	87	0.0	67.0	-67.1	0.1	0.0	76.1	-76.3	0.2	0.0	85.4	-85.6	0.2
FP/VERO	88	49.3	117.1	-68.0	0.2	61.5	126.4	-65.2	0.4	71.8	136.6	-65.4	0.6
KEY WEST	89	35.2	47.4	-12.2	0.0	38.2	50.4	-12.2	0.0	40.6	52.8	-12.2	0.0
LK WORTH	90	31.1*	44.6	-13.5*	0.0	36.1*	49.6	-13.5*	0.0	41.6*	55.1	-13.5*	0.0
		115.6	298.1	-183.3	0.9	135.8	327.0	-191.7	0.6	154.0	356.4	-203.2	0.8
WEST:													
BUSHNELL	92	0.0	2.3	-2.3	0.0	0.0	2.6	-2.6	0.0	0.0	2.8	-2.8	0.0
LEESBURG	93	0.0	46.1	-46.3	0.2	0.0	51.7	-51.9	0.2	0.0	57.2	-57.5	0.3
OCALA	94	0.0	127.5	-128.0	0.5	0.0	146.7	-147.4	0.7	0.0	165.9	-166.8	0.9
SEBRING	95	63.0	25.2	37.7	0.1	64.0	28.8	35.1	0.1	64.0	31.2	32.7	0.1
		63.0	201.1	-138.9	0.8	64.0	229.8	-166.8	1.0	64.0	257.1	-194.4	1.3

REV 02/21/90

* - GENERATION CHANGED IN NORMAL DISPATCH CASES TO REPRESENT 15 MW TRANSACTION FROM LK WORTH TO GR COV SPGS/JAX BEACH - (11 MW IN 1999/80%, NOT POSSIBLE IN 1999/PEAK)


JACKSONVILLE BEACH
GR COVE SP
NE CENT
ATLANTIC OCEAN
GULF
OCALA
NW CENT
LEES BURG
BUSH NELL
BRK SOUTH
LK T SHELD
SE CENT
VERO BEACH
FT PIERCE
SO CENT
SEBRING
SE FLA
MEXICO
CLEWISTON
LAKE WORTH
KEY WEST
LEGEND
TRANSMISSION LINES
GENERATING PLANTS & SUBSTATIONS
NOTES:
ALABAMA
GULF OF MEXICO
STATE OF FLORIDA
ELECTRIC SYSTEM MAP

INCREMENTAL FLOWS THROUGH KEY INTERFACES

FOR THE INTEGRATED DISPATCH CASE SCENARIO:

	1991			1995			1999		
	PEAK	80%	60%	PEAK	80%	60%	PEAK	80%	60%
NE CENTRAL :	+21.7	+19.0	+3.4	+3.5	+13.6	+12.3	+49.6	+29.8	+24.0
NW CENTRAL :	+0.5	+2.6	-2.1	-1.5	+0.7	+5.2	+17.4	+10.0	+13.9
BRKRIDGE SO :	+11.6	+10.6	+9.9	+4.7	+9.2	+6.8	+18.2	+13.4	+11.8
LK TARP-SHELD :	+17.6	+16.4	+13.5	+6.3	+13.7	+10.8	+31.4	+22.5	+20.0
SOUTH-CENTRAL :	+26.3	+23.0	+6.6	+3.2	+14.9	+11.1	+46.1	+30.3	+17.1
SE-CENTRAL :	+133.7	+172.9	+113.6	+28.4	+138.7	+123.7	+261.4	+203.0	+135.8
SE FLA :	+114.4	+79.7	+62.2	+53.7	+69.2	+42.6	+53.0	+51.2	+42.3

FOR WORSE CASE SCENARIO:

	1991			1995			1999		
	PEAK	80%	60%	PEAK	80%	60%	PEAK	80%	60%
NE CENTRAL :	+40.6	+19.9	+8.1	+57.5	+20.3	+10.3	+46.7	+28.3	+21.6
NW CENTRAL :	+9.4	+4.5	+2.3	+11.8	+2.5	+4.1	+16.2	+9.6	+12.6
BRKRIDGE SO :	+5.8	+7.7	+4.4	+32.8	+8.6	+4.7	+14.7	+9.9	+6.0
LK TARP-SHELD :	+17.2	+13.1	+7.3	+35.3	+13.8	+8.1	+26.6	+17.8	+12.2
SOUTH-CENTRAL :	+53.5	+28.3	+16.5	+49.1	+23.7	+14.3	+46.6	+31.4	+22.4
SE-CENTRAL :	+222.8	+167.2	+103.8	+237.6	+188.5	+118.1	+258.8	+199.7	+125.9
SE FLA :	+88.0	+74.4	+52.5	+48.0	+50.8	+37.6	+51.1	+48.8	+33.3

REV 02/21/90

APPENDIX F

EF-5186-6047AB

Handed by FPL at 2/21/90 Meeting

IMPACT OF PROPOSED
FMPA INTEGRATED DISPATCH
ON
FPL REGIONAL TRANSMISSION FACILITIES

PRELIMINARY FINDINGS

February 21, 1990

OVERVIEW

SCOPE

DETERMINE IMPACT OF PROPOSED INTEGRATED DISPATCH OPERATION OF THE FMPA SYSTEMS ON FPL'S REGIONAL TRANSMISSION NETWORK.

REGIONAL NETWORK IS DEFINED AS ALL TRANSMISSION LINES WHOSE PRIMARY FUNCTION IS TO SERVE LOCAL LOAD.

PROCEDURE

1- USE NEW FCG LOADFLOW CASES (1989/1990 DATA BANK).

2- THE FORT PIERCE, VERO BEACH, AND LAKE WORTH TRANSMISSION SYSTEMS WERE ADDED TO THESE CASES (THE FMPA TRANSMISSION MODEL IS NOT YET AVAILABLE THROUGH THE FCG). THE PROPOSED FPL/LWU AND FPL/FTP-VB INTERCONNECTIONS WERE MODELED IN SOME CASES (SEE STEP 3).

3- STUDY 1991, 1995, AND 1999. FOR EACH YEAR DEVELOP FOUR SCENARIOS:

SCENARIO 1- NORMAL DISPATCH, NO NEW FPL/FMPA INTERCONNECTIONS

SCENARIO 2- NORMAL DISPATCH, NEW FPL/FMPA INTERCONNECTIONS MODELED

SCENARIO 3- WORST CASE DISPATCH, NO NEW FPL/FMPA INTERCONNECTIONS MODELED.

SCENARIO 4- WORST CASE DISPATCH, NEW FPL/FMPA INTERCONNECTIONS MODELED.

4- STUDY NORMAL CONFIGURATION AND SINGLE CONTINGENCY CASES TO IDENTIFY PROBLEMS IN THE FPL SYSTEM UNDER THE FOUR SCENARIOS.

5- FURTHER STUDY PROBLEMS IDENTIFIED UNDER WORST CASE DISPATCH SCENARIOS TO DETERMINE THE LOAD/GENERATION MISMATCH LEVEL AT WHICH THEY OCCUR.

ANNUAL PEAK LOAD FORECAST
FOR LAKE WORTH, FORT PIERCE AND VERO BEACH

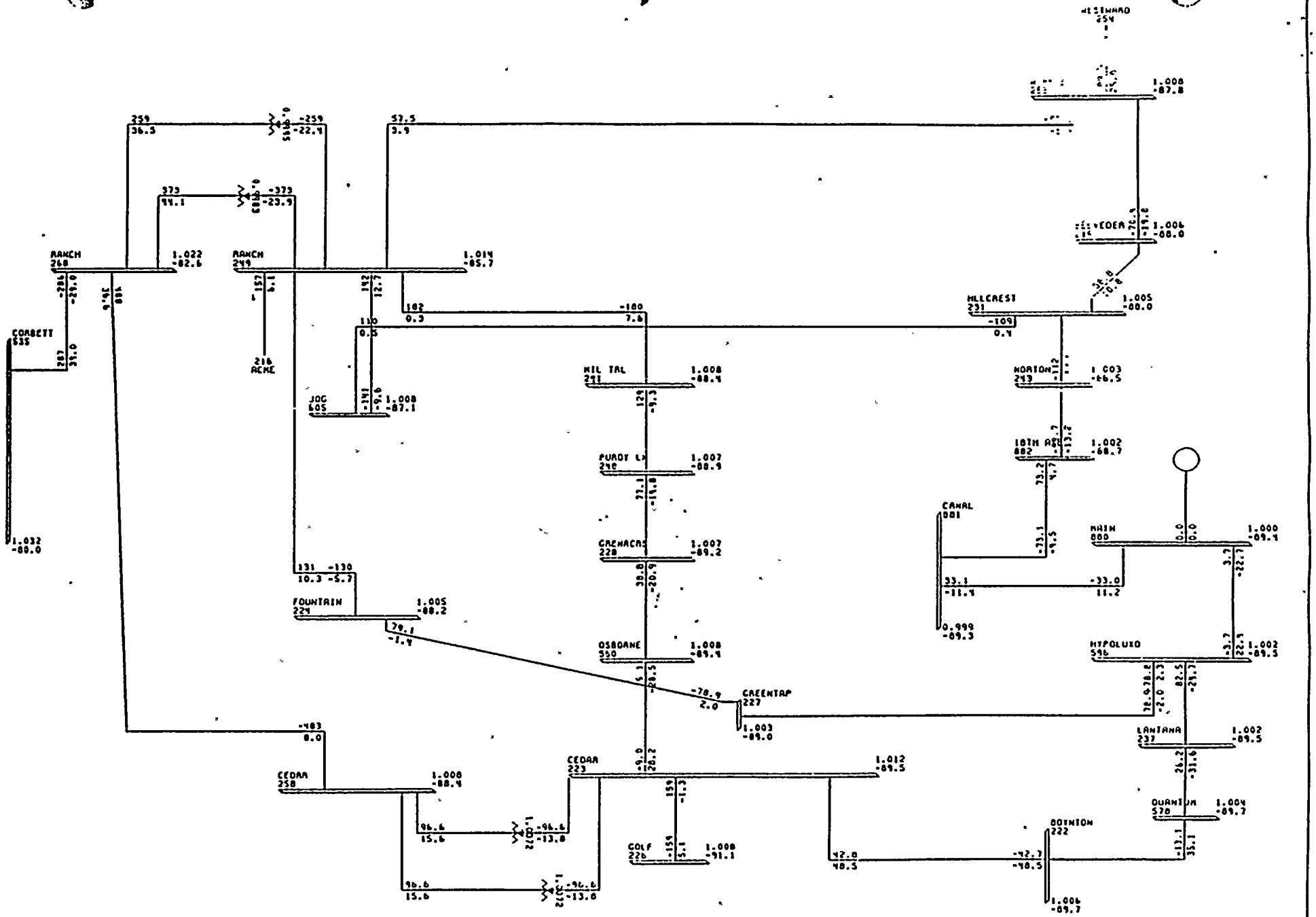
SOURCE: PROVIDED BY LAKE WORTH, FORT PIERCE AND VERO BEACH FOR INTERCONNECTION STUDIES, AND BY FMPA FOR INTEGRATED DISPATCH STUDY.

LAKE WORTH
MW

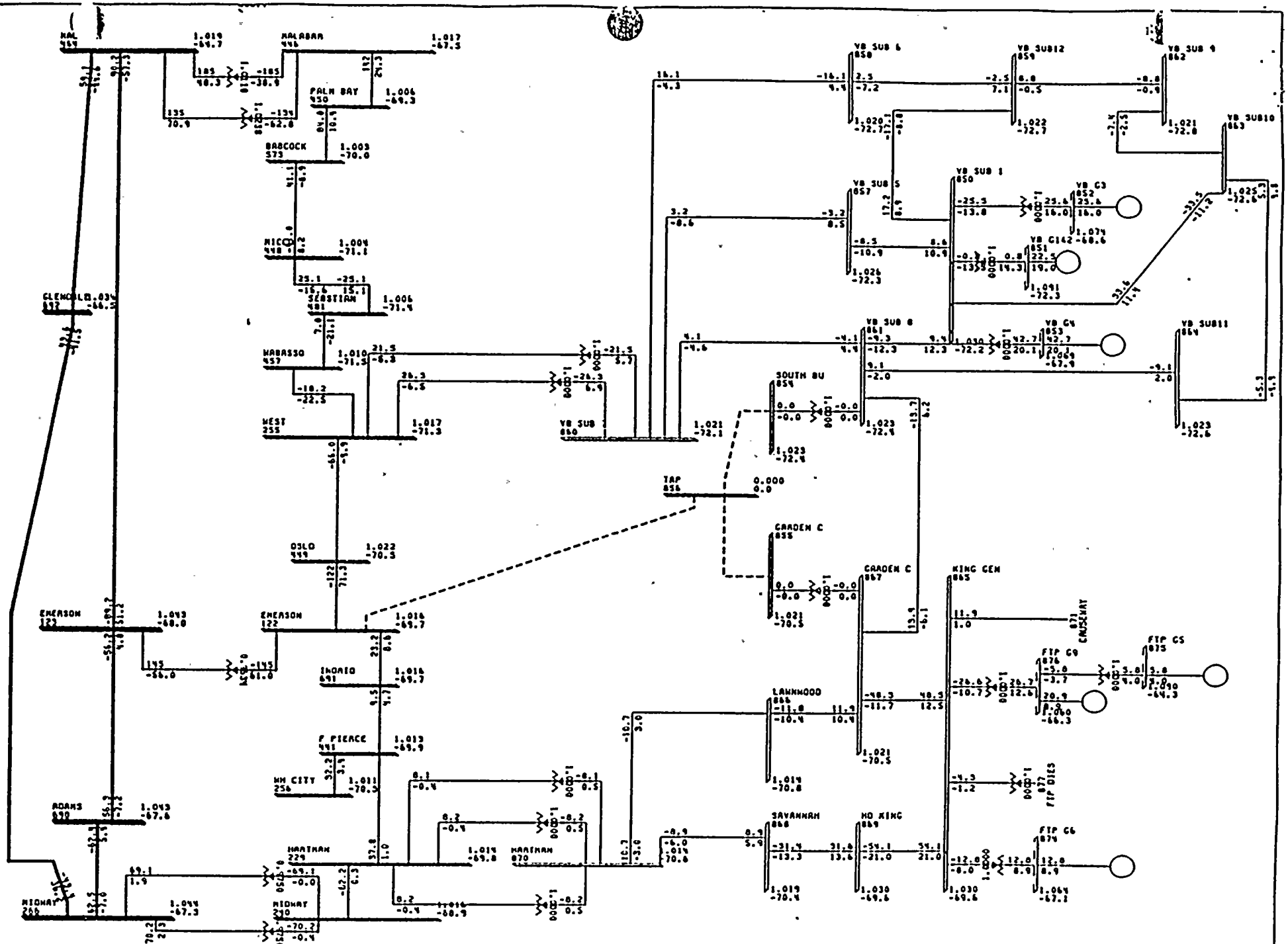
	LWU Interconnection Study	Integrated Dispatch Study
1991	90.8	74.3
1995	100.2	82.6
1999	110.9	91.8

FT PIERCE/VERO
MW

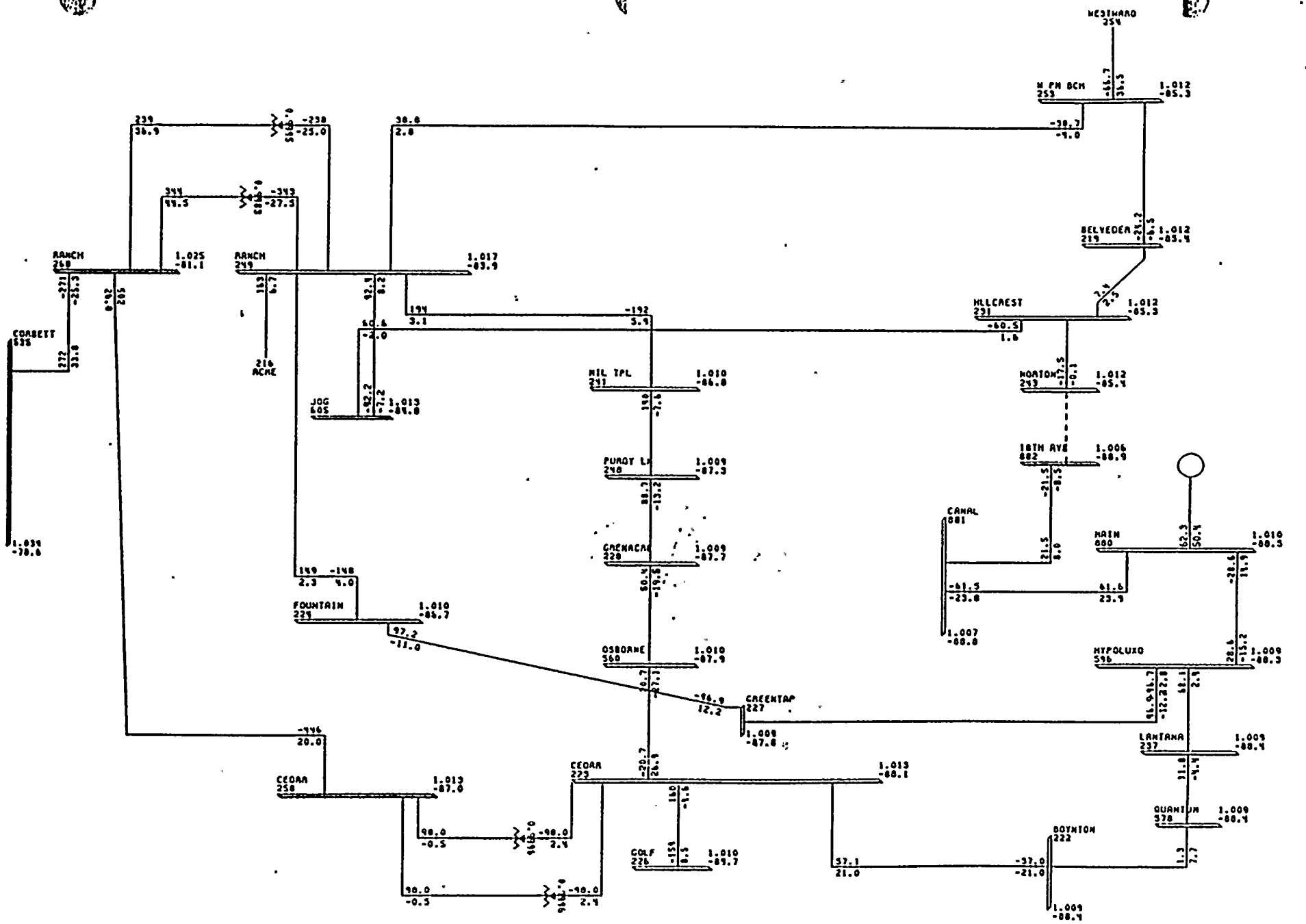
	FTP/VB Interconnection Study	Integrated Dispatch Study
1991	267.1	195.2
1995	314.3	210.6
1999	346.3	227.7



1991 FMPA STUDY - FCG CASE:HYB_91129 FMPA-91-WORST: NO GEN AT FP,VB,LWU ; OUC SERVES FMPA LAKE WORTH SYSTEM TUE, FEB 20 1990 20:15	100% RATED 0.950 UV 1.050 OV KV: ≤138 ,≤230	BUS - VOLTAGE (PU) /ANGLE BRANCH - MW/MVAR EQUIPMENT - MW/MVAR



	1991 FMPA STUDY - FCG CASE:HYB_91129 FMPA-91-NORMAL: NORMAL DISPATCH:LWU.FP & VB IN AA=10 ZO=6 VERO BEACH-FT.PIERCE SYSTEM TUE. FEB 20 1990 19:55	LOG%_RATEA 0.950 UV 1.050 OV KV: ≤69 . ≤138 . ≤230	BUS - VOLTAGE (PU) /ANGLE BRANCH - MW/MVAR EQUIPMENT - MW/MVAR



1991 FMPA STUDY - FCG CASE:HYB_91129 FMPA-91-NORMAL: NORMAL DISPATCH;LWU,FP & VB IN AR=10 ZO=6 LAKE WORTH SYSTEM TUE, FEB 20 1990 20:10	100%_RATED 0.950 UV 1.050 OV KV: ≤138 ,≤230	BUS - VOLTAGE (PU) /ANGLE BRANCH - MW/MVAR EQUIPMENT - MW/MVAR

RESULTS

SCENARIO 1- NORMAL DISPATCH, NO NEW FPL/FMPA INTERCONNECTIONS

In 1999, loss of Emerson transformer results in loading Hartman-Midway to 104%.

In 1999, loss of Malabar-Palm Bay 138 kV line section results in loading the Emerson-Oslo 138 kV section to 102% and West-Wabasso 138 kV line section to 102%.

SCENARIO 2- NORMAL DISPATCH, NEW FPL/FMPA INTERCONNECTIONS MODELED

Same as above.

SCENARIO 3- WORST CASE DISPATCH, NO NEW FPL/FMPA INTERCONNECTIONS MODELED.

Under normal conditions, the Cape Canaveral-Indian River 230 kV line overloads to 108% in 1991 and to 101% in 1995.

In 1999, a Midway 230/138 autotransformer will load to 113% for loss of other Midway autotransformer.

The loss of the Midway-Adams 230 kV will overload the Hartman-Midway 138 kV to 126% in 1995 and 160% in 1999. It will cause low voltages at FPL stations on the Malabar-Emerson-Midway 138 kV network (as low as .91 in 1999).

The loss of Midway-Hartman 138 kV will load the Emerson autotransformer to 116% in 1995 and 142% in 1999. It loads Emerson-Indrio 138 kV to 99% in 1995 and 118% in 1999. It loads Emerson-Adams 230 kV to 105% in 1995 and 140% in 1999. It loads Midway-Adams 230 kV to 108% in 1995 and 142% in 1999. It will cause low voltages at FPL substations on the Malabar-Emerson-Midway 138 kV network in 1995 and 1999.

The loss of Emerson autotransformer will overload Hartman-Midway 138 kV to 138% in 1991, 175% in 1995, and 219% in 1999. The Midway autotransformers load to 125% in 1999. It causes severe low voltages at FPL substations on the Malabar-Emerson-Midway 138 kV network in 1991, 1995 and 1999.

The loss of Emerson-Oslo 138 kV loads Malabar autotransformer to 125% in 1991. Palm Bay-Babcock overloads to 122% in 1991. The 1995 and 1999 cases do not solve due to low voltages in the area.

The loss of Malabar-Palm Bay 138 kV causes severe low voltage conditions and accompanying overloads starting in 1991.

The loss of Cedar-Hypoluxo 138kV overloads Boynton-Cedar 138 kV to 110% in 1995 and 119% in 1999.

The loss of Cedar-Boynton Beach 138 kV load Fountain-Ranch 138 kV to 122% in 1991, and Cedar-Hypoluxo 138 kV to 112% in 1995, and 121% in 1999.

The loss of Ranch-Cedar 230 kV loads Purdylane-Military Trail 138 kV to 103% in 1999.

SCENARIO 4- WORST CASE DISPATCH, NEW FPL/FMPA INTERCONNECTIONS MODELED.

Under normal conditions, the Cape Canaveral-Indian River 230 kV line overloads to 108% in 1991 and to 101% in 1995.

Under normal conditions, the proposed FPL/FTP-VB 138 kV interconnection will overload to 102% in 1999.

In 1999, the Midway-Adams 230 kV line loads to 98% for loss of a Midway autotransformer.

The loss of the Midway-Adams 230 kV will overload the Hartman-Midway 138 kV to 119% in 1995 and 152% in 1999. It will cause low voltages at FPL stations on the Malabar-Emerson-Midway 138 kV network (as low as .93 in 1999).

The loss of Midway-Hartman 138 kV will load the Emerson autotransformer to 115% in 1995 and 137% in 1999. It loads the proposed FPL/FTP-VB interconnection to 95% in 1991, 113% in 1995 and 129% in 1999. It loads the Emerson-Adams 230 kV to 103% in 1995 and 134% in 1999. It loads the Adams-Midway 230 kV to 105% in 1995 and 137% in 1999. It causes low voltages in FPL substations on the Malabar-Emerson-Midway 138 kV network in 1999.

The loss of Emerson autotransformer will overload Hartman-Midway 138 kV to 136% in 1991, 172% in 1995, and 213% in 1999. The Midway autotransformers load to 124% in 1999. It causes severe low voltages at FPL substations on the Malabar-Emerson-Midway 138 kV network in 1991, 1995 and 1999.

The loss of Emerson-Oslo 138 kV loads the proposed FPL/FTP-VB interconnection to 125% in 1991, 151% in 1995 and 178% in 1999. It causes severe low voltages at FPL substations on the Malabar-Emerson-Midway 138 kV network in 1991, 1995 and 1999.

Loss of Ft Pierce-Hartman 138 kV causes Midway-Adams 230 kV to load to 105% and Emerson-Adams 230 kV to 103% in 1999.

Loss of West- Vero Beach autotransformer load the proposed FPL/FTP-VB interconnection to 99% in 1995 and 110% in 1999.

Loss of Malabar-Palm Bay 138 kV causes severe low voltage conditions and line overloads starting in 1991.

FUTURE PLANS

REGIONAL STUDIES

ONCE FPL'S 1990 ANNUAL TRANSMISSION ASSESSMENT AND EXPANSION CYCLE IS COMPLETED (JUNE 1990), IDENTIFY COSTS OF PROJECTS ACCELERATED OR NEW PROJECTS REQUIRED TO ACCOMMODATE FMPA' PROPOSED INTEGRATED DISPATCH OPERATIONS.

APPENDIX G

FMPA IDO PROJECT DAMAGE STUDY
EF-5186-AA5-AA

Volume Numbers	Contents	Bates Numbers Start	Bates Numbers End
1	All-Requirements Project Dispatch Data	B 009573	B 009658
2	All-Requirements Project Cost Data	B 009659	B 009841
3	Data Request Response by City of Fort Pierce	B 009842	B 010265
4	Data Request Response by City of Key West	B 010266	B 010382
5	Data Request Response by City of Lake Worth	B 010383	B 010811
6	Data Request Response by City of Vero Beach	B 010812	B 010878
7	Analysis of Historical Broker Savings	B 010879	B 011187
8	FPC Wholesale Unit Cost Projections	B 011188	B 011539
9	FPC Wholesale Unit Cost Projections -- Workpapers	B 011540	B 011850
10	FPL Wholesale Unit Cost Projections	B 011851	B 012236
11	FPL Wholesale Unit Cost Projections -- Workpapers	B 012237	B 012382
12	Hourly Load and Energy Development	B 012383	B 012848
13	Fuel Forecast and Natural Gas Firm Contract Quantity -- Workpapers	B 012849	B 012987
14	Capacity Plan Screening Analysis	B 012988	B 013532
15	PROSYM/MULTISYM Output Case IND01	B 013533	B 013773
16	PROSYM/MULTISYM Output Case IDO01 (With Network Link Limits)	B 013774	B 014012
17	FMPIT2 Output Case IDO01	B 014013	B 014098
18	PROSYM/MULTISYM Output Case IDO02 (No Network Link Limits)	B 014099	B 014337
19	PROSYM/MULTISYM Output -- Case IDO04	B 014338	B 014662
20	Summary Information and Damages Calculation Part 1	B 014663	B 014963
21	Summary Information and Damages Calculation Part 2	B 014964	B 015241
22	Analysis of Historical Broker Savings -- 1988 and 1989	B	B
23	Damages for 1988 and 1989	B	B

APPENDIX 15

FPL

P.O. Box 029100, Miami, FL, 33102-9100

April 27, 1990

EXPRESS MAIL

Mr. C. R. Henze, General Manager
Florida Municipal Power Agency
7201 Lake Ellenor Drive
Orlando, FL 32809

Re: Transmission Service for FMPA
Integrated Dispatch Arrangement

Dear Calvin:

Following receipt of your letter of September 8, 1989 you and I and our staffs have engaged in extensive discussions regarding matters associated with FMPA's desire to put in place an integrated dispatch arrangement with certain FMPA member cities. FMPA has requested that FPL provide transmission service for such an arrangement and I'm sure you will agree that the effort that we have put into discussions to date have been very informative and worthwhile. I also feel that the analysis which FPL performed has been very helpful for FMPA in understanding the impact the proposed integrated dispatch arrangement may have on the FPL system. FPL has stated that FPL is willing to provide the requested service provided the necessary transmission arrangements can be negotiated between FMPA and FPL.

After review of the proposed integrated dispatch arrangement being considered by FMPA, FPL is prepared to enter into discussions regarding contractual provisions for providing transmission service based on the general concepts and principles outlined below.

- Transmission service is to be provided on a long term firm basis and FMPA has the responsibility of reserving adequate transmission at all times including transmission for regulation service to meet the regulation requirement of each delivery point.
  - If FMPA relies on transmission in excess of the reserved amount, a planning penalty will be assessed.
- Delivery and receipt of power and energy for transmission service by FPL is based on a modified point-point, directional service (HUB concept, see Attachment 1) to be provided on a scheduled basis except for regulation service which will be provided to each respective delivery point on a nonscheduled basis.
  - Transactions scheduled from the HUB to each respective delivery point

- Transactions scheduled from each respective receipt point to the HUB
- Transactions scheduled between the HUB and FPL
- Transactions to be based on hourly whole MW exchanges
- Transactions schedules shall be subject to audit by FPL.

- Deliveries/receipts to and from the HUB shall be adjusted for FPL's transmission losses.

- Transmission service charges shall be based on an annual demand charge established from the amount of firm transmission service requested by FMPA which includes service from; 1) the HUB to the delivery points, and 2) the receipt points to the HUB.

- FMPA shall share in transmission limitations (bulk system/regional systems) on an equal basis with FPL's native load, when they exist on the FPL system, based on FMPA's use of the facilities.

- The arrangement will address the initial impact on the FPL system from a regional and bulk perspective.

- All costs of any necessary additional facilities which are required to meet with FMPA's request for service are to be borne by FMPA.

- All costs of FPL computer systems or modifications to such systems to implement providing transmission service for the integrated dispatch operation are to be borne by FMPA.

- All interchange arrangements would be between FPL and the HUB and not with separate FMPA member cities.

We look forward to meeting with you next week to discuss these principles and concepts and to proceed with the development of contractual arrangements that are satisfactory to both parties.

Sincerely,

for W. R. Schmuck

W. C. Locke, Jr., Manager
Power Supply Contracts & Administration

WCL/WRS:mn

cc: N. P. Garriallo

INTEGRATED DISPATCH OPERATION

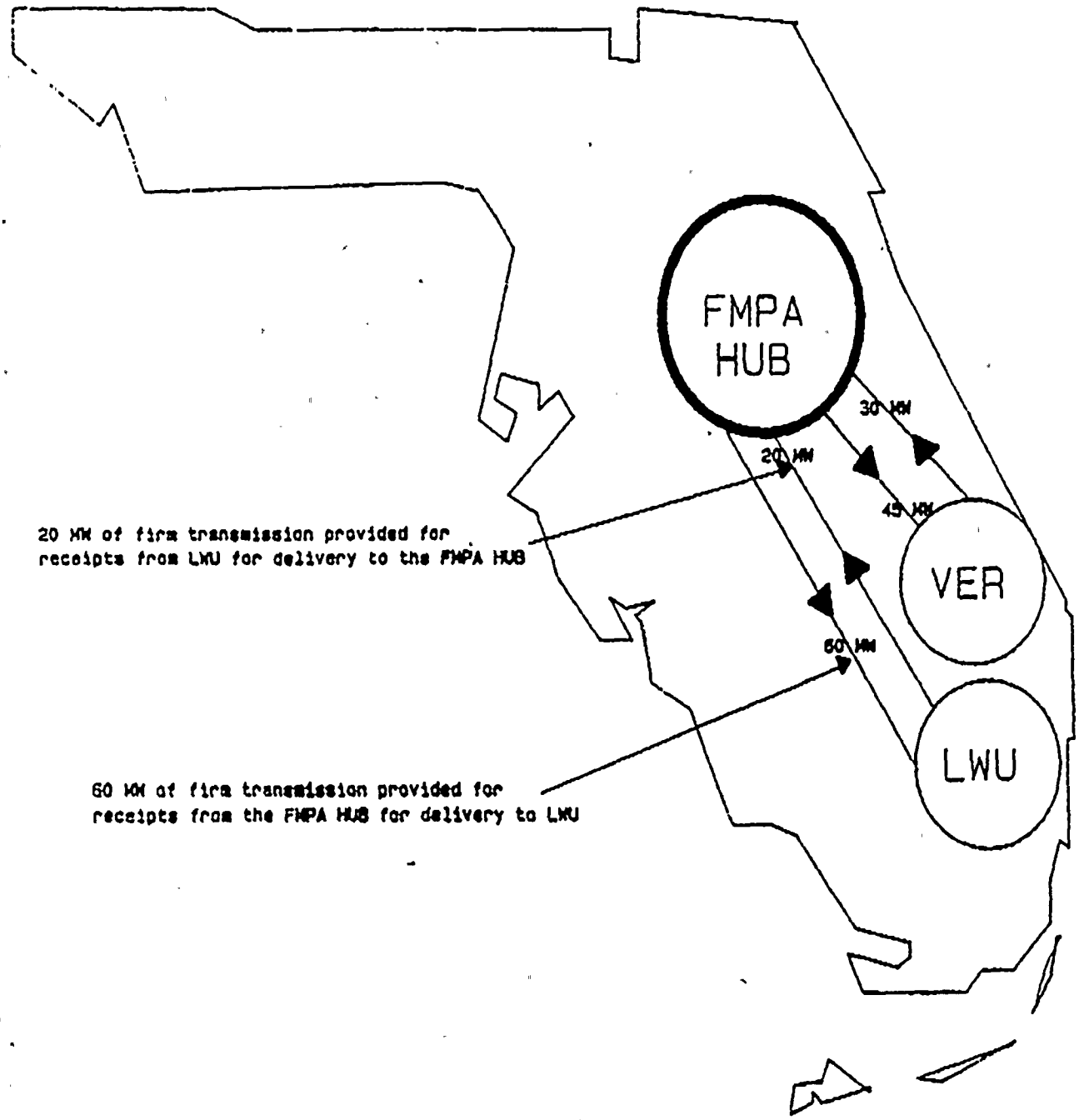
HUB Concept

(Example for VER and LWU)

ɪnsmission Service Concepts:

ɔng term firm basis

- Modified point - point service
- Directional service
- Transactions scheduled
- Deliveries/receipts adjusted for losses
- Shared transmission constraints
- Annual demand charge for each direction
- Costs of additional necessary transmission facilities to be borne by FMPA



ATTACHMENT I

APPENDIX 16

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY, Plaintiff, vs. FLORIDA POWER & LIGHT COMPANY, a Florida Corporation, Defendant.	)	Case No. 92-35-CIV-ORL-22

DEFENDANT FLORIDA POWER & LIGHT COMPANY'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

April 15, 1993

staffing to address these issues promptly and effectively. If FMPA intends to pursue this matter further, it should be directed to the FERC. The Supplemented Amended Complaint asserts no claims entitling FMPA to relief from this Court. Judgment should be entered in favor of FPL on all claims.

ARGUMENT

I. THE CONTRACT AND ANTITRUST CAUSES OF ACTION ARE BARRED BY THE APPLICABLE STATUTES OF LIMITATIONS

A. The Alleged Violations of FMPA's Rights Occurred More Than Five Years Before FMPA Filed Its Suit

Transmission service provided by FPL to FMPA is priced on a "point-to-point" basis. 2/ According to FMPA, during the negotiations for each of the existing contracts, beginning in 1982, it requested what it now claims it was always legally entitled to receive under the "Contract," i.e., transmission service that is priced on a "network" basis. 3/

2/ Under point-to-point pricing, FMPA must pay separately for each "contract demand" between each point of receipt of power on FPL's system and each point of delivery from the FPL system. For example, assume that FMPA has paid for a contract demand from point of receipt A to point of delivery C. If FMPA decides to transmit from B to C rather than A to C, then, under the existing contracts, FMPA has agreed to pay for a separate transmission service from FPL. See Affidavit of William C. Locke, Jr. In Opposition To Plaintiff's Motion For Partial Summary Judgment at ¶ 10 (May 18, 1992) ("Locke Aff.") (Tab B) (The contracts, as amended, are attached to the Locke Aff. at Tabs A thru E); Third Affidavit of William C. Locke, Jr. at ¶ 5 (Apr. 15, 1993) ("Locke Third Aff.").

3/ Plaintiff FMPA's Responses and Objections to Defendant FPL's Second Set of Interrogatories, Interrogatory Responses 10(g), 14, 19 (Feb. 10, 1993). See Tab C.

(continued...)

Likewise, according to FMPA, FPL refused every such request for network transmission. 4/ Thus, FMPA has admitted that the alleged breach of the "Contract" and the alleged antitrust violations occurred during the 1982-83 negotiations relating to the first such agreement. 5/

The limitations periods for those causes of action began to run at the very latest in June 1983, when the first agreement was signed. A civil antitrust action brought under the Sherman or Clayton Acts or under chapter 542 of the Florida Statutes must be commenced within four years after the cause of action first accrues. 6/ Therefore, FMPA's causes

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3/(...continued)
Network pricing would save FMPA money and cost FPL money because it would allow FMPA to pay only for the quantity of power delivered, while requiring FPL to reserve the capacity to receive and deliver power at multiple points on its delivery system at anytime, as FMPA may designate from moment to moment. Locke Aff. at ¶ 16 (Tab B). An FPL analogy used in negotiations was to guaranteed hotel reservations. A guest who insists that a room be held for late arrival in any of three cities on a given night will not succeed in paying only one room charge on the theory that only one room actually will be occupied on that night. Id. at ¶ 27.

4/ E.g., Interrogatory Response 16 (Tab C). See also Interrogatory Response 19 (Tab C); Dep. of Calvin Henze at 53/9 thru 54/3, 74/16-21 (Nov. 3, 1992) (Tab D).

5/ Interrogatory Responses 14, 19 (Tab C). Asked whether FPL's specification of delivery points during those negotiations amounted to a rejection of the network concept, FMPA's General Counsel responded: "I think, in my mind, it amounts to an abdication of the absolute explicit obligations that Florida Power & Light has under the License Conditions." Dep. of Frederick Bryant at 19/18-20 (Tab E).

6/ 15 U.S.C. § 15b (1988); Fla. Stat. ch. 95.11(3)(p) (1991). Assuming arguendo that FMPA's "Contract" can be characterized as an "instrument" upon which an action can be (continued...)

of action expired years before this action was filed in December 1991.

Moreover, FMPA's discovery responses uniformly demonstrate FMPA's unwavering conviction that no later than 1982 it was FPL's policy not to provide the network pricing that FMPA sought and now claims it was entitled to under the "Contract." FMPA never believed that policy would change. To the contrary, FMPA's General Counsel, lead consultants, and General Manager insisted that no change would ever occur.

- Frederick Bryant, FMPA's General Counsel since 1978, emphasized the consistency of FPL's policy:

> [I]n the 25 years -- 23 years that I've been dealing with FPL, their response has never differed: Not only, 'no,' but, 'hell, no.' 7/

> I have been involved with Florida Power & Light since 1975, and I can tell you that, since 1975, Florida Power & Light's position on the transmission has always been point to point. And they were unwilling to discuss, even acknowledge, any other type of discussion since 1975. . . . FPL has never agreed to offer network. They've always insisted on point-to-point. 8/

6/(...continued)
brought, Florida law requires that a legal or equitable action on a contract founded on a written instrument must be commenced within five years of the alleged breach of the contract. Fla. Stat. ch. 95.11(2)(b) (1991). This period begins to run at the first breach -- June 1983. City of Miami v. Brooks, 70 So. 2d 306, 309 (Fla. 1954).

7/ Bryant Dep. at 98/25 thru 99/2 (Tab E).

8/ Id. at 21/24 thru 22/4, 23/23-24.

- Nicholas P. Guarriello, FMPA's lead consultant, Rule 30(b)(6) designated witness on "Contract" performance and active participant in all negotiations, echoed that view:

> An absolute no, that they would not do it, no way, no how. 9/

> Network transmission was the one we always tried to get and they said no, point-to-point. 10/

> But the main thing we were looking for specifically was the network transmission. We raised it in every negotiation and the answer was no, it will be point-to-point. 11/

> Q. Well, if nothing else, you understood FPL's policy on network transmission service, didn't you?
> A. I clearly understood they said it was going to be point-to-point. 12/

- Calvin Henze, FMPA's General Manager from 1978 through 1991, and signatory to all the 1982-86 contracts, had the same understanding of FPL's policy:

> [W]e asked for network transmission, which we feel we were entitled to under the Settlement Agreement and the St. Lucie Agreement, and . . . . we did not receive the network transmission agreement. . . . [FMPA] requested it orally in the St. Lucie transmission contract . . . . We also did in the Stanton and the Tri-City and, again, we were told no. Then we pursued it, I have diligently [sic], in the All-Requirements contract because we felt

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9/ Dep. of Nicholas P. Guarriello at 26/1-2 (Feb. 25, 1993) (Tab F).

10/ Id. at 285/20-21 (Feb. 26, 1993).

11/ Id. at 286/19-22.

12/ Id. at 287/1-5.

like it was very important to us at that time. 13/

Not surprisingly then, when FMPA submitted its September 1989 network proposal, the rejection of which led to this lawsuit, FMPA did not expect FPL to agree to it. 14/

FMPA's certainty about FPL's policy is underscored by FMPA's assertion of work product privilege for documents prepared prior to the September 1989 proposal, on the ground that they were prepared "in contemplation of litigation" as to that proposal. 15/ Setting aside the bad faith implicit in preparing for litigation before even embarking on negotiations, this privilege claim demonstrates FMPA's continuing understanding of FPL's continuing policy on network pricing of transmission. 16/

13/ Henze Dep. at 52/24 thru 54/1 (Nov. 3, 1992) (Tab D); see also id. at 76/2-20. The contracts referenced in Mr. Henze's answer were executed in 1983, 1985, and November 1986. See Locke Aff., Tabs B thru E. Other FMPA witnesses had the same clear understanding of FPL's policy. See, e.g., Dep. of Albert Malmsjo at 155/12-17, 156/20-21, 159/20 thru 160/2 (Feb. 16, 1993) (Tab G).

14/ Dep. of designated corporate representative Guarriello at 30/16-18 (Feb. 25, 1993) ("I had nothing that would tell me they had changed their mind. . . .") (Tab F). See also Henze Dep. at 109/20 thru 110/14 (Nov. 2, 1992) (Tab D); Malmsjo Dep. at 167/4-10 (Feb. 16, 1993) (Tab G).

15/ Guarriello Dep. Exs. 4 and 5 (Tab F). See Guarriello Dep. at 27/21 thru 30/9 (Feb. 25, 1993) (Tab F).

16/ See Guarriello Dep. at 30/16-17 (Feb. 25, 1993) (Tab F). See also Interrogatory Response 11 (Tab C).

To the extent that FMPA still claims that FPL has a legal obligation to sell FMPA a portion of FPL's transmission system (see infra n.82), FMPA's witnesses also testified that FMPA

(continued...)

B. FPL's Actions Did Not Toll The Statutes Of Limitations

The only theoretical escape available to FMPA from the limitations box built solely of FMPA's own evidence would be an assertion that FPL's actions somehow constituted a "continuing violation" of the "Contract" and of federal and state antitrust law. To grasp at that straw, FMPA would have to invoke a line of cases holding that overt acts in furtherance of a continuing conspiracy (e.g., price-fixing) create new injuries and thus form the basis for a new cause of action. 17/ But, those decisions uniformly provide that when a refusal to deal has occurred, subsequent refusals of

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16/(...continued)
(and its members before it) had repeatedly asked, as far back as 1975, to buy a portion of FPL's transmission system, and that FPL had refused every such request. See, e.g., Bryant Dep. at 48/3 thru 49/6, 54/17 thru 57/1, 87/13-22 (Tab E); Guarriello Dep. at 23/19 thru 25/14 (Feb. 25, 1993), 270/5 thru 272/11 (Feb. 26, 1993) (Tab F); Henze Dep. at 73/5-19 (Nov. 3, 1992) (Tab D). FMPA fully understood that it was "against [FPL's] company policy to sell an ownership interest in the transmission system to the cities." Bryant Dep. at 56/19-20 (Tab E). See also Interrogatory Response 18 (Tab C).

Finally, with regard to FMPA's allegation that FPL has refused to sell FMPA wholesale power (Complaint, ¶ 17(c), (d)), FMPA requested such a sale and FPL refused during the negotiations leading to the March 1985 transmission service agreement. Bryant Dep. at 90/22-24 (Tab E). Again, this refusal was well outside the statutes of limitations periods.

17/ Kaiser Aluminum v. Avondale Shipyards, Inc., 677 F.2d 1045, 1051 (5th Cir. 1982), cert. denied, 459 U.S. 1105 (1983). There is another exception to the antitrust statute of limitations if at the time of the earlier refusal, damages are speculative and unprovable. Id. at 1051. However, FMPA has made no such contention, and its damage expert testified that reasonable damage estimates could have been made for the period commencing June 1983. Dep. of John W. Wilson at 54/6 thru 55/2 (Feb. 18, 1993) (Tab H).

the same nature, made in response to renewed requests, do not constitute new injuries unless the plaintiff had reason for believing that the defendant's position had changed. 18/

Having ascertained to its satisfaction far more than five years before the filing of the Complaint that FPL's responses to requests for network service were not merely "no," but "hell no," there is simply no room for FMPA to claim a factual dispute over whether, in the Eleventh Circuit's words, FMPA had "reason to believe" that FPL's policy, reiterated during five previous contract negotiations, "did not still stand." 19/ The "messages" in the long-standing commercial relationship between these parties were crystal

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18/ Midwestern Waffles, Inc. v. Waffle House, Inc., 734 F.2d 705, 715 (11th Cir. 1984) ("If plaintiffs' subsequent requests for a franchise . . . were genuine, that is if plaintiffs had reason to believe the original decision not to grant them such a franchise did not still stand, there would be a new alleged injury when a genuine subsequent request was denied. If, however, plaintiffs' subsequent requests were futile and plaintiffs had reason to know they were futile, the statute of limitations will be found to bar plaintiffs' claim that defendants violated antitrust law. . . ." (emphasis added)). See also Drumm v. Sizeler Realty Co., 647 F. Supp. 1288, 1291 (E.D. La. 1986), aff'd, 817 F.2d 1195 (5th Cir. 1987).

19/ Midwestern Waffles, 734 F.2d at 715. See also Kaw Valley Elec. Cooperative Co. v. Kansas Elec. Power Cooperative, Inc., 872 F.2d 931, 934-35 (10th Cir. 1989) (summary judgment is appropriate where the defendant's pre-limitations period decision "sent a clear message" to plaintiff, because "[i]f the decision was final, there is no reason to grant [plaintiff] the ability to restart the statute whenever it so desires by a mere futile request").

clear. Summary judgment in favor of FPL is required as a matter of law. 20/

II. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER THE CONTRACT AND ANTITRUST CAUSES OF ACTION

FERC has exclusive jurisdiction over this pricing dispute. Florida state courts, where FMPA first began this lawsuit, have no jurisdiction at all. Federal courts have none, until FERC has acted. FMPA knows that. It filed this action not out of ignorance or confusion, but because it was apprehensive of the reception it would receive in the proper forum and the costs of pursuing the appropriate remedy before the appropriate agency. 21/ Apprehension, however, can not

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20/ The cited cases also apply to the state antitrust count. See St. Petersburg Yacht Charters v. Morgan Yacht, Inc., 457 So. 2d 1028, 1032, 1984-1 Trade Cas. (CCH) ¶ 65,985 at 68,329 (Fla. Dist. Ct. App. 1984). Nor does Florida law permit extension of the limitations period for FMPA's contract claim. See, e.g., Kelly v. School Bd. of Seminole County, 435 So. 2d 804, 805 (Fla. 1983); Brogan v. Mullins, 452 So. 2d 940, 941 (Fla. Dist. Ct. App. 1984), rev. dismissed, 464 So. 2d 555 (Fla. 1985). Indeed, Florida courts construe such statutes with great "strictness." White v. Padgett, 475 F.2d 79, 83 (5th Cir.), cert. denied, 414 U.S. 861 (1973).

21/ FMPA's Executive Committee was advised to misdirect this action away from the FERC by its outside counsel:

> In spite of the fact that we believe that the Federal Energy Regulatory Commission has jurisdiction to correct discriminatory transmission [pricing], FERC has often been reluctant to enforce what it considers to be an initiation of transmission transactions by public systems. Further, FERC proceedings can be expensive and drawn out.

Jablon letter at p. 4 (Tab A).

order to treat them as "network transmission arrangements to begin with, and because of that they could be integrated together and collapsed into one overall network transmission agreement." 30/

FMPA has shown itself facile enough to suggest that its network proposal seeks some new and different service that eludes the coverage of the existing agreements. But the bedrock, irreducible premise of FMPA's case is that the pricing provisions of the existing agreements must yield to a new network pricing provision. Regardless of whether FMPA could have constructed a transmission service proposal that could co-exist with the existing agreements, the fact is that it did not, either in its proposal to FPL or in the relief that it seeks here. 31/ Accordingly, both FMPA's damage claims and its request for injunctive relief must fail.

B. The Filed Rate Doctrine Compels Dismissal Of FMPA's Claims

Under the "filed rate doctrine," the only lawful rates for services subject to FERC jurisdiction are those properly filed with the FERC. 32/ Thus, FMPA "can claim no

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30/ Malmsjo Dep. at 127/8-15 (Feb. 15, 1993) (Tab G).

31/ See Complaint at pp. 12, 21-23, 25-26; FMPA's Motion For Partial Summary Judgment on Count I at 1-2 (May 1, 1992).

32/ Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 577 (1981) ("Arkla"). The Supreme Court first applied the filed rate doctrine to a suit involving the Federal Power Act in Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co., 341 U.S. 246 (1951) ("Montana-Dakota"), and has since clarified the doctrine's applicability in Nantahala Power and (continued...)

rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the [FERC], and not even a court can authorize commerce in the commodity on other terms." 33/ The doctrine applies even when the filed rate is inconsistent with a present contract between the parties. 34/ The cases establishing this filed rate doctrine teach that the FERC's jurisdiction to modify filed rate schedules is exclusive, and that courts -- except on review of the FERC's decisions -- lack the jurisdiction either to modify filed rates or to assess damages on the premise that some other rate schedule would have been more appropriate.

The filed rate doctrine was first applied in the antitrust context in Keogh v. Chicago & Northwestern Ry. 35/ In Square D Co. v. Niagara Frontier Tariff Bureau, Inc., 476 U.S. 409, 417 (1986) ("Square D"), the Supreme Court

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32/(...continued)
Light Co. v. Thornburg, 476 U.S. 953 (1986) ("Nantahala"), and Mississippi Power & Light Co. v. Mississippi ex rel. Moore, 487 U.S. 354 (1988) ("Mississippi Power").

33/ Montana-Dakota, 341 U.S. at 251. See also Arkla, 453 U.S. at 578.

34/ Arkla, 453 U.S. at 582.

35/ 260 U.S. 156 (1922) ("Keogh"). In Keogh, the Supreme Court considered whether shippers were entitled to bring an antitrust action against carriers based on an allegation that the rates charged, which had been filed with the ICC, resulted from price-fixing in violation of the Sherman Act. The Court held that the ICC's approval established the lawfulness of such rates and shippers could not have been injured within the meaning of the Sherman Act by paying the lawful rate. Id. at 162-63. The Court also held that secondary losses (e.g., losses in the value of a business) that arise because the filed tariffs were in effect are also barred. Id. at 164-65.

extended its holding in Keogh to claims based on rates that had not been challenged before they were allowed to go into effect. 36/ Then, in Nantahala and Mississippi Power the Supreme Court made clear that the filed rate doctrine applies not only to rates, but also to changes that interfere with the purchase or transmission of electricity in a way that affects rates, e.g., power allocation and power sharing agreements on file with the FERC. 37/ The Keogh test, thus, does not simply inquire into whether a claim directly changes filed rates, but must also inquire into collateral attacks.

In anticipation of having to wriggle out of the reach of the filed rate doctrine, FMPA, in response to an FPL interrogatory, argued that the existing transmission service agreements would not have to be "modified or superseded" because "those contracts all permit changes in the rates, terms and conditions for service. . . " 38/ This

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36/ See also Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 497 U.S. 116, 126-28 (1990) (citations omitted) ("Despite the harsh effects of the filed rate doctrine, we have consistently adhered to it.").

37/ Nantahala, 476 U.S. at 960, 966. See also Mississippi Power & Light Co. v. Mississippi ex rel. Moore, 487 U.S. 354 (1988); Appalachian Power Co. v. Public Serv. Comm'n of West Virginia, 812 F.2d 898 (4th Cir. 1987).

38/ Interrogatory Response 12 (Tab C). Setting aside FMPA's unpersuasive attempt to distinguish between a "modification" and a "change," its answer ignores that the contracts explicitly provide that either party may "make application to the FERC for a change in the rates, charges, terms and conditions of service provided in [the] Agreement[s]. . . ." (e.g., Locke Aff., Tab C at 29 (emphasis added) (Tab B)), precisely because, under the filed rate doctrine, such

(continued...)

disingenuous response ignores the obvious proposition that a contract changed by agreement of the parties is, nonetheless, changed. Presumably, FMPA's point is that if FPL had agreed to the necessary changes, the filed rate doctrine could not have been invoked. Without FPL's agreement, however, the only way to implement FMPA's network proposal is through the FERC, pursuant to the filed rate doctrine.

The filed rate doctrine applies even if the filed rate is the result of the defendant's alleged illegal activity. Indeed, the doctrine does not come into play except when a plaintiff has advanced a claim that, but for operation of the filed rate doctrine, would entitle it to court relief. 39/

While there have been efforts to apply the filed rate doctrine exclusively to cases involving injury to customers of the defendant, and not to cases involving harm to the defendant's competitors, 40/ the doctrine is more all-

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38/(...continued)
"changes" may only be accomplished through a filing at the FERC.

39/ See, e.g., Keogh, 260 U.S. at 160; Square D, 476 U.S. at 412; Georgia v. Pennsylvania R.R., 324 U.S. 439 (1945); Pinney Dock & Transport Co. v. Penn. Cent. Corp., 838 F.2d 1445, 1456-57 (6th Cir.), cert. denied, 488 U.S. 880 (1988) ("Pinney Dock"); Taffet v. Southern Co., 967 F.2d 1483 (11th Cir. 1992), cert. denied, 113 S. Ct. 657 (1992). In these cases, the filed rates were alleged to have resulted from price-fixing, conspiracy to monopolize, or fraud.

40/ See City of Groton v. Connecticut Light & Power Co., 662 F.2d 921, 929-31 (2d Cir. 1981); Essential Communications Sys. Inc. v. American Tel. & Tel., 610 F.2d 1114, 1121 (3d Cir. 1979).

encompassing than that. Recent cases, following the Supreme Court's strong reaffirmation of the filed rate doctrine in Square D, have held that Keogh and Square D are not limited solely to antitrust damage claims brought by customers but also apply to bar claims by competitors or parties who are both competitors and customers of the regulated company. 41/ Accordingly, FMPA's status as both a competitor and customer of FPL does not preclude application of the filed rate doctrine as a bar to FMPA's claims. 42/

III. NO CONTRACT HAS BEEN BREACHED

While FMPA's claimed right to "network" service is pled in contract, the "Contract" described in the Complaint is an after-the-fact amalgamation of disparate documents and actions effectuated on widely differing dates and involving, in most instances, signatories other than FMPA. This artifice was employed to bury the fact that the License Conditions -- identified by FMPA as the only operative portion of the

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41/ See, e.g., Pinney Dock, 838 F.2d at 1456-57; Lifschultz Fast Freight, Inc. v. Consolidated Freightways Corp., 805 F. Supp. 1277, 1295 (D.S.C. 1992). Square D reversed a Second Circuit opinion that had concluded that the filed rate doctrine had outlived its usefulness and that Keogh should be overruled.

42/ FMPA's further contention that FPL breached the "Contract" and violated the antitrust laws by refusing to sell it a "block" of wholesale power (Complaint, ¶¶ 17(c)-(d), 33(f)) simply reflects FMPA's desire to receive wholesale service that is available under FPL's FERC-filed wholesale power tariff and existing FERC-filed wholesale power contracts, but to pay less than the tariff rate. Locke Third Aff. at ¶ 12. For the same reasons, relief can only be granted by the FERC.

CONCLUSION

FMPA is simply seeking to co-opt the Court into becoming its negotiating partner against FPL. The claims asserted here are so misleading, so obviously manufactured and so lacking in intrinsic legal merit that they can only have been conceived as a negotiating tactic. Negotiations should be conducted at the negotiating table, not in federal court. For the reasons stated above, FPL respectfully requests the entry of an Order granting summary judgment in its favor on all Counts of the Supplemented Amended Complaint.

DATED this 15th day of April, 1993.

Respectfully submitted,

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APPENDIX 17

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY

Plaintiff,

v. Case No. 92-35-CIV-ORL-3A22

FLORIDA POWER & LIGHT COMPANY

Defendant.

PRE-TRIAL STIPULATION

Pursuant to the Court's Second Amended Docket Control Order dated November 12, 1992, Plaintiff Florida Municipal Power Agency ("FMPA") and Defendant Florida Power & Light Company ("FPL") hereby submit this Pre-Trial Stipulation. The sections of this Pre-Trial Stipulation correspond to the items enumerated in part 4.(B) of the Second Amended Docket Control Order.

1. The factual basis of federal jurisdiction

A. FMPA's Statement

This Court has jurisdiction of the Sherman Act claims, 15 U.S.C. §§ 1 and 2, pursuant to 15 U.S.C. § 15 and 28 U.S.C. § 1337. FPL removed under the Court's federal question jurisdiction, 28 U.S.C. § 1331. To the extent this action presents state law issues, this Court has pendent jurisdiction because those issues arise out of a common nucleus of fact -- FPL's refusal to sell FMPA network transmission and "block" wholesale power, which FMPA claims violates FPL's Antitrust

100. Whether FPL's terms offered during the negotiations commencing in September 1989 were comparable to those accepted by FMPA in the five existing contracts that are on file with the FERC.

101. Whether FMPA had any reason to believe that FPL would accept in 1989 terms that had been consistently and unequivocally unacceptable in all the years prior to 1989.

102. Whether FMPA has ever believed and has ever had any basis for assuming that FPL would change or had changed its policy not to price transmission service on the network basis.

103. Whether, when FMPA submitted its September 1989 proposal, FMPA had any reason to expect that FPL had changed its policy against agreeing to provide network transmission service on FMPA's terms.

104. Whether FMPA's proposal to buy a "block" of wholesale power from FPL without specifying contract demands for each delivery point is a proposal to receive wholesale service that is available under the tariff and the existing contracts, but to pay less than would be paid under the tariff, by establishing a single contract demand that is lower than the sum of the contract demands that would be specified separately for each delivery point under the tariff.

105. Whether the heart of FMPA's "refusal-to-deal" claim is the notion that FPL was required to replace its existing point-to-point transmission service agreements with a

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Florida Power & Light Company) *Docket No. ER93-465-000*

ANSWER OF FLORIDA POWER & LIGHT COMPANY TO THE MOTIONS FILED BY FLORIDA CITIES, SEMINOLE ELECTRIC COOPERATIVE, INC., TAMPA ELECTRIC COMPANY, JACKSONVILLE ELECTRIC AUTHORITY, AND UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH

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Counsel for
FLORIDA POWER & LIGHT COMPANY

April 27, 1993

Because FPL would not accede to FMPA's demands and relinquish its existing contract rights to the obvious detriment of its native load customers, the negotiations broke off. FMPA nonetheless has the right to seek changes to any of its existing contracts under FPA section 206 and to seek any new or additional service under FPA sections 211 and 212. It chose instead to file a civil action, which is now pending in the United States District Court for the Middle District of Florida. FPL believes that the allegations contained in that suit are sanctionally frivolous and has before the Court a motion for summary judgment that would dispose of all the issues alleged in the complaint.

Now, more than one and one-half years after FMPA decided to file the district court suit,[45] FMPA seeks to use FPL's open-access filing as a vehicle for asking the Commission to rewrite its existing agreements. The Commission has rejected such attempts in the past and should do so here. In Entergy Services,[46] the Commission held that it would not allow customers to abrogate their existing bilateral transmission contracts as a result of the tariff proceeding.[47] There is

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45/ Evidence before the court in the district court suit indicates that FMPA decided in August 1990 to file the suit, after considering and rejecting the option of seeking relief from this Commission.

46/ 58 F.E.R.C. (CCH) ¶ 61,234 at 61,761.

47/ On rehearing, the Commission went on to state that the parties failed to show how it is unduly discriminatory to enforce valid contracts. 60 F.E.R.C. (CCH) ¶ 61,168 at 61,627 (1992).

similarly no justification for permitting FMPA to attempt to do so in this proceeding.

FPL's open-access transmission tariffs provide an additional menu of options for wholesale transmission customers. They do not, however, foreclose other arrangements or supersede existing contracts. These open-access tariffs should therefore be reviewed on their own merits, in the same manner as the Commission has reviewed other recent transmission tariff filings. This docket, however, should not become an open-ended forum for the litigation of other contracts and other issues not properly before the Commission in this case.

FMPA attempts to leave the Commission with the impression that, once these tariffs are on file, FPL will never negotiate transmission arrangements and that the Commission will be without authority to resolve transmission disputes. Such is not the case. FPL will, in good faith, consider proposals for specific transmission arrangements proposed by a customer. If a dispute arises, the Commission will have authority under section 211 to resolve the issues. All that FPL is contending here is that the filing of transmission service tariffs that are themselves reasonable and in accord with the Commission's policy should not present a forum for the litigation of other transmission-related issues that may arise under section 211, and particular issues that include efforts to escape from existing contracts. To the extent parties (such as FMPA) have executed agreements and those agreements are on file as just and

reasonable rate schedules, FPL is entitled to rely on those agreements until a finding is made, pursuant to section 206, that the agreements have become unjust and unreasonable.

B. The Terms And Conditions Of FPL's Open-Access Tariffs Are Not Unjust Or Unreasonable.

1. FMPA And Seminole Have Not Responded Substantively To FPL's Arguments In Favor Of An Hourly Comparison Of Embedded And Opportunity Costs.

In addition to the general anti-competitive arguments raised by FMPA and Seminole, which were addressed in the previous section, FMPA, Seminole, TECO, and JEA each make a number of arguments as to why specific provisions in FPL's transmission service Tariffs are improper and should be modified. For example, Seminole, FMPA, and TECO point out that FPL's proposal to recover opportunity costs based on a "higher of" comparison in each hour is not consistent with the Commission's decision in New England Power Co.[48/] (Seminole at 127; FMPA at 60-63; TECO at 53-54.) However, in a more recent Order, the Commission stated that its finding rejecting the hourly comparison in New England Power was preliminary and was being reviewed on rehearing.[49/]

FMPA has not responded substantively to FPL's argument that the long-term firm service at issue here should be treated the same as the service provided in Northeast Utilities,[50/] in which the Commission approved an hourly comparison of opportunity

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48/ 61 F.E.R.C. (CCH) ¶ 61,009 (1992).

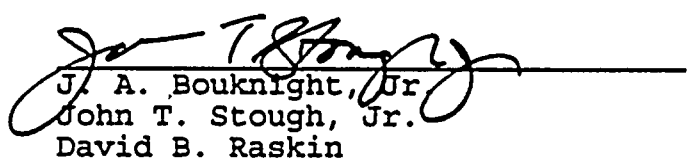
49/ Northeast Utils. Serv. Co., 62 F.E.R.C. (CCH) ¶ 61,294, at 62,295 n.197 (1993).

50/ 58 F.E.R.C. (CCH) ¶ 61,069 (1992).

IX. CONCLUSION.

Wherefore, for the reasons stated herein and in the March 19 Transmittal Letter, FPL urges the Commission to accept for filing, without suspension and without modification except as discussed herein, each of the Rate Schedules before the Commission in this proceeding.

Respectfully submitted,



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Counsel for
FLORIDA POWER & LIGHT COMPANY

April 27, 1993

APPENDIX 19

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Department of Justice
Washington, D.C. 20530

NOV 14 1973

Howard K. Shapar, Esquire
Assistant General Counsel
Licensing and Regulation
U. S. Atomic Energy Commission
Washington, D. C. 20545

Re: Florida Power & Light Company
St. Lucie Plant, Unit No. 2
AEC Docket No. 50-389A
Department of Justice File 60-415-45

Dear Mr. Shapar:

You have requested our advice pursuant to the provisions of Section 105 of the Atomic Energy Act of 1954, as amended by P. L. 91-560, in regard to the above-captioned application.

Florida Power & Light Company ("Applicant") has applied for a construction permit for its St. Lucie Plant, Unit No. 2, an 810-megawatt nuclear steam generating unit to be located on Hutchinson Island off Florida's east coast. Operation of the facility is presently scheduled for September, 1979.

The Applicant

Applicant is by far the largest electric utility in the State of Florida; it serves approximately half of the statewide electric load. Headquartered in Miami, its area of operation includes most of southern Florida and extends up the east coast to the Georgia border. As of the end of 1972, it provided retail electric power to 574 communities with over 1,500,000 customers. Its total energy sales for 1972 were 28,927,808 megawatt hours. Applicant's summer 1972 peak load was 6,011 megawatts; its dependable generating capacity at that time was 6,585 megawatts--over 70 percent of the generation in the area. Its system of generating stations is integrated by over 3,400 miles of high-voltage transmission lines, approximately 90 percent of the high-voltage transmission in the area--including the 230-kilowatt main transmission grid for southern Florida and the east coast.

Applicant calls itself "the nation's fastest growing electric utility." Florida's rapid growth has been concentrated in the area in which it serves; and for the past several years, the Applicant has added more new customers than any other electric utility in the United States. Applicant's projected peak load for 1980 is 14,475 megawatts--over twice its 1972 load--and generating capacity is planned to increase more than 10,000 megawatts to meet that load.

Applicant's system is directly interconnected and coordinated to some degree with most of the other electric generating systems in Florida: Florida Power Corporation, Tampa Electric Company, and the municipal systems of Jacksonville, Orlando, Fort Pierce, Vero Beach and Lake Worth. Applicant coordinates operations with still other systems through the activities of the Florida Operating Committee. Some of these coordinating arrangements have been entered into only recently.

Applicant supplies electric power in bulk at wholesale to seven rural electric cooperative distribution systems: Lee County, Clay, Glades, Okefenoke, Peace River, Suwanee Valley, and Florida Keys. With the exception of Florida Keys, which has some generation of its own, these cooperatives are exclusively distribution systems and purchase all of their bulk power requirements. 1/ Applicant also supplies bulk power to supplement the generation of two small municipal systems, Homestead and New Smyrna Beach.

Competition

There is substantial and vigorous actual and potential competition among electric utilities in Florida in both bulk power supply and retail distribution markets. Florida law does not require electric utilities to restrict their service areas. The Florida Public Service Commission has approved certain voluntary territorial agreements between Applicant and neighboring systems. 2/

1/ Applicant supplies the total requirements of Lee County, most of the requirements of Clay, Florida Keys, and Glades, and a portion of the requirements of Okefenoke, Peace River and Suwanee Valley.

2/ Some territorial agreements involving the Applicant apparently have taken the form of oral understandings and have never been submitted to the Commission.

Even where these territorial agreements exist, neighboring smaller systems do compete with Applicant at retail. They still compete to attract new loads who can choose to locate either in their service areas or in Applicant's. They still compete to extend service in developing areas on the fringes of their systems. Finally, they compete to stay in business; if their costs and retail rates become too high, their customers may force them to sell out to the Applicant.

There is also competition in bulk power supply, where territorial agreements cannot lawfully operate. The smaller systems have two basic competitive alternatives; either they produce their own bulk power supply, or they buy their bulk power requirements from the Applicant.

Antitrust Implications of This License Application

The Department regards Applicant's ownership of the main high-voltage transmission network in southern and east coast Florida as a significant factor in this antitrust review of the St. Lucie Unit No. 2 license application.

As we have advised you previously,3/ there are substantial economies of scale in the business of generation and bulk supply of electric power. Nuclear power, which is expected to be the cheapest kind of base-load electric power available to meet future load growth, may be produced economically only from large generating units--units with a capacity of 500 megawatts or more. Most electric generating systems cannot install and market power from such large units on their own. They can employ large units--and achieve the economies of scale necessary to compete effectively in today's electric power markets--only through coordination with other generating systems. High-voltage transmission is the necessary medium for such coordination.

Applicant's control over the transmission network in its area has given it the power to grant or deny access to coordination--and thereby access to the benefits of large-scale,

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3/ E.g., letter of advice of June 28, 1971, regarding Consumers Power Company (Midland Units 1 and 2), AEC Docket Nos. 50-329A and 50-330A.

low-cost, base-load nuclear generation--to neighboring smaller systems. There have been some allegations that Applicant may have used this power to deny coordinating benefits to smaller systems or to take the predominant share of the benefits of such coordination as has been entered into. The principal allegations of this nature are (1) that Applicant insisted upon retail territorial allocation agreements as a prerequisite to entering into interconnections and bulk power supply transactions with other systems; (2) that Applicant once refused interconnection arrangements to Gainesville in adherence to wholesale territorial allocation with Florida Power Corporation; 4/ and (3) that on one occasion in the 1960's, Applicant refused to make available to a rural electric cooperative the coordinating arrangements necessary to "firm up" its own isolated generation.

Applicant's control over regional transmission and over access to necessary coordinating arrangements for small systems is illustrated by the current problems of two municipal systems, Homestead and New Smyrna Beach. Both have generation of their own and have endeavored to remain in the business of producing their own bulk power supply and to expand their generating facilities to compete for new and growing loads. 5/ Applicant has interconnected with these two municipal systems for the sale of wholesale bulk power. 6/ The nature of the interconnection and the terms under which the power is sold appear to be designed for systems without any generation or systems planning to cease self-generation, rather than for systems seeking to coordinate with others.

4/ During the course of our antitrust review, the municipal distribution system of Jacksonville Beach (which presently obtains its full bulk power requirements from the Jacksonville municipal system) advised us of a pending request to Applicant (which has transmission lines close by) to consider an interconnection with it for the sale of bulk power. Applicant's ultimate response to this request should indicate its current policy with regard to selling wholesale bulk power to a retail distribution system seeking an alternative source of bulk power supply.

5/ Homestead now has barely sufficient generation to meet its load requirements, and it lacks reserves. New Smyrna Beach's generation is sufficient to serve approximately half of its load.

6/ There is some evidence that Applicant earlier had a policy of refusing to sell power at wholesale to municipal systems.

We are advised that Homestead and New Smyrna Beach are negotiating with the Applicant for parallel interconnections at transmission voltage and appropriate coordinating arrangements. Since the instant application was filed, Homestead and New Smyrna Beach have sought ownership participation in or unit power purchases from St. Lucie Unit No. 2 as a means of satisfying their future power supply needs in coordination with their own generation. Homestead and New Smyrna Beach also have asked the Applicant to agree to provide transmission services ("wheeling") to accommodate future power transactions with other systems as another means of satisfying their power supply expansion needs.

The following example indicates how wheeling might be used. We are advised that the Jacksonville electric system proposes to construct two 1,150-megawatt nuclear units and has inquired of other Florida systems, including Homestead and New Smyrna Beach, whether they would be interested in participating in those units or purchasing unit power surplus to Jacksonville's needs. Applicant, which already has a high-voltage interconnection with Jacksonville, could transmit this nuclear power to Homestead and New Smyrna Beach. Applicant has not yet offered, however, to provide such transmission services to Homestead or New Smyrna Beach.

We have noted above that seven rural electric cooperative systems purchase some or all of their bulk power requirements from the Applicant. Six of these systems, 7/ and six other distribution cooperatives who do not obtain any power from Applicant, are members of Seminole Electric Cooperative, Inc., a corporation formed to act for its members in solving their power supply problems. Seminole has at various times in the past conducted studies to determine the feasibility of alternative means of power supply for its members. It appears that the possibility of self-generation by these cooperatives as an alternative to purchased power has had the effect of keeping wholesale purchase rates relatively low, and therefore the cooperatives have continued to purchase their power requirements from the Applicant and other large generating systems.

Recently, both Applicant and Florida Power Corporation have filed wholesale rate increases with the Federal Power Commission; and, as a result, Seminole is again exploring

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7/ The exception is Florida Keys.

power supply alternatives to meet the growing loads of its members. One alternative for the cooperatives would be to acquire a share of, or purchase unit power from, Applicant's St. Lucie Unit No. 2 (in conjunction with appropriate provisions for power delivery, reserve sharing, and other forms of coordination). A second alternative would be to obtain nuclear power from Jacksonville or other systems which may contemplate installing nuclear generation, with provision for delivery of that power over Applicant's high-voltage transmission system to those cooperatives with which it is interconnected. Since the filing of this license application, Seminole has advised the Applicant of its interest in participating in St. Lucie Unit No. 2 and in other forms of coordination to achieve a feasible long-range power supply program.

Applicant has recently installed its first two nuclear generating units, Turkey Point Nos. 3 and 4, each with a capability of 723 megawatts. A third nuclear unit, St. Lucie Unit No. 1, with 810 megawatts of capacity, is projected to enter service in September, 1975. Unit No. 2, the subject of the present license application, and also 810 megawatts in size, is scheduled for operation in September, 1979. When Unit No. 2 comes on line, Applicant will have over 3,000 megawatts of large-scale, low-cost, base-load nuclear generating capacity. The marketing of power produced by this substantial block of nuclear generation clearly could impair the competitive viability of the other systems in Applicant's area if they are unable to exercise a similar opportunity to obtain their power from nuclear generation.

If systems such as Homestead and New Smyrna Beach are denied both access to nuclear generating units like Applicant's St. Lucie No. 2 and access to other systems' nuclear generation through the use of Applicant's transmission system, they will not be able to take advantage of nuclear generation to meet growing loads as bulk power suppliers. Likewise, without similar access to nuclear generation, the feasibility of Seminole's members entering the bulk power supply business as an alternative to full-requirements wholesale purchase appears greatly diminished.

Conclusion

Our antitrust review led us to the following conclusions: (1) Applicant is the dominant electric utility in Florida and because of its ownership of transmission, has the power to

grant or deny other systems in its area the access to coordination--and thus the nuclear power--needed to compete in bulk power supply and retail distribution markets; (2) there is some indication Applicant's dominance may have been enhanced through conduct inhibiting the competitive opportunities of the smaller systems in its area; and (3) construction and operation of St. Lucie No. 2, and the sale of power therefrom to meet Applicant's load growth and compete with the smaller systems in its area could create or maintain a situation inconsistent with the antitrust laws if access to nuclear generation were denied those smaller systems.

We related our concern over these matters to representatives of the Applicant. While denying construction and operation of St. Lucie Unit No. 2 could have the effect we feared, they advised us that Applicant would nevertheless seriously consider offering participation in St. Lucie Unit No. 2 (with the transmission services, reserve sharing, and other coordination necessary to support such participation) to the three utilities who, prior to our rendering this advice, have given Applicant notice of their interest in such participation to meet a portion of their future power supply requirements--i.e., Homestead, New Smyrna Beach and Seminole Electric Cooperative. Further, because of the status of Applicant's transmission network as the key to coordination by these systems with others, the Department requested Applicant also to consider adopting a policy to facilitate their efforts to obtain access to other economical power sources. It was indicated that the Applicant's final position on these matters will be determined within the next 90 days; this would appear to leave sufficient time to formulate such license conditions as may be appropriate.

In view of the consideration Applicant is now giving to the question of access by other entities to nuclear generation, and the probability that participation in St. Lucie Unit No. 2 will be made available to certain of these entities, 8/ the Department does not at this time recommend an antitrust hearing. Considering that issuance of the construction permit

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8/ In this connection we note also that Applicant will almost certainly apply to the Commission for licenses to construct and operate additional nuclear generation units. Further questions concerning the opportunities of its neighboring systems (including systems other than Homestead, New Smyrna Beach, and Seminole) for access to the benefits of nuclear generation may be ripe for resolution in the antitrust review of such license applications.

for St. Lucie Unit No. 2 is not contemplated until early in 1975, we believe it reasonable to ask the Commission to abide the outcome of Applicant's 90-day consideration prior to ultimately deciding whether or not to hold an antitrust hearing. The Department would, of course, be pleased to advise the Commission further on this question or other relevant questions, in the light of whatever offers Applicant may make and other intervening developments.

Sincerely yours,

Bruce B. Wilson

BRUCE B. WILSON
Acting Assistant Attorney General
Antitrust Division

APPENDIX 20

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Department of Justice
Washington, D.C. 20530

MAR 2 1976

Howard K. Shapar, Esquire
Executive Legal Director
Nuclear Regulatory Commission
Washington, D. C. 20555

Re: Florida Power & Light Company Nuclear Units
NRC Docket No. P-547-A.

Dear Mr. Shapar:

You have requested our advice pursuant to the provisions of Section 105c of the Atomic Energy Act of 1954, as amended, in regard to the above-captioned application.

Florida Power & Light Company has applied for construction permits for two nuclear steam generating units of 1140 megawatts each. The Applicant has advised us that the first unit is presently scheduled for operation in 1985, with the second planned for an as yet undetermined date thereafter. When these units are operational, nuclear generation will represent approximately 30 percent of Applicant's total generating capacity; its growing importance to Applicant's future as the largest producer and supplier of electric power in Florida is quite clear.

A description of the Applicant's electric power system, coordinating relationships, dealings with smaller systems who are its actual and potential competitors, and our conclusions based thereon was transmitted to the Atomic Energy Commission by letter of November 14, 1973, in connection with its request for our advice on Florida Power & Light's application to construct the St. Lucie Plant, Unit 2, AEC Docket No. 50-389A. In that letter, the Department noted the substantial competition among electric utilities in Florida in bulk power supply and retail distribution. Further, we described the power which Applicant's control over the high-voltage transmission network in its area gave it over neighboring smaller systems' opportunities to coordinate generation and transmission and over their access to large-scale, low-cost, base-load nuclear generation. Applicant still possesses such power.

DEPOSITION EXHIBIT
Gardner 1

Our previous letter also set forth certain allegations of Applicant's anticompetitive conduct that had been made during the course of our antitrust review, and we discussed the then-ongoing attempts of particular small systems to obtain coordinating agreements with the Applicant, including access to nuclear generation. We raised these matters with the Applicant, as did the AEC's Regulatory Staff. Following this advice to the AEC, the Applicant entered into license conditions offering ownership in St. Lucie Unit 2 to small systems that had timely requested such access.

Subsequent to our antitrust review of its St. Lucie Unit 2 Application, Florida Power & Light has entered into coordinating agreements with the municipal electric systems of Homestead and New Smyrna Beach. It has also committed itself to wheel power to certain systems in its area from Florida Power Corp.'s Crystal River Nuclear Plant. We note also that Applicant recently obtained a jury verdict in its favor in an antitrust action brought by the City of Gainesville, wherein at least some of the alleged anticompetitive activities raised at the time of our review of the St. Lucie Unit 2 application were litigated. While the Department, of course, does not believe that it or the Commission is estopped in the present antitrust review by that jury's findings, and it appears, in any event, that those findings were strictly limited to the issue whether a territorial agreement existed between Florida Power Corp. and the Applicant, we have nevertheless taken into account the jury's verdict.

We have also been advised that Applicant has been negotiating with Homestead and New Smyrna Beach and with six rural electric distribution cooperatives (members of Seminole Electric Cooperative, a generation and transmission cooperative) for participation in St. Lucie Unit 2. Seminole, however, has reported encountering difficulties in those negotiations, most significantly Florida Power & Light's insistence on dealing with the individual distribution cooperatives rather than with Seminole (which has contracted to be their power supply agent), and some question has been raised that FP&L's motives for such insistence may be anticompetitive, and not simply the reasonable desire for adequate contractual security. Also, as a result of comments made by FP&L representatives during these negotiations, Seminole has reported doubts concerning Applicant's willingness to engage in other coordinating transactions with it as its system develops.

Further, Applicant's license conditions for St. Lucie Unit 2 required it to give smaller systems in its area timely notice of its plans to construct its next nuclear units, which are, of course, the two now applied for. Applicant gave such notice on April 1, 1975, and, as a result, received a number of responses from smaller systems expressing various degrees of interest in participation in these units. We had understood, relying upon information earlier submitted by FP&L in connection with the instant license application, that discussions were in progress to develop a participating agreement concerning this facility. Recently, however, FP&L advised us that our information was in error and that in July 1975 it had submitted corrected information to your Commission (which, according to our records, was not transmitted to us). We were surprised to learn that Applicant has neither responded to these indications of interest, nor, as yet, determined what, if any, form of access to the units now applied for it is willing to make available to other, smaller electric systems. Applicant is not prepared to commit itself at this time to accept reasonable license conditions offering the opportunity for access to those smaller systems.

In light of the various factors described above, the Department cannot state that the activities under the license now applied for will not create or maintain a situation inconsistent with the antitrust laws. We believe that the Commission may wish to consider in the light of subsequent developments, particularly regarding Applicant's ongoing negotiations with Seminole Electric Cooperative and its members for participation in St. Lucie Unit 2 and Applicant's eventual responses to indications of interest in participation in these new nuclear units, whether or not to hold an antitrust hearing on the instant application.

Sincerely yours,

Thomas E. Kauper

THOMAS E. KAUPER
Assistant Attorney General
Antitrust Division

APPENDIX 21

State of Florida)
)
County of Dade)

THIRD AFFIDAVIT OF WILLIAM C. LOCKE, JR.

I, William C. Locke, Jr., having been duly sworn according to law, state that the following facts provided under oath are true and correct to the best of my knowledge and information.

I. QUALIFICATIONS/PURPOSE OF AFFIDAVIT

1. I am the same William C. Locke, Jr. who filed an Affidavit in this proceeding on May 18, 1992 (filed with Florida Power & Light Company's ("FPL") Memorandum of Law in Response to Florida Municipal Power Agency's ("FMPA") Motion for Partial Summary Judgment). My qualifications are listed in paragraphs 1-3 of that Affidavit.

2. The purpose of this Third Affidavit is to further elaborate upon several of the points I made in my previous Affidavit, and to address FMPA's claims regarding sales of wholesale power by FPL, which claims were appended to the Complaint after my May 18, 1992 Affidavit. In particular, this Third Affidavit, along with my prior Affidavit, will explain how FMPA's network transmission service proposals and requests to purchase a block of wholesale power would have increased costs to FPL's retail and wholesale customers other than FMPA.

II. FMPA'S NETWORK TRANSMISSION SERVICE PROPOSALS

3. As I explained in my May 18, 1992 Affidavit, FPL currently provides FMPA with transmission service pursuant to four firm-transmission service agreements which the parties executed over the past ten years, and which are on file with the Federal Energy Regulatory Commission ("FERC").

4. The revenues received by FPL for transmission service under the existing firm-transmission service contracts with FMPA are credited, in cost allocations prepared for rate cases, against FPL's cost of providing service to FPL's other retail and wholesale customers and thus reduce FPL's cost of serving those customers. If FPL were to provide additional services under the existing firm transmission service contracts without receiving appropriate additional revenues, then FPL's other customers would, in effect, be subsidizing those additional services.

5. As I explained in my prior Affidavit, under FPL's existing transmission service contracts with FMPA, with limited exceptions, transmission service is provided only from identified points of receipt to identified points of delivery on the basis of a separate "contract demand" for each such service. If FMPA wants transmission service in excess of the specified contract demand between those specified points, or if it wants transmission service from a new point of receipt to an existing point of delivery, it must offer to buy and pay for such additional transmission service, and FPL is not

obligated to provide such service unless it determines that it can make the transmission capacity available without adversely affecting its ability to serve its other customers economically.

6. Under FMPA's network transmission service proposal, if at any point in time FMPA were not fully utilizing the entire contract demand for a specified transmission path under the existing transmission contracts, FMPA would be able to utilize that "excess" transmission capacity, at no additional charge, for transmission service between any point of receipt and any point of delivery. Under the existing transmission contracts, FMPA would have to pay separately for such additional transmission service. Thus, acceptance of FMPA's proposal would result in the loss of revenues that are available under the existing contracts, and which are used to reduce the cost of service to FPL's other customers. Therefore, the provision of network transmission service on the terms proposed by FMPA would increase FPL's cost of service to its other customers and put those other customers in a position of subsidizing FMPA's additional transmission service.

7. As I stated in my prior Affidavit, under its proposal FMPA would pay a contract demand charge based on FPL's cost of providing transmission service between two specified points on the FPL transmission system (as it does now) even though FPL would have to operate, maintain, and

construct facilities to stand ready to deliver that amount of contract demand between any two of more than a dozen points that FMPA might choose from hour-to-hour.

8. As I also stated in my prior Affidavit, and as various FMPA witnesses acknowledged during depositions, during substantial time periods of each year, some portions of FPL's transmission system are utilized to the full extent consistent with safe and reliable operation.

9. In addition, under FMPA's network transmission service proposal, FPL would be required to provide additional transmission service for new power resources designated by FMPA without regard to the impact of providing those new services on the economies of FPL's existing operations. Because some portions of FPL's transmission system are utilized to the full extent consistent with safe and reliable operation during substantial time periods of each year, FMPA's proposal could force FPL to give up constrained transmission capacity in order to accommodate a new FMPA power resource. If FPL is required to give up constrained transmission capacity to FMPA, FPL will be forced to depart from the optimal economic dispatch of its generating resources and incur higher energy production costs which would be reflected in higher fuel charges to its retail customers. For example, FPL could be required to reduce its usage of its most efficient coal-fueled capacity to serve its own customers, and be forced to replace that energy with energy produced by

older, less efficient oil-fueled units located elsewhere on its system. Under FMPA's proposal, this risk would be completely open-ended. FPL would simply be required to modify its operations, at whatever cost, to accommodate any new resources designated by FMPA. FMPA did not offer to compensate FPL for these additional costs.

10. As I stated in my prior Affidavit and as demonstrated above, FMPA's September 8, 1989 network transmission service proposal would have required modification of the existing transmission service contracts. Although FMPA modified certain elements of their proposal over the following two years, central to each proposal was the concept of a single contract demand charge (based on the cost of providing service between two specified points) for network transmission service which would require FPL to stand ready to operate, maintain, and construct facilities to deliver power between any two of more than a dozen points that FMPA might choose from hour-to-hour. All of those proposals would, therefore, have required modification or termination of the existing FERC-filed transmission service contracts.

III. FMPA'S PROPOSAL TO BUY A BLOCK OF WHOLESALE POWER

11. In addition to its request for network transmission service, FMPA has, at various times, requested that FPL sell FMPA a "block" of wholesale power which FMPA could then allocate and require FPL to deliver among the delivery points of its member cities from hour-to-hour. This

is contrary to FPL's existing wholesale power tariff, which is on file with and approved by FERC, and which provides for the cities to designate and pay for a separate contract demand for each separate point of delivery. FPL, FMPA, and three FMPA member cities have also entered into contracts which provide for deliveries of wholesale power from FPL to three cities' specified points of delivery. True and correct copies of FPL's wholesale power tariff (Tab A); the Partial Requirements Service Agreement Among Florida Power & Light Company, the Florida Municipal Power Agency, and the City of Jacksonville Beach (Tab B); the Partial Requirements Service Agreement Among Florida Power & Light Company, the Florida Municipal Power Agency, and the City of Green Cove Springs (Tab C); and the Partial Requirements Service Agreement Among Florida Power & Light Company, the Florida Municipal Power Agency, and the City of Clewiston (Tab D) are attached to this Third Affidavit.

12. Selling FMPA a "block" of wholesale power would reduce FPL's revenues for the sale of wholesale power to FMPA without reducing FPL's total system costs, because, although FMPA would be paying for a lesser amount of power, it would not change the demands on FPL's electrical system. As a result, FMPA's proposal would shift cost responsibility from FMPA to FPL's retail and other wholesale customers. In other words, FMPA's proposal to buy a "block" of wholesale power without specifying contract demands for each delivery point is

simply a proposal to receive wholesale service that is available under FPL's FERC-approved wholesale electric tariff and the existing three-party wholesale power contracts, but to pay less than would be paid under the wholesale tariff (by establishing a single contract demand that is lower than the sum of the contract demands that would be specified separately for each delivery point under the tariff).

[The next page is the signature page.]

W. C. Locke Jr.

Authorized Agent for
Florida Power & Light Company

STATE OF FLORIDA)
S/S:
COUNTY OF DADE)

I HEREBY CERTIFY that on this 13th day of April, 1993, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared W. C. Locke, Jr., who produced the following as identification, Florida Drivers License, Number L200-923-47-326 and he acknowledged before me that he executed the same as his free act and deed and who did take an oath.

In witness whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 13th day of April, 1993.

Notary Public
State of Florida
Commission or Serial No. CC147934
My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP.SEPT 30,1995
BONDED THRU GENERAL INS. UND.