

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION -

Civil Action No. 79-5101-Civ-JLK

THE CITY OF GAINESVILLE AND THE  
GAINESVILLE-ALACHUA COUNTY  
REGIONAL UTILITIES BOARD, THE  
LAKE WORTH UTILITIES AUTHORITY,  
THE UTILITIES COMMISSION OF NEW  
SMYRNA BEACH, THE SEBRING UTILITIES  
COMMISSION, THE CITIES OF ALACHUA,  
BARTOW, FT. MEADE, HOMESTEAD,  
KISSIMMEE, MOUNT DORA, NEWBERRY, ST.  
CLOUD, STARKE and TALLAHASSEE,  
FLORIDA,

Plaintiffs,

-v-

FLORIDA POWER & LIGHT COMPANY,

Defendant.

ORDER DENYING MOTION  
FOR A  
DECLARATORY ORDER

Plaintiffs have filed a Motion for a Declaratory Order requesting the Court to order that counsel and officers of defendant FLORIDA POWER & LIGHT COMPANY (FPL) should not communicate with any plaintiff's officials about this case unless FPL first (1) notifies counsel of record for plaintiffs, at least three days in advance, of the officials and subject matter of proposed discussions, and (2) receives the consent of plaintiffs' counsel of record for such communication.

The Court has considered the memoranda filed in support of and in opposition to the Motion and, on July 1, 1980, heard oral argument on the Motion, and has concluded as follows:

1. There is a strong public interest in the resolution of disputes by way of settlements by the parties, instead of through litigation.

2. Any of the parties to this litigation have a right to settle or compromise the dispute between them without the knowledge or consent of their counsel, and the Court may not



enjoin discussions between willing principals in this litigation.  
Lewis v. S.S. Baune, 534 F.2d 1115, 1121-24 (5th Cir. 1976).

3. FPL counsel, including attorneys in FPL's Legal Department, represent that they have not communicated with any plaintiff in the absence of its counsel, and that they have no intention of engaging in such communications.

4. Officers and employees of FPL whose responsibilities are represented not to include legal representation of FPL, including FPL's Vice President, Robert J. Gardner, may communicate directly with officials of a plaintiff about this case, and each plaintiff shall be free to determine for itself whether it wishes to engage in settlement discussions with FPL and whether it wishes to involve counsel of its selection in any such discussions.

On the basis of the foregoing, plaintiffs' Motion for a Declaratory Order is hereby denied.

DONE and ORDERED in Chambers at Miami, Dade County, Florida, this 3 day of July, 1980.

**JAMES LAWRENCE KING**

---

JAMES LAWRENCE KING  
UNITED STATES DISTRICT JUDGE

Approved as to form:

Robert J. Blum  
Attorney for Plaintiffs

Copies furnished to:

Spiegel & McDiarmid  
Ervin Varn Jacobs Odom & Kitchen  
Lowenstein Newman Reis Axelrad & Toll  
Covington & Burling  
Steel Hector & Davis





September 16, 1977

Mr. Harry C. Luff, Jr., Chairman  
Intervenor Steering Committee

Mr. R. A. Jablon  
Attorney for Intervenors

Gentlemen:

I have been asked to respond to your letter addressed to Marshall McDonald, dated July 28, 1977, but apparently mailed during the first part of August, and which is captioned "Settlement of NRC Dockets Nos. P-636-A and 50-329A, et al."

FPL joins with you in desiring to end the protracted litigation to which your letter refers. Viewed as a settlement proposal, your letter does nothing to advance this end. As near as I have been able to determine, your proposal simply tracks the requests for relief which are contained in your various pleadings before the NRC, and, to the extent that anything new is said, it is in the nature of specifying the means of implementing the measures which you have proposed. I doubt that you really expect any litigant to "settle" legal proceedings by acquiescing in substantially all of the relief requested by the opposing parties.

However, your letter also suggests that its proposals be considered on their economic merits. Perhaps by doing so and pointing out the economic penalties and operating burdens which your proposals would impose upon FPL and its customers, I can bring us closer to understanding one another's problems and advance the day when serious discussions leading to a final resolution of these matters can begin.

#### A. Capacity Arrangements

You propose that FPL agree to sell to the intervening Cities undivided interests equal to 13.7% in Turkey Point Units Nos. 3 and 4 and St. Lucie Unit No. 1, all of which are now in commercial operation, and a like interest in St. Lucie Unit No. 2, which is now under construction. In exchange, you propose to pay something in excess of FPL's current book investment for the three units in commercial operation, to reimburse FPL for its book cost for the interest in St. Lucie Unit No. 2 and to sell FPL a like amount of capacity in the form of existing oil and gas fueled generation on the systems of the various Cities.

From an economic standpoint, you propose that FPL exchange relatively low cost generation for relatively high cost generation, throwing in some premium over book cost for some of the capacity, but with a very substantial economic gain overall for the Intervenors and a corresponding economic loss for FPL. If FPL were to accept this proposal, the costs of serving FPL's existing customers

would increase, and it would be necessary to increase FPL's wholesale and retail rates correspondingly. To state the obvious, such a proposal is not "economically beneficial...on its own merits" to FPL.

Nor do I perceive any practical or ethical basis for recommending acceptance of such a proposal. To my knowledge none of the Intervenor's ever requested participation in Turkey Point Unit No. 3 or 4 or St. Lucie Unit No. 1 during the planning or construction stages. FPL's customers and shareholders carried all of the financial and technological risks of bringing these units from conception to commercial operation. The Intervenor's interest in these units materialized only very recently, after experience and changed economic conditions have demonstrated the technical and economic feasibility of the plants.

As regards St. Lucie Unit No. 2, FPL has accepted license conditions and offered ownership participation to each of the entities which expressed an interest in participation at or about the time that the application for a construction permit was docketed by the AEC. You suggest that systems which did not express an interest in participation at the planning and application stage should now be offered interests in the facility. As in the case of the operating plants, your suggestion would permit systems to benefit who have borne none of the substantial costs and risks incurred by FPL customers and stockholders throughout the four-year struggle to license this plant.

The area in which there is a meaningful opportunity for our systems to work together concerns future base load generating capacity. I would like to see us resume discussions about developing a joint project in Central Florida, possibly at the East Orange or other suitable site. FPL would be prepared to consider a commitment to share the risks of ownership of such a facility, preferably through long-term unit power purchase arrangements; we will make available transmission arrangements to assure that any municipal system in FPL's area of service which desires to participate may do so; and we offer to make available FPL's experience and capability in developing and managing large nuclear generating projects. When the large electric loads in Central and Northern Florida are combined with FPL's established capability in developing nuclear projects, there is no reason why a joint project cannot become a reality on an expedited schedule. This would provide the access to base load generation which the Intervenor's seek without increasing the cost of power to FPL's customers.

When we first proposed such a joint project, in 1976, the Intervenor's attended a few of the meetings but ultimately took the position that they would commit no money to the project until FPL met a long list of conditions, including agreement to much of the relief requested in the NRC petitions. I hope that you will see fit to reconsider this position.

As regards the request that FPL agree to support certain legislation, the purpose of which is to expand the availability of tax exempt financing exclusively for municipally-owned electric generating facilities in Florida, I do not regard commitments as to FPL's position on legislation which may be introduced in the future as within the scope of settlement discussions.

#### B. Partial Requirements Service

You propose that FPL make available "firm partial requirements service" to all municipal systems in the State of Florida. This request must be viewed in the context of the facts as they exist in Florida today.

FPL is interconnected with eight municipal electric systems, all of which operate a substantial amount of generating capacity. Three of these systems have lacked the capacity required to meet their customers' full loads at all times. FPL has provided firm partial requirements service to these Cities to supplement their deficient generation. In addition, FPL has interchange agreements with and is providing emergency and scheduled interchange service to backup the generation facilities of two of these Cities.

The other five municipal systems with which FPL is interconnected all own and operate generating capacity sufficient to meet their loads on a firm basis, and they have interchange agreements and interchange power with FPL on the same basis as FPL interchanges power with other utilities in Florida. The five self-sufficient systems which are interconnected with FPL and the municipal systems in other areas of the State have in common that they are not in any way dependent on FPL for their regular supply of power. Sales of power from FPL to these systems -- other than emergency and scheduled maintenance interchanges -- are non-firm and are made for economic purposes.

Our management is faced currently with two problems which must be taken into account in deciding on a major expansion of FPL's firm service commitments. First, particularly in view of the impending, and possibly lengthy, outages of Turkey Point Units Nos. 3 and 4, we are concerned about having the capacity to meet at all times FPL's firm commitments to its existing retail and wholesale customers. Second, we have had to face the reality that rapid growth in FPL's generating capacity increases the average cost of producing electricity and thus of serving FPL's firm customers as a group.

In these circumstances FPL is reluctant to undertake substantial new public utility obligations, and is aware that offering "firm partial requirements service" to all the municipal utilities in Florida would involve undertaking just such substantial new commitments. For FPL to assume these responsibilities would increase the cost and impair the reliability of service to FPL's existing customers without the consent or the protection of the Florida Public Service Commission. We are particularly reluctant to burden FPL's existing customers in order to extend firm service to systems which have readily available alternatives, such as continuing to rely on their existing wholly-owned power supply sources or taking advantage of the joint project mentioned previously. Your offer to sell FPL existing capacity on the Intervenor's systems, while mitigating the potential reliability problem in the short term, does not alter the fact that the cost of serving FPL's existing customers would be increased by acceptance of your proposal.

The best solution that I know of to our mutual problems in these respects is (i) to assure that the municipal systems have full access to any excess capacity which is more economical than their existing resources, and (ii) to work together to develop resources for the future. To further these objectives, FPL has exchanged economy energy with its municipal neighbors at all times that economical capacity has been available, and a substantial and growing amount of such interchange transactions have been and are being implemented. FPL's operating personnel have made special efforts recently to expand the use of economy energy

transactions. As I recently told representatives of the City of Ft. Pierce, FPL is prepared to develop variants of the economy interchange concept, providing for example for a City to shut down its generating facilities over weekends when capacity is available on the FPL system. Secondly, FPL is prepared to offer a range of transmission services comparable to the proposal recently made to the City of Vero Beach to any municipal system with which FPL is interconnected. This will enable municipal systems to take advantage of economical capacity which may be available on any other system in the State. Finally, in the long run, FPL is prepared to work with the municipal systems in developing new base load capacity, as detailed in the preceding section of this letter.

These arrangements would be true coordinating arrangements among generating utilities which will avoid detrimental effects on FPL's customers while preserving the independent nature of the Intervenor's systems. For FPL to assume new public utility responsibilities to supply municipal loads which are now supplied by municipally-owned generation would not be beneficial to anyone in the long run.

### C. Pooling

You propose that all of the utilities in Florida should form a "fully integrated power pool" which would involve centralized planning and dispatch of generating facilities.

The procedures now in place amount to an informal pool among the utilities in Florida. There is substantial coordination, planning, and exchange of information and forecasts through the Florida Electric Power Coordinating Group (FCG). The FCG coordinates reserve-sharing among the utilities in the State; and interchange agreements among the various utilities provide for emergency and maintenance exchange and economy energy transactions.

FPL will cooperate in any mutually beneficial effort to improve and strengthen these arrangements. The concepts of centralized planning and dispatching for the entire State require more study and involve disadvantages which must be weighed against any advantages which are demonstrated. A committee of the FCG has recently completed a detailed study of the benefits and disadvantages of planning the electric facilities in Florida on a single-system basis. The results were that the economic benefits at best would be small and there may be no economic advantages at all. The study revealed that centralized planning is not likely to provide any real economic benefits to FPL, and that it might well be economically disadvantageous to FPL. To these considerations must be added the loss of healthy diversity in planning philosophy which would accompany centralized statewide planning.

FPL is not opposed in principle to centralized planning and dispatch but we believe that such arrangements should produce benefits which outweigh costs for all parties. The choice is not between a "fully integrated pool" or nothing. The arrangements already in place offer most of the benefits which you apparently perceive in such a pool, and we are continuously working with all utilities in the State to strengthen them.



D. Transmission

FPL is prepared to enter into a transmission service contract with any municipal system with which it is interconnected comparable to the arrangement recently offered to the City of Vero Beach. Moreover, FPL is prepared to make available the transmission service agreements required for any municipal system's participation in a joint generating project within or outside of FPL's service area. It is FPL's intention to provide its municipal neighbors with access to its transmission system in accordance with such agreements, stopping short only of assuming the obligations of a common carrier, which we do not believe the law requires our Company to assume.

The question of "joint transmission rates" between FPL and Florida Power Corporation is not one of concept but of price. No city has encountered any problem in arranging transmission service through the two systems. FPL intends to recover its cost of providing transmission service under any agreement, subject to final determination by the Federal Power Commission. Your proposal to combine the loads of the two systems for the purpose of allocating costs to the Intervenor would permit them to pay less (in proportion to demands imposed) for use of FPL's transmission system than is borne by any other class of users. Obviously, we do not consider such an arrangement compensatory or economically fair to FPL's customers. In any event, the two companies' methods of determining costs are significantly different, and the suggestion that FPL and Florida Power Corporation should develop transmission rates in combination is incongruous in a proposal for settlement of antitrust proceedings.

E. Conclusion

In essence, FPL is working with the municipal systems to coordinate power supply planning and operations and is prepared to increase and improve this coordination in any mutually beneficial way. However, our management cannot accede to proposals which directly increase the cost of power or reduce the reliability of service to FPL's customers.

Sincerely,

  
Robert J. Gardner  
Vice President

RJG:std

APPENDIX G

### Additional FP&L Commitment

If in the future Company enters into a new participation agreement or an amendment to a participation agreement previously entered into pursuant to Section VII of the proposed license conditions ("new agreement") which contains contractual provisions which conflict with the principles of Section VII, paragraph (i) of the proposed conditions submitted to the Licensing Board on September 12, 1980, and such provisions are included in such new participation agreement as a result of a final order of the NRC which is no longer subject to appeal and which (a) modifies or deletes paragraph (i) and (b) requires that such contractual provisions be included in such new agreement, Company, upon request of the other party to a participation agreement previously entered into pursuant to Section VII ("prior participation agreement"), will consent to amend such prior participation agreement to substitute such provisions of such new agreement for the conflicting provisions in such prior participation agreement; provided that Company may, at its option, incorporate in such amendment all other substantive terms of such new agreement which differ from the terms of the prior Participation Agreement, including but not limited to provisions for conveyance of an ownership interest which is less as a percentage of such party's 1977 peak electric load than was originally conveyed in such prior participation agreement (in which event Company may include provisions for reconveyance of the excess to Company). This provision is not intended to affect any authority which the NRC may possess independent of

-2-

this paragraph or to limit the right of any party to take any legal position on the extent of such authority:

7



11-4