

AFFIDAVIT OF MICHAEL MILLS

Michael Mills, being duly sworn, deposes and says:

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1. My name is Michael Mills. I am an engineer in the employ of Florida Power & Light Co. ("FPL"). I have been employed by FPL since January 4, 1971. In 1975 I was employed in FPL's Power Supply department, where my duties involved familiarity with all interchange agreements in effect between FPL and other electric systems as well as involvement in the preparation of interchange agreements under negotiation during the time that I was assigned to that department. I am now assigned to the West Palm Beach District Office.

2. In 1975, I was directed to work under the supervision of Tracy Danese, who was Director of Public Affairs and, after May 1975, Vice President for Public Affairs, to prepare a document entitled "Information Requested by the Attorney General for Antitrust Review Facility License Application" ("Information"). This document was prepared pursuant to 10 CFR Part 50, Appendix L ("Appendix L"), and was submitted to the Nuclear Regulatory Commission in Docket No. P-636A on July 14, 1975.

3. Mr. Danese instructed me to prepare full and candid responses to each of the questions in Appendix L. I performed my responsibilities with that objective.

81060.40377

4. I was able to assemble much of the material needed for the Information from readily available documentary sources. In preparing responses to Questions 13 and 18, which I am informed are in issue in this proceeding, I proceeded as follows:

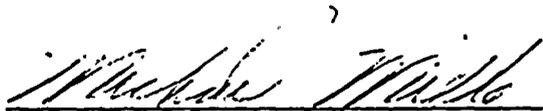
a. I systematically reviewed FPL's central files at its corporate headquarters in Miami, Florida, for correspondence and other documents pertaining to each of the municipal and cooperative electric systems listed in FPL's response to Question 9 of the Information.

b. I interviewed a number of individuals in the employ of FPL who I believed might have personal knowledge of any matter that was responsive to these questions. The persons to be interviewed were selected on the basis of the documents which I located during my review of FPL's central files as well my own knowledge gained while working in the Power Supply department of the persons and departments most likely to become involved in relationships of the kind described in Questions 13 and 18. My efforts covered a spectrum of departments within FPL, and in my interviews I inquired whether the interviewees were aware of events which should be listed in response to either of Questions 13 and 18 and which were not known to me as a result of my review of FPL's central files. I also asked inter-

viewees for further information about specific matters mentioned in the documents which I had located.

c. During the course of the activities described in a and b, above, I conferred on many occasions with Mr. Danese, reported to him on the progress of my efforts, and discussed the substance of the responses with him.

5. I believed that the procedures which I followed and which are described in paragraph 4, above, were sufficient to bring to my attention all material information responsive to Questions 13 and 18 of Appendix L which was then in the possession of FPL.


Michael Mills

Subscribed and sworn to before me this 7th day of May, 1981.



Notary Public

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEPT 12 1981
BONDED THRU GENERAL INS UNDERWRITERS

1 APPEARANCES:

2 ERVIN, VARN, JACOBS, ODOM & KITCHEN, by
 Robert King High, Jr., Esq.,

3 and

4 SPIEGEL & McDIARMID, by
 Joseph Van Eaton, Esq.,
 Attorneys for the Plaintiffs.

5 LOWENSTEIN, NEWMAN, REIS & AXELRAD, by
 6 J. A. Bouknight, Jr., Esq., and
 E. Gregory Barnes, Esq.,

7 and

8 COVINGTON & BURLING, by
 Joanne B. Grossman, Esq.,
 Attorneys for Defendant.

9
 10 - - - - -

11 I N D E X

12	<u>WITNESS</u>	<u>EXAMINATION</u>	<u>BY</u>	<u>PAGE</u>
13	OLAF PEARSON	Direct	Ms. Grossman	3
14		Direct	Mr. Bouknight	220
15		Cross	Mr. Van Eaton	328
		Redirect	Mr. Bouknight	353

16 EXHIBITS

17 PEARSON EXHIBITS FOR IDENTIFICATION

18				
19		1		38
20		2		41
		3		46
21		4		48
		5		51
22		6		53
		7		56
23		8		60
		9		61
24		10		64
		11		66
25		12		67

1 time in purchasing this power at wholesale because it
2 was not offered on the REA wholesale rate?

3 A No.

4 Q Why didn't you proceed and purchase
5 wholesale power following this meeting?

6 A I would have to talk to the engineers
7 as to the reason behind that, as to whether their
8 records would indicate as to reasons as to why we
9 did not come in on July 28 with a request for wholesale
10 power.

11 Q What happened following July 27, 1967
12 about the possibility of FPL purchasing or leasing
13 the Homestead electric system?

14 A I am not entirely positive of the dates
15 that were involved. There was one meeting held with
16 Florida Power & Light representatives here in Miami,
17 but that was early on and it may have been before
18 1967.

19 After that, there was a discussion
20 concerning that possibility and there was an exchange
21 of information relative to, oh, the city's rate
22 structure, kilowatt hours devoted to street lights
23 and a number, a good deal of fiscal information.
24 There were a number of items that were requested and
25 exchanged.

1 I don't believe all of those were
2 ever completed. As I recall now, the problem I had
3 about those two points, as to whether or not there
4 were other meetings concerning this point, I don't
5 recall. It seemed to me there were, but whether one
6 went into the other or not, I am not sure. I know
7 of at least two times this has been discussed.
8 I believe there was at least one other.

9 Q And you don't recall it going beyond
10 this preliminary discussion stage that you have
11 described; is that right?

12 A The first thrust we got was that yes,
13 it would be looked into. We, the company, want a
14 resolution from the council.

15 Apparently they were concerned about
16 even considering this type of thing after some
17 problem they had some place else. I don't know if
18 it was Vero Beach or New Smyrna, they had quite a
19 problem somewhere up the line and they wanted a
20 resolution from council before they would even enter
21 into any negotiations which they received from our
22 council.

23 Then there was also a contact--and the
24 sequence here, I think the resolution might have been
25 a result of Mayor House contacting a FPL representative

1 and then the resolution came about, I believe.

2 Prior to that, however, there were
3 discussions that did not require resolution but that
4 may have been also prior to the time that FPL had
5 the problem upstate.

6 Q But with respect to the 1967 note that
7 we were looking at a minute ago, you don't recall in
8 1967 or in the years immediately after that any
9 extensive consideration by the City of Homestead of
10 the possibility of selling or leasing their system
11 to Florida Power & Light, do you?

12 A I can't recall such a thing until
13 the approach of Dr. House, whatever year that may
14 have been.

15 Q Let me show you another piece of paper
16 and ask the reporter to please mark it as Pearson
17 Exhibit Number 60.
18 (Thereupon, the document referred to
19 was marked for identification as Pearson Exhibit
20 Number 60.)

21 Q (By Mr. Bouknight): This appears to be
22 a newspaper clipping with--at least on my copy--a date
23 which is not legible. The next to last paragraph on
24 the newspaper clipping entitled "City, FP&L Reach
25 Truce," subtitled "In Service Battle," and the next to

1 IN THE UNITED STATES DISTRICT COURT
2 IN AND FOR THE SOUTHERN DISTRICT OF
3 FLORIDA, MIAMI DIVISION

4 CASE NO. 79-5101-Civ-JLK

5 THE CITY OF GAINESVILLE AND :
6 THE GAINESVILLE-ALACHUA :
7 REGIONAL UTILITIES BOARD, THE :
8 LAKE WORTH UTILITIES AUTHORITY, :
9 the UTILITIES COMMISSION of :
10 NEW SMYRNA BEACH, the SEBRING :
UTILITIES COMMISSION, AND THE :
CITIES OF ALACHUA, BARTOW, :
FT. MEADE, HOMESTEAD, KISSIMMEE, :
MT. DORA, NEWBERRY, ST. CLOUD, :
STARKE, and TALLAHASSEE, FLORIDA, :

11 Plaintiffs, :

12 v. :

13 FLORIDA POWER & LIGHT COMPANY, :

14 Defendant. :
15 -----x

16 Homestead City Hall
17 Homestead, Florida
18 Friday, 9:12 a.m.
19 March 27, 1981

20 DEPOSITION OF WILLIAM F. DICKINSON

21 Taken on behalf of the Defendant before
22 Joannie Fieger, Court Reporter, Notary Public in and
23 for the State of Florida at Large, pursuant to notice.
24
25

1 A Wittkop, yes.

2 Q Do you recall that he may have
3 expressed a point of view that any connection with
4 Florida Power & Light Company was not a good idea?

5 A He may have, I don't know that.

6 Q Were there different views among the
7 members of the city council at that time as to whether
8 you ought to consider a proposal by Florida Power &
9 Light Company to purchase or lease the electric system?

10 A If it were, in fact, a consideration,
11 and I don't recall it ever being a consideration, I'm
12 sure there must have been opposing views. I don't
13 recall the city taking any position to seek selling the
14 facility or leasing it to FP&L.

15 Q Do you recall any discussions with FP&L
16 about that in the 1960's?

17 A No, I don't recall that.

18 Now, I'm trying to think back.

19 Q Let me show you a piece of paper and
20 ask the reporter, please, mark it as Dickinson Exhibit
21 6.

22 (The document referred to was
23 thereupon marked "Dickinson
24 Exhibit 6 for Identification.")

25 Q (By Mr. Bouknight) Mr. Dickinson, this

CITY CLERK'S OFFICIAL COPY

INITIAL POWER SUPPLY STUDY

CITY OF
FORT PIERCE, FLORIDA

R. W. BECK AND ASSOCIATES
Analytical and Consulting Engineers

Boston, Massachusetts
Columbus, Nebraska

Seattle, Washington
Denver, Colorado

Orlando, Florida
Phoenix, Arizona

SEPTEMBER-1970

337202

station service busses and the City's diesel units. This would speed up considerably the restoration of service to the City's customers during such an event, by enabling the generating units to "get back on line" more quickly.

ALTERNATIVE POWER SUPPLY ARRANGEMENTS STUDIED

Load Forecast

An extensive analysis was made of the City's historical load growth during the past ten years. Based upon trends established in this analysis and upon known economic and other factors which can be expected to have a bearing on the future loads of the City, we have projected the gross power and energy demands of the City as follows:

TABLE I-1
PROJECTED PEAK LOAD
CITY OF FORT PIERCE, FLORIDA

<u>Year</u> <u>12 Months Ending</u> <u>September 30</u>	<u>Gross Summer</u> <u>Peak Demand</u> <u>KW</u>	<u>Gross</u> <u>Generation</u> <u>KWH(000)</u>
1970	40,000(1)	203,600(2)
1971	44,000	224,000
1972	48,300	245,900
1973	53,000	270,300
1974	58,500	297,800
1975	64,200	326,900
1976	71,000	361,500
1977	78,000	397,100
1978	86,000	437,800
1979	94,500	481,100
1980	104,000	529,500
1985	167,000	850,200
1989	245,000	1,247,000

Footnote ():

- (1) Actual peak experienced during summer of 1970 prior to September; however, a peak of 42,000 kw was experienced in September.
- (2) Actual gross energy generated during the year was 205,600,000 kwh.

337215

Power Supply Alternatives

Based upon the load forecasts developed for the City, a number of power supply arrangements for the City were studied in depth for the 20-year period ending in 1989 to determine the best economical and technically sound power supply program the City could reasonably achieve. This included the investigation of six basic concepts, which are summarized as follows:

- Cases 1. Independent Operation - The independent operation plan, which consists of three alternative cases, is one in which the City would construct and own all of the necessary generation and transmission facilities to meet its projected load and reserve requirements, taking into account the operating practices attainable under its interconnection agreements. Case 1A (Base Case) envisages a mixture of conventional base load steam and peaking generation, with the first base load unit in commercial operation by 1976. Case 1B (Early Additional Base Load Generation) is a modification of Case 1A, in that the first base load unit is advanced to 1974. Case 1C (Utilization of Combined Cycle) involves the installation of a combined cycle unit at the existing power plant in which a waste heat boiler would be fired from the exhaust gases of a gas turbine unit with the steam from the waste heat boiler being used to operate existing steam turbines in the power plant.
- Case 2. Joint Planning and Participation in Future Generating Units With Vero Beach - Under this concept, the City would coordinate its future generating unit additions with Vero Beach, such that each system would install and own units on a "take your turn" basis with contractual arrangements for the purchase and sale of capacity and energy from such future generating units being made between the two systems. With this arrangement, each utility would be able to install base load generating units that are substantially larger than it would install on its own, thereby enabling both systems to enjoy the lower investment cost per kilowatt and lower operating costs of larger generating units.
- Case 3. Joint Planning and Ownership of Future Generating Units With Vero Beach - This alternative utilizes basically the same concepts as in Case 2, except that the City and Vero Beach would jointly participate in the ownership and operation of future base load generating units. Each system would effectively own parts of each new base load unit jointly installed, either through joint financing (each system arranging for the financing of a fixed share of the unit), or through making commitments for purchasing a share of the unit for its useful life. As with Case 2, under this arrangement each utility would be able to enjoy the investment and operating cost savings attainable with larger generating units.

- Cases 4. Firm Power Purchases From the Florida Power & Light Co. - This alternative, which consists of two separate cases, is one in which the Interconnection Agreement with Florida Power & Light Co. would be amended to include a firm power service schedule. Under Case 4A (Short-Term Purchases With Additional City Generating Units), the City would make periodic short-term purchases of firm power from the Company to enable the City to temporarily delay the installation of its own generating facilities. Under Case 4B (Long-Term Purchases with No Additional City Generating Units), the City would continue to operate its existing generating facilities but would purchase all of its additional power supply requirements from the Company.
- Case 5. City Participation in Florida Power & Light Co. Nuclear Generating Facilities - Under this alternative, the City would supplement its own generation expansion plans with purchases from the Florida Power & Light Co. of a fair share of the Company's nuclear generating facilities presently planned or under construction, if and when made available to the City. This fair share of nuclear purchase amounts to 29% of the City's projected peak load commencing in 1975, and represents the same ratio as Company owned nuclear facilities would bear to the Company's projected peak demand.
- Case 6. City Participation in a Potential Florida Municipal Power Pool - The concept envisaged under this alternative is one in which the City would participate and obtain all of its additional power supply requirements from a potential major Florida municipal power pool that would be statewide, and would involve all municipally owned power systems north of and including Fort Pierce and Sebring. The participating systems would be interconnected by a 230 kv and 500 kv transmission network with large base load generating units installed at central locations to supply the combined needs of all the participants. The generating facilities would consist of large nuclear, conventional fossil-fueled and peaking type generation, all of which would be integrated with the existing generation of the participants. Under this concept, each member utility would purchase its fair share of each major generating addition as it became commercially available on the pool.

A more complete description of each of the alternative power arrangements studied is contained in Section IV of this Report, together with a discussion of the conclusions reached on each case. For each of the nine cases studied, annual costs of power were developed for each year of the 20-year period from 1970 to 1989, together with the total present worth cost of each case to enable economic comparisons between alternatives. Certain

existing fixed costs, which are common to all of the cases studied, were not included in the total annual costs of the alternatives studied. These costs were included, however, in the pro forma operating results for the Recommended Power Supply Plan.

The total annual and present worth costs of each alternative are summarized in Table IV-1, which follows at the end of Section IV. Of the nine cases studied, the most economical alternative is Case 6 (City Participation in Potential Florida Municipal Power Pool), the overall present worth costs being some 20% lower than those of Case 1A (Independent Operation - Base Case). The City cannot, however, at this point in time rely on a Florida Municipal Pool to provide its power supply requirements since such a Pool does not presently exist, and a great deal of coordinated effort and organization would be required on the part of all potential participants before it becomes a reality. Nonetheless, the City should, in our opinion, strive along with all of the other potential participants in such a Pool to make this concept a reality, since it holds the key to the lowest attainable power supply costs to all participants.

The most expensive of all the power supply alternatives studied was that of Case 4B (Firm Florida Power & Light Co. Power Purchases - Long-term Purchase with No Additional City Generating Units), in which the 20-year present worth costs were some \$5.0 million greater than the estimated costs for Case 1A. It is our opinion, therefore, that this concept should not be considered by the City as a reasonable power supply alternative.

Of the other cases studied, Case 1A (Independent Operation - Base Case) appears to be the best alternative that can be achieved at this time. Case 2 (Joint Planning and Participation with Vero Beach) also showed economic benefits over other alternatives studied and, while such a concept cannot be readily achieved at this time, the City should, in our opinion, continue to endeavor in the future to bring about this sort of joint power supply planning.

If difficulty is encountered in financing the Recommended Plan on a timely basis, an alternative plan could be utilized. This alternative plan would be a modification of Case 1C, utilizing a gas-turbine with a waste heat boiler as the next base load addition before proceeding with essentially the same program of conventional steam generating unit additions as in the Recommended Plan.

2. RECOMMENDED POWER SUPPLY PLAN

In arriving at the Recommended Power Supply Plan for the City, consideration was given to all of the power supply alternatives studied, particularly that of Case 1A (Independent Operation - Base Case). As described at the end of Section IV in the discussion of each of the alternatives, there are economic penalties and other problems to be overcome in each of the other cases studied when compared with Case 1A. Taking this into consideration, of all the cases studied, Case 1A appears to be the best alternative that can be achieved at this time. However, because of a number of other factors which are described below, the recommended power supply plan for the City is a modification of the Base Case 1A.

Until this past summer peak load period, the City's existing No. 7 turbine-generator had not been operated at its full capability during the summer, since the City's summer peak load heretofore has not required the full machine output. During this past summer's operation, it was determined that, because of the high cooling water temperature, the No. 7 unit should not be operated at an output greater than 30,000 kw for sustained periods, and that for short periods, by dropping the vacuum on the machine, it can be operated at an output of 33,000 kw. This de-rating of the machine's output from 38,000 kw lowers the amount of the City's base load steam capacity during the summertime annual peak load period, and as a result, it is our opinion that the installation dates, as envisaged under Case 1A, of the next two base load steam units to be installed at the existing power plant, should each be advanced by one year. This situation is common to all those alternatives studied, such that the economic effect on each alternative would be approximately the same.

1. GENERATION FACILITIES

As stated above, because of the de-rating of the City's existing No. 7 unit and the critical nature of the power supply picture during the next year, our recommended power supply plan is a modification of Case 1A (Independent Operation - Base Case), and involves the early installation of diesel peaking generation in 1971 and the advancement by one year of each of the next two base load generating units at the existing power plant.

In 1971, with a projected peak summer demand of 44,000 kw plus required reserves of 19,000 kw, the installed capacity requirement is 63,300 kw. Two 2,750 kw diesel units

would be installed at the existing power plant in 1971, bringing the City's total generating capability to 68,000 kw. Following this, the City would utilize 5,000 kw of capacity credit from Vero Beach in 1973 and 1974, and in 1974 would install two additional 2,750 kw diesel units, bringing the City's total installed capability in 1974 to 73,500 kw. The 1974 diesel installation would be located at the site of the City's future Substation No. 2, which is discussed later in this Section. This installation would be capable of remote operation from the existing power plant via supervisory control. In addition to adding to the City's generating capability, these diesel installations would provide emergency back-up to this future substation in the event of a failure of transmission or substation facilities.

Through 1974 the City would, therefore, have in three units 57,000 kw of steam-electric generating capacity and 16,500 kw of diesel-electric capacity in six units. These diesel units have a low first cost, quick start capability (the existing units have been started in 57 seconds), proven reliability of starting when required, and great flexibility in operation under varying load and emergency conditions. They are, therefore, the ideal type of generation additions for reserve and peaking capacity. The City should always maintain a reasonable balance of this type of generation in the form of diesel units or gas turbines, as well as making major steam-electric plant additions as needed to meet base load requirements.

As indicated on Plate I-1, which follows at the end of this Section, the City would install its next 38,000 kw steam-electric base load generating unit at the existing power plant for commercial operation not later than 1975. In order to assure this unit's availability by 1975, we recommend that a one-year allowance be made for strikes, financing delays and other factors. The unit should, therefore, be scheduled for 1974 if a satisfactory financing plan can be developed consistent with such a schedule.

To provide the necessary space for this unit, the western end of the existing power plant, which contains the first four generating units and four boilers (three of which have already been retired), would be demolished. Funds have been provided for this demolition work in the \$5,450,000 Series 1969 of the Electric and Water Utility Revenue Certificates, and this phase of the work should commence during the latter part of 1971. With the addition of the 38,000 kw steam unit, the City's total generating capability

would be 111,500 kw by 1975, which would provide sufficient generating capacity to meet the City's load and reserve requirements until 1979 when 5,500 kw of diesel-electric capacity would be added at the site of future Substation No. 3.

Our Recommended Plan actually only extends for the ten-year period 1970-1979. Beyond this point, any of the other more attractive alternatives might actually be developed such as participation in a potential Florida Municipal Power Pool or closer planning and joint participation with Vero Beach in generating unit additions. Even though our studies show that for the period 1980-1989 such alternatives would be more attractive, they are still, nonetheless, more speculative than the City independently planning for its own future needs. We have, therefore, shown and discuss hereinafter such a long-range independent plan which the City can evaluate against such other alternatives during this period 1980-1989.

By 1980, under independent planning, the City would require its third 38,000 kw generating unit to be installed at the existing power plant. At this time, the City would have a projected peak demand plus required reserves of 125,000 kw and its total generating capability would be 117,000 kw. The 38,000 kw unit in 1980 would increase the City's installed capacity to 155,000 kw. If the City's load should grow at a greater rate than that projected between now and 1980, then this 1980 unit addition could well be a 44,000 kw (52,000 kw gross rating) generating unit, or if the joint systems of the City and Vero Beach coordinate the planning of their generating additions, then the 1980 unit could be a 66,000 kw (75,000 kw gross rating) addition, with contractual arrangements for the sale of unit power to Vero Beach. Plate I-2, which follows at the end of this Section, is a plot plan of the existing power plant layout and shows the proposed locations of the diesel units in 1971 and the base load steam generating units in 1975 and 1980. Based upon preliminary studies, it is our opinion that the existing plant site can accommodate two additional units in the size range of 33,000 kw - 44,000 kw (nominal rating) and 66,000 kw (nominal rating).

In 1982, under independent planning, with a projected peak demand of 125,000 kw, the City would require additional peaking type generation to meet its reserve obligation. 5,500 kw of diesel capacity would be installed during this year at a remote substation, followed in 1983 and 1984 with additional peaking and reserve capacity installations also at remote substations. The 1983 installation would add 11,000 kw of capacity to the City's system and the 1984 installation

would add 16,500 kw of capacity, bringing the City's total dependable capability in 1984 to 188,000 kw. This peaking and reserve generation could also be in the form of gas turbines, and an evaluation would have to be made at the time to determine the best type peaking capacity from both an economic and a reliability standpoint.

In 1985, under independent planning, with a projected summer peak demand of 167,000 kw, the City would require additional base load generation and a 75,000 kw steam generating unit would be added at a new power plant site, bringing the total installed capability on the City's system to 263,000 kw. Detailed site investigations were beyond the scope of this Initial Power Supply Study; however, it is anticipated that the new power plant site would be located between the City and Vero Beach near the County line on the west side of Indian River. In 1986, it was assumed that the City's existing 8,000 kw unit No. 5 would be retired, reducing the City's total installed generating capability to 255,000 kw and its total steam-electric capacity to 200,000 kw.

In 1988, under independent planning, with a projected summer peak demand of 222,000 kw, and a total generating capacity requirement including reserve of 266,000 kw, the City would install 22,000 kw of peaking capacity, bringing its total installed capability to 277,000 kw. This generating addition would be followed in 1989 with a second 75,000 kw steam-electric base load unit at the new power plant site, bringing the City's total installed capability to 352,000 kw.

Table I-2, which follows, presents a summary of the generating facilities proposed under the Recommended Plan through 1979 and under independent planning from 1980 through 1989.

1 IN THE UNITED STATES DISTRICT COURT
2 IN AND FOR THE SOUTHERN DISTRICT OF
3 FLORIDA, MIAMI DIVISION

4 CASE NO. 79-5101-Civ-JLK

5 THE CITY OF GAINESVILLE AND :
6 THE GAINESVILLE-ALACHUA REGIONAL :
7 UTILITIES BOARD, THE LAKE WORTH :
8 UTILITIES AUTHORITY, THE UTILITIES :
9 COMMISSION OF NEW SMYRNA BEACH, :
10 THE SEBRING UTILITIES COMMISSION, :
11 AND THE CITIES OF ALACHUA, BARTOW, :
12 FT. MEADE, HOMESTEAD, KISSIMMEE, :
13 MT. DORA, NEWBERRY, ST. CLOUD, :
14 STARKE AND TALLAHASSEE, FLORIDA, : VOLUME I

15 Plaintiffs, :

16 v. :

17 FLORIDA POWER & LIGHT COMPANY, :

18 Defendant. :
19 -----X

20 15th Floor Conference Room
21 Southeast National Bank Building
22 Miami, Florida
23 Wednesday, 1:40 p.m.
24 April 22, 1981

25 DEPOSITION OF HENRY CLAY PETERS, JR.

26 Taken on behalf of the Defendant before
27 Joannie Fieger, Court Reporter, Notary Public in and
28 for the State of Florida at Large, pursuant to
29 Notice of Taking Deposition.

30 - - - - -

1 A I can't say if this is the first or
2 not, I don't remember.

3 Q Do you remember any consideration of
4 that by the city prior to February 19, 1972, while you
5 were acting director of utilities or director of
6 utilities?

7 A '72 is the date that strikes me--that
8 sticks in my mind. I can't remember anything prior to
9 it, no.

10 Q Do you recall the circumstances in
11 which Mr. Berry wrote this letter?

12 A "It will be necessary for increased
13 capacity to keep pace with load growth," it says.

14 Q Let me show you another document which
15 was marked yesterday as Pearson Exhibit 69.

16 MR. VAN EATON: Off the record.

17 (Discussion off the record.)

18 MR. VAN EATON: Go ahead and take the
19 time to read the whole document, if you would.

20 THE WITNESS: This is sometime after.

21 Q (By Mr. Bouknight) Mr. Peters, that
22 appears to be a letter dated February 26, 1972, to you
23 from Mr. Berry. Did you get that letter from Mr. Berry?

24 A Yes, I did.

25 Q Is it accurate that as of February 26,

1 1972, "There is no way of knowing at this time whether
2 or not the city council will wish to explore the
3 alternative of interconnection"?

4 A We didn't know at the time whether we'd
5 wish to explore, is all I know.

6 Q Is it in accord with your recollection
7 that you didn't know at that time whether the city
8 council wanted to explore the alternative of inter-
9 connection with FP&L?

10 A Seems to me at that particular time
11 there was some talk about an offer from Florida Power
12 & Light to buy or lease or something of that sort, and
13 that's--they were talking about an offer from Florida
14 Power & Light to buy, so that is the reason he said
15 that he didn't know whether the city council wished
16 to explore the interconnection at that time.

17 Q What is your basis for believing that
18 in 1972 there was an offer pending by Florida Power &
19 Light to purchase the Homestead electric system?

20 A I didn't say there was an offer. I
21 said probably the council had probably asked Florida
22 Power & Light to make a proposal.

23 Q Is it true that at that time it was
24 unclear whether the city council wanted you to explore
25 the alternative of interconnection, at least in your

1 mind?

2 A At that time they did not want me to
3 explore the interconnection.

4 Q You wouldn't have done so under those
5 circumstances; would you?

6 A Not under those circumstances because
7 I had different thoughts and ideals from Mr. Pearson.
8 Mr. Pearson at times wanted--thought the best
9 alternative or to benefit the City of Homestead would
10 be to sell. I never wanted to sell the City of
11 Homestead--the light plant to Florida Power & Light.
12 I've always felt that somehow the--as they used to
13 call it--the white elephant could turn into a goose
14 that laid the golden egg. I had plans for my system
15 and I needed time for those plans to materialize.

16 I would like to say, I was not--I
17 disagreed with Mr. Pearson on many times when he
18 wished to sell out our light plant along with some of
19 the council.

20 Q At that time, then, as you recall, the
21 city council and the city manager were actively
22 considering the possibility of asking FPL to make a
23 proposal to acquire the system?

24 A I can't say that it would be all the
25 city council. I would say it would be Mr. Pearson,

1 sometime through his own ideals, or maybe one or two
2 councilmen, but certainly not the majority.

3 I have never seen the majority of the
4 council when they wanted to even look at a proposal
5 from Florida Power & Light.

6 Q At that time you understood that
7 council didn't want to explore the possibility of
8 interconnection until that decision was worked out
9 among the council?

10 A That's right, until that situation was
11 worked out.

12 Q Was there any particular reason,
13 Mr. Peters, why the subject of exploring an inter-
14 connection with Florida Power & Light didn't come up
15 between the time that you became acting director of
16 utilities in 1970 and this period in 1972?

17 MR. VAN EATON: Let me object. That
18 assumes a fact not in evidence.

19 Q (By Mr. Bouknight) You may answer.

20 A We might probably had correspondence
21 between '70 and '72, but none that I remember.

22 Q You can't think of any particular
23 reason why there wouldn't have been consideration of
24 this during that time period; is that right?

25 A Consideration of what, sir?

1 Q Of the possibility of interconnection.

2 A There was no possibility of inter-
3 connection during that time. Florida Power & Light
4 refused us interconnection.

5 Q When, to your knowledge, did Florida
6 Power & Light refuse you interconnection?

7 A Well, not exactly refuse us, but never
8 could get together on it, had prolonged it and would
9 keep making more engagements for meetings. It wasn't
10 until FP&L was put under the regulation of public
11 service--I mean FERC, Florida Power Commission then--
12 I mean Federal Power Commission then, excuse me. It
13 was not until Florida Power & Light was put under
14 Federal Power Commission and that seemed to turn
15 things around and they really got serious about the
16 interconnection.

17 Q Mr. Peters, exactly when was it that
18 you were involved in or witnessed any event that
19 indicated that Florida Power & Light either was
20 unwilling to interconnect or was delaying on the
21 subject of interconnection?

22 A Well, I felt that they were delaying it
23 because I could never get an agreement with them.

24 Q Have you testified---

25 A Not until after the Grid Bill went

1 into effect and after they went under regulation with
2 Federal Power Commission--

3 Q Let's see if we can divide the times--

4 A --on wholesale power.

5 Q Let's see if we can divide the time
6 periods, Mr. Peters. Let's talk about the time
7 period beginning when you assumed the position of
8 acting director of utilities and ending in February of
9 1972.

10 Can you tell us about anything that
11 happened during that time period that indicates that
12 Florida Power & Light either refused to interconnect
13 with you or was delaying an interconnection with you?

14 A I can't remember the--I can't recall
15 that.

16 Q You can't recall any such event?

17 A No.

18 Q Sir, now let me show you another
19 document which was marked yesterday as Pearson
20 Exhibit No. 70.

21 Pearson Exhibit 70 appears to be a
22 memo to file on Florida Power & Light interoffice
23 correspondence from Frank Thompson - South Dade
24 dated December 19, 1972. It purports to describe a
25 meeting which Mr. Thompson had with Mr. Berry who was

1 acting as Homestead's consulting engineer.

2 My first question, Mr. Peters, is, do
3 you have any recollection of any approach that the
4 city made to Florida Power & Light Company about
5 interconnection between February of 1972 and this
6 meeting in December of 1972 that is described in this
7 memorandum?

8 A Any correspondence?

9 Q Or any kind of contact.

10 A Between February '72--between when?

11 Q February '72 and December '72.

12 You might want to read this memorandum,
13 and particularly the next to the last sentence which
14 I will read into the record, "He further stated that
15 some people within the city government are opposed to
16 interconnection for certain reasons which are unclear
17 to him."

18 A Well, that may be true. You're not
19 ever going to get a hundred percent council.
20 Probably always some people that disagree or agree
21 with interconnections.

22 Q Let me ask you this and then I want to
23 come back to that question.

24 Is it your recollection that in
25 December of 1972 the disagreement within the city

1 Q Let me show you a letter which I'd ask
2 the reporter, please, to mark as Peters' Exhibit No. 1.

3 (The document referred to was
4 thereupon marked "Peters'
5 Exhibit 1 for Identification.")

6 Q (By Mr. Bouknight) Peters' Exhibit 1
7 appears to be a letter on Smith and Gillespie
8 stationery dated May 2, 1975, written to Mr. R. T.
9 Culberson, chief engineer, Florida Power & Light
10 Company, signed by Mr. James J. Berry and showing
11 copies to, among others, Mr. Peters.

12 Do you recall receiving this letter
13 from Mr. Berry, Mr. Peters?

14 A Yes, sir.

15 Q Let me ask you this: After the inter-
16 connection agreement was signed on May 1, 1974, what
17 steps did the city take to move ahead with its work
18 on that interconnection?

19 A It was signed May 1974?

20 Q Yes, sir.

21 A... Well, steps were taken to bid
22 construction of the interconnection.

23 Q How long did that take?

24 A... Seems to me it took about three years--

25 Q Do you know why it took that long---

1 A --for the completion--before the
2 construction was completed.

3 Q Just the bidding process, how long did
4 it take for you to get contracts in place to do the
5 work that the city needed to do?

6 A I don't recall when they put out
7 invitations to bid to the contractors. I don't
8 recall the date.

9 Q Do you recall at the time that the
10 negotiations were completed in January of 1974 when
11 the city projected that the interconnection would be
12 activated?

13 MR. VAN EATON: Could you read back
14 that question, please.

15 A I'd say that this just gives you the
16 advertising for bids for the oil-filled equipment and
17 circuit switchers. This is not a bid of the
18 contractors itself. It's advertising bids for
19 equipment, but it's not advertising bids for the
20 contractor.

21 MR. VAN EATON: Let the record show
22 that he was referring to Peters' Exhibit No. 1.

23 MR. BOUKNIGHT: Would you read back the
24 question that I asked a minute ago.

25 (Question read.)

1 Q (By Mr. Bouknight) I guess that wasn't
2 a very clear question.

3 Let me ask it this way: As of January
4 1974 when did you think you'd be able to complete this
5 interconnection so it could be activated?

6 A By 1978.

7 Q You didn't expect it to be any earlier
8 than that?

9 A No, I didn't have--yes, I did, as a
10 matter of fact. We did have problems with contractors
11 dragging the work out and it was anticipated, I think,
12 to be from start to finish about a two-year project.
13 It seemed to me it drug out about three years.

14 Is that the answer you wanted?

15 Q Yes.

16 Mr. Peters, do you know why it was
17 that with an agreement having been reached in January
18 of 1974 and the agreement actually having been
19 executed on May 1st of 1974 that it wasn't until May
20 of 1975 that you were advertising for bids on these
21 items that are discussed in Peters' Exhibit 1?

22 MR. VAN EATON: I instruct the witness
23 not to speculate as to any answer.

24 MR. BOUKNIGHT: My recollection was
25 that Mr. Peters was there at the time.

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MR. VAN EATON: All I'm saying is that if you can't remember, Mr. Peters, you don't have to speculate as to an answer.

THE WITNESS: Just wait a minute.

Well, if I recall, Florida Power & Light is the one that--they bid this equipment for us so they get this equipment for us. Seemed to me they bid it for us, Florida Power & Light bid it for us. This is equipment only.

Q (By Mr. Bouknight) What I'm asking is, do you have any impression that after this agreement was signed in May of 1974 that any delay in getting the interconnection in place was attributable to Florida Power & Light Company?

A No. I would not say that any delay was any fault of Florida Power & Light Company as far as completion of the interconnection. Due to construction.

Q Due to construction or was it anything else?

A No, not anything else that I can recall.

Q Is it the case that after the agreement was signed on May 1, 1974, it took some time for the City of Homestead to work out the arrangements for financing the equipment that it was committed to

2a

1 purchase?

2 A I'm trying to remember whether this
3 equipment was supposed to be paid half by Florida
4 Power & Light and half by Homestead.

5 Q In any event, Mr. Peters, it was
6 necessary for Homestead to sell some bonds to pay for
7 its portion of the interconnection; wasn't it?

8 A Well, Homestead paid for just about all
9 of the interconnection. There was very little
10 equipment that Florida Power & Light bought in the
11 interconnection.

12 Q Did Homestead have to sell some bonds
13 in order to pay for this equipment?

14 A Homestead had to float bonds to pay for
15 the whole interconnection. That \$5,500,000. I mean,
16 is that the one?

17 MR. VAN EATON: Would you like to see
18 that exhibit?

19 THE WITNESS: Yes. Was that the one on
20 the interconnection?

21 Q (By Mr. Bouknight) Mr. Peters, I did
22 examine that. I don't think it is, but you are welcome
23 to look at it.

24 A It was a \$4,000,000 bond issue we're
25 about then. It was a \$4,000,000 bond issue, if I

1 recall, and we paid for most all the interconnection
2 through that bond issue.

3 Q Mr. Peters, did it---

4 A What you must understand here is this
5 wasn't the bid for the whole interconnection. This
6 was just a bid for some small amount of equipment,
7 oil-fille equipment and circuit switchers, and we're
8 not talking about a great deal of money here.

9 Q Is it your recollection that other
10 equipment was bid earlier than that?

11 A Oh, yes.

12 Q Do you recall if this was all done
13 promptly after May 1, 1974, or was there a delay?

14 A It was done pretty promptly after that.
15 Sometimes we even bid--we have been known--I can't
16 recall this incident, but we have been called to even
17 make bids on equipment or packages for expansions
18 even before the bond issues are complete.

19 Q Mr. Peters, I'm very pleased to be able
20 to show you a piece of paper which is entitled
21 "Official Statement, City of Homestead, Florida,
22 \$4,000,000 electric and water revenue bonds, series
23 1975," dated October 29, 1975.

24 I ask you, sir, if that is the official
25 statement or a true copy of the official statement

1 or a true copy of the official statement which the
2 City of Homestead issued to finance the interconnection
3 with Florida Power & Light Company?

4 A It is, yes.

5 Q Why did it take you all---

6 MR. VAN EATON: Excuse me, Lon, are we
7 going to mark this as an exhibit?

8 MR. BOUKNIGHT: Yes. I'd ask, please,
9 that it be marked as Peters' Exhibit 2.

10 (The document referred to was
11 thereupon marked "Peters'
12 Exhibit 2 for Identification.")

13 THE WITNESS: Yes, sir, I said it is.

14 Q (By Mr. Bouknight) Why did it take the
15 city from May 1, 1974, to October 28, 1975, to sell
16 these bonds?

17 A Well, I think that's a relatively short
18 time to sell them.

19 Q You regard this as a normal time that
20 it would take the city to finance something of this
21 sort?

22 A That's six months?

23 Q No, that's 18 months.

24 A Eighteen months. Well, there is
25 problems with interviewing your bond issue people that

1 you want to do the work. Sometimes that takes delays
2 and then the bond issue itself.

3 Seems to me it's pretty hard to get a
4 bond issue any earlier than eight, nine months.

5 Q Did the city start its preparations for
6 this bond issue before the contract was executed on
7 May 1, 1974? Do you recall?

8 A I don't recall that.

9 MR. BOUKNIGHT: Off the record.

10 (Discussion off the record.)

11 Q (By Mr. Bouknight) Mr. Peters, this
12 May 2, 1975, letter from Mr. Berry indicates that
13 "It is expected that the City of Homestead and Florida
14 Power & Light Company should be able to effect the
15 interconnection on or about September 30, 1976."

16 Is that consistent with your recollec-
17 tion of what the city expected as of May 1975?

18 A I would say so.

19 Q In fact, when was the interconnection
20 effected?

21 A Would you make that a little bit more
22 clearer?

23 Q Yes. . . When was the interconnection
24 completed so that you could energize it; in fact,
25 looking back and knowing what you know now? and

1 A Seemed to me it was '78.

2 Q Was that delay attributable to the
3 difficulties you spoke of with some of the contractors?

4 A Yes. They ran over completion time.
5 Quite a bit over completion time. Say, six months,
6 maybe longer. I can't recall.

7 Q What contractor are you talking about?

8 A Can't remember the name.

9 Q Does ANECO---

10 A What I want to say is there was two
11 contractors. There was WONTECO who was one of them---

12 Q How about A-N-E-C-O, does that sound
13 like one of them?

14 A ANECO, that's it.

15 Q Let me show you a document---

16 A That was not the first contractor.

17 The first contractor was from Tifton, Georgia, but I
18 can't remember the name of the company.

19 Q Did you have to fire that first
20 contractor?

21 A No. The first contractor sold out to
22 ANECO. Now it's coming back to me. Sold out to
23 ANECO and then ANECO had some real problem with
24 supervision and real problems building our lines.

25 As a matter of fact, Mr. Clyde Booth

1 had to go out and our engineer had to go out and
2 supervise ANECO's job to get it done.

3 Q Did ANECO agree that the problem was
4 their fault or did they argue that the city had
5 continually made changes in specifications of what
6 they were supposed to do?

7 A I don't recall what changes the city
8 made and the specifics on it, but I do know that
9 through their own house, not being able to keep enough
10 people on the job and not being able to keep a
11 supervisor on the job, that we just didn't get any-
12 thing done. That's a proven fact.

13 Q Let me show you---

14 A That's in the notes of Mr. Clyde Booth.

15 Q Where does Mr. Clyde Booth live now?

16 A Homestead.

17 Q Who is he employed by or is he retired?

18 A Employed by the City of Homestead.

19 Q He is still employed by the City of
20 Homestead?

21 A Yes.

22 Q What is his position?

23 A He's my inspecting engineer.

24 We've got two new diesels. We've got
25 a new installation going in and he's inspecting the

1 installation.

2 Q Is that the same Clyde Booth who at one
3 time worked for Maurice Connell & Associates?

4 A It is.

5 Q Let me show you a document and ask the
6 reporter, please, to mark this as Peters' Exhibit 3.

7 (The document referred to was
8 thereupon marked "Peters'
9 Exhibit 3 for Identification.")

10 Q (By Mr. Bouknight) Peters' Exhibit 3
11 appears to be on the stationery of Smith and Gillespie
12 Engineers, Inc., a letter dated June 2, 1978, to a
13 Mr. Lee R. Sims, Jr., ANECO, from a Mr. David A. Jones
14 of Smith and Gillespie Engineers, Inc., showing a copy
15 to Mr. Peters.

16 Mr. Peters, did Mr. Jones of Smith and
17 Gillespie write this letter on behalf of the City of
18 Homestead?

19 A Yes.

20 Q Let me show you a second document which
21 I will ask the reporter, please, to mark as Peters'
22 Exhibit 4.

23 (The document referred to was
24 thereupon marked "Peters'
25 Exhibit 4 for Identification.")

1 Q (By Mr. Bouknight) This appears to be
2 a letter on the stationery of ANECO Company addressed
3 to Mr. Jones of Smith and Gillespie Engineers dated
4 June 12, 1978. Have you seen this letter before,
5 Mr. Peters?

6 A I just don't recall this letter at all.
7 I may have seen it, but I just---

8 Q Fair enough.

9 (Thereupon Marta Manildi, Esq.,
10 enters the room.)

11 (Short recess taken.)

12 THE WITNESS: May I feel free to speak
13 on this?

14 Q (By Mr. Bouknight) On the exhibit?
15 I don't think I've asked you a question yet.

16 A We were talking about this issue right
17 here, ANECO.

18 MR. BOUKNIGHT: What was said just
19 before we left.

20 (Questions and answers read.)

21 Q (By Mr. Bouknight) My question,
22 Mr. Peters, if you'd look at page 2 of this letter
23 which is Peters' Exhibit 4, does this---

24 MR. VAN EATON: That is the June 12th
25 letter; isn't it, Mr. Bouknight?

1 MR. BOUKNIGHT: Yes, it is.

2 Q (By Mr. Bouknight) And look at some of
3 the material on pages 3 and 4. Does this refresh your
4 recollection as to whether there was a dispute between
5 Homestead and ANECO as to whose fault this delay was?

6 A Well, there was a dispute between Smith
7 and Gillespie representing the City of Homestead and
8 ANECO on change orders, and what they did was we did
9 penalize them for delay of lost productivity here.
10 I don't know what the penalty was for each day, but I
11 do know that this is a true figure, was in the neighbor-
12 hood of around \$50,000 penalty for the delay on their
13 part.

14 Like I said before, I don't recall
15 ever seeing this document and I don't necessarily
16 agree with ANECO's document on the change orders, but
17 I do agree with this document on the loss of
18 productivity. The 49,322, I can recall that.

19 MR. VAN EATON: Can we go off the
20 record for just a second.

21 (Discussion off the record.)

22 Q (By Mr. Bouknight) Mr. Peters, would
23 you take a look at Pearson Exhibit 76 which is that
24 big fat exhibit.

25 May I direct the witness' attention to

1 memorandum for discussion No. 7 which appears in the
2 document which has been marked Pearson Exhibit 76 and
3 that is entitled "To Special Committee to Review
4 Interconnection, City of Homestead, Florida; from
5 James J. Berry; subject, the effect of different
6 alternatives on cost." It is dated February 25, 1974.

7 I would direct your attention, please,
8 Mr. Peters, to page 3 of this exhibit, and that table
9 appears to discuss the possible in-service dates for
10 the interconnection between Homestead and Florida
11 Power & Light Company.

12 I'd ask you first, are you familiar
13 with this work that Mr. Berry apparently did in
14 February of 1974?

15 A I'm familiar somewhat with it.

16 Q Is it true that at that time the city
17 believed that it had alternatives available to it
18 which would provide for having this interconnection
19 completed and in service by January of 1975?

20 MR. VAN EATON: I'd like the witness to
21 go ahead and take a look at the whole memorandum for
22 discussion No. 7, if you would.

23 MR. BOUKNIGHT: The witness is free to
24 do that. My question is, if to his knowledge, it's
25 true that that's what the city thought then.

1 MR. VAN EATON: The reason I would like
2 the witness to go ahead and take his time and feel
3 free to read it is so that he's clear that, in fact,
4 the city even did consider itself to have any
5 alternatives at that time.

6 THE WITNESS: Okay. What's the
7 question again?

8 MR. BOUKNIGHT: Would you read the
9 question back, please, ma'am.

10 (Question read.)

11 MR. VAN EATON: Mr. Bouknight, I am
12 going to object. That question is too vague. It
13 leaves open the question of whether you're asking
14 whether the city had alternatives to building a tie,
15 any alternative it could think of or whether it had
16 alternatives that would result in an equivalent inter-
17 connection.

18 Q (By Mr. Bouknight) Mr. Peters, I don't
19 think that objection has much merit. Let me state it
20 in a way that there can be no doubt in your mind.

21 As of February of 1974, did the City
22 of Homestead believe that the interconnection which
23 had been negotiated between Homestead and Florida
24 Power & Light Company could be installed by early 1975
25 if Homestead did certain things to do that?

1 A I don't believe it could have been
2 installed by 1975, no.

3 Q Do you have any opinion or do you think
4 Mr. Berry was just wrong about that?

5 A I think he was wrong with his timing.

6 Q Did you think then---

7 A He ran into many complications and he
8 may have thought so, but then he ran into complications.
9 Maybe with the council on making decisions on what
10 some of these alternatives should be.

11 Q Let me see if I understand you
12 correctly.

13 Do you mean that Mr. Berry thought,
14 honestly thought that at the time, but that he didn't
15 anticipate the amount of time that would be consumed
16 in getting decisions from the Homestead City Council?

17 MR. VAN EATON: I object. I don't
18 think you have established that the witness even knows
19 what Mr. Berry was thinking at that time.

20 Q (By Mr. Bouknight) You may answer the
21 question.

22 A I really can't recall what Berry was
23 thinking at that time.

24 Q What did you think then?

25 A Well, I don't think we could have

1 completed it by then. I think it would have taken .
2 much longer than that to complete it.

3 Q Because of the necessity of getting
4 decisions from the city council or for some other
5 reason?

6 A Are you talking about--well, when you
7 look and see that the council hasn't made decisions,
8 you've got a special committee here to review inter-
9 connection or alternatives, you had a bond issue that
10 had to be floated. At that time I didn't feel like
11 you could complete the interconnection itself by 1974.

12 Q '75?

13 A '75, excuse me. I always thought it
14 would take probably '77, '78.

15 Q Is it true that Homestead was
16 responsible for doing the great bulk of the work that
17 was involved in installing the interconnection,
18 construction work?

19 A Yes. Homestead did the bulk of the
20 work.

21 Q Did Florida Power & Light also have some
22 work that they had to do?

23 A Florida Power & Light had to do some
24 work or agreed to do some work for us on the metering
25 part of it.

1 Q Did Florida Power & Light need to know
2 what the construction schedule was likely to be in
3 order to time their own work?

4 A I don't recall Florida Power & Light
5 ever asking what the completion date was going to be.
6 I think we worked with them and we told them when we
7 would need for them to--they were supposed to obtain
8 some equipment for this metering and we gave them
9 some--well, there wasn't a true date. I don't
10 remember what date we told them, but we gave them the
11 closest date that we knew of for them to come in and
12 put their equipment--install their equipment in.

13 Q Let me direct your attention, please,
14 sir, to Pearson Exhibit 75 which, I believe, we showed
15 you awhile ago.

16 It appears to be a letter dated
17 January 15, 1974, from Mr. R. G. Mulholland, Florida
18 Power & Light Company, to City of Homestead, care of
19 Mr. Pearson, City Manager.

20 The second paragraph of that letter
21 refers to completion of the interchange facilities
22 scheduled for March 1975.

23 My question is, Mr. Peters, did anybody
24 at Homestead tell Mr. Mulholland in early 1974 that
25 that date was wrong?

1 MR. VAN EATON: Could you read that
2 back.

3 (Question read.)

4 THE WITNESS: No, nobody told him that
5 date was wrong.

6 Q (By Mr. Bouknight) Did the City of
7 Homestead think in January of 1974 that that date was
8 wrong?

9 A Well, at the time that they quoted this
10 date, they didn't contemplate all the problems with
11 ANECO for delays.

12 Q Did they also at that time contemplate
13 a little faster internal decision-making process than
14 what actually happened?

15 A You mean from this 1975?

16 Q No, sir. In 1974 when the city was
17 making its projection of when the interconnection
18 would be completed, I believe you've said that they
19 believed that this March 1975 date was realistic but
20 that there were things they didn't anticipate.

21 A Right.

22 Q Was one of the things that they didn't
23 anticipate the fact that it took longer to get the
24 approvals needed from the Homestead City Council than
25 people thought it was going to take in January of 1974?

1 A You're speaking of the decision the
2 council made with the special committee?

3 Q Yes, sir, and the other decisions as I
4 understand they had to make. Do I understand
5 correctly that the city council---

6 A I'm not so sure--excuse me, I'm not so
7 sure the city council ever made a decision on this
8 special committee report.

9 Q The city council did have to make a
10 decision to execute the interconnection agreement
11 before it could be executed; didn't it?

12 A Yes.

13 Q Didn't they also have to make decisions
14 on bids before you could advertise for bids on
15 equipment and services?

16 A Yes.

17 Q Didn't they also have to make decisions
18 before you could accept a bid and enter into any
19 contracts on the basis of those bids?

20 A Well, I think we went into the contracts
21 before--with FP&L--you're talking about the bid
22 contracts?

23 Q Yes, sir.

24 A That's true.

25 Q Didn't the city council also have to

1 take several formal actions before bonds could be
2 sold to pay for the interconnection?

3 A I don't understand what you mean by
4 "several acts."

5 Q For example, was it necessary--

6 A You said several decisions?

7 Q Yes. Was it necessary, for example,
8 for the city council to authorize the attorneys to
9 initiate litigation in order to have the bonds
10 validated?

11 A They did authorize the city attorney to
12 have the bonds validated, yes.

13 Q Did they also have to take action
14 approving the bond resolution before the bonds could
15 be sold?

16 A Right, yes.

17 Q Is it true that one of the reasons why
18 this date of March 1975 for completion of the inter-
19 connection proved to be too optimistic was that it
20 took longer to get the city council to take all those
21 actions than people thought it was going to take as
22 of January of 1974?

23 A I still don't think the loss of time
24 was caused by council. I think the loss of time was
25 caused by the bond issue length and construction

1 period and the problems we had with ANECO.

2 Q Was the company that you told us awhile
3 ago that was bought out by ANECO Gibson Electric?

4 A Gibson, that's the one I was trying to
5 think of, yes.

6 Q Mr. Peters, from the time that the
7 interconnection was put in place until today, has
8 there ever been an indication when the city wanted
9 power delivered to it by Florida Power & Light Company
10 under the SR or PR rates when you couldn't get as much
11 power as you wanted?

12 MR. VAN EATON: Could you read that
13 question back again, please.

14 (Question read.)

15 MR. VAN EATON: I am going to object
16 to that. That seems to be vague. I don't understand
17 what you mean by, "Did the city always get what it
18 wanted?"

19 Are you excluding FP&L's attempts to
20 take the city off the SR and PR rates?

21 MR. BOUKNIGHT: I just want the witness
22 to answer the question.

23 THE WITNESS: I got the power on
24 Florida Power & Light I was supposed to get under the
25 contract agreement on the SR and the PR.

1 we didn't actually ask Florida Power & Light Company
2 for transmission service.

3 Q Anytime you wanted transmission service
4 during this period you asked for it; is that correct?

5 MR. VAN EATON: Objection. He testified
6 he didn't recall any, period.

7 Q (By Mr. Bouknight) Would you answer
8 the question.

9 A Well, seems to me that you wouldn't
10 very well be able to obtain transmission unless you
11 requested it.

12 Q Would your answer be affirmative to the
13 question?

14 A Yes, we requested it.

15 Q Do you recall any occasion arising in
16 which the city considered entering into any kind of a
17 transaction with the city electric system at Key West?

18 A There was some negotiations, a pig-in-
19 a-poke situation where we talked about interconnecting
20 with Key West.

21 Q Were there some technical problems
22 that would have been involved in that?

23 A Technical problems is the Seven Mile
24 Bridge.

25 Q There's not any transmission over that

1 seven miles of ocean, is there?

2 A That's correct.

3 Q You used the phrase "pig in the poke."
4 Do I understand correctly that you didn't regard this
5 as something that was considered very seriously at
6 that time?

7 A Well, I think it was kind of a stab in
8 the dark because we certainly wouldn't object to
9 interconnecting with Key West, but there was a problem
10 of bond issue for Key West. They've never--Key West
11 is not--is not in very good financial condition and
12 in my opinion it would be pretty hard for Key West to
13 borrow enough money, particularly at that time, to
14 build a 38-mile transmission line, because that would
15 be instead of the seven-mile transmission line over
16 the Seven Mile Bridge. The actual distance of that
17 transmission line would be 38 miles to tie into
18 Marathon which is Florida Keys Electric.

19 Q Can you tell me what the Florida
20 Municipal Power Agency is?

21 A Florida Municipal Power Agency is an
22 agency of joint venture with all cities on generation
23 participation, transmission, connections or
24 participation in transmission, participation in fuel
25 supply for this municipal electric system. It is an

→ B.H. Fuqua

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION



File

Florida Power & Light Company) Docket No. E-8008

PRESIDING ADMINISTRATIVE LAW JUDGE'S INITIAL
DECISION ON RATE INCREASE, SERVICE CONDITIONS,
AND INTERCONNECTION

(November 26, 1974)

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New Smyrna Beach takes issue with FP&L on several points. The City asserts that it does not wish to be saddled with expenditures for an interconnection of greater capacity, and therefore greater cost, than is presently needed. It argues that FP&L would benefit from an interconnection, since the City would be willing to maintain a 15 percent generating reserve on its own system; but that even if such reserve could not be maintained, the City would be obligated to pay the Company greater revenues (including payment for reserves). It contends that FP&L has made no investigation and presented no credible evidence that the proposed three-terminal interconnection would be unworkable in the New Smyrna Beach area; that there are three-terminal lines satisfactorily in operation throughout the country; that such operation is merely a matter of providing suitable protective relaying equipment; and that FP&L's position is based on rigid policy, rather than any study of the proposal.

The City does not deny that interconnection from a two-terminal line is simpler than a three-terminal line. With respect to operating problems presented by the latter, the City's witness, Mr. Peter M. Collet, has testified about "schemes" suggested by two manufacturers of protective devices "which put forward solutions which have to be specifically tailored" to the particular case; and that "there is equipment available that is an approach to the problem."1/

The evidence and the arguments presented by the Company and the Staff are persuasive that the interconnection proposed by the City should be disapproved. The Commission, under the provisions of Section 202(b), is without authority to compel such an interchange, unless it could be found that it would not impair the ability of FP&L to render adequate service to its customers. The record herein does not permit such a finding. Although not unique, the three-terminal interconnection is apparently of unconventional design and not widely accepted by the industry; and, as such, its implementation by the Company would be contrary to its operating policies and practices. The City has failed to sustain

1/ The City's initial brief, p. 15.

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its burden of proof by showing that its proposal conforms to the required statutory standards. On the other hand, Alternative A put forth by FP&L appears to be an appropriate interconnection. The Company is willing to establish voluntarily that interconnection; and no order is, therefore, necessary to effectuate that proposal. It is worth noting that the three-terminal line interconnection, should the relaying not work properly, may well cost more in the long run, by reason of substantial damage to equipment and outages, than the two-terminal line interconnection proposed by FP&L.

Neither FP&L's Alternative B, nor the City's latest proposed alternative high voltage interconnection, set forth in Appendix A to its initial brief, need be dealt with and considered herein. The former has been abandoned by FP&L; and the latter has been objected to, and challenged by, the Company as being a post-hearing proposal without any record support. On September 19, 1974, the Utilities Commission of New Smyrna Beach filed a motion to reopen the record for the purpose of submitting additional testimony concerning the new issues raised by the pleadings contained in its briefs. This proceeding has been pending since January 29, 1973. All of the parties have been afforded ample opportunity to present all evidence they deemed relevant and material. The record herein was closed on February 28, 1974. Since no adequate justification has been advanced for the reopening of the hearing at this late date and for further prolonging this case, the motion will be denied.

It is observed that the parties are still free to settle their differences and reach an amicable agreement concerning the interconnection matter, and they are again urged to do so. However, in the event of a lack of a mutually satisfactory conclusion of this matter, the City may file a proper application, pursuant to the provisions of Section 202(b) of the Act and of Sections 32.1-32.4 of the Commission's Regulation promulgated thereunder, for appropriate relief in a separate proceeding. In fact, the Commission appears to have been quite liberal in exercising its discretion to allow the City to proceed in this proceeding, arising under Section 205 of the Act and involving mainly proposed increased rates and charges, to determine also the

OFFICIAL STENOGRAPHERS' REPORT

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

SUBJECT

In the Matter of:

FLORIDA POWER & LIGHT COMPANY

DOCKET NO. ER78-19

(Phase II)

Held at Washington, D. C.

Wednesday, November 14, 1979

PAGES 16 TO 166

Columbia Reporting Company

OFFICIAL REPORTERS

300 SEVENTH STREET, S.W.

WASHINGTON, D. C. 20024

TELEPHONE 554-9050

1 exactly the opposite to the inference so tortuously wrung out
 2 of this letter by Dr. Taylor. We did, in fact, inform New
 3 Smyrna Beach in a letter dated June 30, 1975 "that FPL is
 4 agreeable to providing such transmission service in accordance
 5 generally with the principles outlined below." The letter was
 6 in response to a request to transmit Crystal River power
 7 (Exhibit X (RJG-8)). In a concurrent letter dated June 26,
 8 1975, counsel for New Smyrna Beach stated:
 9

10 "I recognize that FP&L does not desire at this time to
 11 offer transmission services broadly, covering all its
 12 interconnected systems and their resources. It would be
 13 sufficient for disposition of the immediate matter that
 14 the transmission service for Crystal River No. 3 be
 15 accomplished on the basis of a specific contract covering
 16 the amount of the entitlements to be transmitted. Within
 17 the specified capacity, FP&L would also transmit any
 18 replacement capacity and energy required during periods
 19 when Crystal River is not operating. This should be a
 20 relatively simple matter to resolve."

21
 22 (Exhibit 9 (RJG-9)). I fail to see how FPL's documented
 23 provision of transmission service to New Smyrna Beach for
 24 each and every specific transaction they have presented to us
 25 constitutes a refusal to deal.

26
 27 Q Dr. Taylor has cited three other instances of alleged refusal to
 28 wheel; the first of these (p. 11, line 16) is allegedly contained
 29 in a letter to JEA dated February 26, 1971. Does that letter
 30 constitute a refusal to wheel?
 31

32 A No. A more thorough examination of this incident is
 33 revealing. The January 27, 1971 letter from J. K. Wiley of
 34 JEA to H. W. Page of FPL, referred to in the February 26,
 35 1971 letter is omitted from Dr. Taylor's testimony. That
 36 letter, Exhibit 10 (RJG-10), reveals that JEA proposed that
 37 FPL and JEA transmit power through each other's system and
 38 that
 39

40 "Payments for the service of transmitting power will,
 41 under normal conditions, be at no cost, on the basis that
 42 both parties will be transmitting power through the other
 43 party's system on an equitable basis"
 44

45 At that time FPL was interconnected with JEA at two points.
 46 One of the points, the Robinwood interconnection had been
 47 located east of the St. John's River at higher cost to FPL, to
 48 accommodate JEA. The result of that interconnection was to
 49 cause normal power flows through the JEA system to the
 50 portion of FPL's system lying to the north and west of JEA.
 51 Such power flows resulting from multiple interconnections are
 52 a normal consequence of interconnected system operation and
 53 could, in no sense, be interpreted as JEA "wheeling" for FPL.
 54 JEA was not interconnected with any system other than FPL.

1 Therefore, JEA was not in a position to wheel "third party"
2 power from any other system to or from FPL. Since they
3 could not wheel third party power and since the power flows
4 through JEA from one part of FPL's system to another was the
5 normal consequence of interconnection and was not wheeling,
6 JEA was not in a position of providing any equitable
7 consideration in return for FPL's transmitting JEA power at no
8 cost.

9
10 One only has to read further on in the letter to find set forth
11 several instances of power purchases by FPL from three other
12 utilities to resell to JEA. In short, power from other utilities
13 was delivered to JEA using FPL's transmission system. The
14 electrical phenomenon and its impact on the FPL system is
15 exactly the same as "wheeling". What the letter does not
16 disclose is that it was normal practice at that time, before
17 FPL was held to be jurisdictional under the Federal Power
18 Act, to charge for the service using a % or flat adder on to the
19 power cost. As the letter plainly says, these kinds of
20 transactions were regularly and customarily taking place in
21 Florida. The only distinction is the way in which the service
22 was priced and the nomenclature used. The net effect is
23 identical to the transaction we today call wheeling service.
24 JEA enjoyed the economic benefit of Orlando's power, Tampa
25 Electric's power, and even Lakeland's power. That can hardly
26 be said to be a refusal to deal. The issue boils down to one of
27 pricing. FPL preferred to price on the basis of an adder rather
28 than transmit power at no cost which is what JEA requested.

29
30 Q Dr. Taylor alleges another refusal to wheel at p. 12, line 5,
31 involving Homestead. Did FPL refuse to wheel for
32 Homestead?

33
34 A No. What Dr. Taylor has done, as he has consistently done
35 throughout his testimony, is to extract an example of involved
36 and lengthy internal speculations over alternative positions
37 with respect to dealing with Homestead, long before a
38 Company position was decided. FPL invariably considers and
39 discusses a wide variety of policy positions before embarking
40 on any particular course of action. Refusal to deal cannot
41 possibly be inferred from speculation. The relevant question
42 is, what power did Homestead want to wheel and what
43 transactions were refused? The answer is none. No
44 transactions were contemplated by Homestead and no
45 transactions were involved in the discussions with Homestead.
46 No request for transmission service was made. No refusal of
47 transmission service occurred. The discussions related to
48 interconnection. An interchange agreement was negotiated
49 and an interconnection was made. There has been no refusal
50 to deal.

51
52 Q Dr. Taylor alleges another refusal to wheel at p. 12, line 31,
53 involving Vero Beach. Did FPL refuse to wheel for Vero
54 Beach?

AGREEMENT

SECTION 0.1 THIS AGREEMENT, made and entered into this _____ day of _____, 1971, by and between the Jacksonville Electric Authority, a Florida body, politic and corporate, hereinafter called the AUTHORITY, and Florida Power and Light Company, a private corporation organized and existing under the laws of the State of Florida, herein referred to as the COMPANY;

WITNESSETH

SECTION 0.2 WHEREAS, the AUTHORITY and the COMPANY have entered into an interchange agreement dated _____, 1963, for the purpose of the interchange of electric energy and capacity; and

SECTION 0.3 WHEREAS, the AUTHORITY and the COMPANY desire to supplement the said interchange agreement with this AGREEMENT; and

SECTION 0.4 WHEREAS, the AUTHORITY and the COMPANY desire to transmit power through each others electric system for the express purpose of the use of said power for the other party's purpose in order to promote and secure reliability and to avoid duplication of electrical facilities, with the intent being that economics to both parties will be achieved; and

SECTION 0.5 NOW, THEREFORE, in consideration of the foregoing premises and of the mutual benefits to be obtained from the covenants herein set forth, the parties hereto do hereby agree as follows:

354494

ARTICLE I

TERM OF AGREEMENT

SECTION 1.1 The term of this AGREEMENT shall commence on the _____ day of _____, 1971, and shall continue in effect for the remaining term of the existing AGREEMENT dated _____, 1963, which provides for cancellation upon one year's written notice from one party to the other.

ARTICLE II

TRANSMITTED POWER

SECTION 2.1 By mutual agreement between the parties, one party may transmit power through the other party's system, provided that such transmitted power will not jeopardize the service reliability of the other party's electrical system. Power to be transmitted through one party's electrical system may be power which is received from another electric utility from which power has been negotiated for by the other party.

ARTICLE III

PAYMENTS

SECTION 3.1 Payments for the service of transmitting power will, under normal conditions, be at no cost, on the basis that both parties will be transmitting power through the other party's system on an equitable basis; however, under extremely unusual circumstances, where it is mutually agreed by both parties that one party would suffer economic damages in the form of undue electrical losses due to the transmitting of power over that party's system, then compensation to the damaged party would be

set at that time. The basis for setting such compensation will be made on an energy basis which would compensate the injured party for increased losses on its electrical system. Such payments will be mutually agreed to in advance by a letter of agreement which would become a part of this AGREEMENT during the duration of the transmitting of power. It is hereby agreed that the transmitting of power by the Florida Power and Light Company through the JEA electrical system, under normal system conditions, will not cause economic damages through the time period of June 1, 1975.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

6352

9a - 10/17/70 16/14/70

From: Lee S. Nelson, Commissioner

To: Mayor, Commissioners and Electric Supervisory Personnel.

Subj: Meeting with Florida Power and Light officials on Tuesday morning, 13 October, 1970

Those in attendance were FPL Officials Mr Richard Hill, Vice President, Mr J. L. Breedlove, Division Manager, Mr Louis Browning, Division Engineer, two representatives from R. W. Beck, Consulting Engineers and Mr Milton Davis, Mr Robert Skinner and Lee S. Nelson representing the City of Fort Pierce.

Discussion centered around the temporary tie line and the proposed permanent tie line with FPL, with results as follows:

1. The temporary tie line may be used as long as needed for power from FPL to the City but it cannot be used for power from the City to FPL. It was agreed that FPL will make a further study of the possibility of a direct connection with the City over the temporary line.
2. Said temporary or permanent tie line shall be used only for emergency service to the City.
3. FPL has not and will not commit itself to firm power although it may be considered if and when FPL has facilities for power in excess of its directly connected customer needs.
4. FPL will assist Fort Pierce at all times in the event of an emergency.
5. Within the indefinite future, probably within five years FPL plans to increase its line capacity from 69 KV to 138 KV and it was learned for the first time that the City, having constructed a permanent tie line at a cost of \$620,000.00 would then be faced with an additional approximate outlay of \$300,000.00 to convert its own tie line to accept the 138 KV conversion by FPL.
6. The suggestion that FPL bear a part of the cost for a temporary or permanent connection was denied since a legal "stand by" charge by FPL for maintaining instant automatic power is not a part of the current agreement. Such "stand by" charge might amount to as much as \$100,000.00 per year.

It is noted, although not discussed at the meeting with FPL that the 69 KV connection with Vero Beach has served both cities many times with no apparent problem although it does not contain the automatic switch gear for instantaneous power to either community. This omission is a part of the agreement with Vero Beach and it is further noted, according to the Sup't of the Vero power plant, that their new 38000KW generator will be on the line early in the summer of 1971, thereby serving the Fort Pierce - Vero Beach power requirements to a greater advantage.

A further fact to be noted is that the R. W. Beck Company plans to recommend the immediate installation of additional Diesel generators at the Fort Pierce power plant

Whether it be Diesel units or a tie line a time lag of at least nine months is indicated.



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