

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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

RESPONSE OF FLORIDA POWER & LIGHT COMPANY
IN OPPOSITION TO PETITION FOR ENFORCEMENT ACTION

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Dated: August 27, 1993



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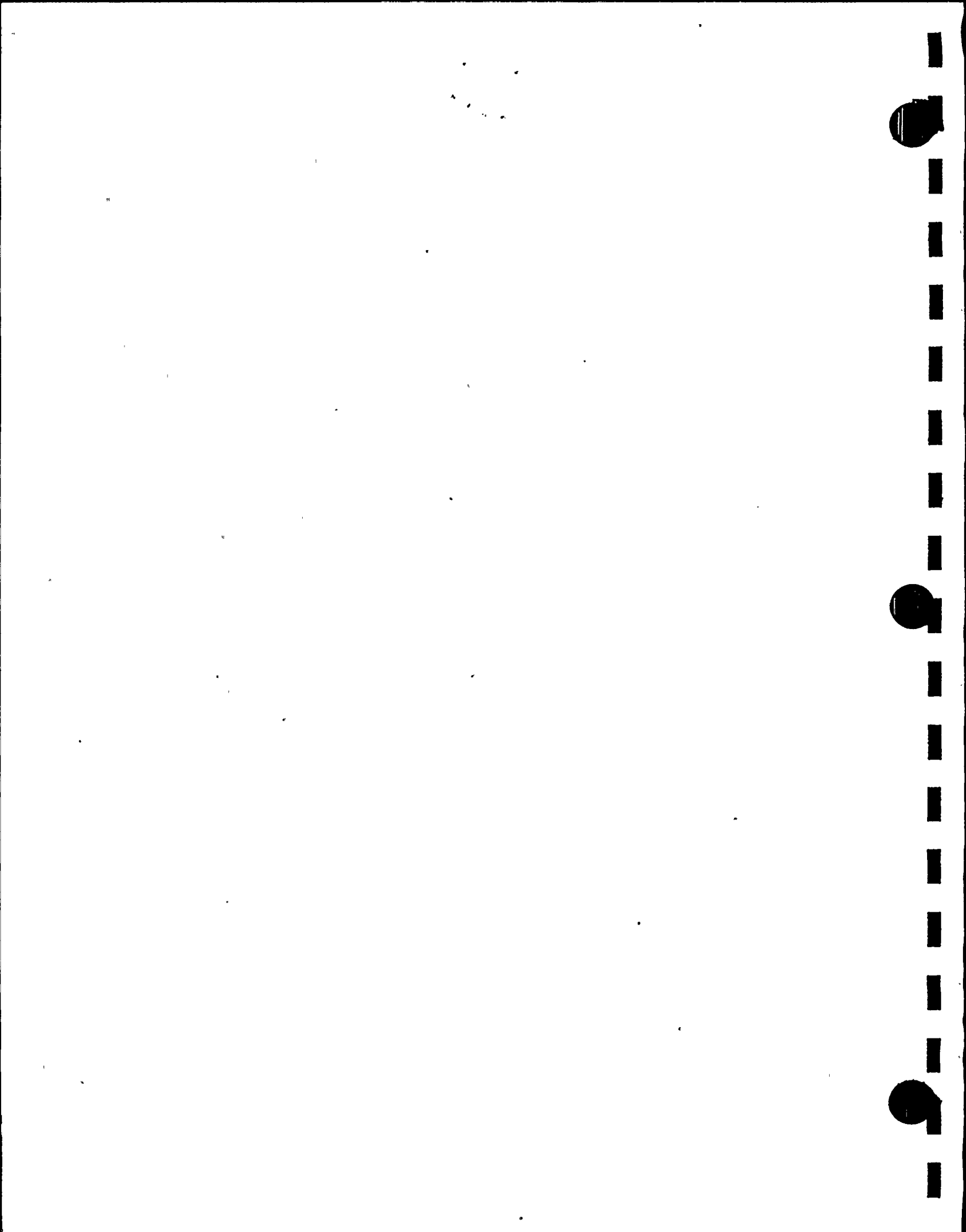
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On July 2, 1993, the Florida Municipal Power Agency ("FMPPA") filed with the Commission pursuant to 10 C.F.R. § 2.206 a document entitled Petition of Florida Municipal Power Agency For Declaration And Enforcement Of Antitrust Licensing Conditions And To Impose Requirements By Order (hereinafter "FMPPA Petition"). The FMPPA Petition asks the Director to take certain actions to enforce antitrust conditions contained in Florida Power & Light Company's ("FPL") St. Lucie Unit No. 2 Operating License ("St. Lucie License Conditions"). According to FMPPA, FPL is not in conformance with the St. Lucie License Conditions because it has "refused" to provide what FMPPA describes as "network" transmission service. FPL categorically denies FMPPA's allegations and asks that the Director dismiss FMPPA's Petition without the initiation of a proceeding under Section 2.206.

On the same day that FMPPA filed the instant FMPPA Petition, it also filed with the Federal Energy Regulatory Commission ("FERC") a Complaint pursuant to Section 206 of the Federal Power Act ("FPA") and an Application for transmission



service pursuant to Section 211 of the FPA. The FERC filing is based on the same allegations that FMPPA makes before this Commission.

FPL filed its Answer to FMPPA's FERC Complaint on August 23, 1993. In that Answer, FPL responded to each of FMPPA's allegations and demonstrated that FMPPA is not entitled to any relief under Sections 206 or 211 of the FPA at this time. FPL believes that its FERC Answer responds to all of the allegations that FMPPA has made before this Commission and, therefore, FPL has attached its FERC Answer to this Response and asks that it be incorporated herein by reference. In the instant filing, FPL will supplement its FERC Answer by focusing the Director on several central issues raised by FMPPA's Petition and the reasons why the Petition should be dismissed.

1. FPL Has Agreed To Respond To A "Good Faith Request" For Network Transmission Service Pursuant To New Section 211 Of The Federal Power Act And To Abide By A FERC Decision Pursuant To Sections 211 And 212 Of The Federal Power Act

As discussed in the next section of this Response, after the St. Lucie License Conditions became effective, FPL and FMPPA entered into five transmission service contracts that are on file as rate schedules with the FERC. It has been and remains FPL's position that it will negotiate to replace these five existing transmission service agreements with an agreement providing comprehensively a form of "network" transmission



service so long as (1) the reliability of FPL's system is not jeopardized, (2) FPL receives fair compensation and its other customers do not subsidize FMPA, and (3) the arrangement allows FPL prudently to plan and operate its transmission system. In accordance with this position, FPL told the FERC in its August 23 Answer to FMPA's Complaint (FPL FERC Answer at 1-6, 61-67) that FPL would respond to a good faith request for network transmission service under FPA Section 211, 16 U.S.C. § 824j, 1/ that contains the information required to be provided by FERC's recent Statement of Policy on good faith transmission service requests, 2/ and that FPL would abide by an ultimate decision under Sections 211 and 212 of the FPA (following any appeals) regarding FPL's provision of transmission service. 3/

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- 1/ Section 211 was revised in 1992 as part of the Energy Policy Act of 1992. That Section, together with Section 212 of the FPA, permits FERC to order transmission owning utilities to provide transmission services for wholesale transactions and to establish rates for such services pursuant to standards set forth in Section 212.
- 2/ Policy Statement Regarding Good Faith Requests For Transmission Services And Responses By Transmitting Utilities Under Sections 211(a) And 213(a) Of The Federal Power Act, As Amended And Added By The Energy Policy Act Of 1992, Doc. No. PL93-3-000, FERC Stats. & Regs. Regulations Preambles (CCH) ¶ 30,975 (1993).
- 3/ FPL explained to the FERC that FMPA to date has refused to supply FPL with the information required to evaluate the impact of FMPA's service request on FPL's system, and that FMPA has varied its request at different times. (FPL FERC Answer at 3-5, 24-28, 63-67.)



This voluntary commitment by FPL exceeds what FPL is required to do under the St. Lucie License Conditions and the recently enacted transmission provisions of the FPA. As discussed below, neither the St. Lucie License Conditions nor Section 211 require FPL to acquiesce voluntarily to the replacement of valid and enforceable contracts for transmission service. Accordingly, FMPA's Petition, apart from being without merit, is mooted by FPL's voluntary agreement..

2. FMPA Is Bound By Contracts That It Entered Into With FPL After The St. Lucie License Conditions Became Effective

FMPA's contention that FPL is in violation of the St. Lucie License Conditions ignores the fact that FMPA already exercised its rights under the License Conditions and entered into long-term transmission service contracts with FPL. FMPA briefly refers to the five Transmission Service Agreements ("Existing TSAs") that it has with FPL that provide transmission services for the delivery of various FMPA generating resources. FMPA's request for "network" service entails replacement of these existing contracts with a new transmission service agreement.

All of these Existing TSAs, however, were entered into after the St. Lucie License Conditions went into effect. In each case, FMPA entered into negotiations with FPL after requesting transmission service pursuant to the License Conditions. In each case, FPL made concessions in order to reach agreement with FMPA, and the resulting contracts were executed by the Parties and



filed with the FERC under Section 205 of the FPA. As described in FPL's FERC Answer, FMPA's negotiators have acknowledged in depositions that the Existing TSAs were the result of good faith bargaining in which neither party got everything it wanted, and that FMPA's decision to sign the contracts was a "business decision." (FPL FERC Answer at 18-22.)

These contracts satisfy FPL's obligations under the St. Lucie License Conditions. They are binding contractual commitments of both FPL and FMPA and they are enforceable as filed rates at the FERC. 4/ FMPA seems to harbor the belief that the St. Lucie License Conditions afford it a perpetual right to walk away from contracts it has executed whenever it is no longer satisfied with them. To the contrary, Article X of the License Conditions (Transmission Services) expressly provides that the License Conditions will be implemented through agreements or tariffs filed with the FERC. The License Conditions do not nullify the law of contracts or the filed rate doctrine.

FMPA's position has already been rejected by one federal District Court. In United States v. Pacific Gas & Elec. Co., 5/ a federal District Court rejected a request, much like FMPA's, for relief from existing agreements. The case involved

4/ United Gas Pipeline Co. v. Mobile Gas Serv. Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956) ("Mobile-Sierra").

5/ 714 F. Supp. 1039 (N.D. Cal. 1989).



the validity of a 1982 agreement whereby the Western Area Power Administration ("WAPA") agreed to sell energy to the California cities. Pacific Gas & Electric Co. ("PG&E") argued that that agreement could not be valid because there was a preexisting contract obligating the cities to purchase their full power requirements from PG&E. The cities argued that, under the antitrust license conditions for the Diablo Canyon nuclear plant (the "Stanislaus Commitments"), PG&E was obligated to offer full or partial requirements service, and that this gave the cities the right unilaterally to terminate or modify the full requirements contracts.

The court rejected the cities' argument, pointing to the fact that the full requirements contracts were entered into by the cities long after the Stanislaus Commitments took effect. The court concluded that:

To the extent that the Cities obligated themselves to take their full requirements from PG&E in exchange for PG&E's obligation to supply them, they cannot look to the Stanislaus Commitments for an escape clause.

Id. at 1052.

The PG&E decision was obviously correct on this point. If FMPA's interpretation of the St. Lucie License Conditions is accepted, contracts entered into pursuant to them would be binding only on the selling party. In effect, the License Conditions would allow the purchaser to override contract law and the filed rate doctrine by permitting the purchaser to walk away



from its contracts simply by arguing that the License Conditions would have permitted it to obtain more or different service on more favorable terms.

3. FMPA Made A Voluntary Choice To Negotiate And Sign Transmission Service Contracts With FPL Rather Than Seek Enforcement Of The License Conditions

FMPA's excuse for seeking the right to abrogate its Existing TSAs is that FMPA was forced by the exigencies of the situation to sign the contracts under duress. (FMPA Petition at 6.) There are three independent reasons why this excuse does not wash.

First, FMPA's argument is illogical. The St. Lucie License Conditions gave FMPA the option of requiring FPL to file unilaterally with the FERC unexecuted contracts for transmission service. (FPL FERC Answer at 40.) If FMPA had exercised this option in lieu of negotiating with FPL, FMPA would have been assured of the commencement of transmission service after the statutory 60-day notice period provided under Section 205 of the FPA, and, at the same time, would have retained the right to contest FPL's unilateral filing before the FERC as unjust and unreasonable and to obtain refunds for any charges found by FERC to be in excess of just and reasonable levels. At the same time, FMPA could have sought simultaneous enforcement of the so-called "network" requirement before this Commission.

Instead, FMPA chose to negotiate with FPL over a period of several months and to sign contracts that reflected many



compromises by both sides. The only fair conclusion that can be drawn from these facts is that FMPA concluded that it had obtained at least as much in concessions from FPL as it could expect to get if it sought enforcement of the St. Lucie License Conditions at the NRC or had directed FPL to file an unexecuted contract with the FERC. FMPA is now asking this Commission, under the rubric of the License Conditions, to relieve it of the consequences of its own free choice.

Second, the record developed in the current District Court litigation between FPL and FMPA shows that FMPA did not sign the Existing TSAs under duress, but rather made a business decision to enter into these contracts. This factual record is described in FPL's FERC Answer at 17-22. The facts here do not support a finding of duress under applicable law. (See FPL FERC Answer at 39.)

Third, FMPA's central problem is not that the rates, terms, and conditions of the Existing TSAs are improper. The problem is that subsequent to executing those contracts, FMPA decided that it wished to alter the All-Requirements Project and the other projects that FMPA had in place with its members, and for which the Existing TSAs were designed, in favor of the Integrated Dispatch & Operations ("IDO") Project. As FMPA acknowledged in its Petition, FMPA first began active consideration of its new IDO Project in 1987, after it had entered into all of the above-described contracts with FPL.



(FMPA Petition at 9.) The IDO Project involved an entirely new arrangement encompassing generation entitlements and cities that were not part of the All-Requirements or other projects. FMPA never discussed with FPL transmission service to implement the IDO Project during the negotiation of the All-Requirements TSA in 1984 and 1985, 6/ or in connection with the negotiation of the other Existing TSAs between 1983 and 1987, because the IDO Project did not even exist at that time. 7/

Finally, FMPA alleges that one of the TSAs, the All-Requirements Agreement (see FPL FERC Answer at 12-14), affords it a unilateral right to terminate the contract at any time. This argument is frivolous. The provisions at issue are relatively standard provisions in FERC contracts and none of them provides for a unilateral right of termination. The provisions are discussed in FPL's FERC Answer at 40-42. FMPA specifically sought and obtained long-term contractual commitments to support the projects it was involved in at the time. (FPL FERC Answer at 12-15.)

6/ FMPA's Petition leaves the misimpression that this Agreement was entered into in 1990. In fact, the 1990 "Amended and Restated" All-Requirements Transmission Service Agreement merely added another FMPA member city to the Project and otherwise substantially retained the rates, terms, and conditions committed to in the original 1985 All-Requirements contract.

7/ In the District Court lawsuit, one of FMPA's consulting engineers testified that FMPA was organizationally not ready to consider an IDO-type project prior to 1988. Deposition of Albert Malmsjo at 52/12 thru 56/10 (Feb. 15, 1993). (FPL FERC Answer at Tab C.)



4. The St. Lucie License Conditions Do Not Guarantee FMPA "Network" Service On The Terms That FMPA Demands

FMPA relies exclusively on the statement in Article X of the St. Lucie License Conditions that FPL will provide transmission service "among" neighboring entities. It then references the Atomic Safety and Licensing Board decision in Louisiana Power & Light Company, 8/ for the proposition that FPL's St. Lucie License Conditions require FPL to provide "network" transmission service on the particular terms that FMPA demands.

FPL already provides transmission service "among" FMPA members pursuant to the Existing TSAs. The transmission services provided by FPL under these existing agreements permit FMPA to integrate remote generation resources with the loads of multiple FMPA members and afford FMPA significant flexibility to vary the use of generation to serve its members' needs. These arrangements are described in detail in FPL's FERC Answer at 12-17, 48-50. As shown therein, FMPA already receives a form of network transmission service from FPL that more than meets any requirement established by use of the word "among" in Article X.

In addition, FMPA's position is based on a strained interpretation of the St. Lucie License Conditions that requires the Director to find that those License Conditions established

8/ In the Matter of Louisiana Power and Light Company (Waterford Steam Generating Station Unit No. 3), Docket No. 50-382A, 8 AEC 718 (1974), aff'd, 1 NRC 45 (1975).



the rates under which FPL would be required to provide "network" transmission service. ^{9/} The essence of FMPA's Petition is not that FPL must provide transmission service "among" FMPA's members, but that FPL must do so pursuant to rates established in the manner that FMPA considers proper. The question of the appropriate rates for transmission service is a matter for FERC to decide, as the St. Lucie License Conditions acknowledge by providing that agreements for transmission service will be filed with the FERC.

FMPA's references to the NRC license conditions imposed on Louisiana Power & Light Company are also misplaced. As explained in detail in FPL's FERC Answer at 42-47, the St. Lucie License Conditions do not include the provision added by the Waterford ASLB to address the network question. In addition, the Waterford ASLB expressly deferred to FERC on the question of the appropriate rates for transmission service, which is ultimately the issue in dispute here.

^{9/} The St. Lucie License Conditions do not even refer to, nor less define, "network" transmission service. On June 30, 1993, the FERC issued a "Notice of Technical Conference and Request For Comments" (Docket No. RM93-19-000) regarding the pricing of transmission services, in which it stated that there is no accepted definition of network service and asking for comments on what such service should entail. FMPA's self-serving interpretation of the St. Lucie License Conditions has no foundation whatsoever.



Conclusion

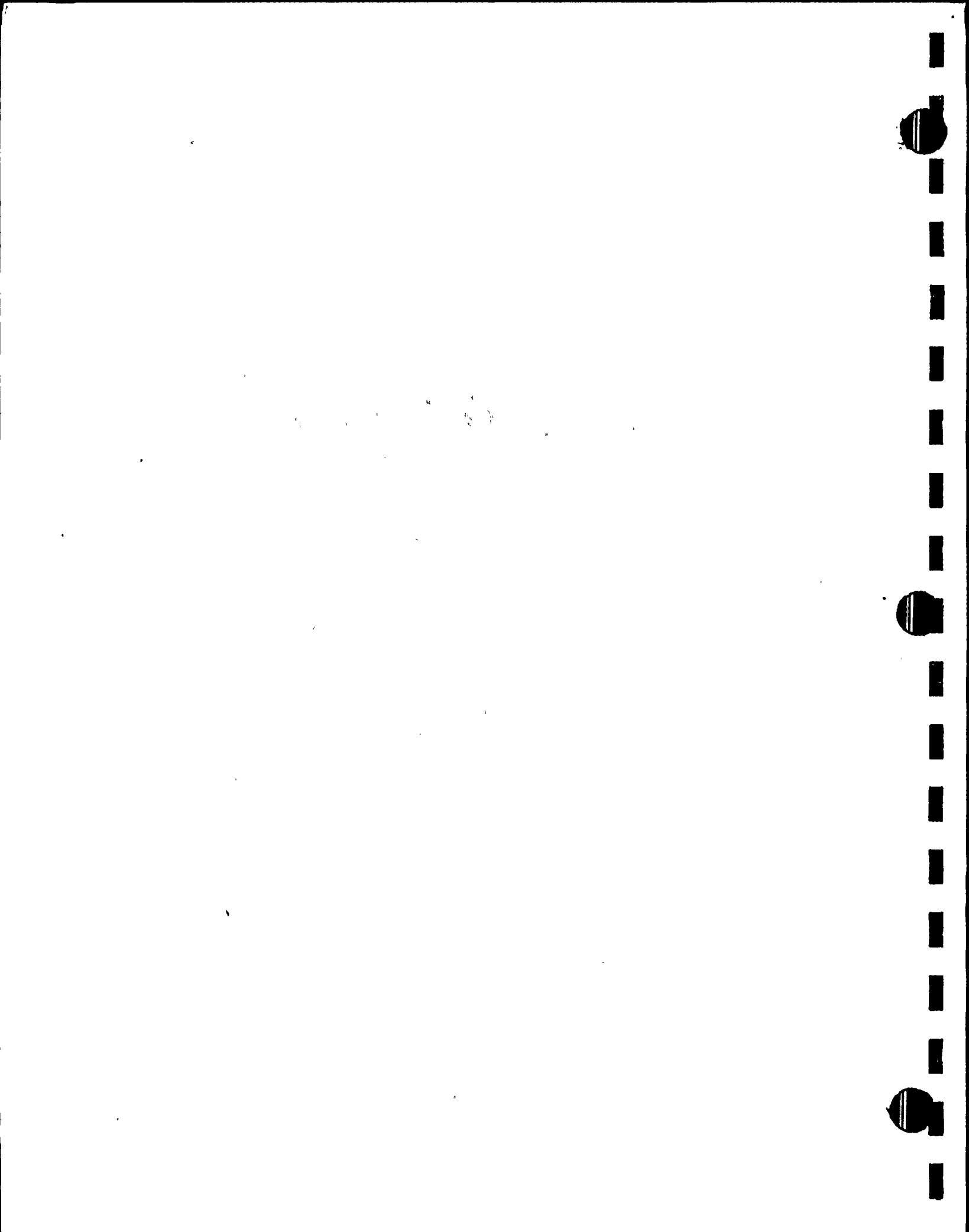
For all of the foregoing reasons, and for the reasons set forth in the attached Answer of FPL to FMPPA's Complaint at the FERC, FPL urges the Director to dismiss FMPPA's Petition.

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Dated: August 27, 1993



**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

FLORIDA MUNICIPAL POWER AGENCY,)

Plaintiff,)

vs.)

**FLORIDA POWER & LIGHT COMPANY,)
a Florida Corporation,)**

Defendant.)

**Docket Nos. TX93-4-000
and EL93-51-000**

**ANSWER OF FLORIDA POWER & LIGHT COMPANY
TO COMPLAINT, APPLICATION AND MOTION FOR
SUMMARY DISPOSITION OF FLORIDA MUNICIPAL POWER AGENCY**

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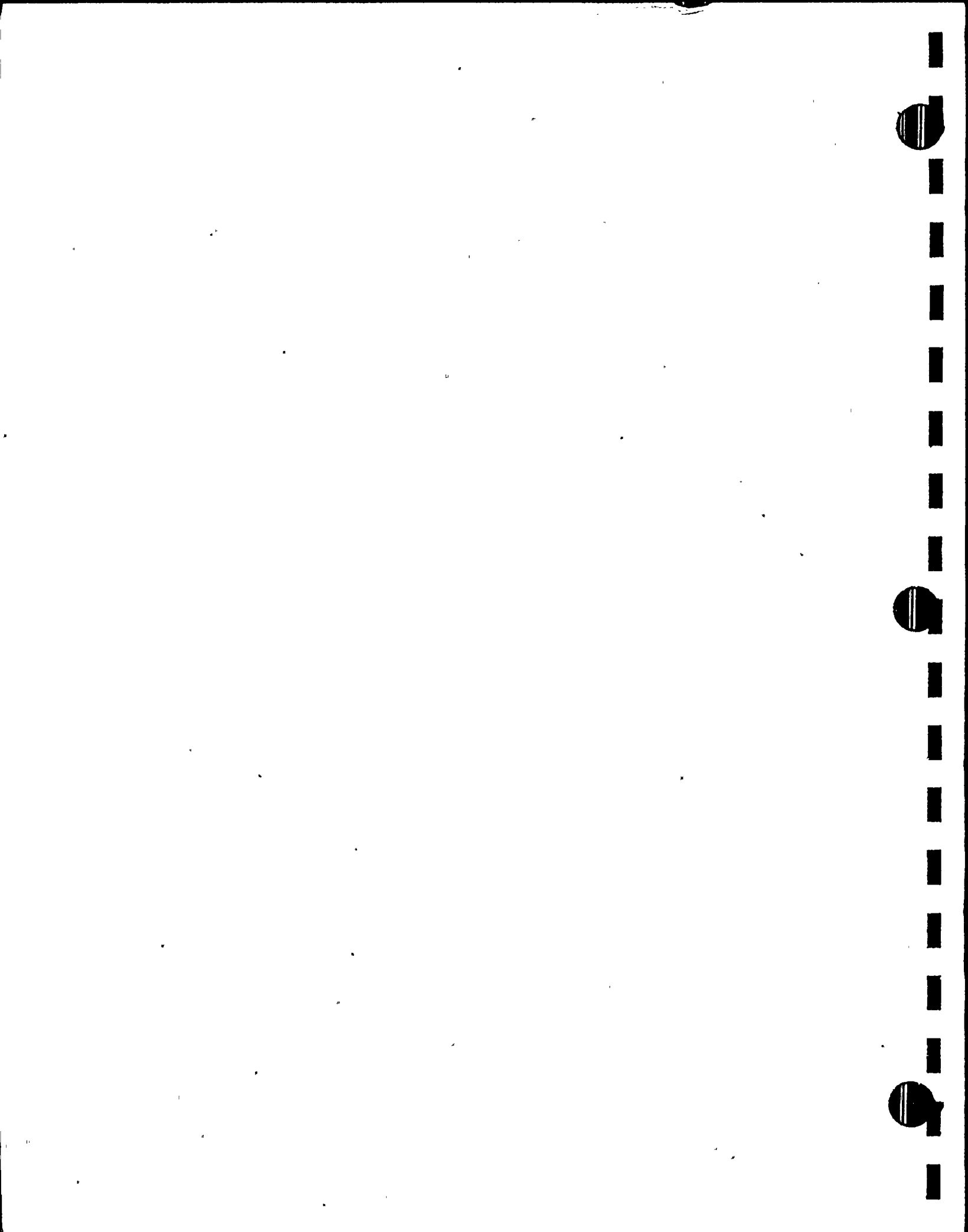


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1/ By order of July 23, 1993, the Commission set August 23, 1993 as the answering date.



The purpose of FMPA's Complaint is to obtain a form of "network" transmission service over FPL's system in lieu of the service FMPA currently receives under existing contracts with FPL. It has consistently been and remains FPL's position that it will negotiate to replace its five existing transmission service agreements with FMPA (the "Existing TSAs") with a single agreement providing comprehensively a form of "network" service so long as (1) the reliability of FPL's system is not jeopardized, (2) FPL receives fair compensation and its other customers do not subsidize FMPA, and (3) the arrangement allows FPL to prudently plan and operate its transmission system.

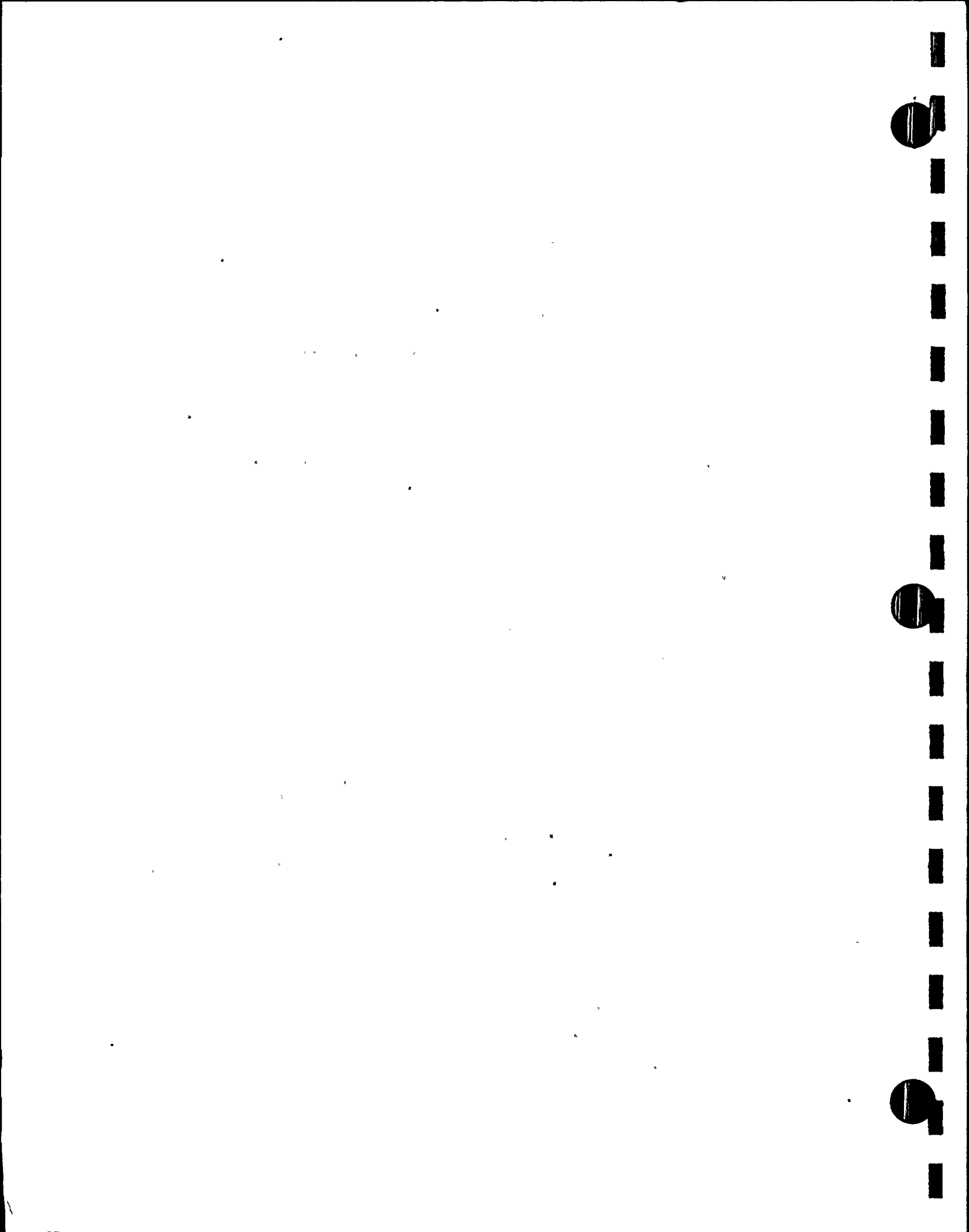
FPL believes that Sections 211 and 212 of the FPA provide a process for establishing rates, terms, and conditions of transmission service for FMPA that are consistent with these objectives. Accordingly, although FPL has legitimate rights under the Existing TSAs, FPL will respond to a specific good faith request for new "network" transmission service from FMPA in accordance with the Commission's recent Policy Statement, without regard to the Existing TSAs, and will provide service pursuant to Sections 211 and 212 of the FPA. FPL's willingness voluntarily to allow the Existing TSAs to be superceded by new arrangements established pursuant to Sections 211 and 212 of the FPA should moot the need for the Commission to entertain the FMPA Complaint.

FMPA's Section 206 Complaint must be rejected in any event because the Existing TSAs, which FMPA freely executed, cannot be shown to be unjust and unreasonable, a condition



precedent to a Section 206 action. Section 206 does not provide a vehicle for customers to escape their contractual obligations because they have decided that they want different services than the ones they contracted to purchase, and this conclusion does not change because FPL is subject to NRC license conditions -- particularly license conditions that already were in effect when the existing contracts were negotiated and executed. In addition, the Existing TSAs conform with, and indeed provide substantially more flexibility than is required by Commission precedent regarding point-to-point service. Further, the relief that FMPA seeks -- the compelling of an expanded form of transmission service -- cannot be ordered under authority of Section 206.

FMPA's Section 211 application must also be rejected at this time because FMPA has not made the mandatory good faith request for service that is a prerequisite to the exercise of Section 211 authority by the Commission. FMPA's request for transmission service must comply with the Commission's recent Policy Statement concerning good faith requests by providing FPL with the information that FPL reasonably needs to evaluate the impact of FMPA's transmission service request on FPL's system, in addition to the other components of a good faith request. To date, FMPA has discussed different versions of its Integrated Dispatch and Operations ("IDO") Project with FPL and has been consistently vague about the parameters of the service it



desires. In order to evaluate and respond to FMPPA's request FPL requires:

1. A designation of each municipal system to be covered by the requested service and ten-year projections of peak loads served by each delivery point for the covered municipals.

2. A designation of each FMPPA generating resource that FMPPA will or may utilize to serve the loads in (1) above, and the maximum quantity of power available to FMPPA from each such resource. 2/ This information should also include the data set forth in Attachment 2.

3. A designation of all planned or projected FMPPA generating resource additions (and/or substitutions) for the next ten years, the size and location of such resources, and the characteristics of the resource (base load, intermediate or peaking, plus the information required in 2. above to the extent available).

4. Any studies or other data showing FMPPA's anticipated dispatch or use of existing and planned/projected generating resources, including anticipated retirements or long-term shutdown options, and any studies or other data showing the impact of FMPPA's proposal on FPL's transmission system.

2/ The generation information should include (a) heat rate, (b) fuel type, (c) maintenance schedules, (d) real and reactive capabilities of each unit and (e) interchange schedules for each participating member by existing and future contract, expected interchange, and maximum and minimum imports. The information required in (e) above should be provided in the format contained in Attachment 1, page 1.



5. A model of each participating FMPA member's transmission system. 3/

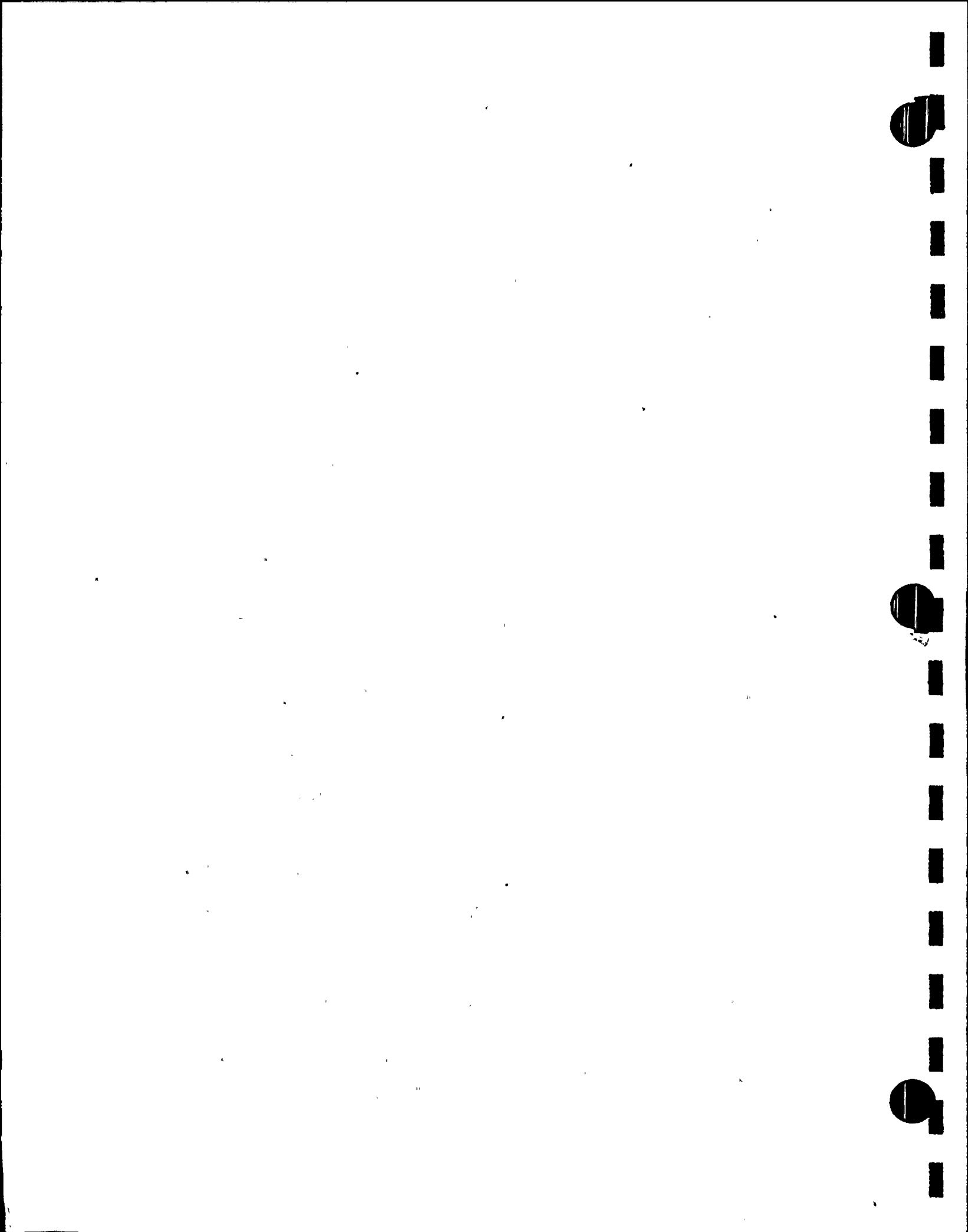
To date, FMPA has not been willing to provide much of this critical information to FPL and has presented FPL with a moving target. FPL cannot respond to stealth requests or moving targets. The requested information is not unreasonably detailed or burdensome to provide.

Finally, FPL asks the Commission to recognize that FPL is already providing transmission services to FMPA under valid and enforceable contracts. If FPL is going to agree voluntarily to cede its rights under its existing contracts and abide by the results of a Section 211 proceeding, FMPA, as part of its good faith request, should be directed to state whether it has a bona fide transaction in mind to which it is prepared to commit in lieu of the Existing TSAs. Documents discovered in the District Court case 4/ reveal that FMPA initially chose the district court forum because of doubts that this Commission would look favorably upon its arguments. 5/ Apparently, the instant

3/ FPL requests this information in PSS/E format and in printed and software formats. The information should include: (1) transmission line impedances, (2) compensation devices, (3) auto transformers, and (4) load projections and power factor (leading and lagging) for each substation.

4/ In a pending lawsuit filed against FPL in December 1991 in the Middle District of Florida, FMPA is arguing that it has a contractual and antitrust right to network transmission service. FMPA v. FPL, Case No. 92-35-CIV-ORL-22 (M.D. Fla.)

5/ Letter from R. Jablon, Esq. to C.R. Henze (Aug. 23, 1990). (Tab A.)



Complaint was filed as a last resort when FMPP found itself unable to explain satisfactorily to the court why the court should entertain a challenge to the legality of rates on file with this Commission, when FMPP had not even sought relief from this Commission. 6/

It is not appropriate for FMPP to force FPL and the Commission to engage in a lengthy proceeding regarding new transmission service for the IDO Project when, at the end of the road, FMPP alone can reject the Commission's findings and reassert rights to service under the Existing TSAs. Asking FMPP to state whether its request for service is bona fide is particularly important here. As discussed below, FMPP's modus operandi has been to negotiate and enter into contracts with FPL, decide shortly thereafter that it wants to do a project that differs from the one embodied in the existing contracts, and then use pressure tactics (like the instant Complaint) to force FPL to abandon its existing contracts. If FMPP is not prepared to go forward based on a determination under Section 211, or intends again to change its plans in the middle or at the end of the process, the Commission should have the ability to consider whether FMPP has made a bona fide, good faith request for transmission service that warrants the initiation of a proceeding under Section 211.

6/ It is a fair inference that FMPP's filing with this Commission was prompted by the motion for summary judgment that FPL filed with the court on April 15, 1993. (Tab B.)



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STATEMENT OF FACTS

It is impossible to extract from FMPA's Complaint anything approaching a fair recitation of FPL's and FMPA's relationship since the issuance of the St. Lucie Unit No. 2 License Conditions, or the actions of FPL in implementation of those License Conditions. FMPA has grossly distorted the factual record. The relevant facts are as follows:

7/ FPL hereby requests a waiver of the Commission's rules to the extent necessary to permit FPL to include three names on the Official Service List in this proceeding.



A. The St. Lucie Unit No. 2 License Conditions

In 1980, in the course of obtaining its Nuclear Regulatory Commission ("NRC") license to construct and operate its St. Lucie Unit No. 2 nuclear power plant, FPL, as the result of a settlement reached with the Department of Justice ("DOJ") and the NRC Staff, consented to the incorporation of antitrust conditions into the license. 8/ These antitrust license conditions ("License Conditions") require, inter alia, that FPL either enter into or unilaterally file with this Commission, agreements or tariffs to provide transmission service "between two or among more than two" receipt and delivery points of "neighboring entit[ies]." FMPA Appendix 23 at 24. FMPA is such an entity. The License Conditions entitle FPL to be reasonably compensated for the service that it provides, as determined by this Commission. 9/

8/ See Joint Motion of the Department of Justice, NRC Staff, and Applicant to Approve and Authorize Implementation of Settlement Agreement, Florida Power & Light Company (St. Lucie Plant, Unit No. 2), NRC Docket Nos. 50-389 and 50-389A, attached at Appendix 21 to FMPA's Pleading (Sept. 12, 1980). On May 26, 1981, the NRC, pursuant to a Memorandum and Order issued by the Atomic Safety and Licensing Board ("ASLB") dated April 24, 1981, issued the License Conditions as Amendment No. 3 to the St. Lucie Unit No. 2 Construction Permit. See Appendix 23 to FMPA's Complaint.

9/ Id. at 26. At the time of the NRC licensing proceeding, FPL was also involved in a legal action brought by certain Florida cities involving antitrust and other claims. On February 11, 1982, March 3, 1982, and April 20, 1982, dates all subsequent to the effective date of the License Conditions, FPL entered into settlement agreements with those cities to end the dispute. As part of these settlements, FPL agreed to support legislation to further

(continued...)



FMPA uses approximately 20 pages to describe its view of FPL's obligations under the St. Lucie License Conditions -- obligations that FPL accepts and has consistently honored -- but its discussion ignores the two points about the License Conditions that are most relevant for purposes of this proceeding. First, the License Conditions provide that FPL will enter into and file with the Commission agreements to provide transmission service. They state:

Company's provision of transmission service under this section shall be on the basis which compensates it for its costs of transmission reasonably allocable to the service in accordance with a transmission agreement, transmission tariff or on another mutually agreeable basis. Company shall file such transmission agreements or transmission tariffs with the Federal Energy Regulatory Commission or its successor agency. 10/

FMPA's Complaint seeks to evade the fact that all of the Existing TSAs between FPL and FMPA were entered into after the License Conditions went into effect. These existing contracts implement the License Conditions, and FMPA entered into them willingly and in circumstances where it could have required FPL to file unsigned agreements unilaterally or sought enforcement of the License Conditions at the NRC. The executed TSAs were filed with and accepted for filing by the Commission.

2/ (...continued)

FMPA's aim of becoming a fully functioning joint action agency supplying power to its members.

10/ FMPA Appendix 23 at 26.



The License Conditions do not override the law of contracts or the filed rate doctrine, and nothing in the License Conditions affords FMPA a perpetual right to walk away from existing agreements that it signed whenever it wants a new form of transmission service or otherwise becomes dissatisfied with its existing contracts.

Second, FMPA relies on the NRC ASLB decision in Louisiana Power and Light Company, 11/ to support its claimed right to network service. However, the LP&L license conditions are different from FPL's License Conditions. In particular, LP&L's license conditions contain an express "single charge" requirement for transmission among coordinating groups that was included by the ASLB to deal straightforwardly with the requirement imposed in that case for flexible delivery points. The absence of this provision from FPL's License Conditions shows that no similar requirement was intended here. Further, while the ASLB in LP&L rejected limiting LP&L's obligation to strictly point-to-point services, it did so in the context of the particular claimed need for access that gave rise to the issuance of those license conditions. 12/ It did not purport to

11/ In the Matter of Louisiana Power and Light Company
(Waterford Steam Generating Station Unit No. 3), Docket No.
50-382A, 8 AEC 718, 733, aff'd, 1 NRC 45 (1975) ("LP&L").

12/ The ASLB stated that the limitation imposed by the multiple charges meant that the license conditions were inadequate "to permit coordination (both operation and development) sufficient to overcome a situation inconsistent with the antitrust laws." 8 AEC at 733-34.



establish a generic transmission policy, require any particular rate, or determine the level at which a rate proposed by LP&L for a particular service would violate the license conditions. 13/ The ASLB that issued the decision stated, in fact, that the appropriate charges for transmission service were a matter for the FERC to decide. 8 AEC at 734.

Therefore, it is likely that in negotiating the Existing TSAs, which include significant flexibility for FMPPA as discussed in the next section, FMPPA's negotiators recognized that the LP&L decision did not decide the parameters of required transmission service, and, in any event, that FPL's License Conditions were materially different from the conditions imposed on LP&L. And, as a result, FMPPA made a tactical choice to accept the result of its negotiations with FPL, rather than to risk an unfavorable decision by the NRC or by this Commission in connection with a unilateral rate filing by FPL. FMPPA's General Manager and General Counsel have testified that FMPPA's decision to sign contracts with FPL was a "business decision" of FMPPA and that the contracts were not all that either party wanted but enough for both parties to go forward. 14/

13/ When the NRC's Appeal Board affirmed the Memorandum decision, it did not consider the Licensing Board's discussion concerning the meaning of the word "among" in its affirming opinion. In the Matter of Louisiana Power and Light Company (Waterford Steam Generating Station Unit No. 3), Docket No. 50-382A, 1 NRC 45, 48 n.6 (1975).

14/ See infra pp. 17-22.



B. The Existing Transmission Service Agreements

Subsequent to the establishment of the License Conditions, between 1983 and 1986, FPL and FMPA negotiated and entered into five agreements that are still in effect today for the sale of transmission services from FPL to FMPA. All of these agreements were executed before FMPA began active consideration of the IDO Project, and they were negotiated to implement other Projects that FMPA had arranged with its members at the time. These agreements are:

- (1) St. Lucie Delivery Service Agreement, FERC Electric Rate Schedule No. 72 (June 27, 1983);
- (2) All-Requirements Transmission Service Agreement, FERC Electric Rate Schedule No. 84 (Mar. 25, 1985). This TSA was amended by the Restated and Revised Transmission Service Agreement, FERC Electric Rate Schedule No. 109 (Oct. 2, 1990);
- (3) Stanton Transmission Service Agreement, FERC Electric Rate Schedule No. 92 (Nov. 25, 1986);
- (4) Stanton Tri-City Transmission Service Agreement, FERC Electric Rate Schedule No. 93 (Nov. 25, 1986); and
- (5) Agreement to Provide Specified Transmission Service, FERC Electric Rate Schedule No. 86 (Apr. 24, 1986).

The most comprehensive of the above is the All-Requirements Transmission Service Agreement ("Agreement") between FPL and FMPA, which was entered into in 1985. 15/ This

15/ FMPA's Complaint leaves the misimpression that this Agreement was entered into in 1990. In fact, the 1990 "Amended and Restated" All-Requirements Transmission Service Agreement merely added another FMPA member city to the Project and otherwise substantially retained the rates, terms, and conditions committed to in the 1985 contract.



Agreement enabled FMPA to meet its obligations under agreements with certain non-generating FMPA members that had contracted with FMPA to meet their total power supply requirements. FMPA alleges that this Agreement limits FMPA to point-to-point service, but that assertion is plainly wrong. The All-Requirements Agreement permits FMPA to integrate existing and future generation entitlements and loads of the applicable members and to incorporate those members' generation and loads into the Orlando Utilities Commission ("OUC") control area. The Agreement permits FMPA, without additional charge, to replace its existing resources with lower cost generation on an hourly basis by utilizing replacement transmission service. The Agreement permits FMPA to substitute new generation for existing generation resources on ninety days notice without additional charge, which means that FMPA has the flexibility to redesignate points of receipt regularly. The Agreement allows FMPA to add new generating resources to meet load growth. The Agreement permits FMPA to designate certain resources for peaking use and to vary transmission payments for those generators on a monthly basis. FMPA also has the right to redesignate contract demands associated with its peaking resources from year to year. The Agreement permits FMPA to use its interchange agreements with other utilities to buy and sell capacity and energy on behalf of the All-Requirements cities. And, by obligating FPL to provide transmission service for any excess demand on the system, the Agreement guarantees that FPL will meet FMPA's transmission needs



even if FMPA under-reserves transmission capacity. In its recent Policy Statement, the Commission stated that there is a continuum from point-to-point to full "network" service. On this continuum, the All-Requirements Agreement is close to full network service. The Agreement does not terminate until the year 2022.

The 1983 St. Lucie Delivery Service Agreement provides for transmission service over FPL's transmission facilities for FMPA's power and energy entitlements resulting from its ownership interest in FPL's St. Lucie Unit No. 2 nuclear generating facility. FMPA uses St. Lucie Unit No. 2 as a base load resource for service to certain of its members, so that scheduling flexibility was not a significant issue in the negotiations. Service under the St. Lucie Agreement is point-to-point with FMPA being allowed annually to redesignate its selected delivery points. FMPA has done so on several occasions. The St. Lucie Agreement also allows for both replacement transmission service when St. Lucie No. 2 is operating at or below certain levels and changes to FMPA's contract demand under certain circumstances. The St. Lucie Agreement states that it will terminate at the earlier of the final retirement of St. Lucie Units No. 1 and No. 2 or the latest stated maturity date of any of the original bonds issued by FMPA to finance its ownership interest in Unit No. 2.

The Stanton Transmission Service Agreement and the Stanton Tri-City Transmission Service Agreement provide for



transmission service for capacity and energy associated with FMPA's and certain FMPA members' ownership shares of the Curtis H. Stanton Energy Center Unit No. 1, a coal-fired plant located on the OUC system. Like the St. Lucie Plant, FMPA and its members use the Stanton Unit as a base load resource. The terms of the two Stanton Agreements are essentially identical and provide for service from various points of receipt to specified points of delivery. In addition, they allow for replacement transmission service in the event FMPA's or its members' Stanton entitlements are wholly or partially unavailable. They also allow for changes to the parties' contract demand under certain circumstances. The Stanton Agreements do not terminate until the earlier of the retirement of Stanton Unit No. 1 or December 31, 2022.

Finally, the Agreement To Provide Specified Transmission Service provides for shorter-term transmission for interchange-type transactions to enable FMPA to fulfill its obligation to provide all requirements service to its All-Requirements Project members. 16/ This Interchange Transmission Agreement establishes six classes of service:

- (1) Schedule TA - Emergency Transmission Service;
- (2) Schedule TB - Short Term Firm Transmission Service;

16/ FPL also has Interchange Transmission Service Agreements with many FMPA members who are not part of the All-Requirements Project.



- (3) Schedule TC - Economy Energy Transmission Service;
- (4) Schedule TX - Extended Economy Transmission Service;
- (5) Schedule TD - Firm Transmission Service;
and
- (6) Schedule TO - OUC Assumed Transmission Service.

Schedules TA and TB facilitate FMPA access to its other members' generating resources, including those owned and operated by Fort Pierce, Homestead, Lake Worth, New Smyrna Beach, and Vero Beach. This access promotes the sharing of reserves between and among FMPA and its members. In addition, Florida Broker transactions transmitted under Schedule TC are matched without regard to generation ownership. Consequently, the opportunity for Broker transactions between FMPA and its members, for which FPL would provide Schedule TC transmission service, further facilitates the sharing of FMPA member reserves. Broker transactions also generally give FMPA the opportunity to achieve hour-to-hour dispatch efficiencies. In addition, under Schedules TA, TB, TD, and TX, FMPA is generally granted additional flexibility in making its unit commitment decisions and extending operating economies to unit commitment decisions. The Interchange Transmission Agreement has a perpetual term subject to a two year cancellation notice provision.

In summary, the Existing TSAs are far from simple point-to-point transmission service arrangements. They provide



FMPPA with a great deal of flexibility, to coordinate its members' loads and resources and to take full advantage of dispatch efficiencies.

C. FMPPA's Changing Plans And Its Belated Duress Allegations

FMPPA's central problem with the Existing TSAs is not that the terms and conditions of those contracts are unjust and unreasonable. The problem is that subsequent to executing those contracts, FMPPA decided that it wished to alter the All-Requirements Project and the other projects that FMPPA had in place with its members, and for which the existing TSAs were designed, in favor of the IDO Project. As FMPPA acknowledges in its Complaint, in 1987 -- after it had entered into all of the above-described contracts with FPL -- FMPPA first began active consideration of its new IDO Project (FMPPA Complaint at 13), which involved an entirely new arrangement encompassing generation entitlements and Cities that were not part of the All-Requirements or other projects'. FMPPA never discussed with FPL transmission service to implement the IDO Project during the negotiation of the All-Requirements TSA in 1984 and 1985, or in connection with the negotiation of the other Existing TSAs between 1983 and 1987, because the IDO Project did not even exist at that time. 17/

17/ In the District Court lawsuit, one of FMPPA's consulting engineers testified that FMPPA was organizationally not ready to consider an IDO-type project prior to 1988. Deposition (continued...)



There is, of course, an important difference between an allegation that a contract is unjust and unreasonable for the services it was designed to provide and one that a contract becomes unjust and unreasonable because one of the parties decides, after the fact, that it no longer wishes to purchase the contracted-for services. The simple facts here are that FMPA signed the All-Requirements TSA committing FPL to provide, and FMPA to pay for, certain transmission service until the year 2022. FMPA required this long-term commitment in order to get the benefits it anticipated from the All-Requirements Project and its other Projects. Section 5.1 of the All-Requirements Agreement states very clearly that it can be terminated before this date only for reasons stated in the Agreement, which was significant protection for FMPA. The same is true for the other Existing TSAs.

It is not disputed that the transmission agreements were highly beneficial to FMPA, assisting it in financing its various projects. For instance, execution of the St. Lucie Delivery Service Agreement enabled FMPA to acquire \$290,000,000 in financing for FMPA's portion of Unit No. 2. FMPA has admitted

17/ (...continued)

of Albert Malmsjo at 52/12 thru 56/10 (Feb. 15, 1993). (Tab C.) (Deposition citations are references to depositions taken in the District Curt litigation. See supra n.4.)



that, without this agreement, "financing would have been impossible." 18/

FMPA's Complaint in the District Court never even acknowledged the Existing TSAs. When obligated during discovery to reconcile the signing of those contracts with its present claim for a new service incompatible with those contracts, FMPA alleged that it was "forced" to sign them under duress and coercion. It now repeats that story in its Complaint. 19/

The facts do not support this claim, and, as discussed later in this Answer, FMPA's allegations do not support a claim of duress under Florida law or Commission precedent. FMPA's former General Manager and its lead negotiator for the Existing TSAs, Calvin Henze, acknowledged that the All-Requirements TSA was the result of negotiated give and take. Mr. Henze testified at his deposition that FPL never committed or threatened to commit any wrongful acts during the negotiations. 20/ He

18/ Deposition of Frederick M. Bryant at 24 (Feb. 16, 1993). (Tab D.)

19/ FMPA Complaint at 11. In an earlier attempt to deflect the court's attention from the Existing TSAs, FMPA claimed that an order requiring network service would not require the modification or termination of them because the contracts themselves provide for modification. Plaintiff Florida Municipal Power Agency's Responses And Objections To Defendant Florida Power & Light Company's Second Set Of Interrogatories, Interrogatory No. 12 (Feb. 10, 1993). (Tab E.) FMPA has apparently abandoned that embarrassingly awkward argument in favor of one based on duress and coercion.

20/ Deposition of Calvin R. Henze at 51/6 thru 53/6 (Nov. 3, 1992. (Tab F.) See also Guarriello Dep. at 282/8-20, (continued...)



recalled the contract negotiations as involving compromises by both parties on many issues. 21/ In a 1991 presentation to FPL's executives, he summarized the 1985 agreement as follows: "Our agreement with FPL was not what we would have desired, but through negotiations, we reached an agreement acceptable to both parties." 22/ In discussing the Existing TSAs in his deposition, Mr. Henze specifically testified that "when I sign a contract I live up to it." 23/

In fact, all five of the Existing TSAs were the product of negotiations between experienced and competent utility personnel and counsel for each side. During discovery in the District Court suit, FMPPA also acknowledged that its negotiators

20/ (...continued)

304/15 thru 305/8, 310/13 thru 311/18, 328/2 thru 334/16, 342/9 thru 347/14 and Ex. 15 (Feb. 26, 1993). (Tab G.)

21/ Henze Dep. at 56/19 thru 57/2 (Nov. 3, 1992). (Tab F.) Similarly, FMPPA's engineering consultant in these negotiations testified that FPL acceded to FMPPA's requests with regard to designation of delivery points, (Guarriello Dep. at 281/19 thru 282/20 (Feb. 26, 1993) (Tab G)), removal of economic penalty clauses, (Guarriello Dep. Exh. 21) (Tab G), monthly contract demands for the peaking resources, Guarriello Dep. at 331/22 thru 332/22 (Feb. 26, 1993) (Tab G)), and Section 206 rights (id. at 346/11 thru 347/9 (Tab G)).

22/ Henze Dep. Ex. 1 at 008319 (Nov. 2, 1992). (Tab F.) Mr. Henze also characterized his counterpart negotiator at FPL as a "fair negotiator." Henze Dep. at 50/8-9 (Nov. 3, 1992). (Tab F.)

23/ Henze Dep. at 59/1-2 (Nov. 3, 1992). (Tab F.)



fully understood their rights under the License Conditions. 24/ If FMPA was not satisfied, it knew that it had the option to seek enforcement of the License Conditions and/or to require FPL to file an unsigned contract unilaterally with the FERC, and it made it very clear to FPL's negotiators that these options existed.

FMPA, although it had ample opportunity to seek enforcement of the License Conditions, simply chose not to do so. The following February 1993 deposition colloquy with FMPA's General Counsel is insightful:

Q. During the course of FMPA's consideration and negotiation of the All-Requirements Project agreement, did FMPA believe that the positions that FP&L took on network transmission service, and the sale of wholesale power to FMPA, were in violation of the Saint Lucie 2 license conditions?

* * * *

Q. Did you believe that?
A. You bet I did. Still do.

Q. And at any time up to the execution of the All Requirements Project agreement on March 30, 1985, did FMPA complain to the NRC about that alleged violation?

A. To my knowledge, we filed no formal complaint.

Q. Did you informally talk to the NRC?
A. To my knowledge, no.

Q. And then on and after March 30, 1985, the date of execution of the All Requirements Project agreement, has FMPA ever complained

24/ Response Of Plaintiff Florida Municipal Power Agency To Defendant Florida Power & Light Company's Request For Admissions, Admission No. 17 (Feb. 10, 1993). (Tab H.)



to the NRC about any violation of the Saint Lucie license conditions?

A. To my knowledge, no formal complaint has been filed by FMPA at the NRC.

Q. Has FMPA complained to the FERC about the terms of the All-Requirements Project agreement?

A. To my knowledge, no formal complaint has been filed by FMPA at the FERC. 25/

FMPA's General Counsel went on to explain that the decision to sign the contracts, rather than to seek License Condition enforcement action was a "business decision." 26/

D. The Impact Of The Existing Transmission Service Agreements On Competition

FMPA claims that FPL's refusal to provide "network" transmission service has adversely affected competition. The facts are that, over the past ten years, FMPA, notwithstanding FPL's so-called refusal to provide network transmission service, has been able to implement four successful projects. 27/ As a

25/ Bryant Dep. at 83/13 thru 84/7 (Feb. 16, 1993). (Tab D.) FMPA made a calculated determination that it was more advantageous to accept the benefits of FPL's transmission service agreements than to litigate. See Guarriello Dep. at 182/14 thru 184/3 (Feb. 25, 1993). (Tab G.) See also id. at 316/20-22 (emphasis added) (Feb. 26, 1993) (Tab G) ("Again, you got to remember, Mr. Henze did not want to litigate if he could help it."). FMPA also declined to enforce its right to request FPL to make a unilateral filing with the FERC under Section 10 of the License Conditions in lieu of executing the agreements. Bryant Dep. at 96/13-23 (Feb. 16, 1993) (Tab D.)

26/ Bryant Dep. at 83/9-15 (Feb. 16, 1993) (Tab D.)

27/ Under the All-Requirements Project FMPA provides or arranges for the full capacity and energy requirements of six municipal system members. Under the Stanton Project, five
(continued...)



result of these various FMPA projects, FPL's share of energy sales to FMPA's members in FPL's service territory has declined from approximately 50 percent in 1981 to less than 15 percent in the last two years. 28/ In 1992, the FMPA members within FPL's service territory obtained only 9.7 percent of their capacity from FPL. 29/ These facts show that FMPA has been able to compete very effectively with FPL. Moreover, FMPA has the ability to use FPL partial requirements service as a backstop. Thus, the existing arrangement guarantees FMPA at least the benefits of FPL's integrated system while permitting FMPA to seek opportunities to better FPL's average cost rates. Finally, over this same time period, FPL entered into only one additional long-term power sales transaction with a member of FMPA. This sale between FPL and the City Electric System of Key West came in response to a competitive solicitation in which several other power suppliers submitted proposals. Key West accepted FPL's proposal on the recommendation of its own consulting engineers.

27/ (...continued)

members receive a total of 62 MW from FMPA's ownership interest in the Curtis H. Stanton Energy Center Unit No. 1. Under the Tri-City Project, three FMPA members receive an additional 22 MW from FMPA's ownership interest in the Stanton Unit. Finally, under FMPA's St. Lucie Project, sixteen members receive approximately 75 MW from FMPA's ownership interest in the St. Lucie Unit No. 2 nuclear plant.

28/ NERA Exhibit No. 10 (page 3 of 6). (Tab I.)

29/ NERA Exhibit No. 11 (page 2 of 4). (Tab I.)



E. The Economics Of The IDO Project

In mid-1987, FMPA commissioned an IDO Project study to develop preliminary projections of potential economic benefits that could be expected from combining resources and operations of its member cities. Phase I of the study, which was completed in November 1987, evaluated the projected overall economics of operating the generation resources of certain FMPA member systems on an integrated basis to serve those members' combined loads. Phase II, which was completed in September 1988, projected individual system economic benefits under specific assumptions regarding the business aspects of the IDO Project. 30/ Of course, the study was commissioned and performed after FMPA was already contractually committed to the Existing TSAs that implement other FMPA projects.

The consultant that prepared the study acknowledged that the pricing of transmission service was a critical assumption underlying the projected benefits of the IDO Project, and that the benefits shown resulted from the fact that the study assumed that FMPA would be able to purchase, without limitation,

30/ FMPA's IDO Project, as proposed, included the following provisions: (i) individual generating municipal systems that participated would sell their capacity and energy to the IDO Project for scheduling and dispatch by FMPA on a "single system" basis; (ii) FMPA would be responsible for supplying all participants' full capacity and energy needs (with the exception of a few excluded -- mostly nuclear -- resources); (iii) FMPA would be responsible for planning, acquiring, and financing all new generation resources; and (iv) a long-term (35 year) contract would govern relationships between the Project and its participants.



transmission service on an hourly basis (i.e., no reservation charges for firm capacity):

[T]he projected total economic benefits of the IDO Project are extremely sensitive to the . . . availability of and pricing of transmission service over the FPC and FPL systems, . . . Differences between, . . . contractual arrangements finally developed and those assumed in the [IDO Study], such as obtaining transmission service from FPL and FPC under an annual or monthly contract demand basis as is currently used in many existing agreements in lieu of a \$/MWh energy basis as is assumed herein, could significantly increase the costs projected under the Alternative Arrangements and could reduce or eliminate the projected benefits of the IDO Project. . . . 31/

In a separate letter addendum to that study, sent to FMPA but not to the member Cities, the consultant cautioned that the transmission assumption in the study represented

the most optimistic transmission arrangements and are probably not readily achievable. In general, the transmission arrangements assumed for purposes of the [study] were based upon those currently used for non-firm interchange service, which non-firm service would not be acceptable for all of the arrangements necessary to produce the projected economic benefits presented in the [study]. 32/

In short, FMPA's own documents show that, unless FMPA is able to buy transmission service to integrate its generation and load without payment of any reservation charges -- i.e., buy firm

31/ Florida Municipal Power Agency Draft Letter Report, Integrated Dispatch and Operation Study, Preliminary Phase II Results at 0000033-34 (Sept. 19, 1988). (Tab J.)

32/ Henze Dep. Ex. 7 at 002213-002215. (Tab F.)



service priced as hourly non-firm service -- the IDO Project does not produce the economic benefits promised. And, it is not clear that this critical information was ever conveyed to FMPPA's members.

In September 1989, FMPPA first submitted a proposal to FPL for the transmission service FMPPA sought in connection with the IDO Project, and, sure enough, that proposal entailed the replacement of existing services with substantial transmission service on an unreserved basis. FMPPA offered to pay for the "as-available" service on a non-firm basis (\$/MWh) but demanded that FPL provide it on an essentially firm basis. Thus, for example, FPL could not curtail such service even where FMPPA's usage would cause FPL to operate out of economic dispatch.

While the loads proposed to be integrated through the IDO Project were approximately 550 MW, during negotiations FMPPA made it clear that it was only willing to buy approximately 250 MW of transmission capacity on a firm basis. In FMPPA's view, to the extent that generation is located on the system of any member city, any transmission service for that amount of load is "as available" rather than firm transmission service and must be priced on an hourly basis, because in theory the local generation could be operated. 33/ Under this theory, FMPPA would

33/ FPL also has significant amounts of generation located at load centers, which undoubtedly results in a significant reduction in its average system transmission cost per MW of load. FMPPA proposes to pay a transmission charge based on FPL's average system cost, thus taking advantage of the cost
(continued...)



integrate approximately 725 MW of generation and 550 MW of load, and dispatch its system without meaningful limitation, while paying a transmission service demand charge for 250 MW. FMPA also argued that the extent of the transmission obligations undertaken by FPL is irrelevant to the appropriate transmission charge. Under this theory, FMPA could require FPL to stand ready at all times to deliver the output of any combination of 5,000 MW of resources to the IDO participants, but the transmission demand charge would never exceed 550 MW (the total load of FMPA's participating members), because that is the maximum "use" allegedly made of FPL's system at any time.

During the negotiation process, which included approximately twelve meetings over a 1½ year period, FMPA made it clear that it was not willing to pay for transmission service on a comparable basis with FPL's native-load. It refused to designate the particular resources that would be included in the IDO Project proposal and how they would be utilized, and it insisted on the ability to add new resources at any time, regardless of the economic impact on FPL's system. 34/ FMPA also refused to provide information about how FMPA proposed to

33/ (...continued)

reductions resulting from local generation, and then to reduce its transmission service contract demand by an amount based on generation located on each member's system. This amounts to a flagrant "double dip" and would result in FPL's other customers subsidizing FMPA's IDO Project.

34/ Deposition of William C. Locke, Jr. at 121 (Jan. 6, 1993). (Tab K.)



operate and dispatch its "integrated system" and offered no assurances that FMPA's dispatch would be limited to mitigate adverse effects on FPL's dispatch. And, despite repeated requests, FMPA refused to provide FPL with load flow data.

In short, FMPA's proposed transmission arrangements for the IDO Project had the potential to: (i) jeopardize the reliability of FPL's system, (ii) underrecover costs and require FPL's retail and wholesale customers to subsidize service to FMPA and its members, and (iii) prohibit FPL from operating and planning its transmission system in a prudent manner.

F. The IDO Project Proposal Will Not Enhance Efficiency

In the District Court proceeding, FMPA has provided two analyses purporting to compute its damages, which are based on the alleged savings from the IDO Project. Interestingly, these analyses do not model any of the three different written proposals that FMPA made to FPL during the 1989-91 negotiations, but rather employ new network transmission assumptions. ^{35/} Each analysis purports to quantify the difference in bulk power costs, over a period between 1988-2006, under a different scenario. The first damage analysis compares the bulk power costs associated with an independent case (IND) -- where no "network" service is available to FMPA on the terms and

^{35/} FMPA has taken pains to say that the study does not represent any plan to which FMPA is willing to commit. See, e.g., Malmsjo Dep. at 103/14 thru 104/22 (July 23, 1993). (Tab C.)



conditions that it seeks -- to those associated with an IDO case (IDO) -- where "network" transmission service is assumed to be available to FMPA on FMPA's terms beginning January 1, 1988. FMPA's second damage analysis compares the bulk power costs associated with the IDO case to those associated with an additional scenario (IND/IDO) -- where network transmission service, again under the terms and conditions which FMPA seeks, is assumed to be available only after January 1, 1994.

FMPA's damage studies indicate that the major benefit derived from the IDO project is the reduction of FMPA member capacity costs. 36/ This reduction is the result of an internalization of diversity among FMPA member cities. 37/ And, although the "mix of resources" under the IDO Project results in higher total energy costs for FMPA members than under the existing Florida Broker arrangements, according to FMPA the capacity savings outweigh these increased energy costs. 38/

FMPA does not show that the IDO Project enhances reliability of service in Florida or that it produces any corresponding reduction in the aggregate capacity needs for Florida utilities. Moreover, FMPA has admitted that there are virtually no operating savings to be gained over the existing Florida Broker system under the IDO Project, which already

36/ See FMPA Exh. 564. (Tab L.)

37/ Henze Dep. at 66 (Nov. 2, 1992). (Tab F.)

38/ Malmsjo Dep. at 263 (Feb. 16, 1993). (Tab C.)



matches high and low cost generators in Florida by computer to ensure efficient operation of the State's generating resources. 39/

In short, the IDO Project does not produce any efficiencies in the production of electricity and does not reduce overall reserve requirements in the State of Florida. It merely moves capacity dollars from FMPA's members to consumers on other systems.

ARGUMENT

I. FMPA'S SECTION 206 COMPLAINT HAS NO FOUNDATION AND SHOULD BE DISMISSED

The largest portion of FMPA's pleading is styled as a complaint under FPA Section 206. FMPA Complaint at 18-70. FMPA alleges that the Existing TSAs are in violation of Section 206 because they allegedly restrict FMPA to point-to-point service rather than some broader (but still undefined) network service. E.g., id. at 18. The vast majority of FMPA's Section 206 argument, (id. at 18-51), is based on its contention that Article X of the License Conditions requires FPL to provide "network" transmission service to FMPA. FMPA's second argument is that,

39/ In deposition, one of FMPA's consulting engineers stated that the inclusion of Broker transactions in the damage study did not "make a whole lot of difference [because] . . . it appeared that those types of transactions and that level of transaction would continue, whether they were treated as individual utilities or as the IDO utility." Malmsjo Dep. at 265/13 thru 266/6 (Feb. 16, 1993). (Tab C.) "If I had said we're not going to include the broker in this damage analysis, the damages would be slightly less. . . ." Id. at 266.



even leaving aside the License Conditions, the point-to-point restrictions in the TSAs are unjust, unreasonable, unduly discriminatory and contrary to the public interest. Id. at 51. FMPA contends that relief is available under Section 206 to modify or replace the Existing TSAs. Id. at 1-2, 66, 89.

FMPA's Section 206 Complaint should be dismissed for several reasons. First, a "condition precedent" for the exercise of Section 206 authority is a finding that existing contracts are unjust and unreasonable. 40/ FMPA has not alleged a problem with the TSAs that would make them unjust and unreasonable for the services they were designed to provide. FMPA's repeated recitation of the claim that the Existing TSAs do not provide for "network" transmission service obscures the fact that FMPA is really seeking to be relieved of its contractual obligations so that it can purchase an expanded and different service for the IDO Project. Section 206 does not provide a mechanism for purchasers to escape their contractual obligations because they are no longer happy with the economic consequences of their contracts.

The License Conditions clearly do not provide a basis for finding FPL's existing contracts unjust and unreasonable. The Existing TSAs were freely entered into after the License Conditions were in effect, under circumstances where FMPA was aware of its rights to require FPL to file unilaterally an

40/ Federal Power Comm'n v. Sierra Pacific Power Co., 350 U.S. 348, 353 (1956).



unsigned agreement or to seek enforcement of the License Conditions at the NRC rather than reach a negotiated resolution with FPL. Even if the facts were otherwise, the LP&L ASLB decision does not apply to the significantly different FPL License Conditions and does not mandate any particular pricing methodology for transmission service.

Second, even if the Existing TSAs limited FMPA to strictly point-to-point service -- which they do not -- that fact would not make the contracts unjust and unreasonable. The Commission has repeatedly endorsed point-to-point service as consistent with Sections 205 and 206 of the FPA, as well as with FERC's pro-competition policies. In any event, the existing TSAs provide FMPA significant scheduling flexibility and are not limited to point-to-point service.

Finally, the Commission does not have the authority under Section 206 to order the relief FMPA requests, which entails compelling FPL to provide additional transmission services.

A. Section 206 Is Not Available To Permit Parties To Reform Their Contracts Because They No Longer Wish To Purchase The Service They Contracted For

When FMPA requested transmission service from FPL for its ownership share of the St. Lucie Nuclear Plant, it needed a long-term contractual commitment to deliver power from one base load generating unit to various members. FMPA got what it requested and needed, together with substantial flexibility to



vary contract demands and use replacement transmission service. FMPA insisted on a thirty-year contract because it needed this commitment in order to finance its purchase of a portion of St. Lucie Unit No. 2, and it has enjoyed the economic benefits of this transaction for many years. Similarly, when FMPA needed transmission service for its two Stanton Projects, it asked for and received transmission service to deliver the output of the Stanton Plant to various of its members, together with a number of provisions providing for flexible use of FPL's system, including replacement transmission service. Again, FMPA sought and received a long-term contract for this service in order to support the purchase of its Stanton entitlement.

And, when FMPA developed its All-Requirements Project, it asked for and received the transmission service to achieve the extensive integration of remote generation and loads required to accomplish this Project. The All-Requirements TSA, as described earlier (see pp. 12-14, supra), provides FMPA broad flexibility to use resources efficiently, including hourly replacement service, substitution and addition of resources, and capacity reservations for peaking resources that can be redesignated annually and that vary on a monthly basis. Among other things, FMPA asked for and received a long-term contract. FPL understands that FMPA and its All-Requirements members have enjoyed substantial economic benefits from participation in this Project.



In each instance, FMPA's request to FPL made it clear that FMPA was exercising its rights under the St. Lucie License Conditions and that FMPA intended to pursue those rights if it did not receive the transmission services it believed FPL was obligated to provide. There ensued negotiations against the backdrop of those License Conditions, and a give and take which resulted in contracts implementing the License Conditions. FMPA's General Manager and chief negotiator has testified that this is what occurred and that the resulting agreements were not all that either party wanted but represented a fair compromise. 41/ He and FMPA's General Counsel acknowledged that FMPA made a business decision to enter into these contracts in lieu of seeking to enforce the License Conditions through litigation. 42/

The question here is whether Section 206 of the FPA permits FMPA to change its mind about this prior business decision and toss aside existing contracts because FMPA now wishes to pursue an IDO Project that FMPA believes is not compatible with the contracts it negotiated and signed before the IDO Project was created. The answer is obviously no.

FMPA devotes the overwhelming majority of its Section 206 Complaint to the argument that the License Conditions require FPL to provide "network" transmission service. FPL fails to

41/ See supra pp. [19-20].

42/ See supra pp. [19-22].



understand, however, why, even if this were true, FMPPA's claim provides a basis for finding FPL's existing contracts unjust and unreasonable. As discussed above, the License Conditions provide that FPL and its transmission customers will enter into agreements for transmission service that will be filed with this Commission. FMPPA exercised its rights under the License Conditions by requesting transmission service from FPL, and FPL met its obligations under the License Conditions by negotiating and entering into contracts to provide those services.

In United States v. Pacific Gas & Elec. Co., 43/ a federal District Court rejected a request for relief from existing agreements much like FMPPA's. The case involved a dispute about whether energy used by certain California cities should be considered to have been purchased from PG&E, or merely transported by PG&E from the Western Area Power Administration ("WAPA"). The issue involved the validity of a 1982 agreement whereby WAPA agreed to sell energy to the California cities. PG&E argued that that agreement could not be valid because there was a preexisting contract obligating the cities to purchase their full power requirements from PG&E. The cities argued that under the antitrust license conditions for the Diablo Canyon nuclear plant (the "Stanislaus Commitments") PG&E was obligated to offer full or partial requirements service, and that this gave

43/ 714 F. Supp. 1039 (N.D. Cal. 1989).



the cities the right unilaterally to terminate or modify the full requirements contracts.

The court rejected the cities' argument, pointing to the fact that the full requirements contracts were entered into by the cities long after the Stanislaus Commitments took effect. The court concluded that:

To the extent that the Cities obligated themselves to take their full requirements from PG&E in exchange for PG&E's obligation to supply them, they cannot look to the Stanislaus Commitments for an escape clause.

Id. at 1052.

The PG&E decision was obviously correct on this point. If FMPA's interpretation of the License Conditions is accepted, contracts entered into pursuant to them would be binding only on the selling party. In effect, the License Conditions would override contract law and the filed rate doctrine by permitting the purchaser to walk away from its contracts simply by arguing that the License Conditions would have permitted it to obtain more or different service on more favorable terms.

Certainly, FMPA's resort to Section 206 to achieve this result must be rejected. The FPA upholds the integrity of contracts, and the Supreme Court has recognized that an orderly wholesale power market depends upon respect for contracts. 44/ Merely because a purchaser of utility services under a contract

44/ United Gas Pipeline Co. v. Mobile Gas Serv. Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956) ("Mobile-Sierra").



is not realizing the expected economic benefits, or has a better deal in mind, is not a valid reason for the Commission to overturn the contract. 45/

In the Public Service Co. of New Mexico case, Public Service Co. of New Mexico ("PNM") filed a thirteen-year contract to sell system power to San Diego Gas & Electric Company ("SDG&E"). By the time the contract was filed, the market had changed and SDG&E asked the Commission to lower the rate that it had agreed to pay for the power. SDG&E argued that changed conditions had rendered the contract unjust and unreasonable. The Commission found that the contract was cost-justified and refused the request to modify it merely because it had become uneconomic to the purchaser. Relying upon three prior cases, 46/ the Commission held that the fact that the contract did not produce the benefits expected did not render it unjust and unreasonable. 47/ SDG&E's further argument that it had limited options and that this allowed PNM to exact a higher rate was also rejected by the Commission, which said that "every

45/ Public Service Co. of New Mexico, 43 FERC (CCH) ¶ 61,469, reh'g denied, 45 FERC (CCH) ¶ 61,034 (1988), aff'd sub nom. San Diego Gas & Elec. Co. v. FERC, 904 F.2d 727 (D.C. Cir. 1990).

46/ Philadelphia Elec. Co., 15 FERC (CCH) ¶ 61,264 (1981); Pennsylvania Power & Light Co., 23 FERC (CCH) ¶ 61,325 (1983); and Gulf States Utilities Co. v. Southern Co. Services, Inc., 43 FERC (CCH) ¶ 61,003, reh'g denied, 43 FERC (CCH) ¶ 61,394 (1988).

47/ Public Service Co. of New Mexico, 43 FERC at 62,152.



transaction before this Commission . . . reflects a choice among limited options." Id.

FMPA seeks to be relieved of its contractual obligations by suggesting that it was "forced" to accept service limitations in the Existing TSAs because of the need for a "timely" transmission commitment from FPL. FMPA Complaint at 11. That is not what is occurring here at all. FMPA has merely changed its mind about what it wants to buy. It admits in its Complaint that the IDO Project was not even considered until 1987, after the existing TSAs were signed.

Moreover, as already explained, the existing agreements were the result of fair bargaining. As SDG&E learned, Section 206 does not allow a party to be relieved from its bargain just because it was "forced" to give up something in order to get something else that it wanted. Indeed, this is the essence of the contracting process. In another recent case, the Commission held that a transmission customer was not coerced into executing an agreement merely because the utility would not give it the transmission service on the terms it most desired. 48/ The reviewing court, too, dismissed the coercion allegation, stating that it amounted to nothing more than the fact that the utility refused to renew the transmission agreement on its old terms,

48/ Northeast Utilities Service Co., 52 FERC (CCH) ¶ 61,336, at n.7 (1990), aff'd. in part and remanded in part, City of Holyoke Gas & Elec. Dept. v. FERC, 954 F.2d 740, 744 (D.C. Cir. 1992).



thus requiring the customer "to choose between two less desirable business arrangements." 49/

FMPA's allegations would not establish an actionable claim of "duress" under Florida law. Under Florida law, "duress" has two elements: "[i]t must be shown (a) that the act sought to be set aside was effected involuntarily and thus not as an exercise of free choice or will and (b) that this condition of mind was caused by some improper and coercive conduct of the opposite side." 50/ In the Fifth Circuit, the essential elements of economic duress are: (1) wrongful acts or threats; (2) financial distress caused by the wrongful acts or threats; and (3) the absence of any reasonable alternative to the terms presented by the wrongdoer. 51/ A valid claim of economic duress or "business compulsion" must be based on the acts or conduct of the opposite party, and not merely on the necessities of the purported victim. 52/ None of these elements exist here. FMPA's negotiators have acknowledged that FPL's negotiators did not act improperly in any respect and have admitted that the decision to execute the Existing TSAs was a business decision based on FMPA's judgment of the risks associated with its options under the License Conditions.

49/ 945 F.2d at 744.

50/ City of Miami v. Kory, 394 So. 2d 494, 497 (Fla. Dist. Ct. App. 1981).

51/ Sonnleitner v. C.I.R., 598 F.2d 464, 468 (5th Cir. 1979).

52/ Chouinard v. Chouinard, 568 F.2d 430, 434 (5th Cir. 1979).



FPL also fails to see the logic of FMPPA's argument that it needed service on short notice and therefore had to execute a contract with FPL. Under the License Conditions, FMPPA had the right to require FPL to file unilaterally a contract for transmission services. 53/ In this event, service would have commenced in sixty days, subject to refund and with FMPPA free to allege that FPL's service was not just and reasonable. Instead, FMPPA chose to negotiate with FPL over a period of several months and to sign a contract that reflected many compromises by both sides. The only fair conclusion that can be drawn from these facts is that FMPPA concluded that it had obtained at least as much in concessions from FPL as it could expect to get if it sought enforcement of the License Conditions at the NRC or had directed FPL to file an unexecuted contract with this Commission. FMPPA is now asking this Commission, under the rubric of Section 206, to relieve it of the consequences of its own free choice.

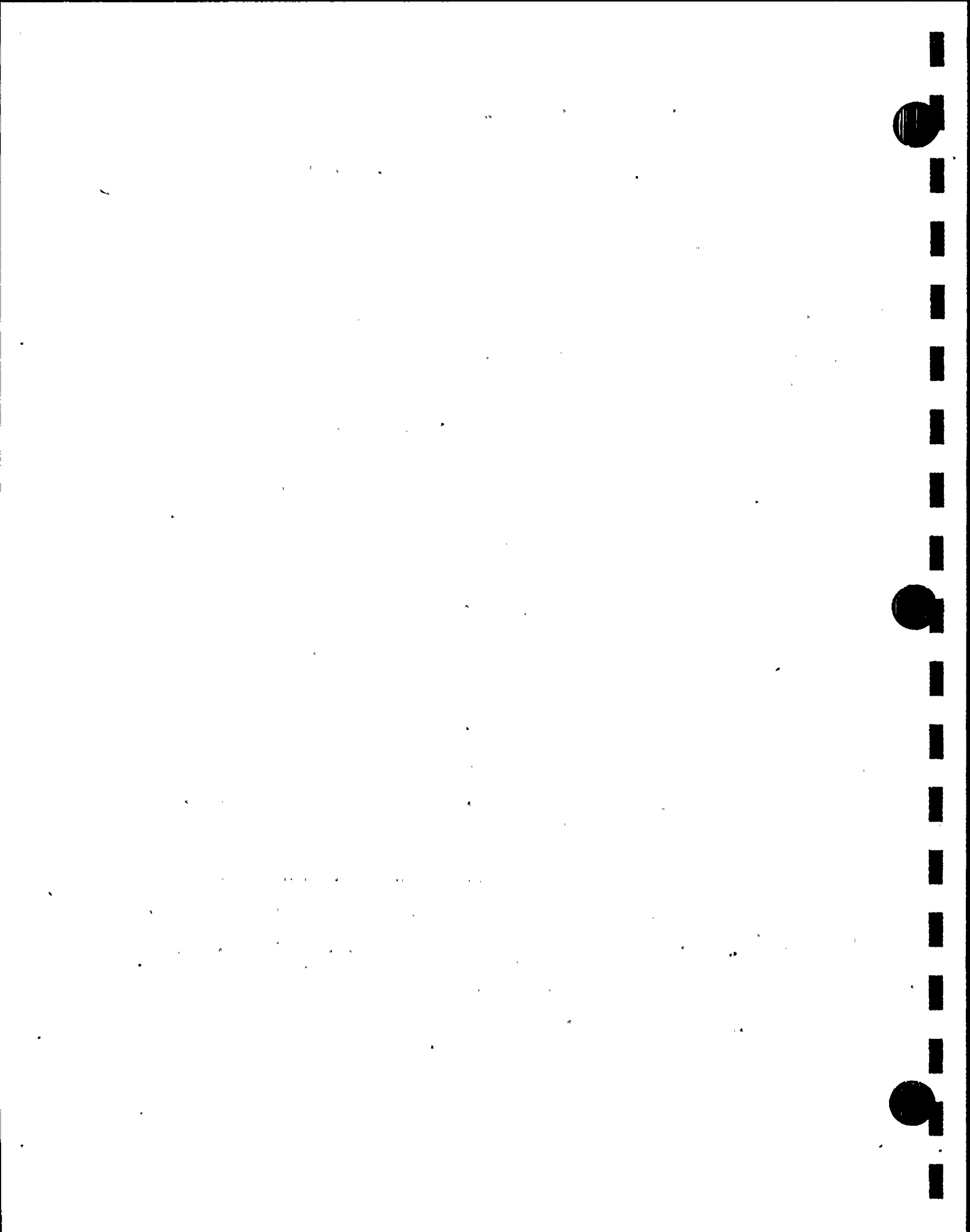
Finally, FMPPA cites (FMPPA Complaint at 12) to provisions in the All Requirements Agreement that purportedly support the proposition that FMPPA retained the right, at any time, unilaterally to rescind the existing contract in favor of a new "network" service contract for the IDO Project. The provisions cited by FMPPA do not provide FMPPA broad rights of unilateral termination. The "Unilateral Changes and

53/ FMPPA Appendix 23 at 24-28.



Modification" provision cited by FMPA (Section 21.1) contains standard Section 205 and 206 language, which preserves the Parties' unilateral rights under those sections to seek changes. The provision recognizes that a termination of service is a Section 205 change requiring prior notice and filing with the Commission. FMPA asked that FPL add language to the 1990 Restated All Requirements Agreement waiving the three year moratorium on terminations or other changes (which was restarted by the new Agreement) because the Parties were negotiating new transmission arrangements for the IDO Project which, if successful, could entail replacing the All Requirements TSA within the three year moratorium period. That addition was not inserted for the purpose of allowing FMPA unilaterally to terminate the Agreement in the event that the Parties were unable to reach agreement on this new service, and FMPA never stated to FPL that it would be used for that purpose.

The "Waiver" provision cited by FMPA (Section 22.2) is a boilerplate provision that assures the Parties that, to the extent that they choose in the future not to assert a claim related to the Agreement or otherwise, such waiver will not constitute a waiver of their subsequent rights. The provision permits a party to choose not to assert a breach of contract or other claim without fear that foregoing such claim once will limit bringing the same claim later. The provision does not provide that either party can unilaterally terminate the entire Agreement if it later decides it was entitled to a better deal.



Similarly, Section 22.13 ("Independent Rights") does not provide FMPP a perpetual unilateral right to terminate the Agreement. It does assure FMPP that, by entering into the All Requirements Agreement, it was not waiving its rights to seek other transmission services from FPL for different FMPP members and/or generating resources, or to seek service upon expiration of the Agreement. It simply and logically provides that FMPP has only committed itself contractually to the covenants and acts stated in the Agreement. FMPP seeks to transform this provision into a statement that FMPP was not agreeing to anything, together with a right to escape its explicit contractual commitments at its will.

The long and short of the matter is that FMPP, in lieu of pursuing its rights under the License Conditions to require FPL to file a contract unilaterally or to seek enforcement of the License Conditions at the NRC, made the "business decision" to negotiate and sign the All Requirements Agreement. The contract included concessions by both Parties and it bound both Parties.

B. FMPP's Construction Of The License Conditions Is Incorrect In Any Event

In the previous section of this Answer, FPL has shown that the License Conditions do not even come into play here because FMPP has already signed contracts implementing those License Conditions. In this Section, FPL will show that, even assuming, arguendo, that FMPP has a right under the License Conditions to walk away from its existing contracts, the License



Conditions do not require FPL to provide "network" service under the particular rates, terms and conditions that FMPA apparently considers to be reasonable. Therefore, they do not provide a basis for modifying or overturning the Existing TSAs. In addition, even if FMPA's interpretation is correct, that does not make the Existing TSAs unjust and unreasonable.

1. FMPA Has Stated Under Oath That The Existing TSAs Are Not Inconsistent With The License Conditions

As an initial matter, it is important to note that FMPA does not argue directly that the existing transmission agreements are inconsistent with the License Conditions. In a response to an interrogatory in the District Court litigation, FMPA stated that the TSAs "are not, on their face, necessarily inconsistent" with the License Conditions. 54/ Despite this admission, FMPA argues to this Commission that it is unreasonable to permit FPL to "collect rates and impose service restrictions inconsistent with those obligations." FMPA Complaint at 40. These two statements by FMPA are not logically compatible. If the TSAs are not inconsistent with the License Conditions, and if FPL is acting in accordance with the TSAs (there is no allegation to the contrary), it cannot be that FPL has failed to comply with the License Conditions. Moreover, if the TSAs are not inconsistent with the License Conditions, there is no basis to find that the TSAs are unreasonable because of the existence of the License

54/ Interrogatory No. 14 (Feb. 10, 1993). (Tab E.)



Conditions. Accordingly, FMPA's entire lengthy argument that the License Conditions form a basis for a Section 206 complaint is defeated by its previous sworn statement in discovery in the District Court case.

2. FMPA's Premise That The License Conditions Require Network Service Is Faulty

FMPA's argument is based on its singular interpretation of the License Conditions. Relying upon essentially one word in the License Conditions, i.e. "among," FMPA argues that they require FPL to provide "network" transmission service, a term which remains undefined. FMPA Complaint at 18. The provision of the License Conditions that FMPA relies upon is Article X(a)(2):

The Company shall transmit power . . .
between two or among more than two
neighboring entities, or sections of a
neighboring entity's system which are
geographically separated, with which,
now or in the future, Company is
interconnected. . . .

This language does not require FPL to offer whatever type of network service that FMPA requests and at whatever rates FMPA requests it. It requires FPL to deliver power between or among several systems, which FPL does under the Existing TSAs. In fact, FMPA does not even argue that the language on its face requires the result it seeks.

Rather, FMPA relies exclusively on the LP&L licensing board decision, which has never been cited in any published



court, NRC, or FERC decision for the proposition FMPPA advances. 55/ FMPPA reads far more into the LP&L decision than is there. While it is true that the ASLB wanted to prevent multiple transmission charges among each coordinating group of entities, the ASLB did not in any way suggest what the appropriate rate would be for the single charge that would encompass multiple transactions among such a group. In fact, as noted above, the ASLB explicitly disclaimed any expertise or

55/ FMPPA Complaint at 18-25. In LP&L, the applicant, supported by the Justice Department, submitted conditions for its nuclear plant construction permit that were intended to address competitive concerns. One of these conditions required the applicant to transmit power and energy over its facilities "between two entities" with which it is interconnected. The ASLB reviewed the adequacy of this commitment for competitive purposes. Based on evidence in the record, including an affidavit by the applicant, the ASLB found that the applicant intended this to mean service from A to B, and a separate charge for each service. 8 AEC at 732. The ASLB also found, based on the record in that case, that there were many small entities for whom effective coordination would require transmission among five or more of them. The ASLB concluded that assuming the applicant's transmission rate is reasonable, "the payment of 6 to 20 or more transmission charges by a single group of entities is deemed unreasonable." Id. at 733. The ASLB, however, emphasized that "supervision over rates is the particular province of the Federal Power Commission and the Board [ASLB] is neither qualified nor authorized to pass on the appropriateness of transmission rates." Id. at 734.

The ASLB concluded that, based on the factual situation presented, there should not be multiple transmission charges "for transmission of a contracted transmission entitlement among a coordinating group of two or more entities." Id. at 737. To effectuate this purpose, the ASLB required two changes in the proposed commitment. First, it changed the transmission requirement from "between two entities" to "among entities." Second, it added a sentence to the commitment stating, "For each coordinating group of entities there shall be a single transmission charge." Id. at 744.



authority to pass on the appropriateness of transmission rates. 56/ Thus, there is no basis to FMPPA's apparent contention that the ASLB intended that the charge for service to and among multiple delivery points cannot be based on principles of point-to-point service pricing.

Second, although the ASLB concluded that the limitation on multiple charges was necessary on the facts there, i.e., small entities consisting of thirty municipals and fourteen electric cooperatives, there was no indication that the ASLB intended to issue a general rule for all situations. In fact, an NRC licensing board has no authority or expertise to make generic transmission policy.

Third, and perhaps most significantly, the ASLB thought it was necessary to include a sentence in the LP&L license conditions stating plainly that there would be a single charge for each group of coordinating entities. In other words, the ASLB recognized that use of the word "among" by itself did not convey the concept of a single transmission charge. In the FPL License Conditions, there is no separate sentence indicating the requirement for a single charge. As FMPPA itself argues, those negotiating and litigating the FPL License Conditions presumably knew and understood the precedent concerning the wording of the LP&L conditions. FMPPA Complaint at 22-24. Accordingly, to the extent that the negotiators of FPL's License Conditions were

56/ 8 AEC at 734.



relying on LP&L as precedent, as FMPA alleges, their decision to omit the extra sentence demonstrates that there was not an intent to follow this aspect of the LP&L decision.

Regardless of what meaning the "among" language in the License Conditions carries, the transmission obligation is not an automatic, self-implementing requirement that exists in a vacuum, but rather it exists in the context of the qualifiers contained in the rest of the License Conditions and the parties' actions subsequent to the effectiveness of the Conditions. For example, Article X(a) of the License Conditions provides that transmission service will be provided thereunder "only if" several conditions are met, including that "the service can reasonably be accommodated from a technical standpoint without significantly jeopardizing Company's reliability or its use of transmission facilities;" that reasonable advance request is given; and that a reasonable magnitude, time and duration for the transactions is specified. Article X(b) of the License Conditions provides, "Company's provision of transmission service under this section shall be on the basis which compensates it for its costs of transmission reasonably allocable to the service in accordance with a transmission agreement, transmission tariff or on another mutually agreeable basis." None of the transmission obligations in the License Conditions becomes a requirement unless and until the specified pre-conditions are satisfied.



C. The Transmission Services That FPL Provides Under The Existing TSAs Are Not Unjust And Unreasonable

FMPA's Section 206 argument includes a gaping hole in that it has failed to explain, why, even if the License Conditions require FPL to provide "network" service, this fact makes the Existing TSAs unjust and unreasonable under the FPA. To fill this hole, FMPA argues that, apart from the License Conditions, the TSAs are unjust and unreasonable because of the point-to-point pricing methodology used for the services provided therein. FMPA's argument, however, does not cite a single case where the Commission has found a transmission tariff to be unjust and unreasonable on the ground that it did not price transmission service based on a single network charge. In fact, the cases hold uniformly to the contrary.

1. The Service Available To FMPA Under The Existing TSAs Provides It Considerable Flexibility

Presumably to make its case more sympathetic, FMPA mischaracterizes the transmission services available to it under the Existing TSAs as being much more restrictive than they are. FMPA repeatedly refers to the current service as containing "point-to-point restrictions" that make coordination "infeasible" and resulting in economic inefficiencies. See, e.g., FMPA Complaint at 51-52. In fact, the TSAs combine features of point-to-point service with many features of network service, and, overall, provide FMPA with considerable flexibility.



For example, the All-Requirements TSA provides what substantially amounts to network transmission service in that it provides for coordination in planning and operations and has provisions for replacement transmission service, superseding transmission service, and new FMPA resources, which provide FMPA substantial flexibility to redesignate resources and contract demands. Likewise, replacement transmission services are provided in the St. Lucie Delivery Service Agreement, the Stanton Transmission Service Agreement, and the Stanton Tri-City Transmission Service Agreement.

Moreover, under the Existing TSAs -- which include interchange TSAs not mentioned in FMPA's Complaint -- FMPA and its member Cities are able to obtain virtually all of the energy efficiencies that are possible by participating in the Florida Broker, under which transactions are matched on the basis of maximizing state-wide savings. FPL charges an hourly rate for Broker transmission service, based on use. These same interchange TSAs permit FMPA and its member Cities to exchange energy and take unused units out of service for periods of up to a week, again with hourly transmission charges based on use.

FMPA contends that its member Cities could install less capacity if the resources were planned on a "single system" basis. However, under the existing interchange TSAs and the two firm transmission tariffs recently filed by FPL in Docket No. ER93-465-000, transmission service is now available for FMPA to exchange capacity where diversity of member loads makes that



economical. Under FPL's recently filed tariffs in Docket No. ER93-465-000, FPL will provide such transmission services, for periods ranging from one day to thirty years, even if the service adversely affects the economics of FPL's operations, provided that the customer pays the higher of embedded or opportunity costs. 57/

The flexibility is demonstrated by recent energy sales data. FMPA's mission is to sell wholesale power to cities in Florida who are members or potential members of FMPA. 58/ FPL provides a minuscule percentage of the wholesale power requirements of these cities. In the narrowest plausible market -- FMPA members that are connected directly with FPL's transmission system -- FPL's market share has declined significantly to less than 15 percent over the past ten years. 59/ No plausible argument can be made that FPL, under the existing transmission contracts, has gained a competitive advantage.

57/ Under FMPA's "network" proposal, FMPA apparently would gain the right to first priority use of FPL's transmission system (even above FPL), since FMPA would simply dispatch its resources at will. A "network service" schedule would not create any new transmission capacity. If reserves in Florida are now adequate and FMPA begins maintaining lower reserves without installing additional transmission capacity, someone else must maintain higher levels of reserves or reliability will deteriorate.

58/ FMPA Fact Sheet at 006551-006553. (Tab M.)

59/ NERA Exhibit No. 10 (page 3 of 6). (Tab I.)



2. Point-To-Point Services That Are Considerably More Restrictive Than FPL's Have Uniformly Been Found To Be Just And Reasonable

For the Commission to find that the services set forth in the Existing TSAs are unjust and unreasonable would require reversal of longstanding and consistent Commission precedent. The type of service that FMPA now challenges has been repeatedly found to be just and reasonable by the Commission. This issue was most clearly addressed in Wisconsin Electric Power Co. 60/ In that case, the Commission held that it was not unjust, unreasonable, or unduly discriminatory for a utility to specify that a transmission transaction consists of transmission from one supplier to one point of receipt, and that transmission from different suppliers or to different points of receipt should be considered separate transactions, subject to separate charges. 61/

The arguments made by the transmission customer in the WEPCO case are quite similar to those made by FMPA here. The customer in WEPCO was Wisconsin Public Power, Inc. ("WPPI"), who, like FMPA, was a joint-action agency formed to provide power supply services for member municipal systems, some of whom were located in WEPCO's service territory. 62/ WPPI had contracted with WEPCO to have power transmitted from specified sources to

60/ 46 FERC (CCH) ¶ 61,019, reh'g denied, 48 FERC (CCH) ¶ 61,247 (1989) ("WEPCO").

61/ 46 FERC, at 61,109 & 61,116.

62/ Id. at 61,108.



specified customers. When WEPCO filed the agreements, WPPI argued that the agreements should be interpreted to allow substitution of an alternative source of power for the specified source without additional charge and that WPPI should have the right to designate a substitute customer to receive the power without an additional charge. 63/ The Commission rejected WPPI's arguments and accepted WEPCO's point-to-point service as just and reasonable. 64/ The Commission noted that WPPI's argument would amount to unlawfully compelling a utility to provide service that it did not agree to provide:

WPPI's proposal would require WEPCO to provide transmission service to WPPI under different terms and conditions than those to which it has voluntarily agreed. Ex. 11 at 3. WEPCO has not obligated itself to provide every transmission service request of WPPI. Ex. 14 at 28. In addition, extension of the principle advocated by WPPI could be interpreted as granting to any firm power or firm transmission customer an unfettered right to use the transmission system up to the level of its firm purchase, thereby forcing utilities to provide transmission service which the utilities have not contractually obligated themselves to provide. 40 FERC at pp. 65,059-60. We agree with the presiding judge that such a finding would be inconsistent with the express provisions, statutory history and prior court interpretations of the Federal Power Act. 65/

63/ Id. at 61,109.

64/ Id. at 61,111.

65/ Id. at 61,113 (footnote omitted).



WPPI also argued to FERC, as FMPA argues here, that it is unduly discriminatory for WEPCO to have the right to dispatch its resources for its requirements customers and not give WPPI similar rights to dispatch its resources. The Commission, however, rejected the notion that there was any comparison between the service that WEPCO provided to its requirements customers and the transmission service provided to WPPI, and there could therefore be no grounds for discrimination:

What WEPCO has contracted to provide its requirements customers is firm power and energy service, not the general right to use its generation, transmission and distribution facilities. What WEPCO has contracted to provide WPPI is transmission service, not the general right to use its transmission facilities. In paying for firm power, which includes payment for the transmission component of firm service, power customers are not entitled to general use of WEPCO's transmission facilities on their own behalf. Thus, in contrast with WPPI's claims, power customers do not receive a benefit denied WPPI as a firm transmission customer. There is therefore no merit to WPPI's claim that it is being discriminated against on this basis. 66/

This also is a complete answer to FMPA's discrimination argument on pages 56-57 of its Complaint.

The Commission has also accepted point-to-point transmission as just and reasonable in recent open-access filings. In Public Service Co. of Indiana, 67/ the Commission

66/ Id. at 61,115.

67/ 51 FERC ¶ 61,367, reh'g denied, 52 FERC (CCH) ¶ 61,260, order on clarification, 53 FERC (CCH) ¶ 61,131 (1990), dism'd, No. 90-1528 (D.C. Cir. Jan. 21, 1992),



approved PSI's point-to-point service. A customer there had argued against any restrictions that limited transmission service according to individual receipt and delivery points, but the Commission responded, "we believe that PSI's proposal is practical and workable and does not unduly hinder the competitive uses of PSI's transmission grid." 68/

Likewise, the Commission approved as just and reasonable point-to-point service as part of the open-access tariff in Entergy Services, Inc., 69/ Subsequently, in the Commission's recent order on Entergy's compliance filing with respect to open-access tariffs, it recognized that it had already authorized point-to-point service, and again rejected an argument that Entergy was required to provide network service, saying that it was "proper" to charge separately for power flowing in different directions. 70/

Very recently, in the Entergy/Gulf States merger proceeding, the Commission rejected an argument that the lack of network service would enhance Entergy's market power. 71/

68/ 51 FERC at 62,204.

69/ 58 FERC (CCH) ¶ 61,234, at 61,768, order on reh'g, 60 FERC (CCH) ¶ 61,168 (1992).

70/ Entergy Services, Inc., 63 FERC (CCH) ¶ 61,205, at 61,147 (1993). Accord, Northeast Utilities Service Co., 62 FERC (CCH) ¶ 61,294 (1993) (each transaction in a wholesale exchange involves a separate wheeling service for which a separate rate may be recovered).

71/ Entergy Services, Inc. and Gulf States Utils. Co., 62 FERC (CCH) ¶ 61,073, at 61,375-76 (1993).



Accordingly, Commission precedent would not permit a finding that FPL's service under the Existing TSAs is unjust or unreasonable.

D. The FERC Does Not Have Authority Pursuant To Section 206 To Compel The Additional Transmission Service FMPPA Requests

FMPPA's Complaint also fails to recognize that the Commission does not have statutory authority under Section 206 to compel additional or expanded transmission services. 72/ Before Sections 211 and 212 were added to the FPA in 1978, there was no authority in the FPA to compel wheeling. The Supreme Court said in 1973,

So far as wheeling is concerned, there is no authority granted the Commission under Part II of the Federal Power Act to order it, for the bills originally introduced contained

72/ The Commission has made clear that a transmission service from point A to point B is distinct from and does not encompass transmission service from point B to point A or from point A to point C. As put recently by the Commission: "Reservation of transmission from point A to point B and reservation of transmission from point B to point A are two different services." Entergy, 63 FERC at 61,147. Transmission from different sources or to different receipt points constitutes separate transactions, and a utility does not give a customer an unfettered right to use its transmission system by agreeing to provide a transmission from one specified point to another. WEPCO, 46 FERC at 61,110 & 61,112-13. To find otherwise, the Commission has said, would be inconsistent with the express provisions, statutory history, and prior court interpretations of the FPA. Id. at 61,113. It necessarily follows from this principle that what FMPPA is seeking -- which is apparently the unfettered right to use FPL's system as it may request -- is a separate and distinct service from what it is being provided under existing transmission agreements.



common carrier provisions which were deleted. 73/

In Richmond Power & Light Co. v. FERC, 74/ the court rejected the notion that the Commission could accomplish mandatory wheeling indirectly by conditioning its approval of rates for voluntary wheeling. The court said:

If Congress had intended that utilities could inadvertently bootstrap themselves into common-carrier status by filing rates for voluntary service, it would not have bothered to reject mandatory wheeling in favor of a call for just such voluntary wheeling. What the Commission is prohibited from doing directly it may not achieve by indirection. 75/

The same conclusion was reached by the Second Circuit Court of Appeals after original Sections 211 and 212 had been enacted in 1978. 76/ There, the Commission ordered a modification to a transmission agreement that had the effect of increasing beyond NYSEG's voluntary commitment the amount of power NYSEG was required by contrast to wheel. NYSEG argued that this could not be done without reliance on Section 211 and 212 authority, and the court agreed that those sections applied "to

73/ Otter Tail Power Co. v. United States, 410 U.S. 366, 375 (1973).

74/ 574 F.2d 610 (D.C. Cir. 1978).

75/ Id. at 620.

76/ New York State Elec. & Gas Corp. v. FERC, 638 F.2d 388 (2d Cir. 1980), cert. denied, 454 U.S. 821 (1981).



orders that would expand a voluntary commitment to wheel." 77/

The court held:

If, after a hearing as required by § 206, the Commission determines that a particular rate, charge, or condition is unreasonable, it can order a modification. But where, as here, the modification amounts to an order requiring wheeling, it must be preceded also by determinations in accordance with §§ 211 and 212. Simply put, we will not allow the Commission to do indirectly without compliance with the statutory prerequisites, what it could not do directly without such compliance. 78/

Likewise, in Florida Power & Light Co. v. FERC, 79/ the court said that although the Commission does have certain authority to review and modify contracts under Section 206(a), that authority does not extend to ordering involuntary wheeling:

While the Commission may not compel the transmission of electricity, it does possess the authority to review transmission contracts under § 206(a) and to make modifications of those contracts upon a determination that the terms of such a contract are unjust, unreasonable, unduly discriminatory, or preferential. . . . In performing these functions with respect to a wheeling contract, though, the Commission must be especially careful not to overstep its authority and require the involuntary wheeling of electricity, absent compliance with the new §§ 211 and 212 of the FPA. 80/

77/ Id. at 401.

78/ Id. at 403.

79/ 660 F.2d 668 (5th Cir. 1981), cert. denied, 459 U.S. 1156 (1983).

80/ Id. at 673.



It is clear, therefore, that the Commission does not have authority under Section 206 to take one transmission service and transform it into a different or additional transmission service. Because this is what FMPA seeks to accomplish in its Section 206 Complaint against FPL, that Complaint should be rejected.

E. FMPA's Requested Refund Effective Date Is Not Authorized Or Appropriate

Although FMPA states that it seeks only prospective relief (FMPA Complaint at 1), it also inconsistently requests that the Commission establish a refund effective date under FPA Section 206(b). FMPA Complaint at 92. According to the terms of the FPA, a refund effective date is authorized only when the Commission institutes a proceeding under Section 206. As discussed above, FMPA has not stated sufficient grounds to warrant a Section 206 proceeding, and therefore, a refund effective date is also unwarranted.

In any event, a refund requirement associated with the relief FMPA requests would be inappropriate and impossible to calculate. Although FMPA makes the broad claim that the level of charges under the existing TSAs is "excessive," (FMPA Complaint at 93), FMPA does not contend that the rates set forth in the Existing TSAs exceed just and reasonable levels for the services FPL is providing. Rather, it is asking that the service be changed and that a new charge for the new service be established. See, e.g., FMPA Complaint at 87. This is not the type of



situation that could be subject to Section 206(b), because the refunds allowable under that section consist of the amount paid in excess of the amount that would have been paid under a just and reasonable rate. In the context of FMPA's Complaint, which involves a request for different service, it would not be possible to calculate such an amount.

FMPA itself does not identify how a refund amount could be calculated. FMPA states that it is seeking "entirely prospective" relief and that "damages for past injuries which FMPA continues to seek in the District Court case" are outside the scope of its complaint. FMPA Complaint at 92. FMPA, of course, is merely acknowledging the fact that the Commission does not have the authority to order reparations or damages. 81/ As mentioned above, only the difference between the rate charged and a just and reasonable rate is within the Commission's refund authority, and because the rates FPL charges for the service provided under the Existing TSAs are just and reasonable, no refunds are appropriate.

F. FPL Should Not Be Required To File Its NRC License Conditions

FMPA asserts that FPL should be ordered to file the License Conditions with the Commission pursuant to FPA Section 205(c) as a contract or practice affecting rates. FMPA Complaint

81/ Federal Power Comm'n v. Sunray DX Oil Co., 391 U.S. 9, 24 (1968); Montana-Dakota Util. Co. v. Northwestern Public Serv. Co., 341 U.S. 246, 254, 257-60 (1951).



at 48-49, 91. This is entirely unjustified. As FPL has shown above, it is the Existing TSAs, executed by FMPA after the effectiveness of the License Conditions, that govern FPL's transmission obligations at this point, not the License Conditions themselves. The License Conditions do not affect the service provided under the Existing TSAs, and there is, therefore, no reason that they should be filed. The Commission has rejected the notion that NRC license conditions should be filed with the Commission unless they contain specific references to the agreements at issue. 82/ There, the Commission found that, although several of the antitrust provisions of the NRC license were potentially relevant to the complaint, these provisions were "general in nature and [did] not specifically refer to [the Agreement at issue] or any other agreement between [North Carolina Eastern and CP&L]." 83/ The Commission concluded that, "[i]n the absence of a closer nexus between the antitrust provisions of the NRC license and the issues raised in [North Carolina Eastern's] complaint," North Carolina Eastern's motion to compel their filing had to be denied. 84/ Likewise, the St. Lucie 2 License Conditions are general in nature and have no specific bearing on the Existing TSAs. The License Conditions are public documents that can be easily obtained, and FMPA has in

82/ North Carolina Eastern Municipal Power Agency v. Carolina Power & Light Co., 57 FERC (CCH) ¶ 61,372 (1991).

83/ Id. at 62,254.

84/ Id.



fact appended them as Appendix 23 to its Complaint. Accordingly, they are available to the Commission for review and there is no reason that they need to be formally filed.

II. FMPA'S SECTION 211 APPLICATION SHOULD BE REJECTED BECAUSE FMPA HAS FAILED TO PROVIDE BASIC DATA REQUIRED FOR FPL TO EVALUATE THE IMPACT OF THE REQUEST ON ITS SYSTEM OR TO PROVIDE A COMPLETE RESPONSE

FMPA's application under Section 211 of the FPA raises three threshold issues.

1. What are the necessary elements of a good faith request for transmission service and whether FMPA has met the standards for a good faith request;

2. Whether Section 211 encompasses requests for "network" transmission service and how "network" transmission service should be defined; and

3. Whether Section 211 of the FPA can be employed to override valid existing contracts to provide transmission services between the entity applying for service and the transmitting utility.

As to issue No. 1, FMPA has not made a good faith request for transmission service because it has not provided sufficient information for FPL to evaluate the impact of the request on its system or to develop a complete response. This problem is described in more detail below.

As to the second issue, FPL does not contest the Commission's determination in its recent Policy Statement regarding good faith requests under Section 211, that Section 211



encompasses requests for "network" type transmission services. FPL believes that the issue to be decided ultimately under Sections 211 and 212 in connection with this matter, assuming that FPL and FMPA are unable to agree on such service, is what constitutes the rates, terms, and conditions of a "network" type service for FMPA that meets the public interest and maintenance of reliability standards of Section 211, as well as the rate standards in Section 212 of the FPA.

As to the third issue, FPL does not agree that Section 211 can be used to override existing contracts for transmission service. 85/ However, the Commission need not address the issue in this proceeding because FPL is committing voluntarily herein to respond to an FMPA good faith request that entails superceding the Existing TSAs consistent with the ultimate determination (including appellate review) in a proceeding under Sections 211 and 212.

85/ Nothing in Section 211 of the FPA evinces Congressional intent to override the filed rate doctrine. Sections 211, 212, and 213 of the FPA were established to provide a mechanism for the Commission to direct transmission owning utilities to provide wholesale transmission services and established procedures for achieving this end. Section 211 was not established as a device for existing transmission customers to escape their contracts for ongoing transmission services. In fact, Section 211(c) provides that no order may be issued under Sections 211(a) or (b) which requires the transmitting utility to transmit "an amount of electric energy which replaces any amount of electric energy . . . required to be provided to such applicant pursuant to a contract during such period" or "currently provided to the applicant by the utility subject to the order pursuant to a rate schedule on file during such period with the Commission." This provision expressly protects FPL's rights under existing filed rates.



A. FMPA's September 1989 Network Proposal Does Not Satisfy The Minimum Good Faith Request Components Set By The Commission

In September 1989, FMPA requested that FPL provide transmission service to implement FMPA's IDO Project. One of the critical stumbling point in the negotiations between FPL and FMPA over that proposal, and FMPA's subsequent variations thereof, was the inability of FPL to obtain information from FMPA that would allow FPL to evaluate the operational and planning impacts of the proposal on FPL's transmission system. FPL was unable even to get FMPA to commit to a particular request for service involving defined loads and resources. FMPA continuously changed its proposal. The Commission's July 1993 Policy Statement Regarding Good Faith Requests For Transmission Services confirms the validity of FPL's concerns. As noted earlier, FPL is not asking FMPA to provide unreasonably detailed or burdensome information. FPL requires only basic information about FMPA's plans that would allow FPL to evaluate FMPA's proposal and present a complete response.

In order for FPL to respond to a transmission request, it must be able to evaluate the impact of the request on its transmission system. FMPA's earlier proposals failed to permit FPL to do any meaningful analysis. In effect, FMPA's earlier requests were entirely open-ended and asked FPL to respond by stating the rates, terms, and conditions under which FPL would provide network transmission service for any combination of FMPA loads and resources that FMPA might designate sometime in the



future, including giving FMFA the right to do whatever it wished on an hourly and long-term basis with those undefined loads and resources. 86/

The Commission has stated that: "A good faith request for transmission services should . . . contain a specific, technical description of the requested services in sufficient detail to permit the transmitting utility to model the additional services on its transmission system. Policy Statement at 9. The Commission later states that the requestor must provide the expected "transaction profile," which is defined to mean "the load factor data that describes the flow of power and energy into the transmitting utility's system, i.e., the hourly quantities of power the requesting party would expect to deliver to the transmitting utility's grid at points of interconnection" 87/ This was found necessary to permit the

86/ FMFA owns portions of various resources in different places in Florida and FPL understands that it has plans to construct and/or purchase interests in other such resources. FPL further understands that some FMFA member loads and associated resources would not be included in the IDO Project. For example, FMFA's original September 1989 request to FPL was not limited to IDO members that were interested in the IDO Project. Indeed, FMFA had attempted to sell the IDO Project to all 28 municipal systems that belong to FMFA. While only 10 signed up (7 within FPL's territory), FMFA was never willing to identify the actual IDO membership for purposes of requesting transmission service from FPL. Because the September 8, 1989 and subsequent proposals did not identify the loads served, FPL was looking at an open-ended responsibility to stand ready to serve all or any portion of FMFA's load from undefined resources whenever and wherever they were obtained.

87/ Id. at 13.



transmitting utility to evaluate the request. The requesting party must also specify the firmness of the service it desires. 88/ Accordingly, a good faith request under Section 211 should identify the specific loads and generating resources that FMPA proposes to "integrate" through the FPL system, together with FMPA's analysis and plans concerning the operation of its included resources. This should include FMPA's current plans to operate or shut down older generation located on the systems of its members, and to purchase new resources. As the Commission has made clear in its Policy Statement, a utility has the basic right to be provided sufficient data to analyze the impact of a transmission proposal, which simply cannot be done without identifying the loads to be served, the generating resources from which they will be served, and the "transaction profile."

Under FMPA's IDO Project, all of the members would be put under one control area and power would be dispatched by the OUC pursuant to a contract between FMPA and Orlando. FMPA's earlier proposals did not provide for the scheduling of power and energy over FPL's system. FMPA anticipated that FPL would learn about FMPA's use of its system after-the-fact. While FMPA at times suggested that it was willing to "notify" FPL in advance, at no time did FMPA agree to schedule energy in order to allow FPL to maintain system reliability and provide proper power

88/ Id.



accounting records. FPL is not prepared to commit at this time whether and to what extent it could agree to forego the scheduling of transactions. At a minimum, however, FMPPA should be required to provide FPL with analyses of the proposed use of generation to serve IDO member loads together with any load flow studies that would show the impact of FMPPA's overlay of its dispatch on top of FPL's system dispatch. FPL would then review this information to determine whether additional system studies might be required in order to evaluate and respond to FMPPA's request. FMPPA in the past has refused to provide that information even though FPL understands that FMPPA was in possession of models that would permit analysis of load flow impacts. 89/ FPL may or may not need to perform any additional dispatch or load flow studies, but obviously it cannot make this determination until FMPPA identifies the services it desires.

The long and short of the matter is that FMPPA has played cat-and-mouse with FPL. To the extent that FMPPA has a specific Project in mind that FPL can evaluate, it should come forward with the information described in detail in the beginning of this Answer -- which is not burdensome to provide -- so that FPL can develop a transmission service proposal that includes fair compensation and protection of FPL's system and its customers. FPL cannot respond to hypothetical proposals, and

89/ Minutes of FMPPA Executive Committee Meeting at 5 (Mar. 23, 1990). (Tab N.)




Section 211 does not require transmitting utilities to develop transmission agreements for hypothetical arrangements. If FMPA is then dissatisfied with FPL's response, it may file a Section 211 application for an order directing FPL to provide transmission service implementing its specific request for service.

Finally, as discussed at the beginning of this Answer, FMPA should be required to state whether it intends to abide by the Commission's Section 211 decision and whether it feels free to change its proposal during or at the end of a Section 211 proceeding. This is appropriate particularly where FPL is agreeing voluntarily to permit FMPA to replace its Existing TSAs with a new contractual arrangement for the IDO Project. This will permit the Commission to determine whether FMPA has made a bona fide good faith request for transmission service that warrants the initiation of a proceeding under Section 211.



CONCLUSION

For all of the foregoing reasons, FMPA's Section 206 Complaint, Application for transmission service under Section 211 and its Motion for Summary Disposition should be dismissed and denied.



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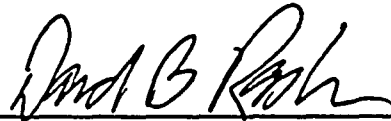
Attorneys for
FLORIDA POWER & LIGHT COMPANY



CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

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



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TRANSACTIONS	SUMMER 1993	WINTER 1993/94	SUMMER 1994	SUMMER 1995	SUMMER 1996	SUMMER 1997	SUMMER 1998	SUMMER 1999	SUMMER 2000	SUMMER 2001	SUMMER 2002	SUMMER 2003
FMPA Cities:												
Key West	-45.0	-38.0	-45.0	-45.0	-45.0	-45.0	-45.0	-45.0	-45.0	-45.0	-45.0	-45.0
Green Cove Springs	-7.3	-7.4	-7.3	-7.3	-8.3	-9.3	-10.3	-11.3	-11.3	-12.3	-10.3	-10.3
Jacksonville Beach	-31.8	-40.0	-33.8	-27.8	-30.8	-35.8	-40.8	-44.8	-47.8	-51.8	-62.8	-62.8
Kissimmee	-190.7	-194.0	-199.7	-189.7	-159.7	-157.7	-145.7	-151.7	-155.7	-170.7	-185.7	-185.7
Ft. Pierce	-15.2	-15.5	-15.2	-15.2	-15.2	-15.2	-15.2	-15.2	-15.2	-15.2	-15.2	-15.2
Vero Beach	-14.2	-14.5	-14.2	-14.2	-14.2	-14.2	-14.2	-14.2	-14.2	-14.2	-14.2	-14.2
Lake Worth	-18.4	-18.7	-18.4	-18.4	-18.4	-18.4	-18.4	-18.4	-18.4	-18.4	-18.4	-18.4
Clewiston	-11.1	-11.2	-11.1	-6.1	-6.1	-6.1	-6.1	-6.1	-6.1	-6.1	-6.1	-6.1
Womestead	-7.1	-6.2	-10.1	-13.1	-13.1	-12.1	-12.1	-14.1	-17.1	-18.1	-19.1	-19.1
New Smyrna Beach	-26.8	-27.0	-26.8	-26.8	-26.8	-11.8	-11.8	-11.8	-11.8	-11.8	-11.8	-11.8
Starke	-6.6	-6.7	-6.6	-6.6	-3.6	-3.6	-3.6	-3.6	-3.6	-3.6	-3.6	-3.6
Bushnell	-0.3	-0.3	-0.3	-0.3	-0.3	-0.3	-0.3	-0.3	-0.3	-0.3	-0.3	-0.3
Leesburg	-6.9	-6.9	-6.9	-6.9	-6.9	-6.9	-6.9	-6.9	-6.9	-6.9	-6.9	-6.9
Ocala	-11.1	-11.1	-11.1	-11.1	-11.1	-11.1	-11.1	-11.1	-11.1	-11.1	-11.1	-11.1
St. Cloud	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Sebring Utilities Commission	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
NET FIRM INTERCHANGE	-392.6	-397.6	-406.6	-388.6	-359.6	-347.6	-341.6	-354.6	-364.6	-385.6	-410.6	-410.6





GENERATOR, TURBINE, GOVERNOR
AND
EXCITATION SYSTEM DATA REQUIREMENTS
FOR
STABILITY AND SHORT CIRCUIT STUDIES

SYSTEM PLANNING DEPARTMENT
BULK TRANSMISSION SECTION



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FIGURES 1 through 14	10-16

The data on the following pages supplied by:

NAME:	
COMPANY:	
ADDRESS:	
PHONE:	FAX:
DATE:	

¹ For conceptual design complete items B.1.d through B.11 and all of C, E, F, H and K.



A) UNIT IDENTIFICATION

1. Plant Name and Unit Number	_____
2. Manufacturer	_____
3. Generator Serial Number	_____
4. Turbine Serial Number	_____
5. In-Service Date	_____

B) GENERATOR RATING AND CAPABILITIES

1. Hydrogen (H ₂) Pressure (PSIG)	MVA Rating
a) _____	_____
b) _____	_____
c) _____	_____
d) Nameplate Rating	_____
2. Terminal Voltage	_____
3. Short Circuit Ratio (SCR)	_____
4. Turbine Rated Capability (MW)	_____
5. Maximum Turbine Capability (MW)	_____
6. Speed (rpm)	_____
7. Power Factor	_____
8. Field Current at Rated Load, Amperes	_____
9. Field Voltage at Rated Load, Amperes	_____
(H ₂ pressure for items 7 through 9)	_____
10. Field Current at Generator rated voltage, no-load, Amperes	_____
11. Air Gap Field Voltage with generator at rated voltage, Volts	_____
12. Field Resistance at _____ °C, Ohms	_____



C) INERTIA

1. WR for Generator, lb-ft
2. WR for Exciter (if applicable), lb-ft
3. WR for Turbine, lb-ft
4. $H = (2.31 \times 10^{-4}) (WR_{GEN}) \times (RPM)^2 (MVA \text{ Rating})$

D) LOSSES & EFFICIENCY

1. Open circuit core loss, kW
2. Windage loss, kW
3. H-seal and exciter friction loss, kW
4. Stator I²R loss at _____ C, kW
5. Rotor I²R loss at _____ C, kW
6. Stray load loss, kW
7. Excitation loss, kW

E) GENERATOR TIME CONSTANTS IN SECONDS

1. T_{do} (Direct Axis Open Circuit Transient Time Constant)
2. T'_{do} (Direct Axis Open Circuit Subtransient Time Constant)
3. T_{qo} (Quadrature Axis Open Circuit Transient Time Constant)
4. T'_{qo} (Quadrature Axis Open Circuit Subtransient Time Constant)
5. T_s (Short Circuit Time Constant)



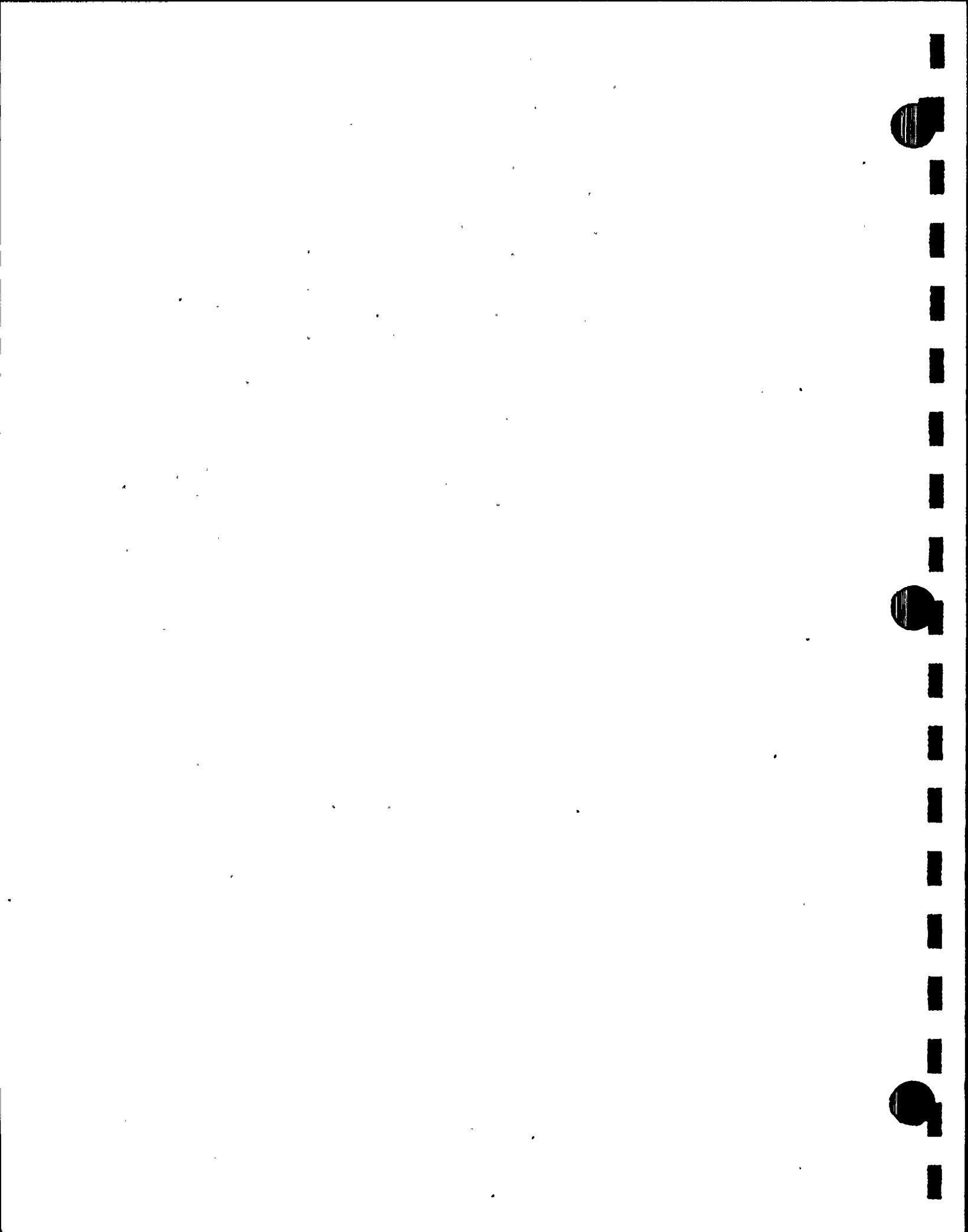
F) GENERATOR IMPEDANCES

Apparent power base for all impedances in MVA		
Voltage base for all impedances below in kV		
PARAMETER	DESCRIPTION	P.V. VALUE
1. X_d	Direct axis synchronous reactance unsaturated	
2. X_q	Quadrature axis synchronous reactance unsaturated	
3. X_d'	Direct axis transient reactance unsaturated	
4. X_d''	Direct axis transient reactance saturated	
5. X_q'	Quadrature axis transient reactance unsaturated	
6. X_q''	Quadrature axis transient reactance saturated	
7. X_{d0}	Direct axis subtransient reactance unsaturated	
8. X_{q0}	Quadrature axis subtransient reactance unsaturated	
9. X_l	Armature Leakage Reactance	
10. R_a	Positive sequence armature resistance at 75°C	
11. R_s	Negative sequence armature resistance at 75°C	
12. X_s	Negative sequence reactance at rated voltage	
13. X_0	Zero Sequence Reactance	
14. R_{ac}	Direct Current armature resistance at 75°C	



G) REQUIRED CHARACTERISTIC CURVES

1. Generator Capability Curve
2. Generator "V" Curves
3. Generator Saturation curve, full load and no-load
4. Governor overspeed response curve
5. Mechanical torque vs. instantaneous power curve
6. Heat balance flow chart



H) EXCITATION SYSTEM

TYPE		FIGURE NO.	
1. K ₁	_____	14. K ₁	_____
2. K ₂	_____	15. T _A	_____
3. K ₃	_____	16. T _B	_____
4. K ₄	_____	17. T _C	_____
5. K ₅	_____	18. T _D	_____
6. K ₆	_____	19. T _E	_____
7. K ₇	_____	20. T _F	_____
8. K ₈	_____	21. V _{MAX}	_____
9. K ₉	_____	22. V _{MIN}	_____
10. K ₁₀	_____	23. V _{MAX}	_____
11. K ₁₁	_____	24. V _{MIN}	_____
12. K ₁₂	_____	25. V _{MAX}	_____
13. K ₁₃	_____	26. K ₁	_____
27. V ₁	_____	31. SE(E ₁)	_____
28. V ₂	_____	32. E ₁	_____
29. V ₃	_____	33. SE(E ₁)	_____
30. E ₁	_____	34. EFD ₁	_____
31. SE(E ₁)	_____	35. THETA ₁	_____

Time constants (T) in seconds; other variables in per unit.

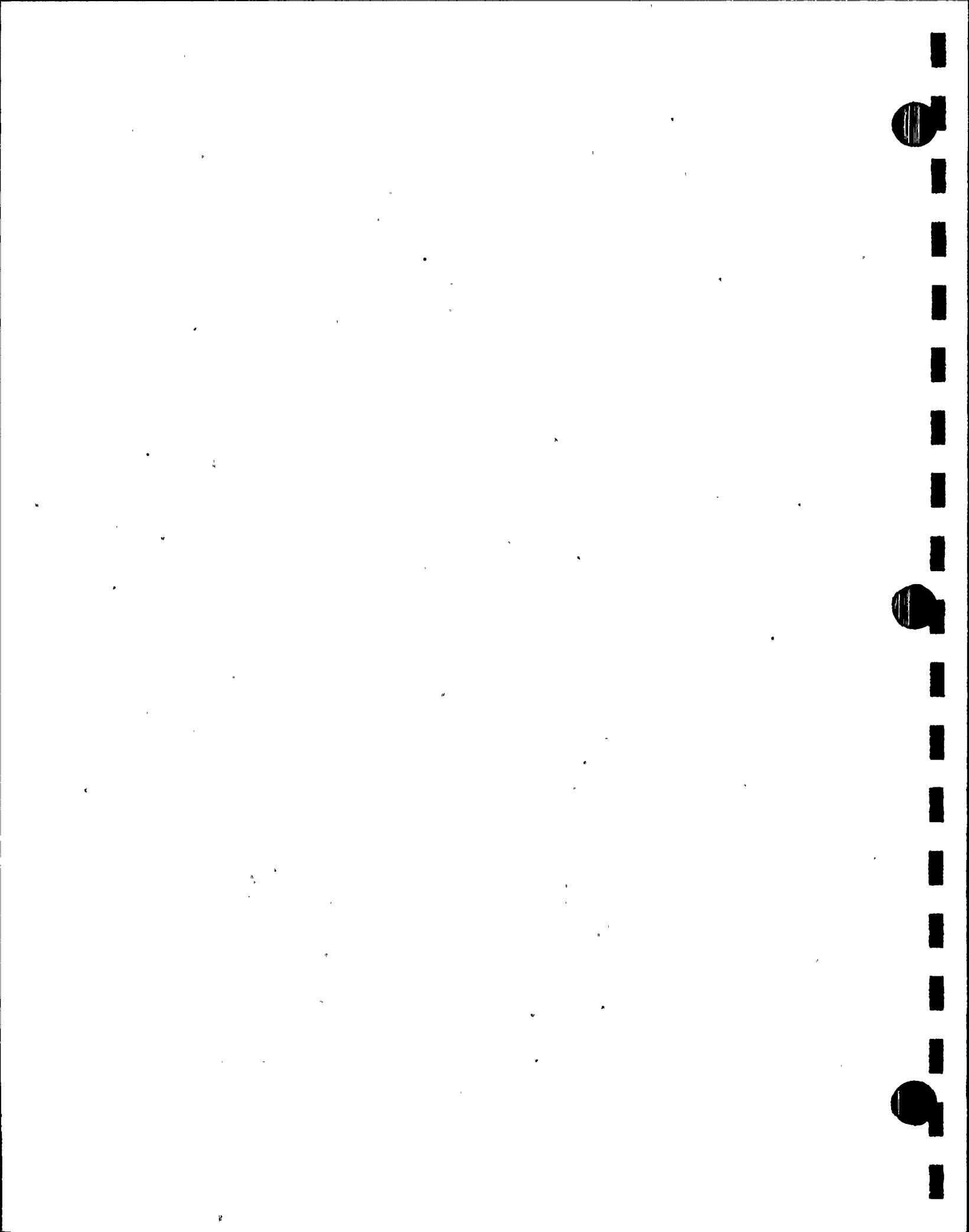
- NOTE:
- 1) Select the model from figures 1 through 10 and fill in the appropriate constants.
 - 2) If the exciter has a Volts per Herz limiter, underexcitation limiter or overexcitation limiter, a corresponding block diagram with appropriate constants must be provided.



I) POWER SYSTEM STABILIZER (FIG. 11)

A_1 through T_6 are time constants, in seconds
 K is in per unit

1	A_1	
2	A_2	
3	A_3	
4	A_4	
5	A_5	
6	$2A_6$	
7	T_1	
8	T_2	
9	T_3	
10	T_4	
11	T_5	
12	T_6	
13	K	



TYPE	FIGURE N	REQUIRED FOR FIGURES
1) P		14
2) K		14
3) T		13
4) K		12
5) T		12
6) K		12
7) K		12
8) K		12
9) K		12
10) K		12
11) T		12
12) D		13
13) D_{max}		14
14) T		13
15) T		13
16) T		13
17) T		13
18) T		12, 14
19) T		12, 14
20) T		12, 14
21) T		12
22) T		12
23) T		12
24) T		12
25) U_G		12
26) U_G		12
27) P_{max}		12
28) P_{min}		12
29) Load Limit		14
30) V_{max}		14
31) V_{min}		14

NOTE: Select the type from figures 12 through 14 and fill in the appropriate constants. Time constants (T) are in seconds, other variables are in per unit.



K) GENERATOR STEP UP TRANSFORMER

1. Transformer Rating, MVA	_____
2. Voltage Rating B-winding (high voltage), kV	_____
3. Voltage Rating X-winding (low voltage), kV	_____
4. % positive sequence impedance based on the above ratings	_____
5. % zero sequence impedance based on the above ratings	_____
6. 3-phase load loss measured at same temperature as the impedance in (4) above	_____
7. % positive sequence resistance and reactance based on the above ratings	_____
8. % zero sequence resistance and reactance based on the above ratings	_____
9. No load loss watts at 100% voltage	_____
10. Percent exciting current at 100% voltage	_____
11. Taps:	_____

- NOTES: 1) Copy of transformer test report nameplate and saturation curve to be supplied as soon as available.
- 2) Supply main one line diagram of facility to property line indicating transformer rating and configuration, as well as all impedances and grounding data.
- 3) Transformer high voltage connection shall be wye and solidly grounded. Low voltage connection shall be delta.



I. REFERENCES

1. IEEE Committee Report, "Excitation System Models for Power System Stability Studies" Transactions on PAS Vol PAS-100, February 1981.
2. IEEE Committee Report, "Procedures for the Exchange of Power Plant and Load Data for Synchronous Stability Studies. Paper N. 81 WM 065-2, IEEE/PES Winter Meeting, Atlanta, Georgia, February 1981.
3. IEEE Working Group, "Dynamic Models for Fossil Fueled Steam Units in Power System Studies" "Paper 90 SM 327-7 PWRS, IEEE/PES 1990 Summer Meeting, Minneapolis, Minn. July 1990.



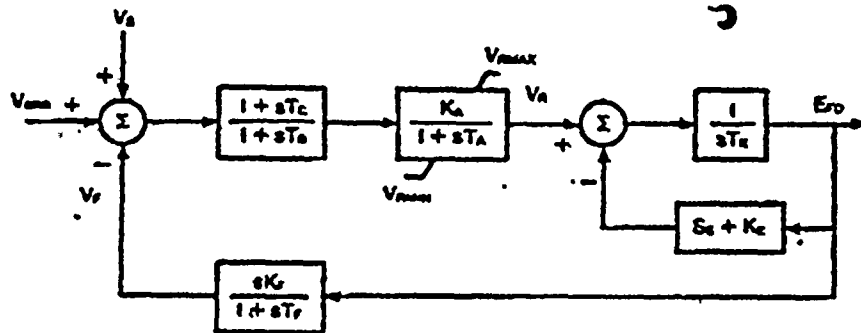


Figure 1. Type DC1 - DC Commutator Exciter

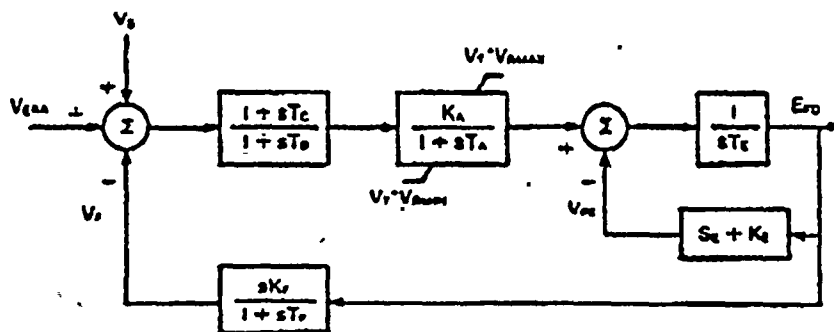
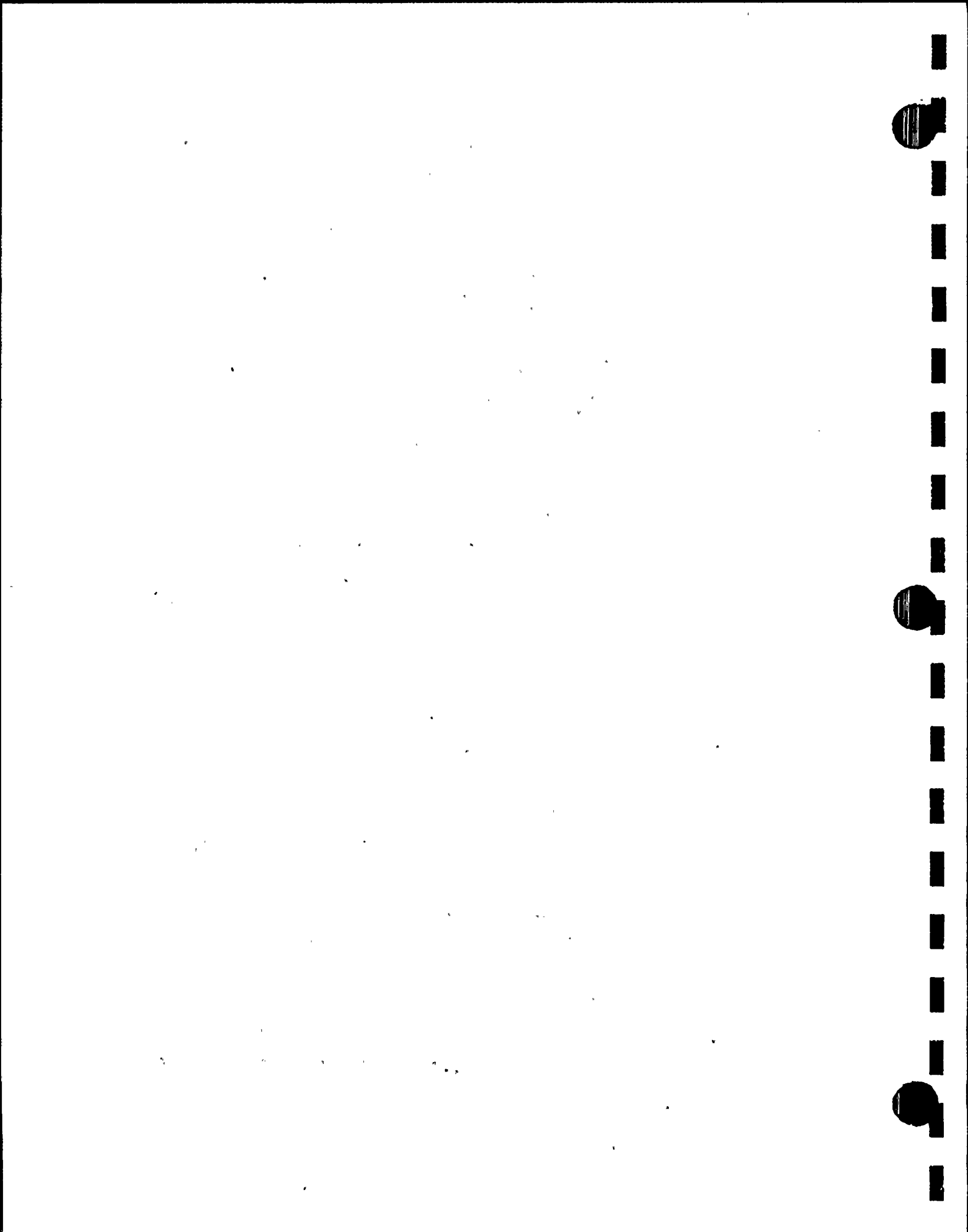


Figure 2. Type DC2 - DC Commutator Exciter



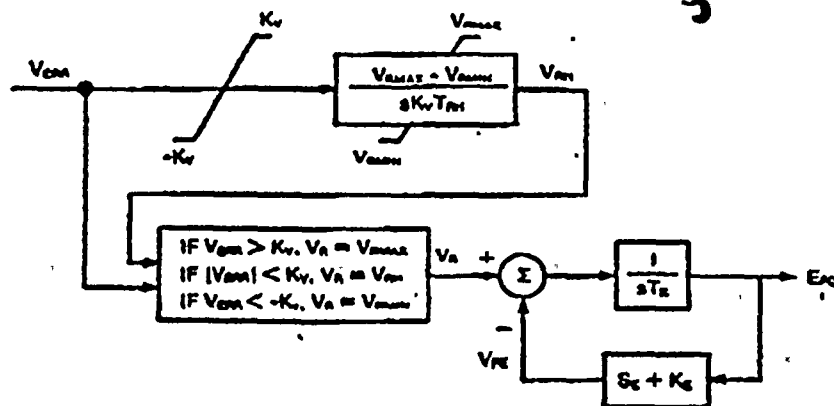


Figure 3. Type DC3 Noncontinuously Acting Regulators

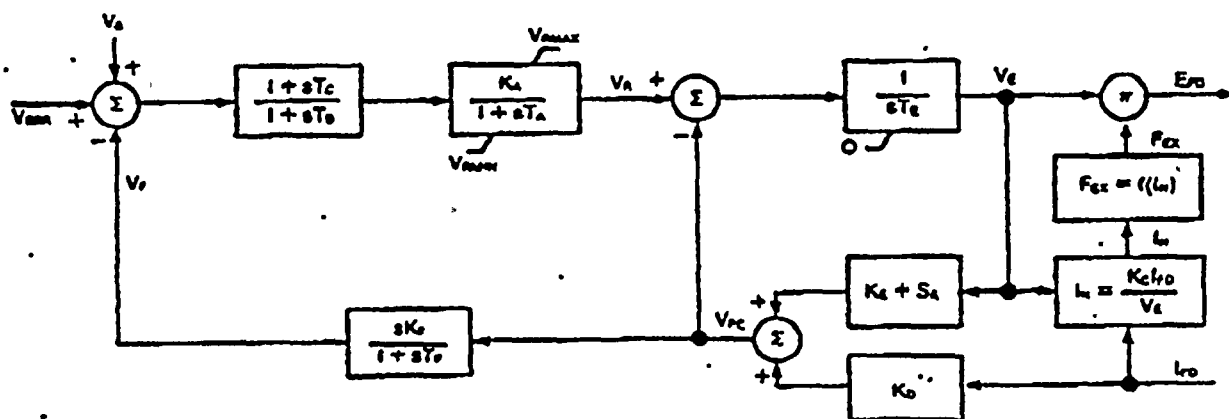
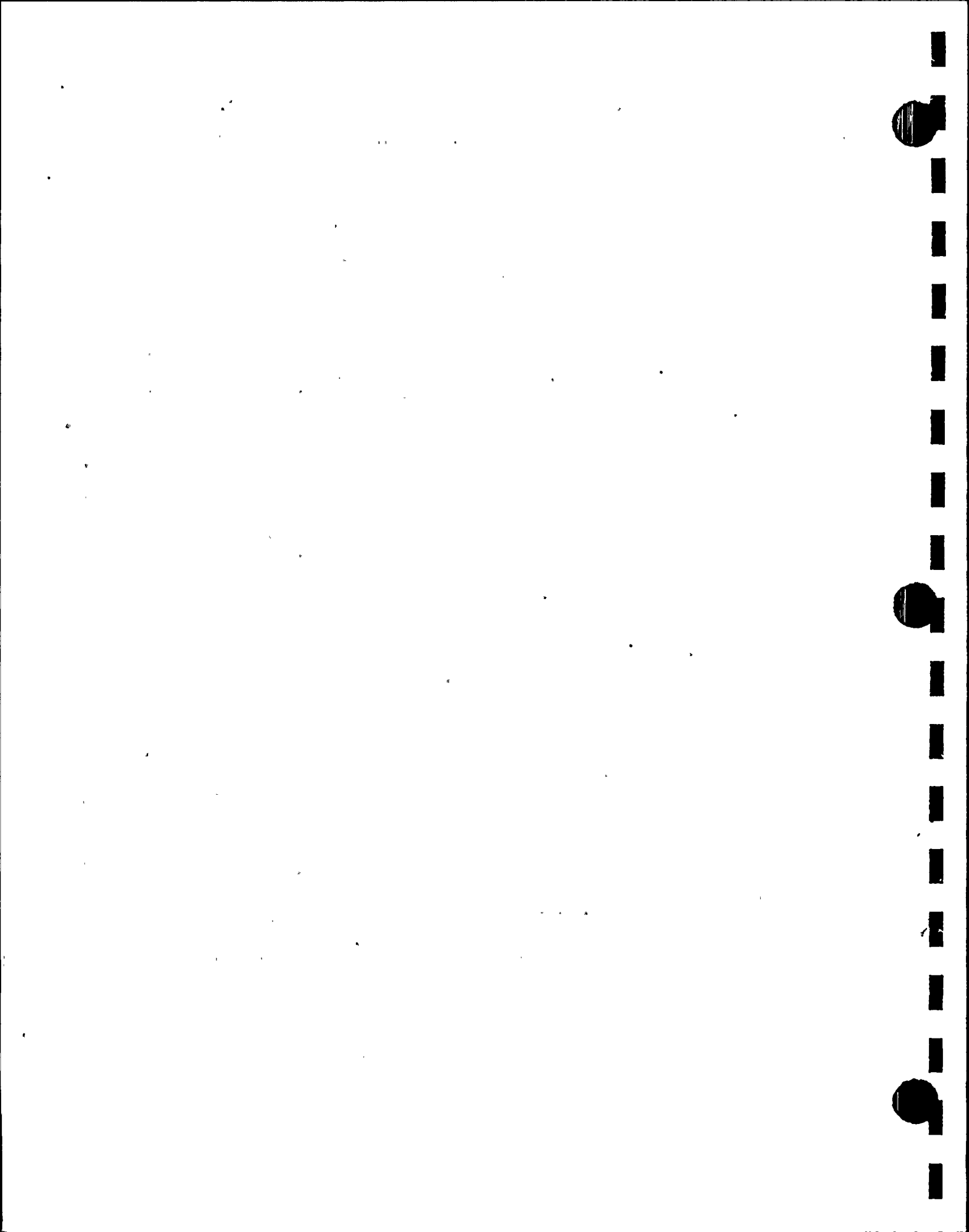


Figure 4. Type AC1, Alternator-Rectifier Excitation System with Noncontrolled Rectifiers and Feedback from Exciter Field Current



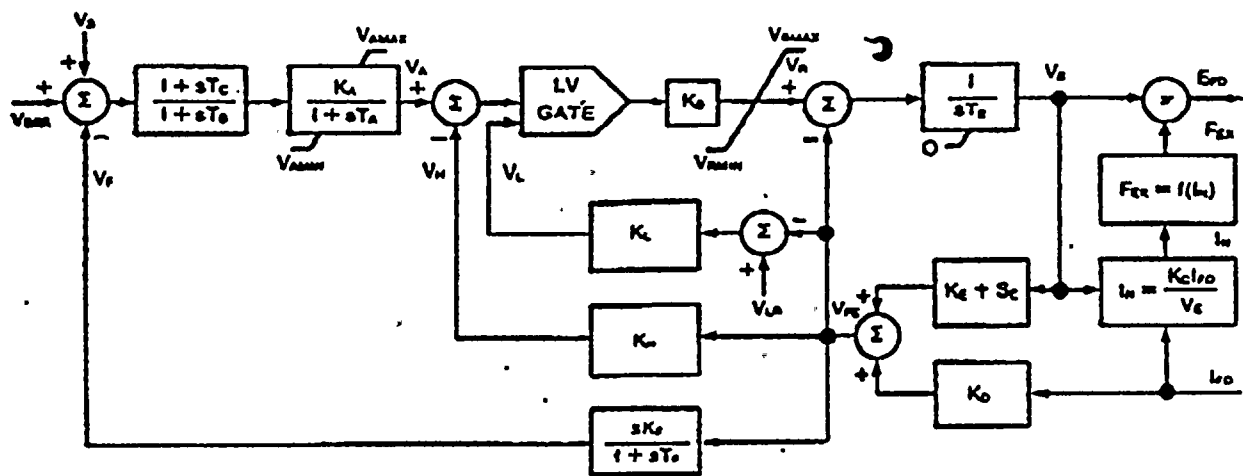


Figure 5. Type AC2, High Initial Response Alternator-Rectifier Excitation System with Noncontrolled Rectifiers and Feedback from Exciter Field Current

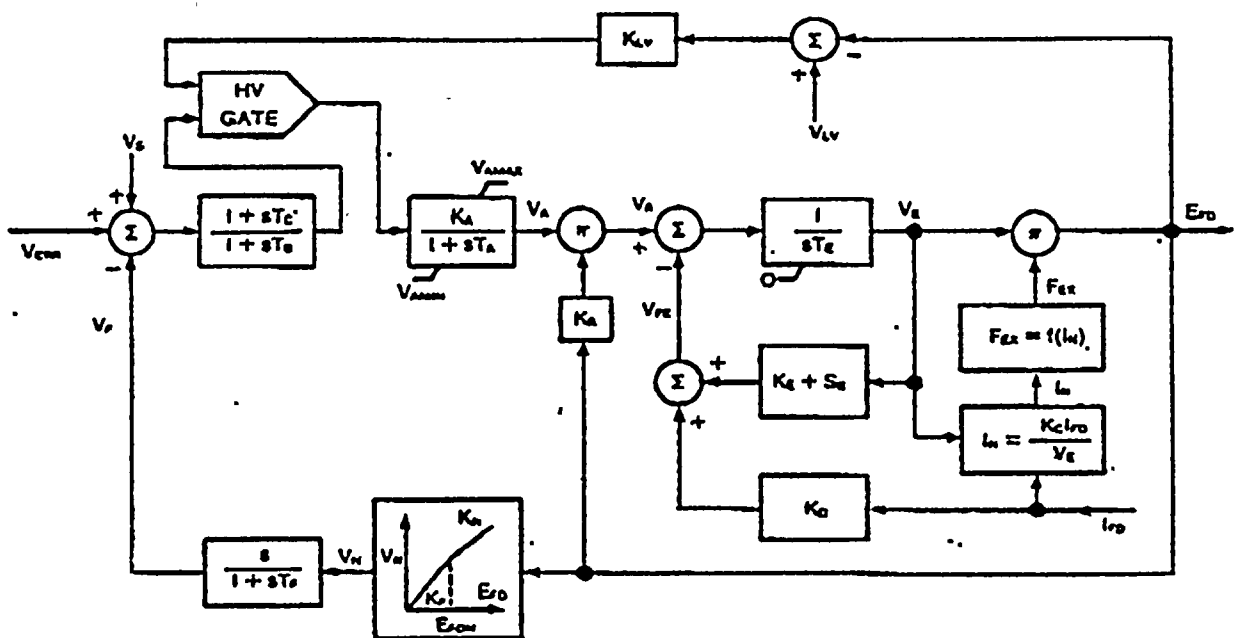
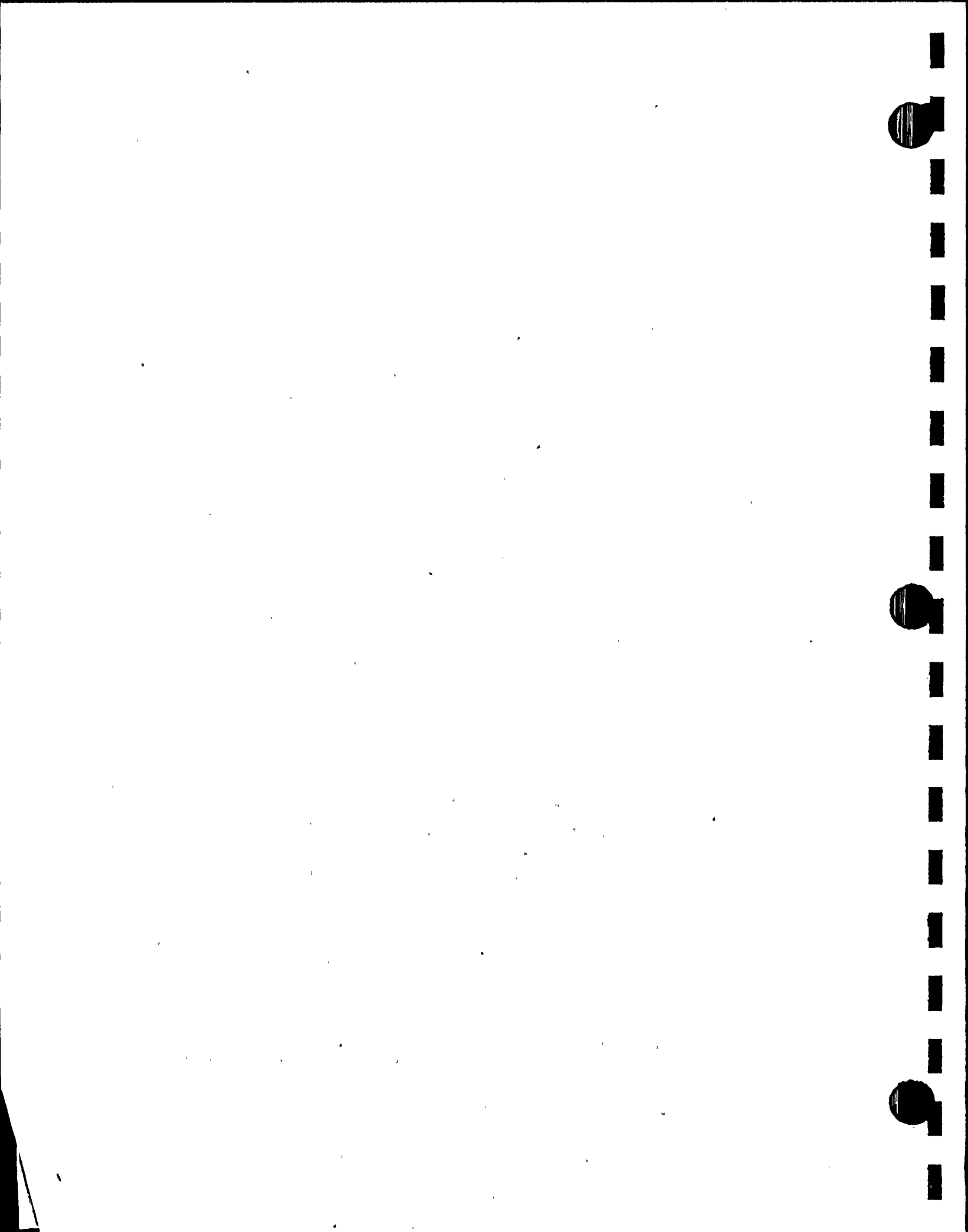


Figure 6. Type AC3 Alternator Rectifier Exciter



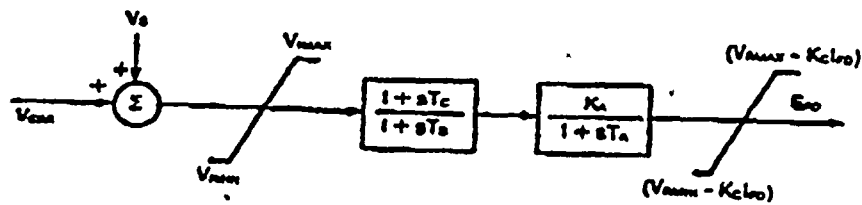


Figure 7. Type AC4 Alternator-Controlled Rectifier Exciter

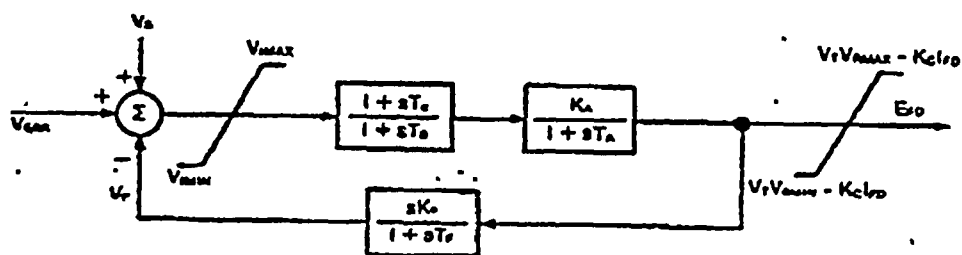
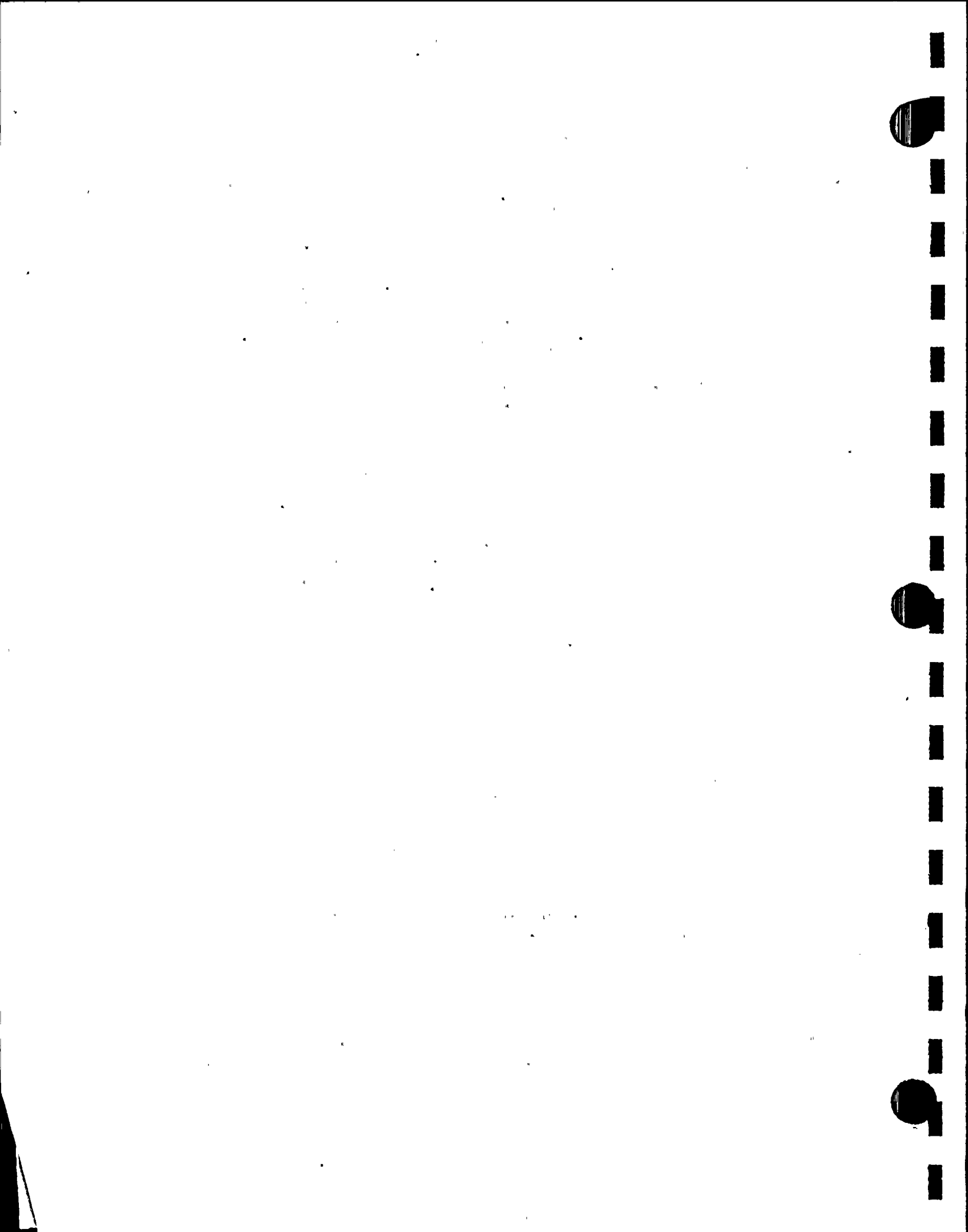
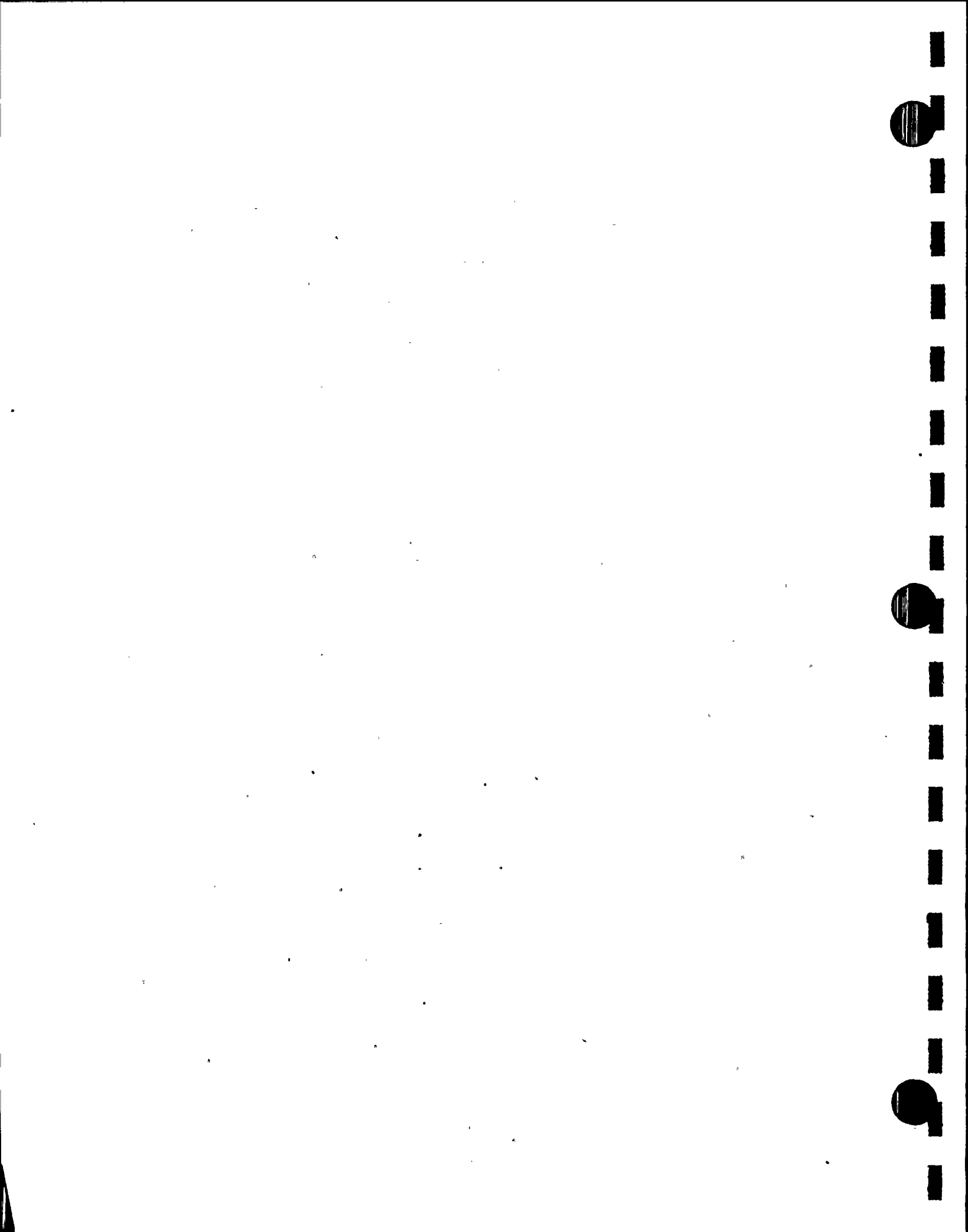


Figure 8. Type ST1 Potential Source-Controlled Rectifier Exciter







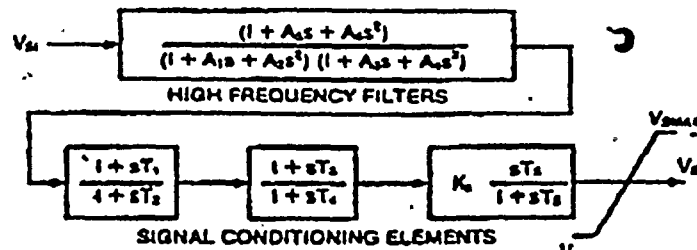


Figure 11. Power System Stabilizer

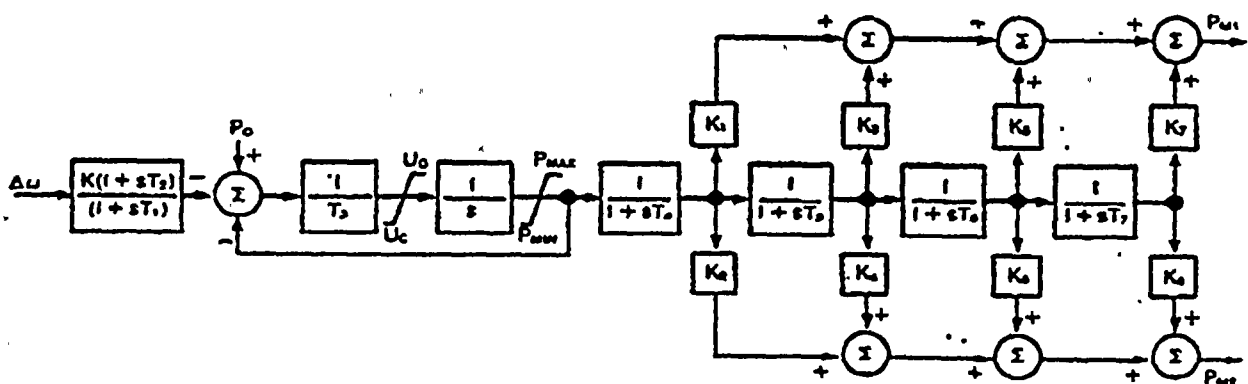
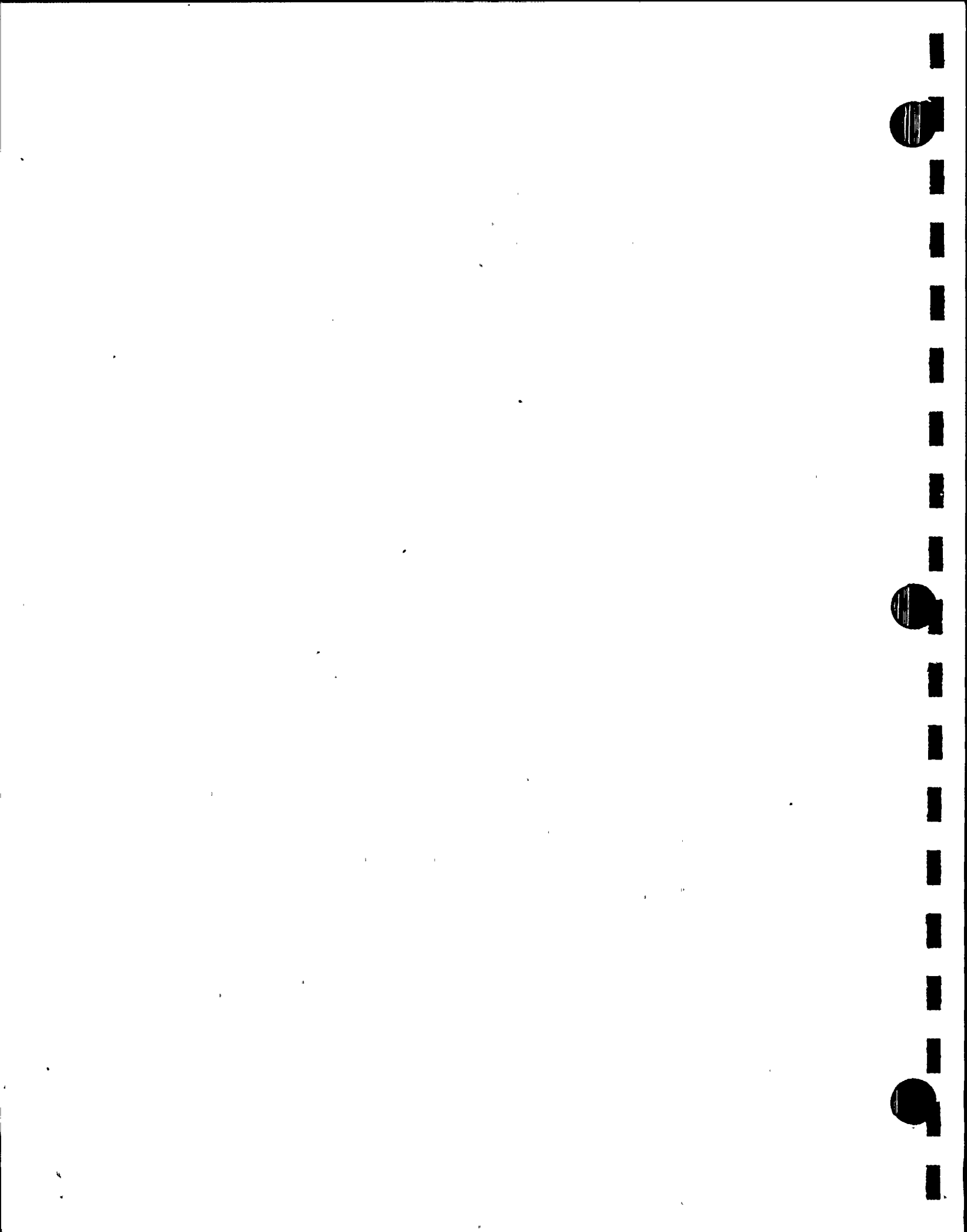


Figure 12. Type 1 Speed-Governing System Model Applicable to Both Steam and Hydro Turbines



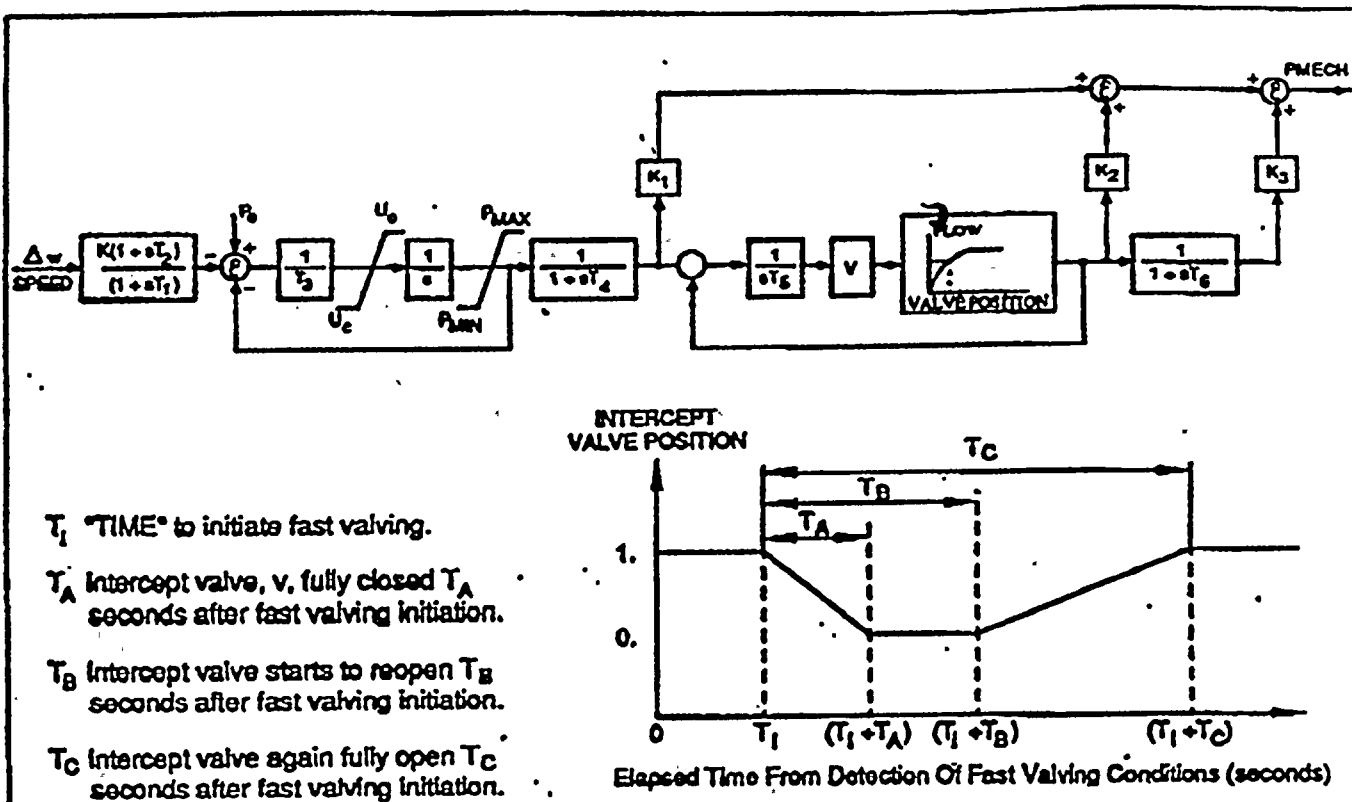
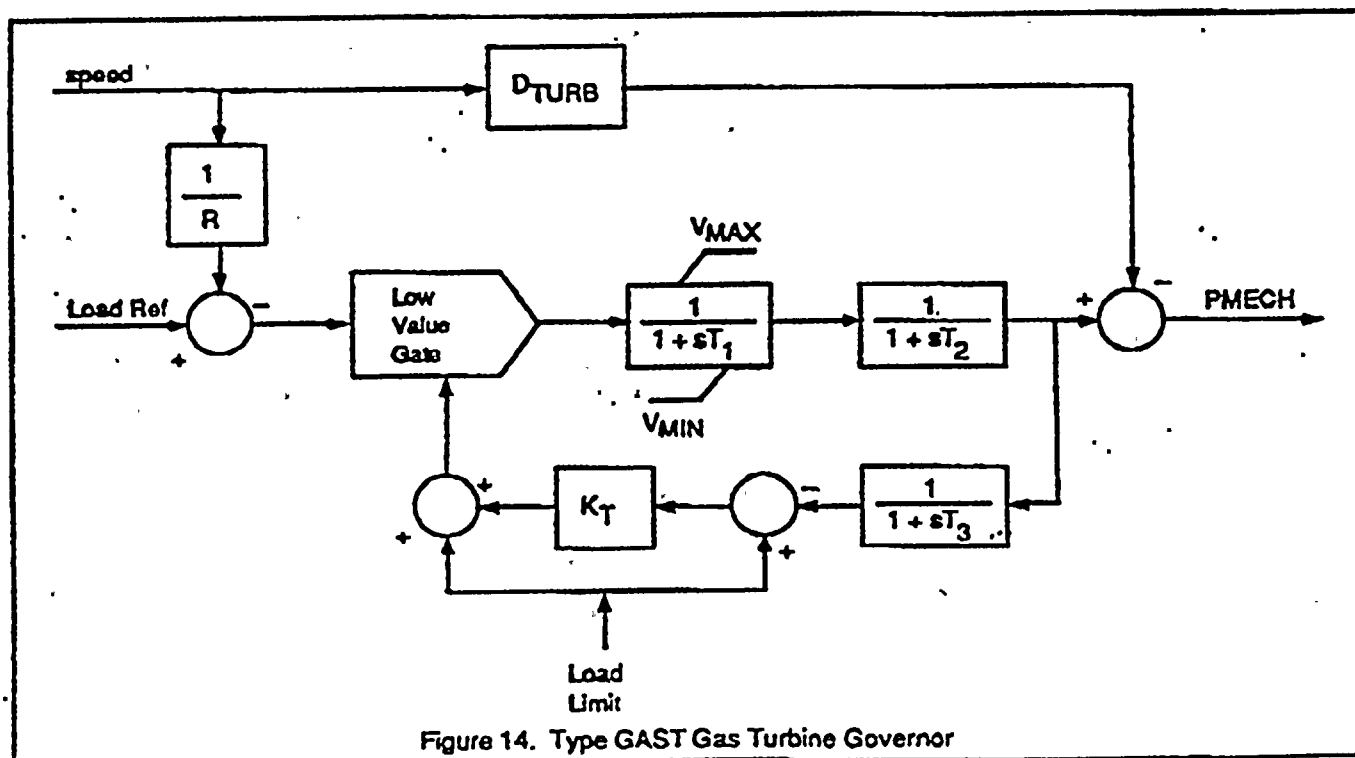
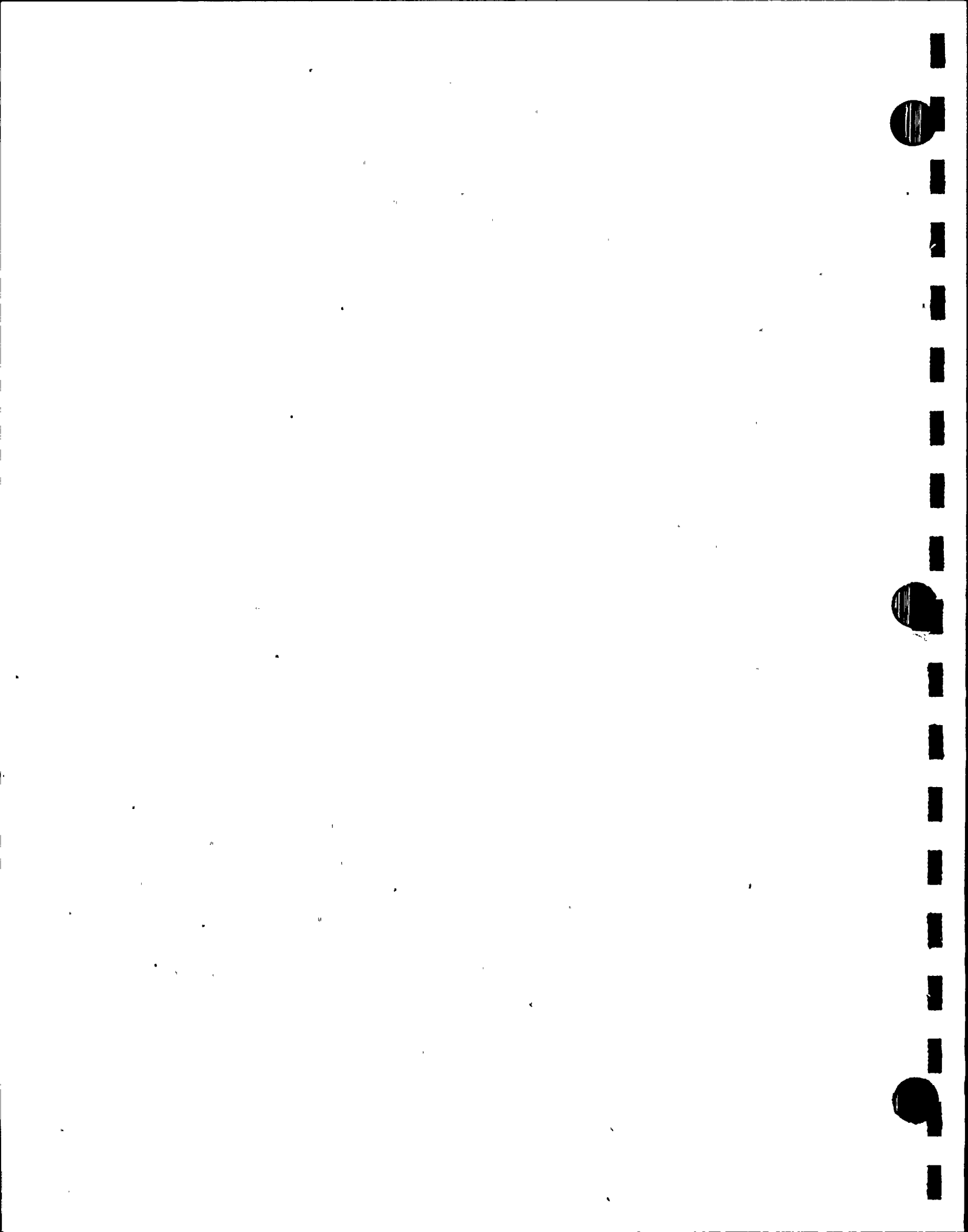


Figure 13. Type TGOV3 Steam Turbine Governor with Fast Valving





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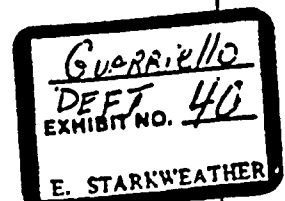
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RAJ

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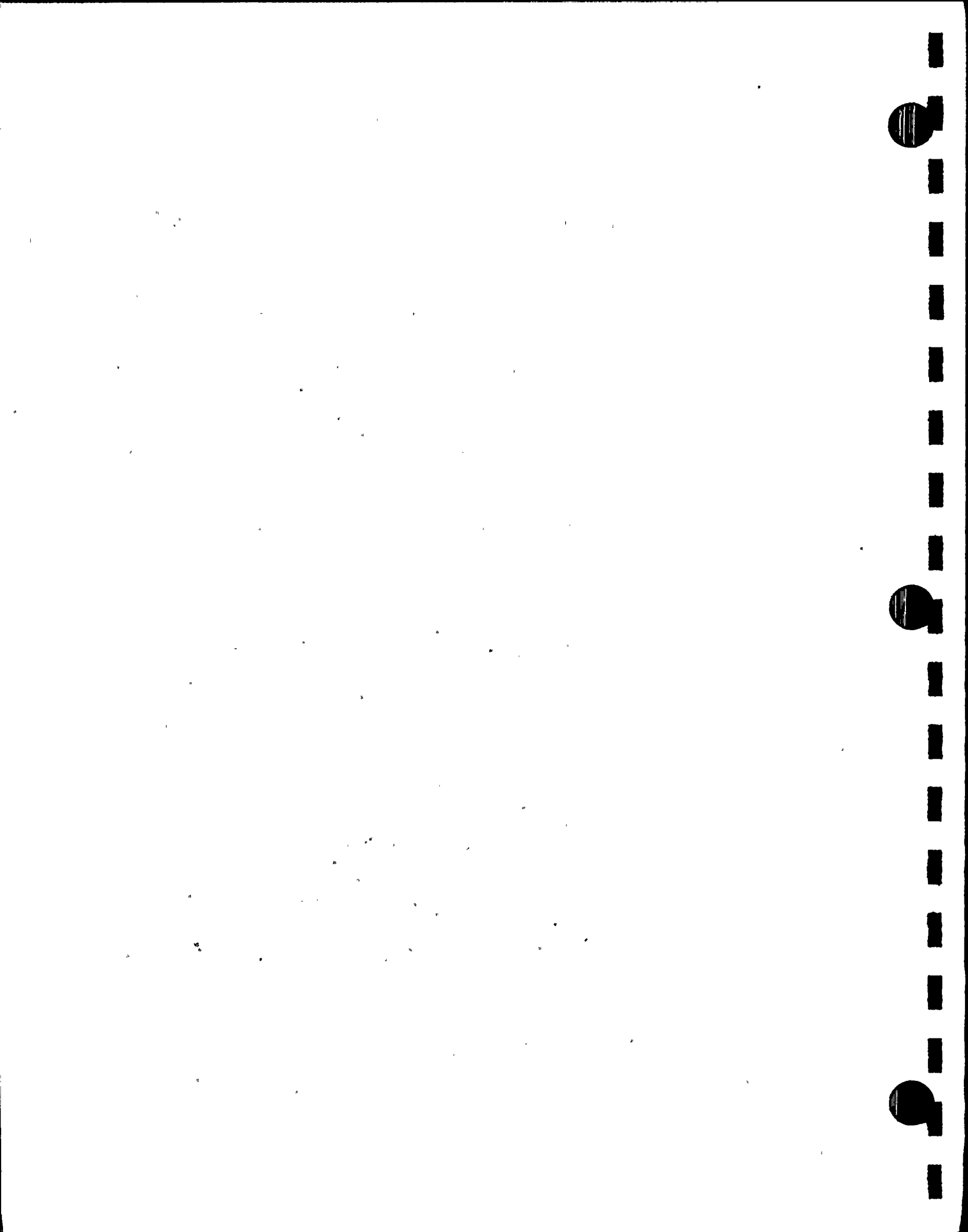
Third Draft

Re: FPL Refusals to Transmit for FMPA Among Cities

Dear Cal:

This is a follow-up to our June 19, 1990 letter, setting forth actions which FMPA can consider taking to secure transmission among the Cities on fair terms and conditions. Through this letter, we report to the members.

The August 8th and 9th negotiations with FPL established that FPL will not agree to transmission for the "IDO" project which is substantially different from its prior offer. To the possible annoyance of those who have been negotiating with FPL for over a year on the project, Bob Jablon attempted to explore possible areas of negotiability. At first FPL (through Bob Schoneck) indicated that FPL might be willing to "consider" supplying transmission pursuant to various broad principles which could underlie an agreement. For example, Bob Schoneck said that he was willing to report back to management that FMPA wanted FPL to consider transmission investments and that he would be willing to consider combining firm and as available transmission. However, when Nick came back with a specific proposal, favorable to FPL, under which we might accept FPL's conditions to providing FMPA with as available transmission in combination with required firm transmission, the Company rejected the proposal. The Company rejected all specific FMPA proposals built around either firm or network transmission. What was most discouraging was not merely the rejection of our proposals, but the Company's unwillingness even to consider variations from its own unacceptable proposals or compromises as to amounts of required firm transmission or other economic compromises.



Final Draft

Mr. Calvin R. Henze
General Manager
Florida Municipal Power Agency
August 23, 1990
Page 2

The Company's position is that its offers to you are fair and "defensible" and that it will not budge from them. The tone of its responses underscored not only a lack of negotiability, but FPL's view that it should determine the appropriate underlying agreements between FMPA and its members.

FPL takes the position that FMPA must contract for firm transmission substantially equal to the cumulative amount of the individual Cities' loads. By cumulating individual city demands, the Company rejects any obligation to treat FMPA transmission on a combined or coordinated basis. In addition, by using the non-coincidental demands of the cities, it ignores that when one city sells to another, there is only one load on the transmission at that time. It ignores that the burden on the transmission system is the combined burden of FMPA usage at times of peak loadings and not the total of the non-coincident individual city peaks.

While FPL proposes an alternative "hub" approach, it insists that you must purchase firm transmission even for power deliveries which the cities can interrupt because they have local generation. Thus, FPL would charge you a firm rate, even for transmission transactions which do not burden the system.

The attitude of the FPL negotiators, who usually did not include management representatives, as well as the specific responses demonstrate a refusal by FPL to recognize FMPA as a utility and a refusal to transmit "among" the cities contrary to the St. Lucie antitrust license conditions and FPL's agreements. We can only conclude that FPL's purpose is to kill the IDO project. We fear, however, that more is at stake than IDO. FPL is taking positions that would limit your transmission to point to point service and would charge you based upon maximum contract demands for all purposes. It appears to be reverting to its position that all transmission is firm and that it will sell as available or interruptible transmission only on such restrictive terms that the proposed service would not be usable. If we are correct in this assessment, FPL will restrict your transmission use in a way that has a potential to make future agency projects and future coordination unduly expensive, if not totally uneconomic.

As we wrote you in our June 19 letter, you have potential remedies through a district court action, through enforcement of the NRC License Conditions, through the Federal Energy Regulatory Commission and through the Florida Public Service Commission. We have done additional legal research on your district court remedies and have drafted a possible complaint based upon FPL's refusals to agree to network transmission among the cities, as FPL is contractually obligated to do under the 1982 Antitrust Settlement Agreement and under the St. Lucie Unit 2 License Conditions.



Third Draft

Mr. Calvin R. Henze
General Manager
Florida Municipal Power Agency
August 23, 1990
Page 3

Taking into account your needs for resolution of the transmission problem on a basis that is as prompt as possible and avoids unnecessary costs, we recommend consideration of the following actions:

1. Write a politely worded demand letter to Florida Power & Light Company, requesting reconsideration of its positions. We have drafted a possible letter to FPL's new Chief Executive Officer, S.E. Frank. Such a letter has at least a possibility of getting the Company to rethink its positions. It is necessary before commencing legal action to establish FPL's refusal to deal.
2. Fred Bryant and Spiegel & McDiarmid will make informal contacts at the Public Service Commission and Nuclear Regulatory Commission, respectively. Such contacts will assure that the Florida Public Service Commission staff is informed of our position.
3. If the NRC staff is supportive, we would request the NRC to convene a meeting with Florida Power & Light to seek to persuade the Company that it should transmit under the License Conditions in order to avoid formal proceedings. Unless we learn reasons why we should not do so, and if informal procedures are unsuccessful, we would recommend that you file a complaint with the NRC seeking enforcement of the License Conditions. We believe that the NRC may aid your getting relief, but that it would seek to avoid formal hearings.
4. We recommend a district court action to enforce your settlement agreements with FPL and the License Conditions. We would recommend also that you file an antitrust complaint, as well as contract claims. However, we would recommend suspending action on the filed antitrust complaint at this time, for the reasons explained below.

A contract action is relatively inexpensive compared with an antitrust action. While we cannot guarantee success, you have relatively straight-forward contract claims. If a district court judge referred the claims to the Nuclear Regulatory Commission under a primary jurisdiction doctrine, or even to FERC, you might achieve a relatively quick result from those agencies, which could hardly ignore the referral. If the district court decided the matter as a "simple contract claim," you may reach a satisfactory result without waiving other rights.

Federal practice permits you to file an antitrust complaint, but not pursue it. Such filing has the advantage that it limits future arguments by FPL that antitrust claims have been waived, are time-barred or are otherwise not judicially enforceable. We believe that such contentions by FPL would lack merit. However, even if FPL were unsuccessful in bringing them,



Inud Ragt

Mr. Calvin R. Henze
General Manager
Florida Municipal Power Agency
August 23, 1990
Page 4

your failing to file an antitrust claim along with your contract claims may create arguments which FPL could then use to delay. Should you lose on the contract claims, you could pursue the antitrust claims. In terms of the potential for a negotiated settlement, the Company can hardly ignore your filing of valid antitrust claims. We note that if you win an antitrust action, such victory could reopen FPL's nuclear licenses for further antitrust relief under the antitrust provisions of the Atomic Energy Act, Section 105(a), 42 USC 2135(a).

The reason for our recommendation of filing but not pursuing the antitrust claims at this time is based largely on cost. Your contract claims present a less expensive and less complicated remedy as compared to your antitrust ones.

5. We do not recommend immediately pursuing seeking a Florida Public Service Commission order that FPL file for network transmission at FERC. While such potential remedy is attractive, and parallel actions have been pursued by the Wisconsin Public Service Commission, we are not certain that the Florida Public Service Commission will want to get involved to support your rights. However, depending upon discussions with the Florida Public Service Commission staff and upon further consideration, we might determine to give such a filing priority.

6. We do not recommend a direct filing at FERC at this time. In spite of the fact that we believe that the Federal Energy Regulatory Commission has jurisdiction to correct discriminatory transmission, FERC has often been reluctant to enforce what it considers to be an initiation of transmission transactions by public systems. Further, FERC proceedings can be expensive and drawn out. However, if FPL makes FERC filings, for example in a merger context as to which relief can be conditioned, or if it files a transmission rate case, transmission issues can be raised. FERC may be receptive to implementing a transmission filing by FPL, which follows Florida Public Service Commission requirements.

You have requested cost estimates. Because it is virtually impossible at this time to anticipate FPL reactions and the course of potential proceedings, we cannot give you specific cost estimates. If you decide to pursue litigation, we recommend that either through direct FMPA review or through a steering committee, litigation actions be reviewed periodically both to control costs and to assure that actions taken are consistent with agency needs. The best way to control costs is through consideration of actions before they are taken.

In general terms, correspondence, meetings with the FPSC and NRC staff, hoped for negotiations through the NRC and the filing of a district court and NRC complaint should be relatively



Mr. Calvin R. Henze
General Manager
Florida Municipal Power Agency
August 23, 1990
Page 5

inexpensive. We would hope that all of the above could be accomplished for under \$50,000 in legal fees.

We believe that, in fact, the Nuclear Regulatory Commission would be very reluctant to set a complaint proceeding and would try to deal with matters summarily. We can anticipate that Florida Power & Light would attempt to delay and make as expensive as possible any district court or agency proceeding, including through seeking to take multiple depositions by even potentially filing counterclaims, and by a multitude of motions to dismiss, transfer, etc. (We know of no valid counterclaims against you and know of nothing that would justify FPL's taking such actions.) We believe that you ought to be able to pursue a district court contract claim through trial for less than \$500,000 in legal fees. Because of the nature of the claims, an antitrust action, even if simplified, could result in over \$1,000,000 in legal fees. Full blown agency proceedings brought either directly or under the doctrine of primary jurisdiction can cost between \$500,000 and \$1,000,000. A primary jurisdiction referral may be framed, however, so as to avoid hearings.

We are aware that the potential cost of legal action are high, although the cost to FMPA and its member cities from not obtaining adequate transmission are likely to be far in excess of any such legal costs. We stress the need for flexibility in the pursuit of remedies, especially where we are seeking to limit costs. FERC and other decision-making precedents are continually changing. What may appear to be a less favorable route may become a more attractive one. However, especially after having sat through the last FPL negotiating session and having listened to the Company's obduracy, we would be grateful for the opportunity to work with you to seek to help you obtain fair transmission rights.

This letter has been coordinated with Fred Bryant and R.W. Beck and Associates. If you have questions or need further information, please let us know.

Sincerely,

Robert A. Jablon

Alan J. Roth

RAJ/AJR/tk



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY,)

Plaintiff,)

vs.)

FLORIDA POWER & LIGHT COMPANY,
a Florida Corporation,)

Defendant.)

Case No. 92-35-CIV-ORL-22

DEFENDANT FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR SUMMARY JUDGMENT

Defendant, Florida Power & Light Company ("FPL"), respectfully moves this Court for entry of an Order granting summary judgment in its favor as to all counts of the Supplemented Amended Complaint ("Complaint"). The grounds for this motion, which are set out more fully in the accompanying Memorandum of Law, are as follows:

1. All claims are barred by statutes of limitations. The alleged rights giving rise to the claims were created in 1981 or 1982. The alleged violations of those rights occurred within a year of that time. The lawsuit to enforce those rights was not filed until December 13, 1991. It is time barred.

2. This Court lacks subject matter jurisdiction. Fairly described, this is a dispute over the pricing of electrical transmission service. The Federal Energy Regulatory Commission ("FERC") has exclusive jurisdiction over such disputes. Under the "filed rate doctrine", the federal



courts lack jurisdiction to entertain direct or collateral attacks on the rate schedules on file at the FERC, or to award damages or injunctive relief on the theory that rates other than the filed rates are more appropriate. Florida Municipal Power Agency ("FMPA") knowingly and intentionally instituted this action in an improper jurisdiction.

3. No contract has been breached. No "Contract" was described in the Complaint. None has emerged through discovery. The "rights" FMPA seeks to enforce were never violated, were never granted to FMPA and, in any event, may not be enforced in a private cause of action. The "rights" are wholly inconsistent with five contracts entered into between FMPA and FPL after the "rights" were allegedly granted.

4. There was no anticompetitive conduct. FMPA's pricing proposals would have required FPL to abrogate a number of existing contracts with FMPA. A regulated utility such as FPL, even if found to have monopoly power, is not obligated to surrender negotiated contract rights or to deal on terms that would adversely affect the efficient conduct of its business or the rights of its other customers.



WHEREFORE, FPL respectfully submits that it is entitled to summary judgment in its favor on all counts of the Complaint.

Respectfully submitted,

STEEL HECTOR & DAVIS
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By: 

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(Fla. Bar No. 383015)

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Washington, D.C. 20036



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by Federal Express on L. Lee Williams, Jr., Esq. and Frederick M. Bryant, Esq., Moore, Williams, Bryant, Peebles & Gautier, P.A., 306 East College Avenue, P.O. Box 1169, Tallahassee, Florida 32302-1169 and on Robert A. Jablon, Esq. and Bonnie Blair, Esq., Spiegel & McDiarmid, 1350 New York Avenue, N.W., Washington, D.C. 20005-4798 on this 15th day of April, 1993.



Alvin B. Davis



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY,)

Plaintiff,)

vs.)

FLORIDA POWER & LIGHT COMPANY,)
a Florida Corporation,)

Defendant.)

Case No. 92-35-CIV-ORL-22

DEFENDANT FLORIDA POWER & LIGHT COMPANY'S
MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT

April 15, 1993

STEEL HECTOR & DAVIS, MIAMI, FLORIDA



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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY,)

Plaintiff,)

vs.)

FLORIDA POWER & LIGHT COMPANY,
a Florida Corporation,)

Defendant.)

Case No. 92-35-CIV-ORL-22

DEFENDANT FLORIDA POWER & LIGHT COMPANY'S
MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

This dispute concerns the pricing of electric transmission service. FPL has provided such service to FMFA for almost a decade, pursuant to five comprehensive, extensively negotiated, written contracts filed with and regulated by the FERC. They remain in full force and effect.

In September 1989, FMFA initiated negotiations with FPL for yet another transmission service agreement. FPL agreed to provide transmission service among the locations involved, but the parties could not agree on the pricing. FMFA's pricing proposal would have measurably altered the pricing provisions of the existing contracts, prepared in accordance with current FERC methodology. It would also have resulted in disproportionate burdens being placed on FPL's other customers, which FPL was neither inclined nor required by law to do.



In the midst of the negotiations, FMMPA received detailed written advice from its attorneys on alternative means to "secure" the terms and conditions it had been unable to achieve in the contract negotiations. Among other things, FMMPA was advised that the FERC was the appropriate "jurisdiction to correct discriminatory transmission [pricing]", but that relief there was uncertain, "expensive and drawn out." FMMPA was further advised that in counsels' view FPL was obligated to provide the "network" service FMMPA sought "under the 1982 Antitrust Settlement Agreement and under the St. Lucie Unit 2 License Conditions." 1/

The parties could not overcome the pricing impasse. FMMPA initiated this litigation. Not in the FERC, which FMMPA had been advised was the appropriate jurisdiction, but in state court. And not to enforce the two contracts which FMMPA has been advised gave rise to FPL's obligations, but to enforce a hitherto non-existent "Contract" cobbled together out of Nuclear Regulatory Commission ("NRC") License Conditions, other contracts to which FMMPA was not a party and "actions" of entities other than FMMPA. Although fragments of this "Contract" are in writing, the "Contract" itself is not. It has no delineated terms, no identified parties, no effective date, no duration and has never been referred to by FMMPA outside of the pages of the Complaint.

1/ Letter from R. Jablon, Esq. to C. Henze at pp. 2, 3 (Aug. 23, 1990) (Tab A) (hereinafter "Jablon letter").



The "Contract" created in the Complaint was allegedly entered into before any of the five existing transmission service agreements between these parties. This seminal "Contract" allegedly entitles FMPA to terms and conditions more favorable than those contained in the five later contracts, even though FMPA now claims it was entitled to those terms and conditions at the time the five later contracts were entered into, and even though FMPA claims it sought those terms and conditions in negotiating those five contracts. Finally, although the last of the five contracts was entered into in 1986, until the filing of this lawsuit, FMPA never asserted that the terms of any of these contracts were inferior to or inconsistent with the terms to which it now says it was entitled since 1982.

FMPA now brings suit under the alleged "Contract", and asserts, as well, that FPL's alleged failure to fulfill its obligations under the "Contract" violates the antitrust laws. As demonstrated below, the suit is barred by the applicable statutes of limitations; the "filed rate doctrine" deprives this court of jurisdiction to entertain FMPA's claims; and, in any case, in light of undisputed facts, the contract and antitrust claims do not present triable issues.

Relief is available to FMPA, if it genuinely seeks relief, exclusively from the regulatory agency having the statutory mandate, the technical expertise, the pervasive knowledge, the comprehensive perspective and the essential



staffing to address these issues promptly and effectively. If FMPA intends to pursue this matter further, it should be directed to the FERC. The Supplemented Amended Complaint asserts no claims entitling FMPA to relief from this Court. Judgment should be entered in favor of FPL on all claims.

ARGUMENT

I. THE CONTRACT AND ANTITRUST CAUSES OF ACTION ARE BARRED BY THE APPLICABLE STATUTES OF LIMITATIONS

A. The Alleged Violations of FMPA's Rights Occurred More Than Five Years Before FMPA Filed Its Suit

Transmission service provided by FPL to FMPA is priced on a "point-to-point" basis. 2/ According to FMPA, during the negotiations for each of the existing contracts, beginning in 1982, it requested what it now claims it was always legally entitled to receive under the "Contract," i.e., transmission service that is priced on a "network" basis. 3/

2/ Under point-to-point pricing, FMPA must pay separately for each "contract demand" between each point of receipt of power on FPL's system and each point of delivery from the FPL system. For example, assume that FMPA has paid for a contract demand from point of receipt A to point of delivery C. If FMPA decides to transmit from B to C rather than A to C, then, under the existing contracts, FMPA has agreed to pay for a separate transmission service from FPL. See Affidavit of William C. Locke, Jr. In Opposition To Plaintiff's Motion For Partial Summary Judgment at ¶ 10 (May 18, 1992) ("Locke Aff.") (Tab B) (The contracts, as amended, are attached to the Locke Aff. at Tabs A thru E); Third Affidavit of William C. Locke, Jr. at ¶ 5 (Apr. 15, 1993) ("Locke Third Aff.").

3/ Plaintiff FMPA's Responses and Objections to Defendant FPL's Second Set of Interrogatories, Interrogatory Responses 10(g), 14, 19 (Feb. 10, 1993). See Tab C.

(continued...)



Likewise, according to FMPA, FPL refused every such request for network transmission. 4/ Thus, FMPA has admitted that the alleged breach of the "Contract" and the alleged antitrust violations occurred during the 1982-83 negotiations relating to the first such agreement. 5/

The limitations periods for those causes of action began to run at the very latest in June 1983, when the first agreement was signed. A civil antitrust action brought under the Sherman or Clayton Acts or under chapter 542 of the Florida Statutes must be commenced within four years after the cause of action first accrues. 6/ Therefore, FMPA's causes

3/(...continued)

Network pricing would save FMPA money and cost FPL money because it would allow FMPA to pay only for the quantity of power delivered, while requiring FPL to reserve the capacity to receive and deliver power at multiple points on its delivery system at anytime, as FMPA may designate from moment to moment. Locke Aff. at ¶ 16 (Tab B). An FPL analogy used in negotiations was to guaranteed hotel reservations. A guest who insists that a room be held for late arrival in any of three cities on a given night will not succeed in paying only one room charge on the theory that only one room actually will be occupied on that night. Id. at ¶ 27.

4/ E.g., Interrogatory Response 16 (Tab C). See also Interrogatory Response 19 (Tab C); Dep. of Calvin Henze at 53/9 thru 54/3, 74/16-21 (Nov. 3, 1992) (Tab D).

5/ Interrogatory Responses 14, 19 (Tab C). Asked whether FPL's specification of delivery points during those negotiations amounted to a rejection of the network concept, FMPA's General Counsel responded: "I think, in my mind, it amounts to an abdication of the absolute explicit obligations that Florida Power & Light has under the License Conditions." Dep. of Frederick Bryant at 19/18-20 (Tab E).

6/ 15 U.S.C. § 15b (1988); Fla. Stat. ch. 95.11(3)(p) (1991). Assuming arguendo that FMPA's "Contract" can be characterized as an "instrument" upon which an action can be
(continued...)



of action expired years before this action was filed in December 1991.

Moreover, FMPA's discovery responses uniformly demonstrate FMPA's unwavering conviction that no later than 1982 it was FPL's policy not to provide the network pricing that FMPA sought and now claims it was entitled to under the "Contract." FMPA never believed that policy would change. To the contrary, FMPA's General Counsel, lead consultants, and General Manager insisted that no change would ever occur.

° Frederick Bryant, FMPA's General Counsel since 1978, emphasized the consistency of FPL's policy:

[I]n the 25 years -- 23 years that I've been dealing with FPL, their response has never differed: Not only, 'no,' but, 'hell, no.' 7/

I have been involved with Florida Power & Light since 1975, and I can tell you that, since 1975, Florida Power & Light's position on the transmission has always been point to point. And they were unwilling to discuss, even acknowledge, any other type of discussion since 1975. . . . FPL has never agreed to offer network. They've always insisted on point-to-point. 8/

6/ (...continued)

brought, Florida law requires that a legal or equitable action on a contract founded on a written instrument must be commenced within five years of the alleged breach of the contract. Fla. Stat. ch. 95.11(2)(b) (1991). This period begins to run at the first breach -- June 1983. City of Miami v. Brooks, 70 So. 2d 306, 309 (Fla. 1954).

7/ Bryant Dep. at 98/25 thru 99/2 (Tab E).

8/ Id. at 21/24 thru 22/4, 23/23-24.



° Nicholas P. Guarriello, FMPA's lead consultant, Rule 30(b)(6) designated witness on "Contract" performance and active participant in all negotiations, echoed that view:

An absolute no, that they would not do it, no way, no how. 9/

Network transmission was the one we always tried to get and they said no, point-to-point. 10/

But the main thing we were looking for specifically was the network transmission. We raised it in every negotiation and the answer was no, it will be point-to-point. 11/

Q. Well, if nothing else, you understood FPL's policy on network transmission service, didn't you?

A. I clearly understood they said it was going to be point-to-point. 12/

° Calvin Henze, FMPA's General Manager from 1978 through 1991, and signatory to all the 1982-86 contracts, had the same understanding of FPL's policy:

[W]e asked for network transmission, which we feel we were entitled to under the Settlement Agreement and the St. Lucie Agreement, and . . . we did not receive the network transmission agreement. . . .

[FMPA] requested it orally in the St. Lucie transmission contract We also did in the Stanton and the Tri-City and, again, we were told no. Then we pursued it, I have diligently [sic], in the All-Requirements contract because we felt

9/ Dep. of Nicholas P. Guarriello at 26/1-2 (Feb. 25, 1993) (Tab F).

10/ Id. at 285/20-21 (Feb. 26, 1993).

11/ Id. at 286/19-22.

12/ Id. at 287/1-5.



like it was very important to us at that time. 13/

Not surprisingly then, when FMPA submitted its September 1989 network proposal, the rejection of which led to this lawsuit, FMPA did not expect FPL to agree to it. 14/

FMPA's certainty about FPL's policy is underscored by FMPA's assertion of work product privilege for documents prepared prior to the September 1989 proposal, on the ground that they were prepared "in contemplation of litigation" as to that proposal. 15/ Setting aside the bad faith implicit in preparing for litigation before even embarking on negotiations, this privilege claim demonstrates FMPA's continuing understanding of FPL's continuing policy on network pricing of transmission. 16/

13/ Henze Dep. at 52/24 thru 54/1 (Nov. 3, 1992) (Tab D); see also id. at 76/2-20. The contracts referenced in Mr. Henze's answer were executed in 1983, 1985, and November 1986. See Locke Aff., Tabs B thru E. Other FMPA witnesses had the same clear understanding of FPL's policy. See, e.g., Dep. of Albert Malmsjo at 155/12-17, 156/20-21, 159/20 thru 160/2 (Feb. 16, 1993) (Tab G).

14/ Dep. of designated corporate representative Guarriello at 30/16-18 (Feb. 25, 1993) ("I had nothing that would tell me they had changed their mind. . . .") (Tab F). See also Henze Dep. at 109/20 thru 110/14 (Nov. 2, 1992) (Tab D); Malmsjo Dep. at 167/4-10 (Feb. 16, 1993) (Tab G).

15/ Guarriello Dep. Exs. 4 and 5 (Tab F). See Guarriello Dep. at 27/21 thru 30/9 (Feb. 25, 1993) (Tab F).

16/ See Guarriello Dep. at 30/16-17 (Feb. 25, 1993) (Tab F). See also Interrogatory Response 11 (Tab C).

To the extent that FMPA still claims that FPL has a legal obligation to sell FMPA a portion of FPL's transmission system (see infra n.82), FMPA's witnesses also testified that FMPA
(continued...)



B. FPL's Actions Did Not Toll The Statutes Of Limitations

The only theoretical escape available to FMPA from the limitations box built solely of FMPA's own evidence would be an assertion that FPL's actions somehow constituted a "continuing violation" of the "Contract" and of federal and state antitrust law. To grasp at that straw, FMPA would have to invoke a line of cases holding that overt acts in furtherance of a continuing conspiracy (e.g., price-fixing) create new injuries and thus form the basis for a new cause of action. 17/ But, those decisions uniformly provide that when a refusal to deal has occurred, subsequent refusals of

16/ (...continued)

(and its members before it) had repeatedly asked, as far back as 1975, to buy a portion of FPL's transmission system, and that FPL had refused every such request. See, e.g., Bryant Dep. at 48/3 thru 49/6, 54/17 thru 57/1, 87/13-22 (Tab E); Guarriello Dep. at 23/19 thru 25/14 (Feb. 25, 1993), 270/5 thru 272/11 (Feb. 26, 1993) (Tab F); Henze Dep. at 73/5-19 (Nov. 3, 1992) (Tab D). FMPA fully understood that it was "against [FPL's] company policy to sell an ownership interest in the transmission system to the cities." Bryant Dep. at 56/19-20 (Tab E). See also Interrogatory Response 18 (Tab C).

Finally, with regard to FMPA's allegation that FPL has refused to sell FMPA wholesale power (Complaint, ¶ 17(c), (d)), FMPA requested such a sale and FPL refused during the negotiations leading to the March 1985 transmission service agreement. Bryant Dep. at 90/22-24 (Tab E). Again, this refusal was well outside the statutes of limitations periods.

17/ Kaiser Aluminum v. Avondale Shipyards, Inc., 677 F.2d 1045, 1051 (5th Cir. 1982), cert. denied, 459 U.S. 1105 (1983). There is another exception to the antitrust statute of limitations if at the time of the earlier refusal, damages are speculative and unprovable. Id. at 1051. However, FMPA has made no such contention, and its damage expert testified that reasonable damage estimates could have been made for the period commencing June 1983. Dep. of John W. Wilson at 54/6 thru 55/2 (Feb. 18, 1993) (Tab H).



the same nature, made in response to renewed requests, do not constitute new injuries unless the plaintiff had reason for believing that the defendant's position had changed. 18/

Having ascertained to its satisfaction far more than five years before the filing of the Complaint that FPL's responses to requests for network service were not merely "no," but "hell no," there is simply no room for FMPA to claim a factual dispute over whether, in the Eleventh Circuit's words, FMPA had "reason to believe" that FPL's policy, reiterated during five previous contract negotiations, "did not still stand." 19/ The "messages" in the long-standing commercial relationship between these parties were crystal

18/ Midwestern Waffles, Inc. v. Waffle House, Inc., 734 F.2d 705, 715 (11th Cir. 1984) ("If plaintiffs' subsequent requests for a franchise . . . were genuine, that is if plaintiffs had reason to believe the original decision not to grant them such a franchise did not still stand, there would be a new alleged injury when a genuine subsequent request was denied. If, however, plaintiffs' subsequent requests were futile and plaintiffs had reason to know they were futile, the statute of limitations will be found to bar plaintiffs' claim that defendants violated antitrust law. . . ." (emphasis added)). See also Drumm v. Sizeler Realty Co., 647 F. Supp. 1288, 1291 (E.D. La. 1986), aff'd, 817 F.2d 1195 (5th Cir. 1987).

19/ Midwestern Waffles, 734 F.2d at 715. See also Kaw Valley Elec. Cooperative Co. v. Kansas Elec. Power Cooperative, Inc., 872 F.2d 931, 934-35 (10th Cir. 1989) (summary judgment is appropriate where the defendant's pre-limitations period decision "sent a clear message" to plaintiff, because "[i]f the decision was final, there is no reason to grant [plaintiff] the ability to restart the statute whenever it so desires by a mere futile request").



clear. Summary judgment in favor of FPL is required as a matter of law. 20/

II. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER THE CONTRACT AND ANTITRUST CAUSES OF ACTION

FERC has exclusive jurisdiction over this pricing dispute. Florida state courts, where FMPA first began this lawsuit, have no jurisdiction at all. Federal courts have none, until FERC has acted. FMPA knows that. It filed this action not out of ignorance or confusion, but because it was apprehensive of the reception it would receive in the proper forum and the costs of pursuing the appropriate remedy before the appropriate agency. 21/ Apprehension, however, can not

20/ The cited cases also apply to the state antitrust count. See St. Petersburg Yacht Charters v. Morgan Yacht, Inc., 457 So. 2d 1028, 1032, 1984-1 Trade Cas. (CCH) ¶ 65,985 at 68,329 (Fla. Dist. Ct. App. 1984). Nor does Florida law permit extension of the limitations period for FMPA's contract claim. See, e.g., Kelly v. School Bd. of Seminole County, 435 So. 2d 804, 805 (Fla. 1983); Brogan v. Mullins, 452 So. 2d 940, 941 (Fla. Dist. Ct. App. 1984), rev. dismissed, 464 So. 2d 555 (Fla. 1985). Indeed, Florida courts construe such statutes with great "strictness." White v. Padgett, 475 F.2d 79, 83 (5th Cir.), cert. denied, 414 U.S. 861 (1973).

21/ FMPA's Executive Committee was advised to misdirect this action away from the FERC by its outside counsel:

In spite of the fact that we believe that the Federal Energy Regulatory Commission has jurisdiction to correct discriminatory transmission [pricing], FERC has often been reluctant to enforce what it considers to be an initiation of transmission transactions by public systems. Further, FERC proceedings can be expensive and drawn out.

Jablon letter at p. 4 (Tab A).



serve to invest this Court with authority to enter the regulatory fray.

A. Granting FMPPA's Relief Would Require Fundamental Changes To FPL's Existing Filed Rates For Transmission Service

The negotiations related to FMPPA's 1989 proposal disintegrated when FMPPA sought pricing benefits inconsistent with existing agreements between the parties. Those existing agreements utilize point-to-point pricing. 22/ Point-to-point pricing is entirely consistent with the FERC's traditional policy on transmission pricing. 23/ FMPPA has not claimed otherwise. 24/

Notwithstanding, FMPPA sought in 1989 and seeks here to replace the existing pricing arrangement with a "network" arrangement which provides a "single charge" for each unit of power transmitted regardless of the number of points of receipt and delivery that FPL must keep available to insure

22/ See supra n.2.

23/ In Wisconsin Elec. Power Co., 46 FERC (CCH) ¶ 61,019 at 61,112 (1989) ("WEPCO") (Tab I), the FERC rejected a claim by a group of municipal utilities that, by paying for a certain contract demand, they reserved the right to use that demand anywhere on WEPCO's system. WEPCO represents traditional FERC policy on transmission pricing. FERC explained that as suppliers change or as delivery points change, the transactions themselves change, warranting separate, additional charges.

24/ FMPPA has not acted to terminate any of the existing agreements nor sought changes in their terms from the FERC. Response of Plaintiff FMPPA to Defendant FPL's Requests for Admissions, Admission Nos. 24, 25 (Feb. 10, 1993). See Tab J.



the service. 25/ But, whether FMPA pays once for a combination of services or pays for each element in the combination separately, the issue at the end of the day is how much FMPA must pay.

The injunctive and monetary relief that FMPA seeks will unavoidably inject this Court into the process of determining the propriety of the charges under the existing agreements. FMPA's witnesses testified that:

- FMPA's network proposal is inconsistent with point-to-point pricing, 26/ because it would treat FPL's whole transmission system as a "bucket" or "reservoir" such that transmission service charges, unlike present charges, would not vary with FMPA's ability to change back and forth in points of receipt and delivery. 27/

25/ FMPA's witnesses testified that FPL must provide the network service at the same single charge rate used to price point-to-point service. Henze Dep. at 84/17 thru 85/1 (Nov. 3, 1992), 128/14 thru 129/16 (Nov. 2, 1992) (Tab D); Malmsjo Dep. at 16/8 thru 17/9 (Feb. 15, 1993) (Tab G); Guarriello Dep. at 12/21 thru 14/6 (Feb. 25, 1993) (Tab F). See also Interrogatory Response 6 (Tab C).

26/ Dep. of Robert Bathen at 11/18-20 (Tab K); Henze Dep. at 58/9-14 (Nov. 3, 1992) (Tab D).

27/ See Malmsjo Dep. at 70/16-23 (Feb. 22, 1993) (Tab G); Dep. of Robert Williams, Ex. 18 (Tab L).



- Implementation of FMPA's proposal would require extensive price and price-related changes to the existing transmission service agreements. 28/
- Network pricing of transmission is critical to the economics of the proposed project that FMPA seeks to implement. 29/
- FMPA's monetary relief is based on a damage study that assumes that the price terms of all but one of the existing transmission service agreements were altered in

28/ In its letter transmitting the September 1989 proposal FMPA stated "the existing transmission arrangements between FMPA and FPL . . . need to be modified." Williams Dep. Ex. 6 at 101270 (Tab L). See also Henze Dep. Ex. 3 at 000729 (Tab D) ("[t]he proposed transmission service agreement . . . differs significantly in concept from the current agreement." (emphasis added)); Henze Dep. at 82/1 thru 84/17, 87/4 thru 88/1, 89/5-15, 94/22 thru 95/9 (Nov. 2, 1993) (Tab D); Williams Dep. at 18/12 thru 19/9 (Nov. 2, 1992) (Tab L); Dep. of Robert Padron at 19/7-15 (Tab M); Dep. of Dean Shaw at 30/1 thru 31/4 (Tab N); Malmsjo Dep. at 185/20 thru 186/12 (Feb. 16, 1993) (Tab G); Guarriello Dep. at 48/12 thru 49/13 (Feb. 25, 1993) (Tab F). FMPA's director of power supply admitted that a subsequent July 1991 proposal that purports to leave the existing transmission agreements "as is" also would have removed point-to-point pricing from those agreements. Williams Dep. at 97-101 (Nov. 2, 1992) (Tab L).

29/ Malmsjo Dep. at 122/18-22 (Jan. 20, 1993) (Tab G); Henze Dep. at 12/14 thru 13/11, 16/10-21 (Nov. 3, 1992) (Tab D); see also id. at 148/13 thru 149/6, 151/8-19 (Nov. 2, 1992); Dep. of Anatoly Bezugly at 12/9-16, 17/16-25, 19/3-11 (Tab O); Dep. of Harry Schindehette at 9/10 thru 10/18 (Tab P); Padron Dep. at 18/3-22, 47/24 thru 49/23 (Tab M); Dep. of Thomas Klaric at 41/20 thru 42/8 (Tab Q); Padron Dep. Ex. 7 at pp. 3, 18-19 (Tab M); Dep. of Samy Faried, Ex. 1 at 001885 and Ex. 2 at SC0000010-12 (Tab R); Henze Dep. Ex. 7 and Ex. 8 at 008092 (Tab D).



order to treat them as "network transmission arrangements to begin with, and because of that they could be integrated together and collapsed into one overall network transmission agreement." 30/

FMPA has shown itself facile enough to suggest that its network proposal seeks some new and different service that eludes the coverage of the existing agreements. But the bedrock, irreducible premise of FMPA's case is that the pricing provisions of the existing agreements must yield to a new network pricing provision. Regardless of whether FMPA could have constructed a transmission service proposal that could co-exist with the existing agreements, the fact is that it did not, either in its proposal to FPL or in the relief that it seeks here. 31/ Accordingly, both FMPA's damage claims and its request for injunctive relief must fail.

B. The Filed Rate Doctrine Compels Dismissal Of FMPA's Claims

Under the "filed rate doctrine," the only lawful rates for services subject to FERC jurisdiction are those properly filed with the FERC. 32/ Thus, FMPA "can claim no

30/ Malmsjo Dep. at 127/8-15 (Feb. 15, 1993) (Tab G).

31/ See Complaint at pp. 12, 21-23, 25-26; FMPA's Motion For Partial Summary Judgment on Count I at 1-2 (May 1, 1992).

32/ Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 577 (1981) ("Arkla"). The Supreme Court first applied the filed rate doctrine to a suit involving the Federal Power Act in Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co., 341 U.S. 246 (1951) ("Montana-Dakota"), and has since clarified the doctrine's applicability in Nantahala Power and (continued...)



rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the [FERC], and not even a court can authorize commerce in the commodity on other terms." 33/ The doctrine applies even when the filed rate is inconsistent with a present contract between the parties. 34/ The cases establishing this filed rate doctrine teach that the FERC's jurisdiction to modify filed rate schedules is exclusive, and that courts -- except on review of the FERC's decisions -- lack the jurisdiction either to modify filed rates or to assess damages on the premise that some other rate schedule would have been more appropriate.

The filed rate doctrine was first applied in the antitrust context in Keogh v. Chicago & Northwestern Ry. 35/ In Square D Co. v. Niagara Frontier Tariff Bureau, Inc., 476 U.S. 409, 417 (1986) ("Square D"), the Supreme Court

32/ (...continued)
Light Co. v. Thornburg, 476 U.S. 953 (1986) ("Nantahala"), and Mississippi Power & Light Co. v. Mississippi ex rel. Moore, 487 U.S. 354 (1988) ("Mississippi Power").

33/ Montana-Dakota, 341 U.S. at 251. See also Arkla, 453 U.S. at 578.

34/ Arkla, 453 U.S. at 582.

35/ 260 U.S. 156 (1922) ("Keogh"). In Keogh, the Supreme Court considered whether shippers were entitled to bring an antitrust action against carriers based on an allegation that the rates charged, which had been filed with the ICC, resulted from price-fixing in violation of the Sherman Act. The Court held that the ICC's approval established the lawfulness of such rates and shippers could not have been injured within the meaning of the Sherman Act by paying the lawful rate. Id. at 162-63. The Court also held that secondary losses (e.g., losses in the value of a business) that arise because the filed tariffs were in effect are also barred. Id. at 164-65.



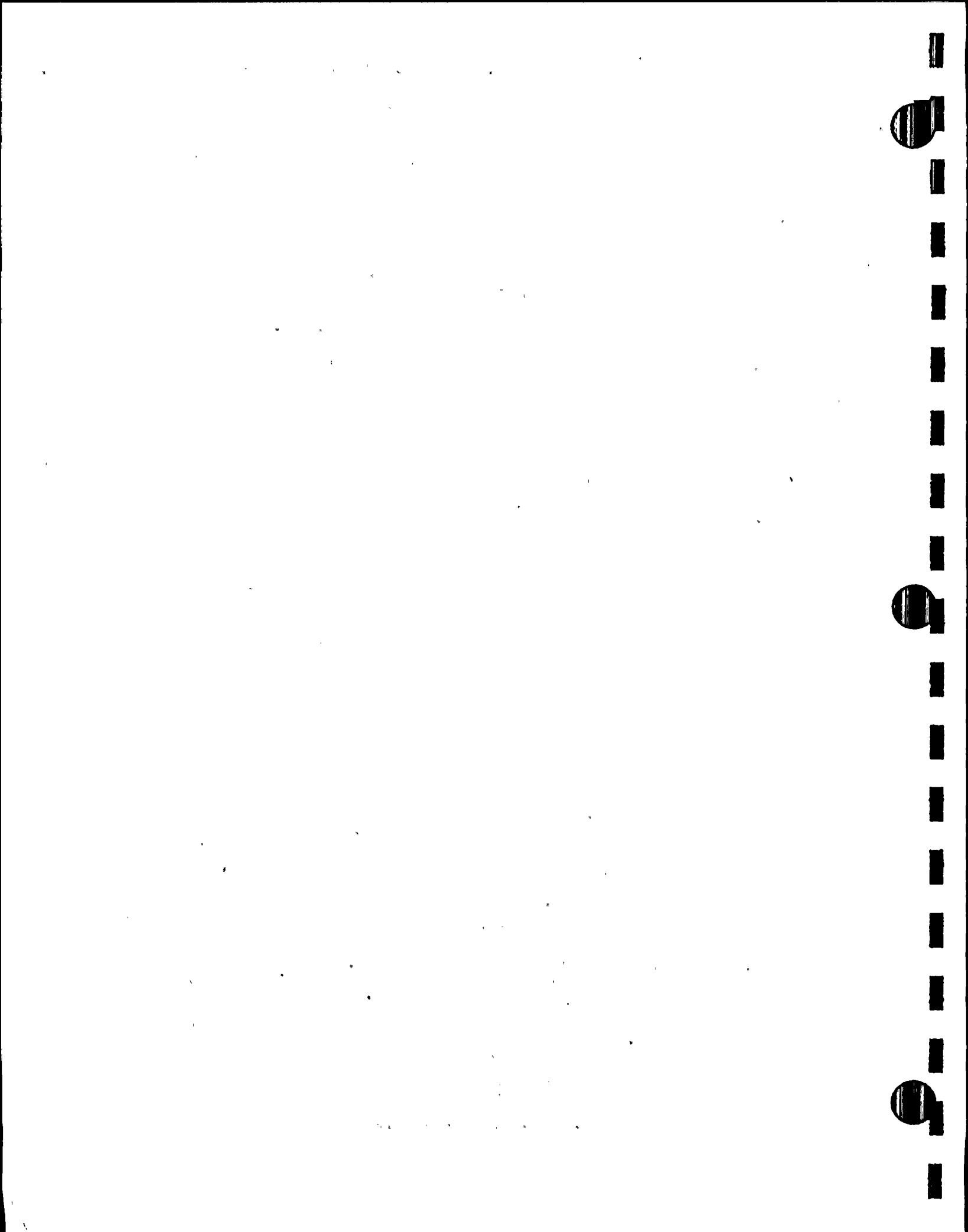
extended its holding in Keogh to claims based on rates that had not been challenged before they were allowed to go into effect. 36/ Then, in Nantahala and Mississippi Power the Supreme Court made clear that the filed rate doctrine applies not only to rates, but also to changes that interfere with the purchase or transmission of electricity in a way that affects rates, e.g., power allocation and power sharing agreements on file with the FERC. 37/ The Keogh test, thus, does not simply inquire into whether a claim directly changes filed rates, but must also inquire into collateral attacks.

In anticipation of having to wriggle out of the reach of the filed rate doctrine, FMPA, in response to an FPL interrogatory, argued that the existing transmission service agreements would not have to be "modified or superseded" because "those contracts all permit changes in the rates, terms and conditions for service. . . ." 38/ This

36/ See also Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 497 U.S. 116, 126-28 (1990) (citations omitted) ("Despite the harsh effects of the filed rate doctrine, we have consistently adhered to it.").

37/ Nantahala, 476 U.S. at 960, 966. See also Mississippi Power & Light Co. v. Mississippi ex rel. Moore, 487 U.S. 354 (1988); Appalachian Power Co. v. Public Serv. Comm'n of West Virginia, 812 F.2d 898 (4th Cir. 1987).

38/ Interrogatory Response 12 (Tab C). Setting aside FMPA's unpersuasive attempt to distinguish between a "modification" and a "change," its answer ignores that the contracts explicitly provide that either party may "make application to the FERC for a change in the rates, charges, terms and conditions of service provided in [the] Agreement[s]. . . ." (e.g., Locke Aff., Tab C at 29 (emphasis added) (Tab B)), precisely because, under the filed rate doctrine, such
(continued...)



disingenuous response ignores the obvious proposition that a contract changed by agreement of the parties is, nonetheless, changed. Presumably, FMPA's point is that if FPL had agreed to the necessary changes, the filed rate doctrine could not have been invoked. Without FPL's agreement, however, the only way to implement FMPA's network proposal is through the FERC, pursuant to the filed rate doctrine.

The filed rate doctrine applies even if the filed rate is the result of the defendant's alleged illegal activity. Indeed, the doctrine does not come into play except when a plaintiff has advanced a claim that, but for operation of the filed rate doctrine, would entitle it to court relief. 39/

While there have been efforts to apply the filed rate doctrine exclusively to cases involving injury to customers of the defendant, and not to cases involving harm to the defendant's competitors, 40/ the doctrine is more all-

38/ (...continued)

"changes" may only be accomplished through a filing at the FERC.

39/ See e.g., Keogh, 260 U.S. at 160; Square D, 476 U.S. at 412; Georgia v. Pennsylvania R.R., 324 U.S. 439 (1945); Pinney Dock & Transport Co. v. Penn. Cent. Corp., 838 F.2d 1445, 1456-57 (6th Cir.), cert. denied, 488 U.S. 880 (1988) ("Pinney Dock"); Taffet v. Southern Co., 967 F.2d 1483 (11th Cir. 1992), cert. denied, 113 S. Ct. 657 (1992). In these cases, the filed rates were alleged to have resulted from price-fixing, conspiracy to monopolize, or fraud.

40/ See City of Groton v. Connecticut Light & Power Co., 662 F.2d 921, 929-31 (2d Cir. 1981); Essential Communications Sys. Inc. v. American Tel. & Tel., 610 F.2d 1114, 1121 (3d Cir. 1979).



encompassing than that. Recent cases, following the Supreme Court's strong reaffirmation of the filed rate doctrine in Square D, have held that Keogh and Square D are not limited solely to antitrust damage claims brought by customers but also apply to bar claims by competitors or parties who are both competitors and customers of the regulated company. ^{41/} Accordingly, FMPA's status as both a competitor and customer of FPL does not preclude application of the filed rate doctrine as a bar to FMPA's claims. ^{42/}

III. NO CONTRACT HAS BEEN BREACHED

While FMPA's claimed right to "network" service is pled in contract, the "Contract" described in the Complaint is an after-the-fact amalgamation of disparate documents and actions effectuated on widely differing dates and involving, in most instances, signatories other than FMPA. This artifice was employed to bury the fact that the License Conditions -- identified by FMPA as the only operative portion of the

^{41/} See, e.g., Pinney Dock, 838 F.2d at 1456-57; Lifschultz Fast Freight, Inc. v. Consolidated Freightways Corp., 805 F. Supp. 1277, 1295 (D.S.C. 1992). Square D reversed a Second Circuit opinion that had concluded that the filed rate doctrine had outlived its usefulness and that Keogh should be overruled.

^{42/} FMPA's further contention that FPL breached the "Contract" and violated the antitrust laws by refusing to sell it a "block" of wholesale power (Complaint, ¶¶ 17(c)-(d), 33(f)) simply reflects FMPA's desire to receive wholesale service that is available under FPL's FERC-filed wholesale power tariff and existing FERC-filed wholesale power contracts, but to pay less than the tariff rate. Locke Third Aff. at ¶ 12. For the same reasons, relief can only be granted by the FERC.



"Contract" -- can only be enforced by the NRC. FMPA's Count I must fail. It takes more than a staple gun to make a contract.

A. The License Conditions Are Not A Contract And Do Not Permit FMPA, Or Anyone Else, To Seek Relief In A Private Cause Of Action

When forced, through discovery, to specify the traditional components of the "Contract", FMPA was unable to identify the effective date, the parties, or even FMPA's own status thereunder:

- ° The Contract is composed of a number of individual contract documents, which together form a comprehensive Contract: . . . FMPA is a party to at least some of the component parts of the contract. . . . In addition, there may be portions of the Contract as to which FMPA is a person in privity with a party. 43/
- ° The various portions of the Contract have, as their effective date, the dates set forth in the respective documents. . . . To say that such a complex Contract has a single effective date is to oversimplify. 44/
- ° FMPA considers itself both a party to and a third party beneficiary to the contract. 45/

FMPA failed to identify a single occasion on which FMPA, FPL or anyone else characterized or relied upon the "Contract" as a contract. Nor did FMPA explain why such a seminal agreement was never memorialized in one document,

43/ Interrogatory Response 7 (Tab C).

44/ Interrogatory Response 10(d) (Tab C).

45/ Bathen Dep. at 72/12-14 (Tab K). Mr. Bathen was designated as FMPA's Rule 30(b)(6) representative to explain the "Contract."



although all other contracts with FPL have been. Further, FMPPA is unable to point to any provision of the "Contract" in which FPL committed to FMPPA or anyone else to comply with the License Conditions. 46/ The only document that obligates FPL to comply with the License Conditions is the NRC license itself, which not even FMPPA contends is a contract.

The Atomic Energy Act ("AEA"), 42 U.S.C. §§ 2011, et seq. (1988), which authorizes the NRC to issue licenses and impose conditions on those licenses, expressly forbids private enforcement: "No action shall be brought against any individual or any person for any violation . . . except by the Attorney General of the United States." 47/ The NRC has formally recognized its "continuing police power over [antitrust] conditions properly placed on licenses." 48/

46/ The only portion of the "Contract" that is signed by both FPL and FMPPA is the St. Lucie Unit No. 2 Participation Agreement, which does not address transmission service or wholesale power sales and provides that it is "intended as the exclusive statement of the agreement between [FPL and FMPPA] pertaining to the subject matter herein." See Complaint, App. A-3 at Sec. 38 (Tab S).

47/ 42 U.S.C. § 2271(c) (1988). Private parties may participate in enforcement only by (1) requesting the NRC to initiate proceedings to revoke, suspend, modify, or take other action with respect to alleged violations of an NRC license, see 10 C.F.R. § 2.206 (1992), or (2) seeking judicial review of NRC orders after the NRC has adjudicated such a request. See 42 U.S.C. § 2239(a) (1988). FMPPA has never sought NRC enforcement. Admission No. 26 (Tab J).

48/ Houston Lighting and Power Co. (South Texas Project, Unit Nos. 1 and 2), CLI-77-13, 5 NRC 1303, 1317 (1977). Accord Ohio Edison Co. (Perry Nuclear Power Plant, Unit 1; Davis-Besse Nuclear Power Station, Unit 1), CLI-92-11, 36 NRC 47, 56 (1992). The NRC takes its mandate seriously. See.
(continued...)



Courts -- including the former Fifth Circuit -- have uniformly held that a private party such as FMPPA cannot maintain an action to enforce the provisions of the AEA, the NRC's regulations, or license conditions imposed by the NRC. 49/

FMPPA cannot circumvent the NRC's exclusive jurisdiction by claiming to be a third party beneficiary of its own "Contract." FMPPA has relied for this purpose on a California district court decision, United States v. Pacific Gas & Elec. Co. 50/ PG&E is factually distinguishable, 51/ conflicts with applicable Florida and

48/ (...continued)

e.g., Pacific Gas and Elec. Co. (Diablo Canyon, Units 1 and 2), DD-90-3, 31 NRC 595 (1990); Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), DD-86-7, 23 NRC 875 (1986). In the NRC's words, "the distinctive nature of the Commission's authority to consider and address the validity of the antitrust conditions it imposed leads us to agree . . . that no other forum or means can provide equivalent protection." Perry/Davis-Besse, LBP-92-19, 36 NRC 98, 106 (1992) (quoting Perry/Davis-Besse, LBP-91-38, 34 NRC 229, 247 (1991)).

49/ See Liesen v. Louisiana Power & Light Co., 636 F.2d 94 (5th Cir. Unit A 1981) (following the seminal decision of Susquehanna Valley Alliance v. Three Mile Island Nuclear Reactor, 619 F.2d 231 (3d Cir. 1980), cert. denied, 449 U.S. 1096 (1981)). See also 10 C.F.R. § 2.206 (1992). Susquehanna and Liesen have been followed by Simmons v. Arkansas Power & Light Co., 655 F.2d 131 (8th Cir. 1981) and County of Suffolk v. Long Island Lighting Co., 728 F.2d 52 (2d Cir. 1984).

50/ 714 F. Supp. 1039 (N.D. Cal. 1989) ("PG&E").

51/ The court in PG&E found that a settlement agreement between the utility and the U.S. Department of Justice ("DOJ") (which itself included proposed NRC license conditions) was a separate contract and, thus, the suit was not an action to enforce the AEA. Id. at 1051. FMPPA's "Contract" does not include a September 12, 1980 Stipulation among DOJ, the NRC Staff, and FPL (Tab T), in which FPL consented to the

(continued...)



Eleventh Circuit law, 52/ and depends upon a somewhat undisciplined reading of California third party beneficiary law. 53/

B. Even If The License Conditions Are A Contract, FMPA Subsequently Entered Into Five Separate Contracts Manifestly At Variance With The Rights Being Sought Here

Even assuming that the "Contract" is a valid instrument, privately enforceable, FMPA entered into five transmission service agreements with FPL that post-date the "Contract" and that preclude relief. FMPA has acknowledged that these five agreements are inconsistent with the "Contract," and that the monetary and injunctive relief FMPA seeks would necessitate fundamental changes to them.

Florida law simply does not permit FMPA to sign agreements inconsistent with alleged rights under an earlier

51/ (...continued)

inclusion of the License Conditions in the NRC's St. Lucie License. It could not be included. Unlike PG&E, there is nothing in the stipulation that even suggests FPL's intent to benefit third-parties by establishing a commitment, independent of the NRC license, to provide transmission service.

52/ See Technicable Video Sys., Inc. v. Americable of Greater Miami, Inc., 479 So. 2d 810, 813 (Fla. Dist. Ct. App. 1985). (permitting a third-party beneficiary claim to enforce a public ordinance (which allegedly was a contract) only after it determined that the ordinance did not provide an exclusive enforcement procedure.) Liesen, 636 F.2d at 95.

53/ PG&E overlooked the holding of its foundational cases that third party beneficiary actions do not provide a "back-door" to avoid mandatory administrative remedies. See Martinez v. Socoma Companies, Inc., 521 P.2d 841, 846-47 (Cal. 1974); Zigas v. Superior Court, 120 Cal. App. 3d 827, 838, 174 Cal. Rptr. 806, 811 (Cal. App. 1981), cert. denied, 455 U.S. 943 (1982).



"Contract," accept the benefits of those subsequent agreements, and then, years later, seek to rejuvenate those earlier rights as if the later agreements never existed. The execution of a subsequent inconsistent agreement abrogates earlier agreements:

The new agreement may make no reference to the previous contract or claim; and yet it may operate as a substituted contract. If the new agreement contains terms that are clearly inconsistent with the previously existing contract or claim, the fact of inconsistency is itself a sufficient indication of intention to abrogate the old and substitute the new. 54/

Of course, no one having a pre-existing right to "network" transmission pricing would have entered into five agreements that don't include it. An explanation was required. It appears in FMPPA's belated, indeed, reckless claim of "duress." 55/

54/ 6 Corbin, Contracts, § 1296 (1962). See also Restatement (First) Contracts § 408 (1979) ("a contract containing a term inconsistent with a term of an earlier contract between the same parties is interpreted as including an agreement to rescind the inconsistent term of the earlier contract."). Accord Bechtel Corp. v. Local 215, Laborers' Int'l Union, 544 F.2d 1207, 1213 (3d Cir. 1976); Kelsey-Hayes Co. v. Galtaco Redlaw Castings Corp., 749 F. Supp. 794, 796 (E.D. Mich. 1990) ("entering a superseding, inconsistent agreement covering the same subject matter rescinds an earlier contract and operates as a waiver of any claim for breach of the earlier contract not expressly reserved"). Under Florida law, a party cannot claim a breach of contract when its actions between the time of the alleged breach and the filing of the claim are inconsistent with the asserted contractual right. E.g., American Somax Ventures v. Touma, 547 So. 2d 1266, 1268-69 (Fla. Dist. Ct. App. 1989); Coral 97 Assoc. v. Chino Elec., Inc., 501 So. 2d 69, 70 (Fla. Dist. Ct. App. 1987); Taylor v. Kenco Chem. & Mfg. Corp., 465 So. 2d 581, 587 (Fla. Dist. Ct. App. 1985).

55/ See Interrogatory Responses 15, 16 (Tab C).



Under Florida law, "duress" has two elements: "[i]t must be shown (a) that the act sought to be set aside was effected involuntarily and thus not as an exercise of free choice or will and (b) that this condition of mind was caused by some improper and coercive conduct of the opposite side." 56/ As the former Fifth Circuit recognized,

[A claim of economic duress] must be based on the acts or conduct of the opposite party and not merely on the necessities of the purported victim. Thus, the mere fact that a person enters into a contract as a result of the pressure of business circumstances, financial embarrassment, or economic necessity is not sufficient. Unless wrongful or unlawful pressure is applied, there is no ... economic duress, and such a claim cannot be predicated on a demand which is lawful or on the insistence of a legal right. 57/

Even if a party knows of the other's economic straits and uses that knowledge to its advantage, there is no duress: "'[m]ere hard bargaining positions, if lawful, and the press of financial circumstances, not caused by the party against whom the contract is sought to be voided, will not be deemed duress.'" 58/

56/ City of Miami v. Kory, 394 So. 2d 494, 497 (Fla. Dist. Ct. App. 1981) (emphasis added).

57/ Chouinard v. Chouinard, 568 F.2d 430, 434 (5th Cir. 1979) (footnotes omitted). See also 11 Fla. Jur. 2d Contracts § 42 (1979).

58/ Chouinard, 568 F.2d at 434 (quoting Business Incentives Co. v. Sony Corp. of America, 397 F. Supp. 63, 69 (S.D.N.Y. 1975)). Accord Coral Gables Motor Cars, Inc. v. Fiat Motors, 673 F.2d 1234, 1239 (11th Cir. 1982).



FMPA's own testimony shows that the five agreements were the product of negotiation, not duress. 59/ Its General Manager, who headed the five negotiations and signed every agreement, testified that during negotiations FPL never committed or threatened to commit any wrongful acts. 60/ He recalled the negotiations as involving compromises on many issues, 61/ resulting in contracts that were "acceptable to both parties." 62/ According to FMPA's General Counsel, FMPA simply made a "business decision" to sign the transmission service agreements. 63/

The documents and testimony further show that whatever pressure FMPA felt to get transmission service agreements executed quickly was caused by FMPA's own financial circumstances and transactions involving parties other than

59/ See generally Guarriello Dep. at 282/8-20, 304/15 thru 305/8, 310/13 thru 311/18, 328/2 thru 334/16, 342/9 thru 347/14 and Ex. 15 (Feb. 26, 1993) (Tab F).

60/ Henze Dep. at 51/6 thru 53/6 (Nov. 3, 1992) (Tab D).

61/ Id. at 56/19 thru 57/2.

62/ Id. at 54/9-21; see Henze Dep. Ex. 1 at 008310 (Tab D). Mr. Henze also characterized his counterpart negotiator at FPL as a "fair negotiator." Id. at 50/8-9 (Nov. 3, 1992) (Tab D).

63/ Bryant Dep. at 83/9-15 (Tab E). FMPA obviously determined that it was more advantageous to accept the benefits of FPL's transmission service agreements than to litigate over the terms of the "Contract." See Guarriello Dep. at 182/14 thru 184/3 (Feb. 25, 1993), 316/20-22 (Feb. 26, 1993) (Tab F).



FPL. 64/ Those parties made demands on FMPA that necessitated quick action. 65/ This is not "duress." 66/

Finally, FMPA knew at the time that it negotiated the contracts that it had the right to complain to the NRC about any alleged violation of the License Conditions. 67/ Moreover, each of the contracts preserves FMPA's rights, after signing each contract, to complain to the FERC that the contract is unjust, unreasonable, or otherwise unlawful. 68/ FMPA admits that it was at all times aware

64/ For example, FMPA's corporate representative explained that the "time constraints" felt by FMPA in the negotiation of the Stanton agreement were caused by the Orlando Utilities Commission. Guarriello Dep. at 298/17 thru 299/12 (Feb. 26, 1993) (Tab F). See also id. at 319/14 thru 320/1 and Ex. 28 at 003025.

65/ Guarriello Dep. at 300/5 thru 301/3 (Feb. 26, 1993) (Tab F). Despite FMPA's time constraints, FPL was even willing to extend the time for executing certain of the agreements. Id. at 306/16 thru 307/22 and Exs. 22 and 23. In fact, in January 1985, FMPA's General Manager wrote to FPL stating "I appreciate your assistance in meeting our tight schedule." Id., Ex. 32 at 004187.

66/ See City of Holyoke Gas & Elec. Dept. v. FERC, 954 F.2d 740, 744 (D.C. Cir. 1992) (no economic duress where utility agreed to proposed terms for transmission service only in order to avoid the significant additional charges it would have incurred from a third-party power supplier if it did not have a transmission agreement in place).

67/ FMPA's failure to enlist the assistance of the NRC is not surprising because FMPA's claim to network transmission service is, at bottom, a pricing dispute subject to the FERC's exclusive jurisdiction. See Section II. Thus, even if the NRC agreed with FMPA, the NRC could only direct FPL to file a proposed agreement with the FERC. See Complaint, App. A at 26, 29.

68/ E.g., Locke Aff., Tab C at 29 (Tab B). See 16 U.S.C. §§ 824d, 824e (1988).



of these alternatives, but chose not to exercise them. 69/
Under Florida law, the presence of alternatives negates any
duress. 70/ Furthermore, having failed to complain to
either the NRC or FERC or to initiate litigation promptly
after executing the first of the five agreements, FMFA can not
maintain its claim:

A contract obtained through duress is capable
of being ratified Such ratification
results where the party entering into the
contract accepts the benefits growing out of it
or remains silent or acquiesces in the contract
for any considerable length of time after
opportunity is afforded to avoid it or have it
annulled. 71/

69/ See Admission Nos. 17, 25, and 26 (Tab J); Guarriello
Dep. at 308/18 thru 309/13 (Feb. 26, 1993) (stating that FMFA
decided not to seek relief from the FERC on the advice of
counsel) (Tab F).

70/ See City of Miami, 394 So. 2d at 499 ("The rule is . . .
that threatened action cannot constitute duress, when there
are adequate legal remedies available to challenge it."). See
also Friedman v. Bache & Co., Inc., 321 F. Supp. 347, 350
(S.D. Fla. 1970), aff'd, 439 F.2d 349 (5th Cir. 1971) ("One of
the elements of actionable duress is that the circumstances
involved allow a person no alternative.").

71/ 11 Fla. Jur. 2d Contracts § 42 (1979). See also
Hendricks v. Stark, 126 So. 293 (Fla. 1930); First Texas Sav.
Ass'n v. Comprop Investment Properties Ltd., 752 F. Supp.
1568, 1572 (M.D. Fla. 1990) (absent threats or force, and
where "defendants signed not one, but two forbearance
agreements," defendant "made a deliberate, considered choice
when it entered into the forbearance agreements;" there was no
duress); Resolution Trust Corp. v. Ruggiero, 977 F.2d 309,
314-15 (7th Cir. 1992), (the failure to claim duress before
signing the instrument, followed by later "unsubstantiated
allegations . . . , creates the strongly suspicious inference
that [defendant] . . . is now asserting whatever seems
necessary to escape from what [defendant] himself did.'")



In short, there was no "Contract." There was no breach. There is no right to private enforcement. Summary judgment must be entered. 72/

IV. THERE HAS BEEN NO ANTICOMPETITIVE BEHAVIOR

Counts 2 and 3 allege that by declining to accede to FMPA's network proposal, FPL has monopolized or attempted to monopolize electricity transmission service in FPL's service territory. 73/ These Counts are clearly ancillary to FMPA's "Contract" claim. 74/

72/ Similarly, while FMPA claims that the License Conditions require FPL to sell wholesale power directly to FMPA on terms more favorable than those contained in FPL's wholesale power tariff, FMPA has contracted to purchase wholesale power, as agent for certain member cities, on the terms provided in the filed tariffs. These contracts have been filed with the FERC. Changes would be required to accommodate FMPA's demands. Locke Third Aff., Tabs B thru D.

73/ Conduct that tends to exclude competitors is not an antitrust violation, if a party has a legitimate business justification for its conduct. Aspen Skiing Co. v. Aspen Highlands Skiing Co., 472 U.S. 585, 608 (1985); see also Mid-Texas Communications v. American Tel. & Tel. Co., 615 F.2d 1372, 1388 (5th Cir.), cert. denied, 449 U.S. 912 (1980). This is true even if that party controls an "essential," impractical-to-duplicate facility. City of Anaheim v. Southern California Edison Co., 955 F.2d 1373, 1380 (9th Cir. 1992); City of Vernon v. Southern California Edison Co., 955 F.2d 1361, 1366 (9th Cir.), cert. denied, 113 S. Ct. 305 (1992). See also Illinois ex rel. Burris v. Panhandle Eastern Pipeline Co., 935 F.2d 1469, 1482-83 (7th Cir. 1991), cert. denied, 112 S. Ct. 1169 (1992) ("Panhandle") (essential facilities cases are no different conceptually than cases involving other monopolization theories, because "'intent' (a.k.a. 'business justification')" is part of the monopolization equation and refusals to provide access are excused if justified by the owner's legitimate business concerns).

74/ See Jablon letter at p. 3 ("Federal practice permits you to file an antitrust complaint, but not pursue it.") (Tab A).
(continued...)



For purposes of this motion, the Court may assume that (1) there is competition between FPL and FMPA, (2) FPL has monopoly power in the markets FMPA describes, and (3) FPL's transmission facilities are essential facilities. 75/ Under the law of this Circuit, in the face of these assumptions, if FMPA's evidence still does not exclude the possibility that FPL's conduct was as consistent with permissible competition as with illegal conduct, summary judgment must be granted. 76/

Since FMPA's network proposal is admittedly inconsistent with the existing transmission agreements, FMPA's antitrust allegation reduces to a claim that FPL was required to replace those agreements with a superseding inconsistent agreement. FMPA has never directly challenged or sought relief from the terms of those agreements. It simply seeks to replace lawful, binding, unexpired contracts. FMPA was advised repeatedly, throughout the negotiations, of the adverse impact its proposals would have on FPL's other customers and FPL's business operations. FMPA disagrees but does not -- and can not -- rebut these concerns. In the absence of a complete rebuttal FMPA can not meet its burden.

74/ (...continued)

See also FMPA's Motion for Partial Summary Judgment on Count I at n.2 (May 1, 1992) (acknowledging that summary judgment on Count 1 "would effectively moot all [antitrust] issues").

75/ See City of Vernon, 955 F.2d at 1366.

76/ McGahee v. Northern Propane Gas Co., 858 F.2d 1487, 1493 (11th Cir. 1988), cert. denied, 490 U.S. 1084 (1989).



FMPA was informed that several of its proposed changes threatened to impose increased costs upon FPL's retail and wholesale customers. 77/ For example, under FMPA's proposal, FPL would be required to transmit power from new generating resources designated by FMPA without advance notice, and regardless of the economic impact on FPL's operations. The economic impacts on FPL could include a reduction in FPL's ability to use its efficient coal-fueled generating capacity, and require it to substitute older oil-fueled units which have much higher generation costs. 78/ FMPA did not offer to compensate FPL for these additional costs. 79/

In several recent cases, the federal courts of appeals have addressed similar alleged refusals to deal on the

77/ Locke Third Aff. at ¶ 3-9. FPL does not have to prove with certainty that these cost increases would have occurred, only that it had a reasonable basis for its concerns. See Panhandle, 935 F.2d at 1483 and n.13.

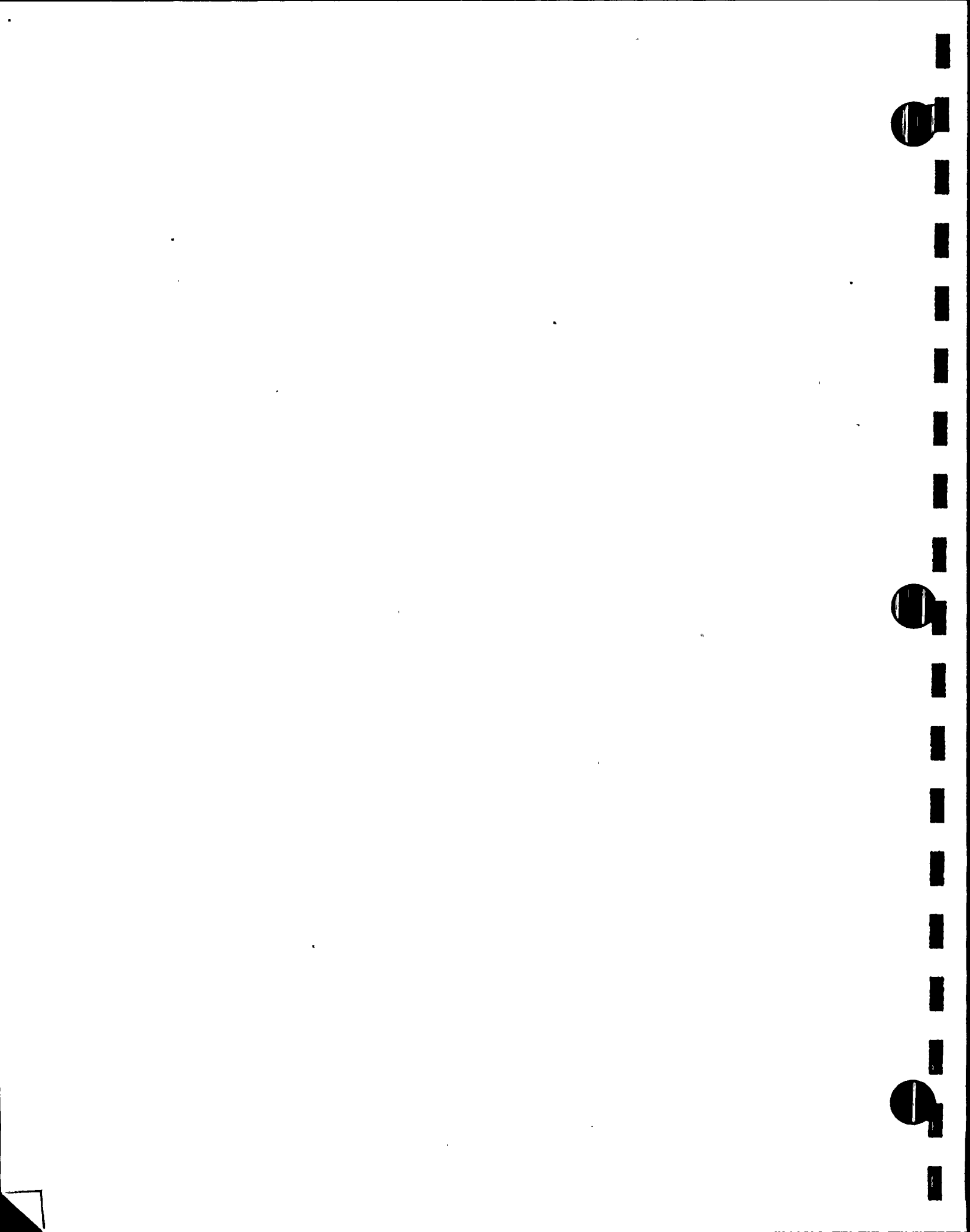
78/ Locke Third Aff. at ¶ 9. As Mr. Locke explains, portions of FPL's transmission system are frequently used at full capacity. Id. at ¶ 8-9. FMPA does not dispute this point. Admission Nos. 59, 60 (Tab J); Henze Dep. at 29/9 thru 31/3, 103/22 thru 104/18 (Nov. 2, 1992) (Tab D); Malmsjo Dep. at 24/13 thru 25/19 (Jan. 20, 1993) (Tab G); Williams Dep. at 28/2-7, 71/3-7 (Nov. 2, 1992), 19/21 thru 20/22 (Nov. 3, 1992) (Tab L). A requirement that FPL accommodate new FMPA transactions means that, when transmission capacity is already fully utilized, FPL would simply have to reduce correspondingly its own use of transmission to serve its own customers economically. Id. at 38/16 thru 39/9, 51/9 thru 52/16 (Nov. 2, 1993) (Tab L); Guarriello Dep. at 59/10-20 (Feb. 25, 1993) (Tab F).

79/ Locke Third Aff. at ¶ 9. See also Williams Dep. Ex. 12 (Tab L).



part of regulated utilities and have found that, as a matter of law, a utility monopolist is under no obligation to harm itself or its other customers in order to accommodate the demand of an antitrust plaintiff. In Panhandle, the Seventh Circuit held that the FERC-regulated defendant's refusal to relinquish its contract rights under gas sales contracts did not violate section 2 of the Sherman Act. 80/ In City of Anaheim, the court held that, even assuming that the transmission line in question was an essential facility, a utility ("Edison") could still deny access because Edison's desire to use its transmission capacity to the maximum extent to obtain cheaper power was a legitimate business justification. The court reasoned that the public interest is

80/ Panhandle, 935 F.2d at 1483-84 ("[W]hat the state labels 'monopolization' was nothing more than the enforcement of legitimate contracts designed to allocate risk between Panhandle and its customers; . . ."). The court distinguished Otter Tail Power Co. v. United States, 410 U.S. 366 (1973), noting that Otter Tail involved a situation where the defendant refused to deal after its franchise contracts with certain other utilities had expired. Panhandle, 935 F.2d at 378 ("As the district court correctly observed, Otter Tail, 'does not stand for the proposition that a utility must renegotiate extant long-term service agreements to enable a customer to supplant the utility as its sole supplier.'") (citing Illinois ex rel. Hartigan v. Panhandle Eastern Pipe Line Co., 730 F. Supp. 826, 909 (C.D. Ill. 1990) (emphasis in original)). See also City of Chanute v. Williams Natural Gas Co., 955 F.2d 641 (10th Cir.), cert. denied, 113 S. Ct. 96 (1992) (summary judgment is appropriate, finding that defendant's insistence that the plaintiffs adhere to existing full requirements contracts is legitimate business behavior).



well served when a monopolist seeks to keep its customers' rates as low as possible. 81/

FMPA's secondary claims that FPL violated the antitrust laws by (1) refusing to permit FMPA to become a joint owner of FPL's transmission system, (2) refusing to sell it a "block" of wholesale power, and (3) tying sales of wholesale power to sales of transmission service are similarly meritless. 82/ The proposal to buy a "block" of wholesale power without specifying contract demands for each delivery point is simply a proposal to receive wholesale service that is available under FPL's tariff and the existing contracts without paying the contract price. As FPL's total system costs are not reduced by the arrangement, FMPA's proposal would simply shift cost responsibility from FMPA to FPL's

81/ City of Anaheim, 955 F.2d at 1381. ("The Cities seem to contend that Edison has to disable itself so that they can get cheap power. The law requires no such thing.") Similarly, in City of Vernon, the same Circuit affirmed a lower court summary judgment ruling upholding Edison's claim that it had a legitimate business justification for its refusal to provide Vernon the transmission access that Vernon had requested: ". . . the demand that Edison turn over its facility to a city simply because the city could save money by obtaining cheaper power stands the essential facility doctrine on its head." City of Vernon, 955 F.2d at 1367.

82/ FMPA now admits that "the antitrust laws do not necessarily require FPL to [offer FMPA] ownership" in the FPL transmission system. Interrogatory Response 5 (Tab C). In any event, the antitrust laws do not obligate FPL to "allow its competitors to become its partners." Michigan Public Power Agency v. FERC, 963 F.2d 1574, 1579 (D.C. Cir. 1992) (citing P. Areeda & H. Hovenkamp, Antitrust Law ¶ 736.1b, at 787 (1991 Supp.)).



retail and other wholesale customers. 83/ FPL was under no obligation to abrogate its existing contracts with FMPA and depart from its FERC-approved tariff to benefit FMPA at the expense of FPL's other customers.

FMPA's allegation that FPL's refusal to sell network transmission service also amounts to a tie-in arrangement is apparently based on the theory that the resulting unreasonably high transmission service charges force municipal utilities to buy power from FPL in order to obtain access to FPL's transmission system. But a legitimate business justification also immunizes an otherwise illegal tie-in arrangement. 84/

83/ Locke Third Aff. at ¶ 12.

84/ Carpa, Inc. v. Ward Foods, Inc., 536 F.2d 39, 46 (5th Cir. 1976); Mozart Co. v. Mercedes-Benz of North America, Inc., 833 F.2d 1342, 1348-49 (9th Cir. 1987), cert. denied, 488 U.S. 870 (1988). FMPA's tie-in claim is defective for other reasons as well. To prevail FMPA must show that FPL tied together two separate products. However, delivered electricity clearly is bought and sold as a product, and case law makes it clear that where a component of a product or service is an integral part of that product or service, a tie-in claim cannot be maintained even if the component itself can also be sold as a stand-alone product. See Washington Gas Light Co. v. Virginia Elec. and Power Co., 438 F.2d 248, 254 (4th Cir. 1971); Gas Light Co. of Columbus v. Georgia Power Co., 313 F. Supp. 860, 869 (M.D. Ga. 1970), aff'd, 440 F.2d 1135 (5th Cir. 1971), cert. denied, 404 U.S. 1062 (1972). Further, FMPA would be required to establish that FPL has "forced" FMPA and/or its members to buy electricity by refusing to sell transmission service, or offering to sell it on terms that are so unreasonable as to amount to a refusal. Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 U.S. 2, 12 (1984). However, the evidence is that FMPA itself now purchases approximately 250 megawatts of long-term transmission service from FPL while purchasing less than 50 megawatts of wholesale power. Henze Dep. Ex. 12 at 1982 (Tab D); Locke Aff., Tab A at 66-72, Tab C at 34, Tab D at 33 (Tab B); Locke Third Aff., Tab B at A-1, Tab C at A-1, Tab D at A-1.



CONCLUSION

FMPA is simply seeking to co-opt the Court into becoming its negotiating partner against FPL. The claims asserted here are so misleading, so obviously manufactured and so lacking in intrinsic legal merit that they can only have been conceived as a negotiating tactic. Negotiations should be conducted at the negotiating table, not in federal court. For the reasons stated above, FPL respectfully requests the entry of an Order granting summary judgment in its favor on all Counts of the Supplemented Amended Complaint.

DATED this 15th day of April, 1993.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by Federal Express on L. Lee Williams, Jr., Esq. and Frederick M. Bryant, Esq., Moore, Williams, Bryant, Peebles & Gautier, P.A., 306 East College Avenue, P.O. Box 1169, Tallahassee, Florida 32302-1169 and on Robert A. Jablon, Esq. and Bonnie Blair, Esq., Spiegel & McDiarmid, 1350 New York Avenue, N.W., Washington, D.C. 20005-4798 on this 15th day of April, 1993.



Alvin B. Davis



1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA
3 ORLANDO DIVISION

4 FLORIDA MUNICIPAL POWER AGENCY,

5 Plaintiff,

6 -vs-

NO. 92-35-CIV-ORL-22

7 FLORIDA POWER AND LIGHT COMPANY,

8 Defendant.

- - - - - x

9 DEPOSITION OF:

10 ALBERT MALMSJO,
11 On Behalf of the Defendant.

12 Examination of a witness beginning at 1:40 PM, and
13 concluding at 6:45 PM, on MONDAY, FEBRUARY 15, 1993,
14 taken at 800 North Magnolia Avenue, Suite 300, Orlando,
15 Florida, before ELIZABETH A. STARKWEATHER, Notary
Public, State of Florida at Large, Certified Shorthand
Reporter and Registered Professional Reporter.

16 A P P E A R A N C E S:

17 BONNIE S. BLAIR, ESQ., OF: Spiegel & McDiarmid,
18 1350 New York Avenue, N.W., Washington, D.C.
20005-4798, for the Plaintiff.

19 EDWARD J. TWOMEY, ESQ., OF: Newman & Holtzinger, PC
20 1615 I. Street. N.W., Washington, D.C.
20036-5680, for the Defendant.

21 ALSO PRESENT: Bill Smith, Hector Sanchez and Emily
22 Macauley.

ALDERSON REPORTING COMPANY, INC.
WASHINGTON, D.C. 20005-5650 (202) 289-2260



1 interrogatory answers and the responses to the
2 admissions, it was my understanding that FMPA is taking
3 the position that FPL has refused to provide network
4 transmission service to FMPA since at least the
5 beginning of the St. Lucie delivery service contract in
6 1983; is that your understanding?

7 A. I think there have been several specific and
8 separate instances in which FP&L has failed to provide
9 FMPA with the network transmission service it's entitled
10 to and St. Lucie project was one of those instances and
11 I guess the first instance.

12 Q. Did you consider whether FMPA would have been
13 able to propose and implement the IDO proposal within
14 any time period after the signing of the St. Lucie
15 delivery service agreement, or did you just consider
16 working forward from the March 1985 contract?

17 A. Given the history of FMPA and the succession
18 of events that occurred that resulted in the way FMPA is
19 today, in my mind the only logical place to start with
20 regard to the implementation of the IDO project is with
21 regard to the early 1986 start date for the existing
22 All-Requirements Project which involved the



1 nongenerating systems.

2 Q. And why in your mind is that the only logical
3 starting point?

4 A. I think there was some need to demonstrate the
5 abilities to benefit from an all requirements type
6 project before several of the generating cities would
7 seriously consider entering into that kind of project.
8 And you also needed the events that surrounded
9 generation in the State of Florida at that time.

10 Q. I didn't understand the latter portion of your
11 answer.

12 A. I think at that point in time the small
13 generating utilities systems in Florida were realizing
14 that they had very limited opportunities to undertake
15 their own generation and very limited opportunities to
16 reduce their costs in the future, unless they
17 participated in the project like the IDO project.

18 Q. Given those factors that you've just recited,
19 is it logical to conclude that FMPA did not in any
20 practical sense experience any harm or damages, if you
21 will, due to FPL's refusal to provide network service
22 prior to the date, January 1, 1988?



1 A. I've only really concentrated on harm and
2 damages as a result of the denials with regard to the
3 All-Requirements Project. I'm sure -- I guess it was my
4 opinion that there might have been harm as a result of
5 earlier denials on other projects.

6 Q. But I thought, at least in the previous answer
7 you had suggested that the State wasn't ready for an
8 All-Requirements Project earlier than let's say January
9 1988. Did I misinterpret what you were saying?

10 A. I wasn't really saying the State in total. I
11 was talking about FMPA members and basically saying that
12 they weren't ready for a commitment of the level that
13 was involved in the All Requirements/IDO project before
14 about that time, 1988. It's a much higher commitment
15 than just the pooling type, or a joint dispatch
16 commitment we're talking about on the IDO project.

17 Q. But if they weren't ready to commit to such a
18 project let's say prior to January 1988, doesn't that
19 logically mean that such a project could not have been
20 successfully implemented by a FMPA prior to January
21 1988?

22 A. I won't say impossible. I'm just saying that



1 my opinions with regard to the IDO project, the most
2 likely implementation date, had FMPA always had network
3 transmission service, would have been around the January
4 '88 time frame. I'm not sure what would or wouldn't
5 have been possible with regard to implementing other
6 kinds of arrangements that involved joint operations or
7 joint dispatch.

8 Q. Now, I think you indicated before the break
9 that generating cities were beginning to express an
10 interest in joining the All-Requirements Project after
11 the All-Requirements Project took effect in early 1986;
12 is that correct?

13 A. That's my opinion. I feel like there was a
14 significant level of interest in the concepts of
15 All-Requirements Project in, quote, IDO projects.

16 Q. Was any of that interest expressed to you or
17 how did you become aware of that interest?

18 A. Well, there were just a lot of discussions at
19 FMPA meetings dealing with the next step in FMPA's
20 organizational development, which was basically
21 integrating the generating systems into the
22 All-Requirements Project. That was the logical next



1 step in the process as that point in time.

2 Q. Well, wouldn't the logical next step first
3 involve a study to demonstrate the benefits of adding
4 generating cities to the existing arrangement?

5 A. I think I was including that in my logical
6 next step. The logical next step for FMPA was to
7 develop the IDO type project, which would have included
8 the studies, which would have included the contract
9 documents, which would have included the sign-up and the
10 actual implementation.

11 Q. Now, isn't it true that Beck developed a
12 proposal to study the inclusion of the generating cities
13 in the All-Requirements Project, and that proposal, if
14 my memory is correct, was dated in June 1987? I've got
15 something here somewhere. I'll show you it though.

16 A. A professional services agreement?

17 Q. Yes. The work order.

18 A. That sounds approximately like the date that
19 we developed that work order.

20 Q. It's being checked on right now. But if
21 you'll assume for the minute that that date is correct,
22 that date is only approximately one year after the date



OFFICIAL TRANSCRIPT
BEFORE THE

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

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

v.

Case No.
92-35-Civ-Orl-22

FLORIDA POWER & LIGHT COMPANY,

Defendant.

Orlando, Florida
Tuesday, February 16, 1993

Continued deposition of ALBERT MALMSJO

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1 partial requirements for delivery among its delivery
2 points, and we did integrated planning and operations.
3 So, we're looking at the differences here.

4 Those energy results, part of them, lines one,
5 two and three, the information in the independent and
6 IDO cases was derived from the MULTISYM/PROSYM
7 production costing model. That's where we got that
8 information from. The information on the remaining
9 lines under energy come from various other portions of
10 the spread sheets that you have in your possession.

11 As I indicated when we were looking at
12 Exhibit 34, dealing with the initial studies, I had
13 indicated there was a tradeoff between energy savings
14 and capacity savings. As you modified the capacity plan
15 and saved capacity dollars, you were actually increasing
16 energy costs on an overall basis, a total basis.

17 I also indicated that under Case 2, for the
18 east systems that we hadn't at all optimized the
19 capacity plan; that we just looked at a couple of items
20 that looked like they would be relatively significant
21 contributors to providing additional benefits to the IDO
22 project.

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1 So, all in all, you're using all your capacity
2 and energy resources in a more efficient manner in the
3 IDO cases compared to the independent case in the damage
4 studies.

5 Q. How much of an impact did inclusion of the
6 broker, a Florida broker, in your damage studies have on
7 the comparison of energy savings between the independent
8 and the IDO situations?

9 A. The inclusion of the broker lowered the cost
10 under the IDO project and thus increased the damages by
11 a couple of hundred thousand dollars a year, not a
12 significant amount, in some years.

13 Q. By not including the broker in the Phase II
14 study, didn't you necessarily create a much greater
15 differential between the IDO case and the status quo
16 back then?

17 A. I think what we're saying is that the
18 inclusion of the broker either in the Phase II study or
19 this study doesn't make a whole lot of difference. And
20 I think what I had discussed with you previously on the
21 Phase II study is that the majority of the broker
22 transactions involving these utilities shown on the IDO

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1 east page, the majority of those broker transactions
2 were with utilities outside this group.

3 And it appeared that those types of
4 transactions and that level of transaction would
5 continue, whether they were treated as individual
6 utilities or as the IDO utility.

7 Q. Well, in your damage study calculations, if
8 you had not taken the broker into account, but of course
9 had assumed the IDO arrangement that you have assumed in
10 the damage calculations, wouldn't the energy savings
11 results of the IDO project vis-a-vis the independent
12 project show a much more robust number for the IDO
13 project, robust in the sense of much greater savings?

14 A. I don't think I understand that question. The
15 inclusion of the broker in the two arrangements, the IDO
16 and the independent, the inclusion of the broker
17 resulted in higher damages than had I neglected and
18 simply not included the broker.

19 If I had said we're not going to include the
20 broker in this damage analysis, the damages would be
21 slightly less to the tune of maybe a couple hundred
22 thousand dollars a year out of the several million

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1 dollars a year.

2 (Discussion off the record).

3 MR. TWOMEY: Let me have marked here as
4 Exhibit 35 a one-page document I took from your work
5 papers, Mr. Malmsjo. It's entitled Florida Municipal
6 Power Agency summary of broker savings as a percent of
7 energy costs, Bates number B 010881.

8 (Document marked Defendant's Exhibit
9 No. 35 for Identification).

10 Q. Where did you get this data that's depicted
11 here?

12 A. Could I make a correction to the title of that
13 first before we talk about it? It should actually say
14 summary of economy transaction savings. It includes
15 both broker and off broker economy transactions. The
16 information on this sheet was derived from reports
17 submitted to us or information given to us by each of
18 the systems shown on the sheet.

19 Q. You sent out a request to them and they
20 provided you with that information?

21 A. Or we telephoned them and talked to them about
22 it.

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ORIGINAL

1

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

ORLANDO DIVISION

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

-----X

FLORIDA MUNICIPAL POWER AGENCY, :

Plaintiff, :

v. :

FLORIDA POWER & LIGHT COMPANY, :

Defendant :

-----X

Washington, D.C.

Friday, July 23, 1993

DEPOSITION OF:

ALBERT B. MALMSJO

a witness, called for examination by counsel for
the Defendant, pursuant to notice and agreement of
counsel, in the offices of Newman & Holtzinger,
P.C., 1615 L Street, Northwest, Washington, D.C.,
20036, beginning at approximately 9:48 a.m.,

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Washington, D.C. (202) 898-1108



1 outside the State of Florida are part of the
2 network service; isn't that correct?

3 A. It's not a condition.

4 It's the fact that the damage studies
5 are done on what I would currently conceive to be
6 FMPA's most likely generation expansion plan for
7 the IDO project.

8 It's not saying -- it's not any kind
9 of concession that there can or can't be other
10 resources involved in that project if it actually
11 goes ahead.

12 This is the most likely scenario, the
13 way the world is seen right now.

14 Q. Do you know if FMPA has a position as
15 to whether it would be willing to commit, at least
16 until the year 2006, not to add generation
17 resources outside the State of Florida to its IDO
18 project were that IDO project were to go into
19 being?

20 A. I cannot say what FMPA would commit to
21 as far as negotiations on the IDO project.

22 It was never anything that was ever



1 proposed to FMPA during any of the negotiations.

2 Q. Well, you were at a lot of the
3 negotiations personally. You're certainly aware
4 that the open-ended, if you will, nature of the
5 project was a severe concern to FPL; isn't that
6 correct?

7 A. I don't know how -- I don't know if I
8 would classify that from my experience as severe.
9 I mean, the whole project was a severe concern to
10 them.

11 The open-ended nature of the -- I
12 don't know that I would focus that at all on the
13 open-ended nature of location of resources or
14 anything.

15 All I said was FPL never went to
16 FMPA during negotiations and said, look, if
17 you'll commit not to put resources here, here
18 and here, then we can probably make this go,
19 nothing like that was ever said to FMPA and no
20 methodology of negotiating a solution was ever
21 proposed by FPL that would deal with a situation
22 like that.



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

FLORIDA MUNICIPAL POWER AGENCY

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

Plaintiff,

vs.

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation,

Defendant.

COPY

THE DEPOSITION OF:

FREDERICK BRYANT

TAKEN AT INSTANCE OF:

The Defendant

DATE:

Tuesday, February 16, 1993

TIME:

Commenced: 9:11 a.m.
Concluded: 2:47 p.m.

LOCATION:

Law Offices of Moore, Williams
Bryant, Peebles, & Gautier
306 East College Avenue
Tallahassee, Florida

REPORTED BY:

B. J. QUINN, RPR, CCR, CP
Notary Public in and for
State of Florida at Large

ASSOCIATED COURT REPORTERS

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1 of FP&L's?

2 A It's certainly not inconsistent with that
3 position.

4 Q And do you recall receiving this letter?

5 A Me, personally?

6 Q Yes, sir.

7 A Gosh, Mr. Bouknight, I -- No, sir, I don't
8 recall receiving it.

9 Q In 1981, '82, and '83 --

10 A And I'm not designated as being a recipient
11 thereof. But even if I were, I'm not sure that I'd recall
12 receiving it.

13 Q In that time frame, 1981, through 1983, was it
14 important to FMPA that it obtain network transmission service
15 for its ownership percentage of Saint Lucie Unit Number 2?

16 A Well, sir, I guess it's, how do you define
17 important? Yes, it was important, but there were other
18 things that FMPA had to accomplish that were much more
19 important at that time.

20 Q And what were those?

21 A Well, we had to have a transmission contract in
22 order to be able to finance the \$290,000,000 that was
23 utilized to pay your company for its, ownership share of
24 Saint Lucie 2, sir. Without that, the transmission
25 arrangements, the financing would have been impossible.



1 A Yeah, I can remember your partner wore tennis
2 shoes and had his feet on the desk.

3 Q Anything else?

4 A Yeah, I'm sure there are lots of other things, but
5 if you'll ask me specific questions, I'll try to respond.

6 Q I'm sure that you didn't evidence your frustration
7 in dealing with the FP&L representatives, did you?

8 A No, I'm sure I did.

9 Q Now, let's go back to 1982, and '83, with the
10 Saint Lucie service delivery agreement. Why did FMPA execute
11 the agreement that was executed in 1983, instead of
12 requesting FP&L to file its proposal with the FERC?

13 A I think I've testified before, Mr. Bouknight, that
14 it simply turned to, quite frankly a business decision that
15 we had to have a transmission agreement in place. We had to
16 be able to finance it. We had to be able to deliver that
17 power as soon as that power plant started generating power,
18 sir.

19 The bonds, the tax exempt bonds which we financed,
20 FMPA financed through -- The only security for those bonds
21 was a revenue stream, sir. That revenue stream, the only
22 place that revenue stream derives from is the power that's
23 generated from Saint Lucie, and delivered to the various
24 participants. They pay for that power.

25 Those payments are then used by FMPA to pay off



1 bonds and cover O&M, and a myriad of other costs. Without
2 that revenue stream, and the ability to pay for those bonds,
3 we'd be in default. The business decision was simply: While
4 this was not, at least in my mind, what we're entitled to,
5 what we can ultimately achieve, we simply had to get on with
6 our business, sir, and have a transmission arrangement in
7 place to avoid that power not being able to be delivered.

8 Q Now, you referred earlier to time constraints
9 being imposed by FP&L with respect to participation in
10 Saint Lucie Unit Number 2. Were you referring, then, to the
11 provisions of Article Roman VII of the Saint Lucie Unit 2
12 license conditions?

13 A No, sir, these certainly are time constraints that
14 were imposed upon FMFA, but there were -- my recollection is
15 there were also additional time constraints imposed upon FMFA
16 in the participation agreement that FP&L And FMFA entered
17 into.

18 Q All right, sir. And those are the -- those two
19 are the time constraints to which you referred?

20 A A month. There may have been others, sir.

21 Q Tell me, please, about any others.

22 A I don't have any independent recollection right
23 now. I will tell you, and my testimony is, because I sweated
24 through it, I lived through it, we were under extreme time
25 pressure.



1 Q I refer you to Section 21.1, sir (indicating).

2 A Yes, sir, I'm familiar with that section.

3 Q And could you read the question, again.

4 (PREVIOUS QUESTION READ BY REPORTER.)

5 A As limited by the actual verbiage in this section,
6 that is correct. I believe you'll see that, if I interpret
7 this as correct, such complaint as you referred to could not
8 be filed by FMPA earlier than three years after the effective
9 date of this agreement.

10 So any complaint that we would have, sir, we were
11 not able to bring for three years until after the expiration
12 of that agreement.

13 Q Now, at the time that FMPA executed the
14 All Requirements Project agreement, did it understand that,
15 under Section 10 of the license conditions, it had the right
16 to, instead of execute the agreement, request FP&L to make a
17 unilateral filing with the FERC?

18 A Say that, again, sir. Repeat that.

19 MR. BOUKNIGHT: Read it back.

20 (PREVIOUS QUESTION READ BY REPORTER.)

21 A I certainly had that understanding.

22 Q But no such request was made by FMPA, was it?

23 A No, sir. Again, we have a situation where FMPA
24 was under severe time constraints to put together the
25 All Requirements Project. FMPA had been offered an ownership



1 interest in the Stanton Unit 1 project. The terms of that
2 participation agreement, have very, very strict time limits
3 to when FMPA would have to raise its money by the sale of
4 bonds, and close on the ownership and all requirements in the
5 Stanton unit.

6 FMPA, also, by the -- or the cities who were going
7 to be in the All Requirements Project were -- had very strict
8 time limits upon which they had to give your company and
9 other companies notice of going off of their All Requirements
10 Tariff with your company and other companies, and joining the
11 All Requirements Project.

12 FMPA had to make sure then that, within those time
13 limits, it, in fact, could be fiscally able to deliver that
14 power, such as installing devices, such as RTUs, and other
15 electrical devices that ensure that when electricity service
16 is stopped from your company, and commenced by my company,
17 that that coincides simultaneously.

18 We are, again, in a situation, sir, where, due to
19 the forces and time constraints placed on us by others, we
20 had to go forward.

21 I might add, your company was totally aware of
22 those time constraints. Not only do they have copies of the
23 provisions of those contracts, I know personally I discussed
24 those time constraints with representatives of your company,
25 and expressed my concerns and frustrations what I felt was



1 tantamount to stonewalling at points in time.

2 Q Now, let me refer you to the Stanton Tri City
3 Transmission Agreement between Florida Power & Light Company,
4 and FMPA; and the Stanton Transmission Service Agreement
5 between Florida Power & Light Company and FMPA, both of which
6 were entered into on November 25, 1986.

7 Off the record.

8 (DISCUSSION OFF THE RECORD.)

9 BY MR. BOUKNIGHT:

10 Q Mr. Bryant, were you involved in the negotiation
11 of these two contracts?

12 A Yes, sir.

13 Q In the course of -- Were these two contracts
14 negotiated together or separately?

15 A I don't recall, sir. Certainly -- they,
16 obviously, were the same time frame, and both have the same
17 date on them.

18 Whether one was done before the other, or done
19 simultaneously, sir, I don't remember.

20 Q In the course of negotiation of these contracts,
21 did FMPA request FP&L to provide network transmission
22 service?

23 A That's my recollection, yes, sir.

24 Q And how did FP&L respond?

25 A Sir, in the 25 years -- 23 years that I've been



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY,)

Plaintiff,)

v.)

FLORIDA POWER & LIGHT COMPANY,)
a Florida Corporation,)

Defendant.)

CASE NO. 92-35-CIV-ORL-3A22

PLAINTIFF FLORIDA MUNICIPAL POWER AGENCY'S RESPONSES AND
OBJECTIONS TO DEFENDANT FLORIDA POWER AND LIGHT COMPANY'S
SECOND SET OF INTERROGATORIES

Plaintiff Florida Municipal Power Agency ("FMPA") makes
the following responses and objections to defendant Florida Power
and Light Company's ("FPL") second set of interrogatories:

General Objections:

A. FMPA objects to FPL's interrogatories to the extent that
they purport to require FMPA to identify "all evidence" relating
to the matters at issue on the grounds that FPL has failed to
fully respond to FMPA's discovery requests, that the document
production process is not yet complete, and that FPL itself has
greater access to relevant information than FMPA.

B. FMPA objects to FPL's interrogatories to the extent that
they purport to require FMPA to identify the evidence or
witnesses it may rely on at trial, on the grounds that such



RESPONSE:

Based upon FPL's previous failures to agree to network transmission in connection with negotiations regarding the St. Lucie, Stanton and All-Requirements Transmission Service Agreements, FMPA was aware that FPL might refuse to respond favorably to its request for network transmission for IDO. This was a major reason why FMPA sent a draft contract, which could be filed at FERC, with the September 8, 1989 transmission service proposal. In this way, FPL could not avoid the request by claiming that it did not know what FMPA was requesting. Thus, from the inception of the negotiations, FMPA anticipated that there might be litigation over the September 8, 1989 transmission service proposal. However, while FMPA recognized litigation was possible, FMPA believed there was a reasonable chance that it could be avoided by negotiation. Although FMPA continued to hope for an agreement, during the summer of 1990 negotiations it became very apparent that FPL was not negotiating in good faith and litigation would be likely. In spite of this fact, in order to avoid litigation, FMPA kept attempting to negotiate an agreement, even as late as the July 1991 meeting it sought with FPL Chief Operating Officer and President Frank. However, William Locke's August 1, 1991 response to the meeting dimmed hopes of a negotiated resolution.

12. State whether the transmission service that FMPA seeks to obtain through this lawsuit would require modification or supersession of any of the Existing



Transmission Contracts, and, if so, identify each contract that would have to be modified or superseded, and the types of modifications that would be necessary.

RESPONSE:

The Network Transmission Service FMPA seeks to obtain through this lawsuit would not require modification or supersession of the Existing Transmission Contracts. Modification is unnecessary insofar as, by their terms, these contracts all permit changes in the rates, terms and conditions for service. Also, a new contract could be entered into by FPL and FMPA which would be structured to allow these contracts to remain in place, but to operate together to provide Network Transmission Service. However, it would be preferable, simpler and more convenient to have a single contract which would provide for Network Transmission Service.

13. State whether FMPA contends that FPL has breached any of the Existing Transmission Contracts or the Superseded Transmission Contract, and, if so, state when the alleged breach first occurred with regard to each contract, the specific provisions allegedly breached, and the basis for FMPA's contention, including identification and description of any evidence on which FMPA may rely at trial with respect to this contention. Further, state whether FMPA contends that there is a continuing breach.

RESPONSE:

See General Objection B set forth above.

Without waiving the foregoing objections, FMPA states that FPL breached the All Requirements TSA (and therefore the



Revised and Restated All-Requirements TSA) by refusing to transmit 13 months of TECO Schedule D purchases under the All-Requirements TSA and instead treating it as transmitted under transmission Schedule TD. The breach occurred in response to FMPA's oral request in December, 1988, and continued during the June, 1989 through January, 1990 period during which FMPA used FPL's transmission to effectuate the TECO purchase. See August 14, 1989 letters from Robert Williams to Glenn Lewis and William Locke.

Also, FPL breached the Stanton Tri-City TSA on November 3, 1992, when it cancelled Replacement Transmission service under that TSA for 11 Mw of Stanton Replacement Power that Key West was purchasing from Tampa Electric Company. FPL's actions fell outside Section 5.1.2.3 of that TSA. A portion of the 11 Mw service could have been continued with no greater impact on FPL's system reliability than 11 Mw of wheeling from Stanton to Key West. See the TSA, Leo Carey's November 4, 1992 letter to FPL's Mr. C.M. Mennes, and Mr. W.R. Schoneck's November 9, 1992 response.

14. State whether FMPA contends that any of the Existing Transmission Contracts is inconsistent, or the Superseded Transmission Contract was inconsistent, with the St. Lucie Unit No. 2 License Conditions. If so, indicate whether each such contract was inconsistent with the License Conditions when it was executed, or became inconsistent at some later date, and identify each contract provision which FMPA contends is



inconsistent with St. Lucie Unit No. 2 License Conditions, and set forth the basis for FMPA's contention, including identification and description of any evidence on which FMPA may rely at trial with respect to this contention. If any contract provision became inconsistent at some later date, specify the date and set forth the basis for FMPA's contention, including identification and description of any evidence on which FMPA may rely at trial with respect to this contention.

RESPONSE:

See General Objection B set forth above; see also response to Interrogatory No. 10(g).

Without waiving the foregoing objections, FMPA states that the existing Transmission Contracts and the Superseded Transmission Contract provide discrete transmission services which are less than the Network Transmission Service FPL is required to provide, on request, under the Antitrust Conditions. No one of these FERC-filed transmission contracts purports to set forth the totality of the transmission FPL is obligated to provide FMPA; each is subject to modification under Sections 205 and 206 of the Federal Power Act; and each contains a broad non-waiver clause. While these contracts themselves are not, on their face, necessarily inconsistent with the Antitrust Conditions, FPL's refusal to provide Network Transmission Service in response to FMPA requests during negotiations of these contracts (see responses to Interrogatories Nos. 15, 16, and 19) and FPL's refusal to agree, in response to FMPA's IDO-related transmission proposals, to provide the more comprehensive Network.



Transmission Service necessary for the IDO project, is a violation of the Antitrust Conditions. Further, FPL violated the Antitrust Conditions by not filing with FERC a contract providing Network Transmission Service, or for Section 205 changes to the Existing Transmission Contracts to accomplish that same result, after FMPA requested such service. See Responses to Interrogatories Nos. 1 and 9.

15. Does FMPA contend that its execution of any of the Existing Transmission Contracts or the Superseded Transmission Contract came about as a result of coercion and/or duress. If so, explain fully the basis of the contention, identify the person(s) involved and identify and describe any evidence on which FMPA may rely at trial with respect to this contention.

RESPONSE:

See General Objection B set forth above.

Without waiving the foregoing objections, FMPA contends that its execution of the Existing Transmission Contracts and the Superseded Transmission Contract came about as a result of coercion or duress. As to all the contracts inquired about, FMPA was always cognizant that it had no option but to deal with FPL. In each instance (other than the Agreement to Provide Specified Transmission), FMPA was forced to accept less than the Network Transmission Service FPL was required to provide, on request, under the Antitrust Conditions, by the necessity to get FPL to timely agree to provide transmission service for new resources and, in one instance, to include a new participant in the All-



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

COPY

FLORIDA MUNICIPAL POWER AGENCY,

VOLUME 1

Plaintiff,

vs.

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

FLORIDA POWER AND LIGHT COMPANY,

Defendant.

* * * * *

DEPOSITION OF:

CALVIN R. HENZE

DATE:

November 2, 1992

TIME:

9:30 o'clock a.m.

PLACE:

Radisson Plaza Hotel
620 S. Ivanhoe Boulevard
Orlando, Florida

REPORTED BY:

JUDITH A. VICK, R.P.R., C.P.

* * * * *

ACE REPORTERS, INC.
1415 E. Robinson Street
Orlando, Florida 32801
(407) 895-5225



1 don't -- It was certainly available to them because
2 all the things we do are of public record. So they
3 would be available.

4 Q Do you recall Beck ever doing a diversity
5 study with regard to the IDO project?

6 A Well, I think that was the project, was
7 diversity of using the best resources that were
8 available for members.

9 Q I'm trying to make sure we are talking about
10 the same type of study. Would Nick Guarriello and
11 Al Malmsjo be the persons who would have done any
12 such diversity study?

13 A Yes.

14 Q Would such a diversity study have been
15 explained to and presented to the Executive
16 Committee?

17 A The study was presented to the Executive
18 Committee and to the Board of Directors, but not in
19 the detail of saying that we are going to shut down
20 Lake Worth generation and run this one or run Lake
21 Worth's generation and shut down this one.

22 I think it was understood by combining the
23 generation and running the most efficient generators,
24 because I think everybody understood that, that
25 that's how they were going to have savings.



U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY,

PLAINTIFF,

VS.

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

FLORIDA POWER & LIGHT COMPANY,

DEFENDANT.

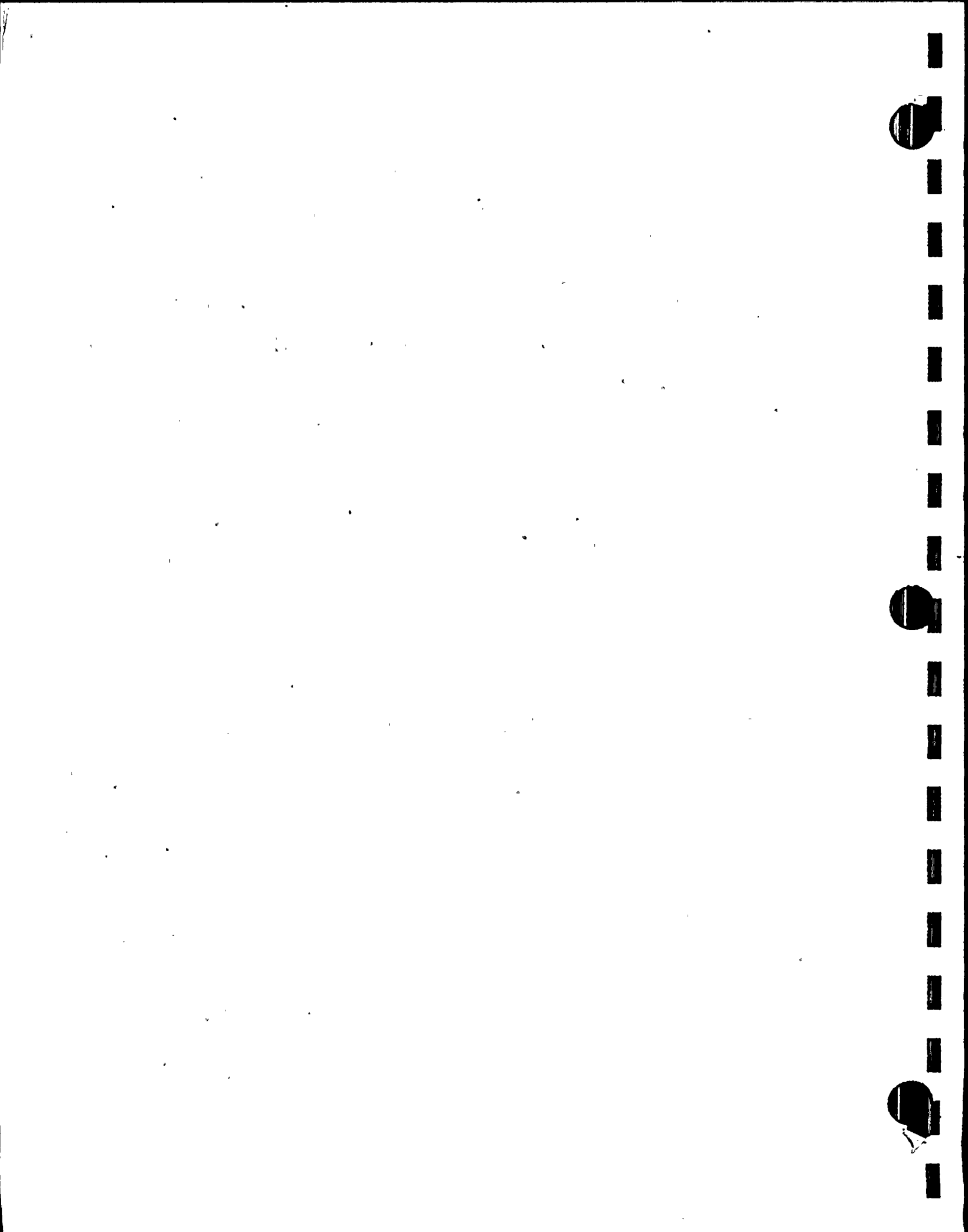
CONTINUATION DEPOSITION

OF

CALVIN R. HENZE

TAKEN BY: COUNSEL FOR THE DEFENDANT
LOCATION: RADISSON PLAZA HOTEL ORLANDO
60 SOUTH IVANHOE BOULEVARD
ORLANDO, FLORIDA 32802
DATE: TUESDAY, NOVEMBER 3, 1992
TIME: COMMENCING AT 9:30 A.M.

ACE REPORTERS, INC.
1450 EAST ROBINSON STREET
ORLANDO, FLORIDA 32802
(407) 895-5226



1 CLEWISTON TO THE TRANSMISSION SERVICE AGREEMENT; AM I
2 CORRECT?

3 A. THAT'S CORRECT.

4 Q. A FEW MINUTES AGO YOU MADE A STATEMENT ABOUT
5 MR. GARDENER. LET ME ASK A COUPLE MORE QUESTIONS ABOUT HIM.
6 WOULD YOU CHARACTERIZE HIM AS A TOUGH NEGOTIATOR?

7 A. YES, SIR.

8 Q. WOULD YOU CHARACTERIZE HIM AS A FAIR NEGOTIATOR?

9 A. YES, SIR.

10 Q. OKAY.

11 A. I'LL HAVE TO DEFINE FAIR AS BEING THAT WHEN WE
12 REACHED AN AGREEMENT ON A CERTAIN ITEM THAT THEN HE, YOU
13 KNOW, ABIDED BY THAT AGREEMENT, DIDN'T CHANGE HIS MIND
14 LATER.

15 Q. SETTING ASIDE THE NEGOTIATIONS WITH REGARD TO THE
16 IDO PROJECT FOR PURPOSES OF THIS QUESTION, DO YOU HAVE ANY
17 COMPLAINTS ABOUT ANY NEGOTIATING CONDUCT ON THE PART OF FPL
18 RELATING TO ANY OF THE CONTRACTS THAT YOU NEGOTIATED WITH
19 THEM DURING THE 1980'S?

20 MR. WILLIAMS: WHAT DO YOU MEAN BY CONDUCT?
21 BY MR. TWOMEY:

22 Q. MR. HENZE, DO YOU HAVE AN UNDERSTANDING OF WHAT I
23 MEAN BY CONDUCT?

24 MR. WILLIAMS: YOU CAN ASK HIM TO EXPLAIN THE
25 TERM, IF YOU WANT TO, OR YOU CAN ANSWER THE QUESTION.



1 IT'S UP TO YOU.

2 THE WITNESS: I GUESS I NEED TO KNOW WHAT DO YOU
3 MEAN BY CONDUCT.

4 BY MR. TWOMEY:

5 Q. LET ME PHRASE IT DIFFERENTLY.

6 FROM YOUR PERSONAL PROSPECTIVE, DO YOU BELIEVE
7 THAT FPL OR SPECIFICALLY ANY OF THE FPL NEGOTIATORS WHOM YOU
8 NEGOTIATED WITH OVER THE CONTRACTS THAT WE TALKED ABOUT
9 DURING THE 1980'S, COMMITTED OR THREATENED ANY WRONGFUL ACTS
10 DURING THE NEGOTIATIONS PROCESS?

11 A. NOT TO MY KNOWLEDGE DID THEY THREATEN COMMITTING
12 ANY WRONGFUL ACTS, NO.

13 Q. LET ME SHOW YOU A DOCUMENTS HERE DATED --

14 MR. TWOMEY: OFF THE RECORD.

15 (WHEREUPON, A DISCUSSION OFF THE RECORD WAS HAD,
16 AFTER WHICH THE FOLLOWING TRANSPIRED).

17 THE WITNESS: I THINK, GOING BACK TO THE LAST
18 QUESTION, IF I MIGHT --

19 MR. TWOMEY: JUST A SECOND. I STARTED A QUESTION,
20 BUT IF YOU WANT TO ADD TO YOUR LAST ANSWER, LET ME JUST
21 NOTE FOR THE RECORD THAT THE ADDITIONAL WILL OCCUR
22 AFTER THERE'S BEEN A CONFERENCE OF APPROXIMATELY TWO
23 MINUTES OR SO WITH COUNSEL.

24 GO AHEAD.

25 MR. WILLIAMS: THE CONFERENCE WAS BASICALLY HIS



1 NOT UNDERSTANDING APPARENTLY THE TERM "WRONGFUL ACTS",
2 AND HE WAS SEEKING CLARIFICATION FROM ME, AND I'VE
3 ASKED HIM TO ASK THE QUESTIONER WHAT HE MEANS BY
4 WRONGFUL ACTS, WHICH IS SIMPLY AN HONEST RESPONSE TO
5 THE QUESTION TO TRY TO BE TRUTHFUL.

6 THE QUESTION, ALTHOUGH PERHAPS NOT INTENTIONAL,
7 WAS SOMEWHAT TRICKY AND MISLEADING AND CAN BE TAKEN OUT
8 OF CONTEXT AT A LATER TIME.

9 MR. HENZE IS JUST TRYING TO SEEK CLARIFICATION OF
10 WHAT THE QUESTIONER MEANS BY THE TERM "WRONGFUL ACTS".
11 BY MR. TWOMEY:

12 Q. MR. HENZE, I PREFERENCED THAT QUESTION, I,
13 BELIEVE, WITH A CLAUSE THAT SAID FROM YOUR PERSONAL
14 PROSPECTIVE.

15 I WAS SEEKING, AND I ASSUMED YOU ANSWERED IN THAT
16 VEIN, UNLESS YOU TELL ME DIFFERENTLY NOW, THAT HOWEVER YOU
17 DEFINE WRONGFUL ACTS IN YOUR OWN MIND YOU BELIEVED THAT NO
18 ONE AT FPL HAD COMMITTED ANY SUCH ACTS OR THREATENED ANY
19 SUCH ACTS DURING THE NEGOTIATIONS PROCESS. IS THAT A FAIR
20 SUMMARY OF YOUR ANSWER?

21 A. THAT'S WHAT I SAID. THERE WAS NO THREATENED
22 ACTION, BUT I THINK -- AND I JUST ASSUME THIS ON A VERY
23 GENERAL BASIS, BUT WHEN YOU GO BACK AND LOOK AT OUR
24 NEGOTIATIONS, WE ASKED FOR NETWORK TRANSMISSION, WHICH WE
25 FEEL WE WERE ENTITLED TO UNDER THE SETTLEMENT AGREEMENT AND



1 THE ST. LUCIE AGREEMENT, AND THAT WE DID NOT RECEIVE THE
2 NETWORK TRANSMISSION AGREEMENT.

3 THAT COULD BE, AND I WOULD HAVE TO -- I'M NOT A
4 LAWYER. IF THAT'S CONSIDERED WRONGFUL ACTS, THEN, YES, THEN
5 FPL HAS COMMITTED WRONGFUL ACTS IN THAT WE DID NOT RECEIVE
6 NETWORK TRANSMISSION AGREEMENT WHICH WE HAD ASKED FOR.

7 Q. OKAY..

8 A. IF IT'S IN THAT CONTEXT OF IT.

9 Q. I UNDERSTAND IT WITH THAT QUALIFICATION. LET ME
10 MAKE SURE I'M CLEAR. ARE YOU SAYING THAT IN CONTRACT
11 NEGOTIATIONS PRIOR TO THE IDO CONTRACT NEGOTIATIONS THAT
12 FMPA REQUESTED OF FPL THAT THEY PROVIDE NETWORK TRANSMISSION
13 TO FMPA?

14 A. THAT'S CORRECT.

15 Q. WHAT SPECIFIC CONTRACTS ARE YOU REFERRING TO WHEN
16 YOU STATE THAT?

17 A. WE HAVE REQUESTED IT ORALLY IN THE ST. LUCIE
18 TRANSMISSION CONTRACT.

19 Q. ST. LUCIE DELIVERY SERVICE AGREEMENT, THE FIRST
20 ONE THAT WE DISCUSSED?

21 A. YES, SIR.

22 Q. OKAY.

23 A. WE ALSO DID IN THE STANTON AND THE TRI-CITY AND,
24 AGAIN, WE WERE TOLD NO. THEN WE PURSUED IT, I HAVE
25 DILIGENTLY, IN THE ALL-REQUIREMENTS CONTRACT BECAUSE WE FELT



1 WAS THAT WE WOULD PAY FOR WHATEVER THE LOAD, COMBINED LOAD
2 WAS OF THE SYSTEM EACH MONTH.

3 FPL, OF COURSE, WANTED ANNUAL CONTRACT DEMANDS
4 WHICH WERE BASED ON PEEK DEMANDS OF THE SYSTEM. I THINK WE
5 FINALLY COMPROMISED ON A MODIFIED, I GUESS IS THE BEST WAY I
6 CAN DESCRIBE IT, A MODIFIED MONTHLY CONTRACT DEMAND.

7 Q. HOW DID YOU REACH THAT COMPROMISE? WAS IT
8 NEGOTIATIONS DIRECTLY WITH MR. GARDENER?

9 A. YES, SIR.

10 Q. DO YOU RECALL WHETHER OR NOT YOU SUGGESTED THE
11 POSSIBILITY OF SEEKING OTHER ACTION WERE FPL NOT TO AGREE TO
12 BACK OFF ITS POSITION OF WANTING ANNUAL CONTRACT DEMANDS?

13 A. WOULD YOU REPEAT THAT, PLEASE?

14 MR. TWOMEY: READ IT BACK.

15 (WHEREUPON, THE QUESTION REFERRED TO WAS READ BY
16 THE COURT REPORTER).

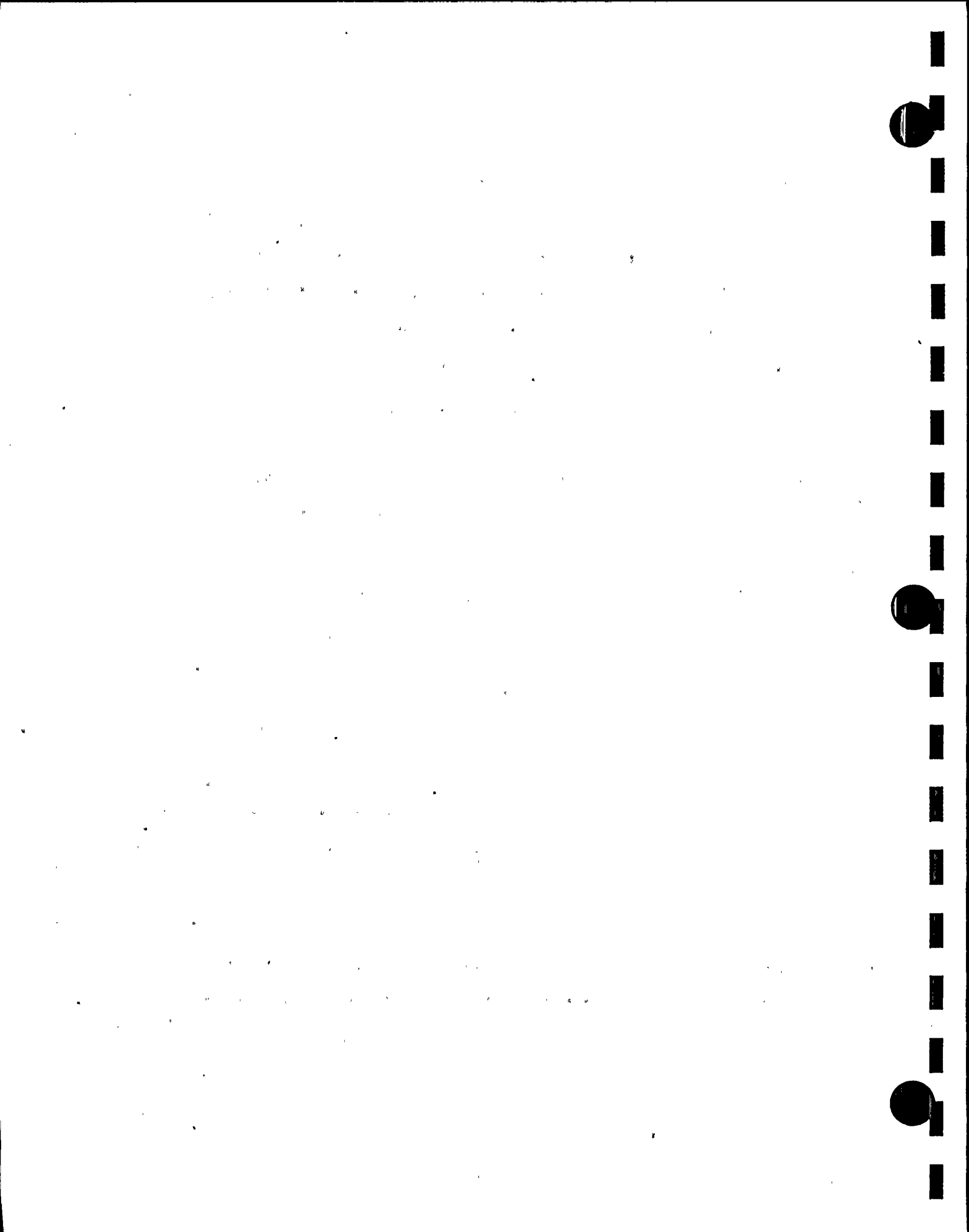
17 THE WITNESS: NO, I DO NOT.

18 BY MR. TWOMEY:

19 Q. JUST SO WE ARE CLEAR, IT SOUNDS LIKE THERE WAS A
20 COMPROMISE ON BOTH SIDES ON THIS PARTICULAR ISSUE; IS THAT
21 CORRECT?

22 A. YES.

23 Q. OKAY. INDEED THERE WERE COMPROMISES ON MANY
24 ISSUES OVER THE YEARS THAT YOU DEALT WITH FPL ON THE
25 CONTRACTS THAT WE HAVE IDENTIFIED IN THE RECORD HERE; IS



1 THAT CORRECT?

2 A. CORRECT.

3 Q. NOW, YOU MENTIONED SEVERAL TIMES DURING THE COURSE
4 OF THIS DEPOSITION THE ST. LUCIE TWO LICENSES CONDITIONS. I
5 ASSUME YOU ARE FAMILIAR WITH THEM, HAVING DEALT WITH THEM IN
6 ONE FASHION OR OR ANOTHER OVER YOUR TENURE AT FMPA.

7 A. I'M GENERALLY FAMILIAR WITH THEM, YES, SIR.

8 Q. NOW, YOU INDICATED JUST A FEW MINUTES AGO TO ME, I
9 BELIEVE, THAT YOU HAD REQUESTED NETWORK TRANSMISSION AS FAR
10 BACK AS THE ST. LUCIE DELIVERY SERVICE AGREEMENT
11 NEGOTIATIONS, WHICH WERE IN APPROXIMATELY 1982?

12 A. '83, I BELIEVE.

13 Q. YES, YOU ARE CORRECT, 1983, AFTER THE SETTLEMENT
14 OBVIOUSLY.

15 A. RIGHT.

16 Q. FPL DID NOT ACQUIESCE IN YOUR REQUEST?

17 A. THAT'S CORRECT.

18 Q. BASED ON YOUR UNDERSTANDING, THEN, OF THE LICENSED
19 CONDITIONS, WAS THAT ST. LUCIE DELIVERY SERVICE AGREEMENT
20 INCONSISTENT WITH THE LICENSE CONDITIONS AT THE TIME OF IT
21 BEING SIGNED?

22 A. BASED ON ADVICE OF MY LEGAL COUNSEL, YES.

23 Q. DO YOU RECALL -- WHEN DID YOU GET THAT ADVICE OF
24 YOUR LEGAL COUNSEL? BACK IN 1983 OR ARE YOU TALKING ABOUT
25 1992?



1 A. MY PERSONAL OPINION IS WHEN I SIGN A CONTRACT I
2 LIVE UP TO IT.

3 Q. THAT'S WHAT I'M GETTING AT. WHEN YOU WERE
4 NEGOTIATING WITH MR. GARDNER AND OTHER PERSONNEL AT FPL AND
5 THEN ACTUALLY SIGNED THE CONTRACTS, YOU PERSONALLY
6 REPRESENTING FMPA HAD NO INTENTION OF TEARING UP, WALKING
7 AWAY, ABROGATING THOSE CONTRACTS AS SOON AS YOU SIGNED THEM,
8 DID YOU?

9 A. NO, SIR.

10 Q. MR. HENZE, I LOOKED AT QUITE A FEW DOCUMENTS THAT
11 WERE PRODUCED BY FMPA DURING THE COURSE OF DISCOVERY IN THIS
12 LAWSUIT, AND I AT MOST SAW SOME OFFHANDED REFERENCES TO THE
13 NEED FOR FMPA TO NEGOTIATE A TRANSMISSION AGREEMENT WITH
14 FLORIDA POWER CORPORATION AKIN TO WHAT YOU WERE TRYING TO
15 NEGOTIATE WITH FLORIDA POWER AND LIGHT WITH REGARD TO THE
16 IDO PROJECT.

17 CAN YOU HELP ME OUT? WHY DID YOU NEGOTIATE WITH
18 FLORIDA POWER CORPORATION OR IF YOU DID NOT WHY DIDN'T YOU,
19 SIR?

20 A. IN REFERENCE TO THE IDO PROJECT?

21 Q. RIGHT, THE IDO PROJECT, THAT'S CORRECT.

22 A. OF COURSE, FIRST, WE ONLY HAD ONE MEMBER THAT
23 SIGNED UP THAT HAD GENERATION.

24 Q. RIGHT.

25 A. WE DID NEGOTIATE WITH FLORIDA POWER CORPORATION TO





FMPA's Integrated Dispatch and Operations Project Transmission Service Proposal to Florida Power & Light

July 1991

I. Introduction — Calvin Henze

The purpose of our meeting today is to resolve the impasse on our request for transmission service for certain generating systems in FPL's service area (i.e. Fort Pierce, Vero Beach, Key West and Lake Worth).

We have been negotiating for nearly two years now and still have not reached an agreement. What we are trying to accomplish is to jointly serve the above generating cities and the non-generating cities in FPL's service area (i.e. Jacksonville Beach, Green Cove Springs and Clewiston) in FMPA's All-Requirements Project in order to operate and plan in the most efficient manner for the benefit of the customers of these municipal systems. Since our loads and generation are dispersed in FPL's service area, to accomplish our goal we must use FPL's transmission system, a service which FMPA is willing to pay for at FPL's current rates. FPL's stockholders will earn a return on FMPA's transmission service.

We negotiated transmission service agreements with Florida Power Corporation, Orlando Utilities Commission and FPL for the non-generating systems that are currently in FMPA's All-Requirements Project, and we have been operating under these agreements for five years. Our agreement with FPL was not what we would have desired, but through negotiations, we reached an agreement acceptable to both parties. Unfortunately, we have not been able to accomplish the same this time.

FMPA's All-Requirements Project is an operating utility, similar to FPL, in that we have our own control area and dispatch our generating resources on an economic basis 24 hours per day, seven days a week. For the past five years, the All-Requirements Project has been serving the total power requirements of non-generating systems in FPL's service area and cities in Florida Power Corporation's service area (i.e. Bushnell, Leesburg and Ocala). During this time, I feel we have proven that we operate as a responsible utility, meeting our load and reserve obligations and assisting other utilities in times of need.

008319

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11-2-92



As I stated earlier, we have been negotiating nearly two years and have not reached an agreement on a transmission service contract. Both sides have proposed changes to their original proposals.

In the interest of settling this issue today, the proposal FMPA is presenting reflects many major changes from our original proposal in the hope of arriving at an equitable agreement.

We recognize the problem that FPL's Transmission System is heavily used at times, and access to those that must use the system needs to be on a fair and equitable basis. We feel our proposal takes into consideration both FPL's concerns and FMPA's needs.

II. Brief Overview of FMPA's Proposal

To accomplish the goal of incorporating four generating utilities into FMPA's existing All-Requirements Project, we believe that it would be best for all concerned, including FPL, to have one transmission service contract encompassing all seven FMPA participants. We prefer this type of arrangement, but in a final attempt to revive these stalled negotiations, we would offer to keep in place the existing transmission contracts for the Stanton, Tri-City, St. Lucie and All-Requirements Projects and develop a new firm transmission contract for service among the generating systems.

The new contract with FPL would be for an annual fixed amount of transmission capacity that could be used for delivery of FMPA resources to any of the generating systems. Our concept is that once you pay for transmission service, you can use the service you paid for.

III. Details of FMPA's Proposal

1. Maintain the concept of having individual system loads served (generating and non-generating systems) and have all of the All-Requirements Project Participants in one control area as in current All-Requirements Project arrangements. Since Fort Pierce and Vero Beach are directly interconnected with each other, they would be considered a single generating system load.
2. Partial Requirements service from FPL (Partial Requirements) would continue to be purchased for and delivered to individual Participants, with FMPA acting as agent, as in current All-Requirements Project arrangements.
3. Existing Stanton, Tri-City and St. Lucie Project transmission contracts remain as-is.

008320



III. Details of FMPA's Proposal—continued

4. Existing All-Requirements Project transmission contract for the non-generating Participants (Jacksonville Beach, Green Cove Springs and Clewiston) would remain as-is. Generating Participants' resources (Fort Pierce, Vero Beach, Key West and Lake Worth) would be pre-approved as replacement resources under this contract.
5. FMPA and FPL would enter into a new transmission agreement for firm transmission service among the generating systems and between FMPA's resources and the generating systems.
 - A. FMPA would establish an annual contract demand (Contract Demand). Changes in the Contract Demand from year to year would be limited to the greater of ± 25 MW, or $\pm 25\%$. Contract Demand could be increased or decreased by more than 25 MW, or 25%, with four years notice.
 - B. The minimum Contract Demand for the firm transmission requirements of the generating systems' would be the projected annual peak demand minus: Partial Requirements, on-system generation capability, Stanton Project, Tri-City Project and St. Lucie Project firm transmission.
 - C. Contract Demand for the first year would not exceed 40 MW.
 - D. FMPA resources which could be delivered under the agreement on a firm basis would include the current All-Requirements Project resources and the generating systems' resources ("FMPA Resources"). Future resources could be added as FMPA Resources so long as FPL could transmit the resources without jeopardizing the reliability of the FPL transmission system or as long as FMPA provides four years of planning notice. Resources that are not FMPA Resources could be used as replacement resources as requested by FMPA and approved by FPL.
 - E. FMPA would have use of transmission service in any hour on a firm basis for transmission service among the generating Participants and between FMPA Resources and the generating Participants up to the Available Firm Transmission.

008321



III. Details of FMPA's Proposal—continued

- F. The Available Firm Transmission in any hour would equal: (i) the sum of all firm contract demands for transmission service for the All-Requirements Project, including 115% of the Contract Demand under the new agreement and the contract demands for the All-Requirements Project Participants under the existing Stanton, Tri-City, St. Lucie and All-Requirements Project transmission agreements; less (ii) the sum of all non-generating Participant hourly transmission deliveries (load net of Partial Requirements) and hourly deliveries of Stanton, Tri-City and St. Lucie Project output.
- G. FMPA would pay a \$/kW-month embedded cost transmission rate for monthly firm transmission service based on the higher of actual use during any hour or 85% of the Contract Demand. Use of transmission service under the new agreement in excess of the Available Firm Transmission amount (unless provided for through TA, TB, TC, TD or TX type arrangements, or through purchases of interchange service from FPL) would result in an excess demand charge during the month and a subsequent year penalty.
- H. Deliveries of firm transmission service to each generating system Participant will be limited to the delivery capabilities of the interconnection with FPL.
- I. Each day, FMPA will provide FPL with a daily estimate of the amount of firm transmission expected to be used for deliveries to each generating Participant.
- J. FMPA will provide FPL with long-term planning information, including its projected transmission requirements under the new agreement so that FPL can include FMPA's future transmission requirements in its planning.

009322



III. Details of FMPA's Proposal—continued

6. FMPA will commit to schedule one generating unit on-line at each generating system participant when necessary for local voltage support and/or for providing regulation.
7. FMPA will provide or purchase from FPL regulation service for each generating Participant as necessary.
8. Deliveries to the generating Participants under existing TA, TB, TC, TD, TX, etc. type schedules would be available for use by FMPA. Commitments made by FPL for TA, TB, TD, TX, etc., would be firm for the commitment periods.
9. FPL will commit to provide FMPA with short-term service (with pricing similar to Schedules A and B as appropriate) during those times when transmission for interchange service (TA, TB, TD, etc.) is not available.

IV. Summary

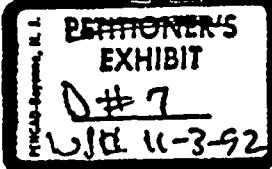
During the last two years of negotiations, we have tried to be reasonable and fair in proposing concessions to our original proposal in an attempt to address concerns raised by FPL. This FMPA proposal is far less than we would like to have, but we are making it today as our bottom line, final proposal in the hope that we can resolve the impasse and move ahead in a more productive way. Our systems have been using and paying for the FPL transmission facilities for many years. All we are asking for today is to continue to use FPL's system, to pay a fair price for what we use, and to be able to use what we pay for in the manner that best meets our needs.

008323









002213

R. W. BECK AND ASSOCIATES

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FILE NO. FF-5186-EP4-AA

December 2, 1987

Mr. Calvin Henze
General Manager
Florida Municipal Power Agency
Suite 100
7201 Lake Ellenor Drive
Orlando, Florida 32809

DEC 4 1987

Dear Calvin:

Subject: Integrated Dispatch and Operation Study
Transmission Sensitivity Cases

In accordance with your instructions, as additional services to be provided under Work Order Agreement FF-5186-EP4-AA, we have evaluated several sensitivity cases dealing with alternative transmission arrangements that were not to be included in the Integrated Dispatch and Operation Study report (the "Report"), but were to be prepared as separate sensitivity analyses. In addition, as you instructed, the assumptions regarding transmission service arrangements with Florida Power and Light ("FPL") and Florida Power Corporation ("FPC") used in the Report represent the most optimistic transmission arrangements possible and are probably not readily achievable. In general, the transmission arrangements assumed for purposes of the Report were based upon those currently used for non-firm interchange service, which non-firm service would not be acceptable for all of the arrangements necessary to produce the projected economic benefits presented in the Report.

The two sensitivity cases included in the Report involved the addition of Tallahassee and Gainesville to the West Power Pool (Sensitivity Case 1) and the impact of the Broker transactions on the projected benefits (Sensitivity Case 2). To evaluate the sensitivity of the assumptions used in the Report regarding transmission service costs, we performed three additional sensitivity analyses for each of the two power pools as follows:



a) Sensitivity Case 3 - Transmission @ Cost Based \$/MWh Rate

As was previously noted, the \$/MWh transmission rates for FPL and FPC used in the Report were developed using the methodology currently used for non-firm service. This methodology generally assumed that all transmission service is provided at monthly load factors of 100% and would not provide revenues sufficient to cover the cost of service if the transmission system monthly load factors were less than 100%. For Sensitivity Case 3, the "cost based" \$/MWh rates for transmission service were developed by dividing each company's projected annual transmission revenue requirements by the projected annual energy transmitted. This methodology produces projected \$/MWh rates that are 60% to 80% greater than those used in the Report.

The results of Sensitivity Case 3 for the East Power Pool and for the West Power Pool are contained on pages 1 and 2 of the attached Table 1, respectively. As compared to the Basic Analysis results presented in the Report, Sensitivity Case 3 lowers the projected cumulative savings for the East Power Pool by 17% from \$54.5 million to \$45.0 million and lowers projected cumulative savings for the West Power Pool by 54% from \$24.6 million to \$11.3 million. In addition, losses are projected for the West Power Pool in the year 1994.

b) Sensitivity Case 4 - Monthly Fixed Transmission Rates

Sensitivity Case 4 assumed that FPL and FPC transmission service is based on the monthly peak kW of incremental transmission service provided by each company times the projected \$/kW-month transmission rates. The results of this sensitivity case for the East and West Power Pools are provided on pages 1 and 2 of the attached Table 2, respectively.

As compared to the Base Case analysis presented in the Report, Sensitivity Case 4 lowers the projected cumulative savings for the East Power Pool by 39% from \$54.5 million to \$33.4 million and lowers projected cumulative savings for the West Power Pool by 83% from \$24.6 million to \$4.3 million. In addition, annual losses are projected for the West Power Pool from 1992 through 1997.

c) Sensitivity Case 5 - Annual Fixed Transmission Rates

Sensitivity Case 5 assumed that FPL and FPC transmission service is based on the annual peak kW of incremental transmission service provided by each company times the projected \$/kW-year transmission rates. The results of this sensitivity case for the East and West Power Pools are provided on pages 1 and 2 of the attached Table 3, respectively.



Mr. Calvin R. Henze
Florida Municipal Power Agency

December 2, 1987
Page 3


As compared to the Base Case analysis presented in the Report, Sensitivity Case 5 lowers the projected cumulative savings for the East Power Pool by 65% from \$54.5 million to \$19.2 million and results in cumulative losses for the West Power Pool of \$6.6 million. Projected annual losses for the West Power Pool commence in 1990 and continue thereafter.

As we discussed, none of the sensitivity analyses discussed herein assumed the use of "point-to-point" fixed transmission contracts, as are currently used by FPL, and thus, do not encompass the worst possible transmission scenarios possible.

If you have any questions, please feel free to call us.

Very truly yours,

R. W. BECK AND ASSOCIATES


Nicholas P. Guarriello
Partner, Orlando Office

ABM/NPG/jpw

cc w/att: Mr. Robert C. Williams - FMFA
Fred Bryant, Esquire - FMFA
Mr. Dean Shaw - Ocala



1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA
3 ORLANDO DIVISION

4 FLORIDA MUNICIPAL POWER AGENCY,
5 Plaintiff,

6 -vs-

NO. 92-35-CIV-ORL-22

7 FLORIDA POWER AND LIGHT COMPANY,
8 Defendant.

9 - - - - - x

10 DEPOSITION OF:

11 NICHOLAS P. GUARRRIELLO,
12 On Behalf of the Defendant

13 Examination of a witness beginning at 9:10 AM, and
14 concluding at 5:10 PM, on THURSDAY, FEBRUARY 25, 1993,
15 taken at the Raddison Hotel North, Orlando, Florida,
16 before ANN L. MENDENHALL and ELIZABETH STARKWEATHER,
17 Notaries Public, State of Florida at Large, and
18 Registered Professional Reporters.

19 A P P E A R A N C E S:

20 ROBERT JABLON, ESQ., OF: Spiegel & McDiarmid,
21 1350 New York Avenue, N.W., Washington, D.C.
22 20005-4798, for the Plaintiff.

EDWARD J. TWOMEY, ESQ., OF: Newman & Holtzinger, PC
1615 L Street. N.W., Washington, D.C. 20036-5680,
for the Defendant.

ALSO PRESENT: Emily Maccauley and Robert Schonek.

ALDERSON REPORTING COMPANY, INC.
WASHINGTON, D.C. 20005-5650 (202) 289-2260



1 A. Yes, I do.

2 Q. It was an important meeting; wasn't it?

3 A. From FMPA's side it was a final attempt to see
4 if FP&L would agree to what they were proposing.

5 Q.. Do you see a reference on that page to the
6 March 1985 transmission service agreement? About three
7 quarters of the way down.

8 A. I believe what you mean here is in the third
9 paragraph where it talks about operating under these
10 agreements for five years, TSA's for the
11 All-Requirements projects?

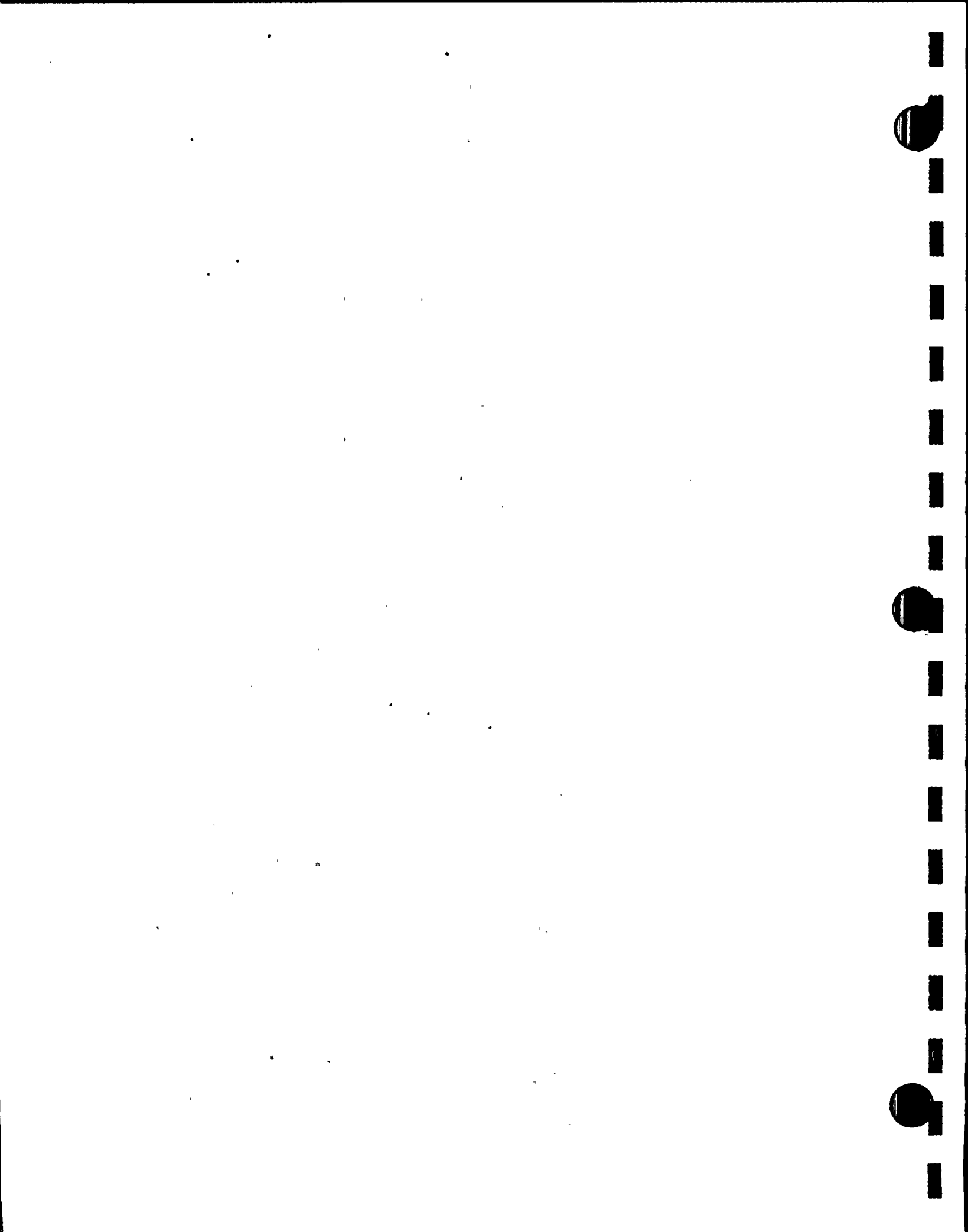
12 Q. Right.

13 A. I see that reference.

14 Q. Isn't Mr. Henze there indicating FMPA didn't
15 get all it wanted? It felt that the agreement was
16 acceptable to both parties.

17 A. There was a lot that goes into that. As we
18 stated in our response to interrogatories, FMPA believed
19 there was a time schedule they had to meet. There was
20 coercion by FPL to accept the agreement that they were
21 offering.

22 There were considerable savings that would



1 have been lost if we couldn't meet the time schedules
2 that were being imposed. And we say it's acceptable.
3 Sort of like if FPL owns the playing field and the bat
4 and the ball and everything else and says this is what
5 you get. You say, okay, I want to play, because I'm
6 going to lose a lot of savings.

7 In that respect, it was agreed to. Nobody
8 says, here, it's acceptable. In that respect it was
9 acceptable. That was it. Take it or leave it type of
10 thing. And because of the potential that was there, and
11 the time constraints and Mr. Henze's wishes if he could
12 avoid it not to litigate, he accepted the agreement.

13 Q. Well, what protection would FP&L have had if
14 it had signed the July 13, 1990 proposal, given that
15 you've testified that it probably did not give FMPA all
16 the rights that it had under the St. Lucie 2 license
17 conditions?

18 A. Well, I think I stated earlier today that all
19 the proposals we made had language in there that both
20 FP&L and FMPA had the right to file for changes in
21 rates, terms and conditions. That is I'm sure in this
22 agreement too, without looking. So, that was always a



1 potential that either party could request changes to
2 rates, terms and conditions. So, FMPA did not have any
3 assurances either that FPL wouldn't call for changes.

4 Q. It's one thing, isn't it, to have a provision
5 that calls for changes or provides for changes, I should
6 say; it's another thing, isn't it, to sign an agreement
7 that puts FP&L at risk that FMPA might come back and
8 argue that some obligation outside the four corners of
9 the signed contract requires the change in the signed
10 contract?

11 A. I guess without agreeing or not agreeing that
12 FPL was at risk, FPL could certainly have avoided that
13 risk by just signing the contract that was based on
14 network transmission. That's what FMPA was requesting.
15 That's what FPL was obligated to provide. And we
16 wouldn't have had a problem.

17 Q. Did FMPA subsequent to the July 13, 1990
18 proposal ever put before FP&L a new draft contract
19 proposal?

20 A. FMPA put before FP&L another proposal in
21 August of 1990, which the July '91 is very similar to.
22 I think there were some minor changes, which in my



OFFICIAL TRANSCRIPT
BEFORE THE

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

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

v.

Case No.
92-35-CIV-ORL-22

FLORIDA POWER & LIGHT COMPANY,

Defendant.

Orlando, Florida
Friday, February 26, 1993

Deposition of NICHOLAS P. GUARRIELLO

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202) 289-2260



1 could reach a conclusion that conceptually the Atomic
2 Safety and Licensing Board was stating that the rates
3 should be based on the cost of the network? (Handing
4 document).

5 A. Again, I'm not saying that this LP&L decision
6 said the rates will be this or exactly how the rates
7 would be developed. That I understand is purview of the
8 Federal Energy Regulatory Commission.

9 I'm just addressing that the between and among
10 means what we defined it to be at the beginning of this
11 deposition or as I expanded on at the beginning of this
12 deposition. That's what I get from the LP&L decision as
13 far as the rates or supervision over rates -- and I
14 think we've said that in all our pleadings or in the
15 complaint, I don't know if you have it in the complaint
16 but in the pleadings -- that the rates themselves are
17 under the purview of the Federal Energy Regulatory
18 Commission.

19 Q. If that's true, they're under the purview of
20 the Federal Energy Regulatory Commission, why did you
21 make the statement in Exhibit 11 at page four that the
22 words between and among are addressing the same



1 of 1982 at least FP&L was talking in terms of
2 point-to-point delivery with regard to the St. Lucie
3 power?

4 A. Are you getting that from the remarks column,
5 is that what you're looking at?

6 Q. I'm looking at the remarks column of item
7 number six on the attachment of Exhibit 14?

8 A. It says: Parties to negotiate an agreement.
9 Again, I don't remember being very involved in this part
10 of it until after the settlement agreement so I don't
11 know what FMPA thought back then.

12 Q. Let me have marked as Exhibit 15 a two-page
13 letter dated May 6, 1982 from Calvin Henze to Bob
14 Gardner of Florida Power and Light and ask you to read
15 that to yourself.

16 (Document marked Defendant's Exhibit
17 No. 15 for Identification).

18 A. Okay.

19 Q. Do you see in the second paragraph of Exhibit
20 15 the reference to FMPA having determined that a plan
21 for delivering St. Lucie to a few delivery points rather
22 than to each city participating in the project would be



1 in the best interests of FMPA?

2 A. I see that.

3 Q. Had you begun participating in the negotiation
4 process at this point?

5 A. I was involved in the analysis of the St.
6 Lucie project so I know what they're talking about here.

7 Q. And what was going on here?

8 A. In looking at the feasibility of the St. Lucie
9 project, I read this quickly, but as Calvin says in
10 here, it would be more feasible for the Cities if St.
11 Lucie could be delivered only to certain delivery points
12 so that some of the cities could continue purchasing
13 All-Requirements instead of having to move over to
14 partial requirements when they took their generating
15 resource.

16 Q. Did FP&L ultimately accede to FMPA's request?

17 A. The way they agreed to it was they allowed
18 FMPA to designate the delivery points so FMPA was able
19 to designate they wanted St. Lucie to go to only these
20 certain delivery points.

21 Q. Let me have marked as Exhibit 16 one-page
22 letter from Mr. Daniel to Calvin Henze dated February



1 point that FPL originally sought to put such a clause
2 that's discussed there in that paragraph in its Stanton
3 transmission offer to FMPA?

4 A. I remember them putting a clause in this.

5 Q. FMPA didn't like that clause very much; did
6 they?

7 A. No, they did not.

8 Q. Did that clause end up in the final agreement?

9 A. If I'm thinking of the right clause, for many
10 reasons it did not wind up in the final agreement.

11 Q. Do you recall why FP&L agreed not to include
12 this economic penalty clause in the final agreement?

13 A. Seems everything we talk about somehow gets to
14 the client/attorney question here.

15 Q. No. My question was: Do you have any
16 understanding as to why FP&L made the concession that
17 eliminated this economic penalty clause?

18 A. My understanding is that actually when it got
19 down to the wire and near the last draft of that
20 agreement, FPL agreed to take it out. My understanding
21 is that, from our side of the table, we felt FPL at that
22 time felt it would not get that accepted by FERC and

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1 that if they filed it that way, it would not be
2 acceptable to FERC. So they couldn't get it anyhow, so
3 they pulled it out.

4 Q. Even with FMPA's support, it's your
5 understanding that FPL felt it could not get such a
6 clause by the FERC?

7 A. Well, like you said, FMPA did not like that
8 clause and did not want that clause in the contract.

9 MR. TWOMEY: Let me have marked as Exhibit 22
10 a one-page letter dated July 24th, 1985 from Bob
11 Williams to Mr. Garrido.

12 (Document marked Defendant's Exhibit
13 No. 22 for Identification).

14 Q. Have you had a chance to read this?

15 A. I read it quickly, yes.

16 Q. You've mentioned a couple of times already
17 that FPL always prepared the first draft. There is a
18 statement at the beginning of the second paragraph that
19 indicates, to me at least, that Mr. Williams was
20 agreeing that in the case of the Stanton transmission
21 agreement -- and I believe the Tri-Cities agreement was
22 tied to it at this point -- that FPL should prepare the



1 A. Would you like me to read the whole thing?

2 Q. Why don't you read that one plus page letter
3 to yourself before I ask any questions.

4 A. (Witness complies).

5 Q. Was this memorandum written during the
6 negotiations of the transmission service agreement
7 pertaining to the Stanton Tri-Cities projects?

8 A. My recollection is that it was.

9 Q. Essentially it's a status report to the
10 executive committee; isn't it?

11 A. It's a status report by Mr. Williams to the
12 executive committee.

13 Q. Right. Do you have any personal knowledge of
14 what the discussion about the issue over paragraph 9.3
15 pertained to?

16 A. My recollection is that basically what Power &
17 Light was asking for with 9.3 was to be able to be
18 compensated for embedded costs, the typical embedded
19 costs of the transmission system, plus what I think we
20 were calling back then opportunity costs.

21 Q. The words come back.

22 A. Yeah, that's right. That was the basis for



1 the -- my understanding of the basis for FPL adding the
2 9.3 section.

3 Q. FMPA was strenuously opposed to the 9.3
4 section; weren't they?

5 A. Yes.

6 Q. Did the 9.3 section ultimately make its way
7 into the final version of either the Stanton or
8 Tri-Cities transmission service agreements?

9 A. I believe you asked that question before. But
10 I'll give you the answer again. I know you asked that
11 question before. It did not make it into the final
12 Stanton/Tri-City agreements. However, I told you why I
13 thought it did not make it into the agreement. And when
14 you start with an agreement, it's way out there again
15 and you're not even close to network transmission or
16 what the obligations under the license agreements were.
17 You take some things out for whatever reason that I
18 don't see what that gets.

19 Q. Could you go over to page two of Exhibit 24.
20 The second sentence states that: "We have negotiated a
21 few good points in the contract on contract demands and
22 replacement power that we would like to keep."

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1 Robert C. Williams to the Stanton and Tri-City project
2 participants to go ahead and approve the Stanton
3 transmission service agreement. It's the Stanton. They
4 were saying they're still retyping the Tri-City one.

5 Q. If you go to page three of Exhibit 26 and
6 focus just on the last two paragraphs. There is a
7 recitation of areas where at least Bob Williams felt
8 that FMPA had achieved some successes I guess would be
9 the best way to put it. Is that fair?

10 A. I read the last sentence as very interesting.
11 It says: The issues remaining are hard and difficult to
12 improve upon without losing somewhere else in the
13 contract. That's how the negotiations often went if we
14 tried to push for one thing here, we lose it over here.
15 I think that's what -- Mr. Williams is sharing a concern
16 that, you know, we're not getting anywhere. So, we need
17 an agreement. Stanton is about at this point to go on
18 line. We need an agreement. This is what we got. This
19 is what FPL is willing to give us. And we moved ahead.

20 Again, you got to remember, Mr. Henze did not
21 want to litigate if he could help it. The project was
22 able to go ahead with this at this point.



1 BY MR. TWOMEY:

2 Q. First let me ask, does the January 17, 1985
3 commitment letter look familiar to you?

4 A. I remember such a letter. I don't right now
5 remember what's in it.

6 Q. That was an important letter in the
7 negotiation process of the All-Requirements TSA; wasn't
8 it?

9 A. What I remember is we were going back and
10 forth on trying to make sure we had some commitment from
11 FPL that would allow us to do the All-Requirements
12 Project, because we needed transmission from FPL for
13 sure. And we needed to be able to move the full
14 requirements customers to a partial requirements rate.

15 Those two things only FPL -- I mean FPL had to
16 be a party to that. And, again, we had that March 30,
17 '85 deadline and Calvin was working with Bob Gardner
18 trying to get a letter commitment. So we could move
19 ahead and go to the boards of the different cities to
20 get them to sign up.

21 We still needed signed agreements by March 30,
22 '85, but we were trying to get something we could move

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1 ahead and make sure we were going to make it. And this
2 was -- I believe it went through a couple of drafts, if
3 I remember.

4 Q. Mr. Henze and Mr. Gardner, as well as
5 respective staffs, had been working pretty hard since at
6 least August 1984 to get this letter commitment
7 finalized; hadn't they?

8 MR. JABLON: Objection. You're looking
9 perplexed. It asks him to speculate what Mr. Gardner
10 and his staff was doing.

11 Q. Weren't you part of the staff working on this
12 letter agreement?

13 A. I was part of the staff on the FMPA side. You
14 said Mr. Gardner and his staff.

15 Q. I didn't want to speak on Mr. Gardner.

16 MR. JABLON: I'm objecting to preserve the
17 objection.

18 Q. Were there intensive negotiations that
19 ultimately led to this January 17, 1985 letter of
20 commitment?

21 A. There were a lot of discussions back and forth
22 and drafts. You keep trying to characterize them as



1 negotiations.

2 Q. I didn't mean to use pejorative terms.

3 A. There were a lot discussions back and forth.
4 FPL had a pretty strong position and I'd say this letter
5 was FPL's position. This is what we're going to do.
6 This is what -- and Calvin. We had a meeting deadline.
7 It was important to the All-Requirements Project. There
8 was savings that were accrued to the cities.

9 As far as the All-Requirements and these time
10 constraints and Calvin is not wanting to litigate if he
11 could help it at that point, we were able to put the
12 project in place with what was finally agreed to. That
13 is not true when we got to the IDO project. It was not
14 feasible to put the IDO project together based on what
15 FPL was willing to agree to on transmission.

16 Q. Was Mr. Guarriello at this time telling Calvin
17 Henze that he should litigate?

18 A. In answer to the question, I'm not sure what
19 was done in front of attorneys or what what wasn't done
20 in front of attorneys.

21 Q. Was the issue of contract demands regarding
22 load following resources an important issue in the



1 negotiations for the All-Requirements TSA?

2 A. It was an important issue in the
3 negotiations. It was an attempt to try to get something
4 that would be more reasonable for FMPA.

5 Q. What was FMPA's position on that issue?

6 A. This is where it was very clear. FMPA's
7 position on the issue was they wanted network
8 transmission just like they were getting from Florida
9 Power Corp for the All-Requirements Project, which we
10 were just in the process of agreement with Florida Power
11 Corp. FPL said no. It's point-to-point.

12 So, it was an attempt to at least get
13 something that was going to be point-to-point that was
14 more workable than just resource by resource on annual
15 contract demands. It really had nothing to do with
16 point-to-point. It was should it be annual contract
17 demands on each resource? Or could we break out the
18 resource to have annual contract demands only for
19 resources that were somewhat base load resources that
20 were used more often and have monthly contract demands
21 for resources that were more peaking type resources.

22 Q. Did FMPA ultimately succeed in getting monthly



1 contract demands for the peaking resources?

2 A. FMPA got monthly contract demands for the
3 peaking resources, but tied to that by FPL was that
4 there would be excess demand charges and subsequent year
5 demand charge penalties. And I remember very clearly
6 discussions with FPL that there was potentials for
7 double and triple transmission charges. I want to say
8 quadruple, but I don't know if I could go that far.

9 But it was finally agreed to monthly demands,
10 but they put on excess demand charges in subsequent year
11 adjustments charges, which are in the current contract.

12 Q. I gather by the fact that a monthly demand
13 charge went in, coupled with the other things that you
14 just mentioned, that FMPA thought that that provision
15 was a better provision than strict annual contract
16 demands.

17 A. That's correct.

18 Q. Did you regard obtaining the monthly contract
19 demand provision as something of significance, you being
20 FMPA?

21 A. We regarded it as something better than what
22 we were initially offered.



1 Q. Were you aware of any other contract that
2 Florida Power & Light had with any other utility that
3 provided for monthly contract demands?

4 A. I think the agreements with Seminole had
5 monthly contract demands on a different basis, not
6 seeking resources on a monthly basis and monthly peaks,
7 but I'm not sure.

8 Q. Based on the negotiations with Florida Power &
9 Light over the All-Requirements power TSA, is it fair to
10 say that Florida Power & Light felt it was making a
11 concession when it acceded to FMPA's request for monthly
12 contract demands for certain units?

13 MR. JABLON: Objection.

14 A. I don't know what FPL was thinking in their
15 minds.

16 Q. Did you have an understanding that FP&L
17 regarded its acceptance of your monthly contract demand
18 request as something of a significant concession?

19 A. They expressed to giving a concession, yes.

20 Q. The cover letter on Exhibit 32 has a statement
21 from Mr. Henze that, to me anyway, suggests that he is
22 very much appreciative of FPL's assistance in meeting



1 FMPA's tight time schedule. Was that a view that you
2 shared?

3 A. I don't remember back then if I shared it.

4 Q. You got a copy of this letter and attached
5 letter agreement; didn't you?

6 A. Yes, I did. One thing did jump into my mind.
7 I remember after all this, when we got down to the wire
8 in March, if I'm thinking about the right contract,
9 there was a meeting where it almost fell apart. Ron
10 Bouknight comments I think we raised that in our
11 interrogatories that, we could be back at square one.

12 And that really shook everything up. I mean,
13 negotiations were pretty one-sided. Watch out. If you
14 start making any waves, we might be starting back to
15 square one and we were faced with a March 30 deadline.
16 This meeting was in March.

17 MR. TWOMEY: Let me have marked as Exhibit 33
18 a letter from Mr. Guarriello to Mr. Henze dated January
19 24, 1985, attaching some written descriptions of two
20 items, one of which is the -- pertains to the
21 negotiations with Florida Power & Light over the
22 All-Requirements TSA.



1 Q. I'm going to direct your attention,
2 Mr. Guarriello, to pages five through nine of
3 Exhibit 35, where it appears that you are listing
4 several items that FPL has agreed to and at the top of
5 page five I see a reference to Lon. Is that a reference
6 to Lon Bouknight?

7 A. Let me just check Lon was at the meeting. I
8 think that would be Lon Bouknight.

9 Q. I know some of this handwriting is hard to
10 read. But to me it appears that FPL is making
11 compromises to various items. Am I reading your notes
12 correctly?

13 A. If my memory going back that far serves me
14 right, what we had done is we had this draft contracted
15 -- I don't know if it was the meeting before this or
16 what. We went through it and came up with a list of
17 items that FPL was willing to discuss change and some
18 items they said they would not change.

19 And I remember we had a list of X items. For
20 some reason fourteen jumps into my mind, but it might
21 have been more than that. We had a list of X items that
22 FPL said we would be willing to discuss that. We went



1 back and forth on it a little bit. I think what
2 happened at this meeting, we said this is what we'd
3 like, and FPL came back through Lon and said that we can
4 do this or on this we'll change it this way.

5 So, I would say -- I don't know if you would
6 use the word concession --

7 Q. . Compromise I believe.

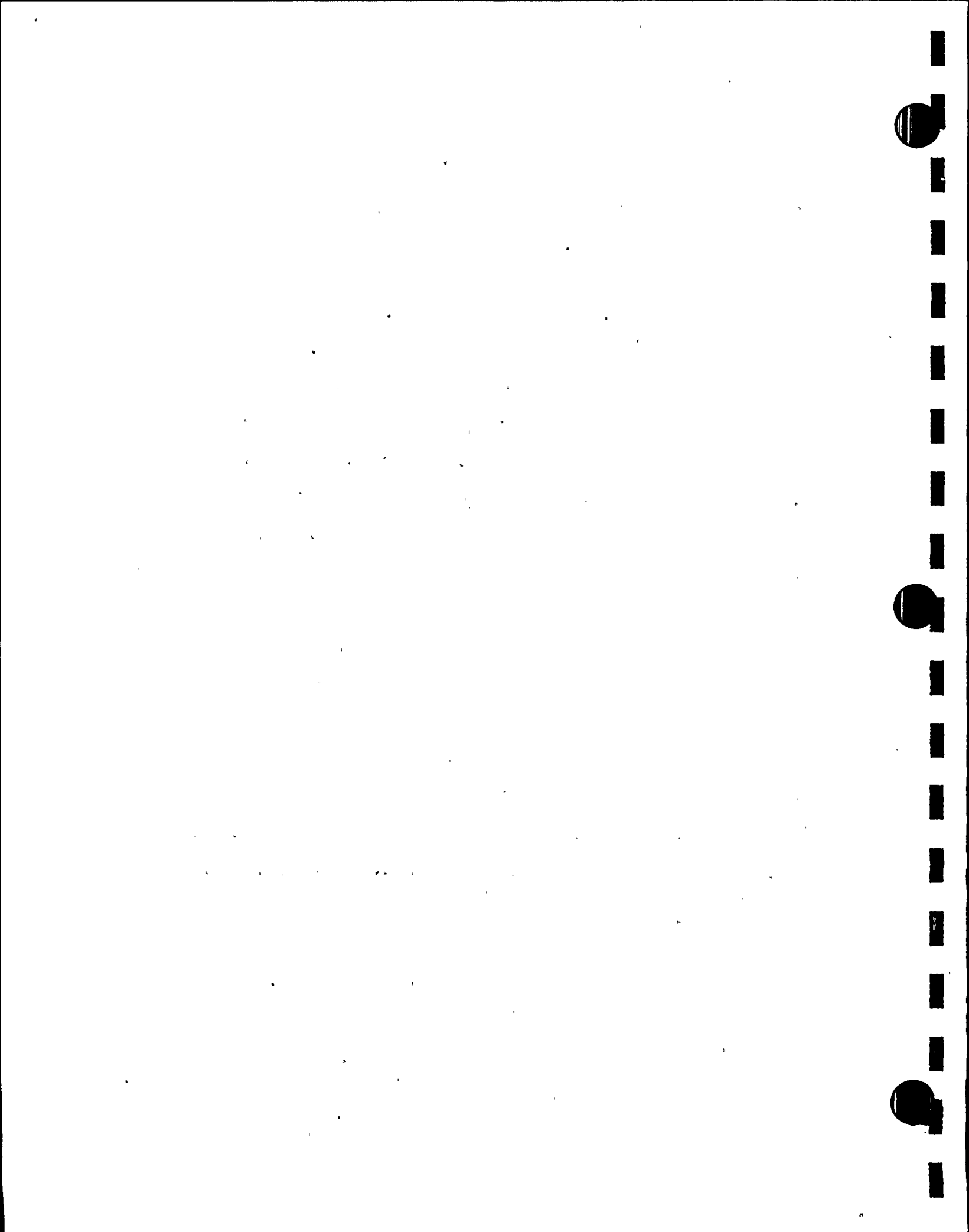
8 A. Compromise -- to use compromise. It wasn't
9 all concessions. It might have been things FPL said it
10 was going to be this way, which is more of their way of
11 wanting it. I haven't --

12 Q. Item number one says will back off the
13 reactive provisions in section 14.1 and 14.2. I know
14 it's a long time since you sat at these negotiations,
15 but was that a concession on FP&L's part, as you best
16 remember now?

17 A. That was a -- wasn't a major concession, but
18 that was a concession.

19 Q. How about just paging through, looking at page
20 six, item four, when it seems to be easy to read. Did
21 you view that as a concession on FPL's part?

22 A. That to me -- I mean, I'm not -- that looks



1 like a legal one. Challenges -- I'd have to look to my
2 lawyer and say was that a concession or not a
3 concession.

4 Q. Is it fair to say at this March 6, 1985
5 meeting there was give and take on both sides?

6 A. Again, when you start with an agreement a
7 month before that the other side had drafted it exactly
8 the way they wanted it, when you say there was give and
9 take, you start with something that is exactly the way
10 you want it and wasn't even close to what was called for
11 under the license conditions as far as network
12 transmission goes, or anything that will give you that
13 type of an arrangement, I'm having a hard time calling
14 it give and take.

15 There was some changes made by FPL. No
16 question about that. But it was starting with something
17 that was just way over on the other side.

18 Q. You aren't suggesting, are you, that FPL did
19 not fairly attempt to reflect the January 1985 letter
20 commitment in its February 11, 1985 draft contract; are
21 you?

22 A. Not at all. The letter agreement was the

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1 same, way over on the left side too.

2 MR. TWOMEY: Let me have marked as Exhibit 36
3 some more handwritten notes, apparently your notes dated
4 March 11, 1985. And they apparently reflect a FMPA/FPL
5 meeting on the All-Requirements contracts.

6 (Document marked Defendant's Exhibit
7 No. 36 for Identification).

8 BY MR. TWOMEY:

9 Q. Focusing just briefly on pages fifteen through
10 nineteen of these copious notes, it appears, beginning
11 on page fifteen, that there had been some negotiations
12 and then there was a caucus and then FP&L came back with
13 what you describe as "counter proposals." Do you see
14 that, towards the bottom of the page?

15 A. I see that.

16 Q. If you take a minute and page through some of
17 these items, I simply want to ask you whether it's fair
18 to say that there was give and take at this meeting with
19 the same subject of the same caveat you expressed in
20 your last answer to my question along the same lines,
21 that FP&L -- FMPA was negotiating at this point from a
22 position of weakness.

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1 A. Again, subject to the answer of the last
2 question the way I phrased it, in was that list that was
3 trying to narrow down some, again, which FPL said no,
4 we're going to keep it our way, some which they agreed
5 to make some changes to.

6 One of the major issues that they would not
7 agree to a change to that was a major concern to FMPA at
8 this time, which did get resolved in FMPA's view as
9 fair, was that Clewiston would not be able to be added
10 to the All-Requirements Project.

11 Q. How about a concession that FP&L did give
12 into? Let's go to page nineteen. Isn't it correct that
13 FMPA was looking for Section 206 rights and negotiations
14 and ultimately they got those rights through the
15 negotiation process?

16 MR. JABLON: Objection.

17 A. Your --

18 MR. JABLON: Calls for a legal conclusion.

19 Q. Just asking you to look at your notes and try
20 and recollect as best you can the back and forth on the
21 Section 206 clause that appeared in several of your
22 notes.



1 A. I guess I really would have to say the way
2 this is reading: If could meet overriding -- it's hard
3 to read this word, but I believe it says -- interest
4 test. Sort of Lon saying we'll give you the 206 if you
5 could meet the overriding interest test.

6 Not being a lawyer, I couldn't tell if that
7 was something we got or didn't get. It didn't say I'll
8 give you 206. It said I'll give you that if you could
9 give 206.

10 Q. Some 206 got written into the final version of
11 the 1985 TSA; didn't it?

12 A. I really can't remember. I'd have to look.
13 I'm not sure.

14 Q. We can look at the contract.

15 MR. TWOMEY: Let me have marked as Exhibit 37
16 some additional notes by you that are dated the next
17 day, March 12, 1985, again on the subject of the
18 All-Requirements contract.

19 (Document marked Defendant's Exhibit
20 No. 37 for Identification).

21 BY MR. TWOMEY:

22 Q. If I could direct your attention to the first

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**OFFICIAL TRANSCRIPT
BEFORE THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

v.

**Case No.
92-35-CIV-ORL-22**

**FLORIDA POWER & LIGHT COMPANY,
a Florida corporation,**

Defendant.

**Orlando, Florida
Friday, February 26, 1993**

Exhibits from continued deposition of NICHOLAS P. GUARRIELLO

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FLORIDA MUNICIPAL POWER AGENCY

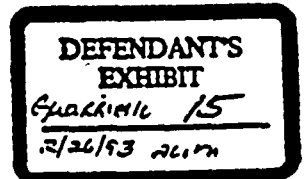
CALVIN R. HENZE
General Manager

File

*FPL
St. Lucie Company*

May 6, 1982

Mr. Robert J. Gardner
Senior Vice President
Florida Power & Light Company
P.O. Box 529100
Miami, Florida 33152



Dear Bob:

This letter outlines the plan for delivery of St. Lucie power that we discussed with you and Ken Daniel at our meeting on May 3. We appreciate your receptiveness to the plan and your offer to respond in writing on or before May 14.

In reviewing the many conditions associated with the St. Lucie project the Agency has determined that a plan for delivering St. Lucie power to a few delivery points, rather than to each city participating in the project, would be in the best interest of the Agency. We also believe that the plan being proposed in this letter would have significant benefits to your Company. We are therefore preparing to make arrangements to implement this plan.

The plan proposes that the capacity allocated to generating systems directly interconnected with the Florida Power & Light system would be delivered to those systems. This capacity is about 52 MW's of the 70 MW's available to the Agency from the project. The remaining approximately 18 MW's, currently allocated to generating systems interconnected with Florida Power Corporation and non-generating systems interconnected with FPL or FPC, would be delivered to one or two of those generating systems interconnected with you. We are currently thinking about delivering this power to Ft. Pierce and Vero Beach.

The benefits of this plan to FPL would be that the complexity of making the deliveries would be significantly reduced since there would be seven delivery points rather than nineteen. In addition, your Company would not have to be concerned with providing back-up power for the St. Lucie capacity since all deliveries would be made to generating systems capable of providing their own back-up. Furthermore, FPL could expect that the requirements for PR service would be reduced by the 18 MW's being delivered from St. Lucie.

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Mr. Robert J. Gardner
Florida Power & Light Company
May 6, 1982

The Agency members would also experience a number of advantages from the proposed plan. For those systems interconnected with FPC the plan eliminates the penalties associated with double wheeling charges and losses of transmission over two systems. For those members who are currently all-requirement customers of FPL, no deliveries of St. Lucie power would be made to their delivery points so that deliveries to those systems would continue to be made under the all-requirement rates. These benefits result in an improvement in the financial feasibility of the project and can be expected to have a positive effect on the interest rates on the Agency St. Lucie project bonds.

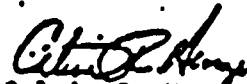
I think that a careful review of this proposal will show that it is beneficial to all concerned. As you suggested during our discussion it would be a good idea to have a written response from you indicating that you would have no objections to the implementation of this proposal. Our underwriters have indicated that your letter would be helpful in supporting the sale of our bonds if it included a statement to the effect that deliveries made to all-requirements customers of FPL, who will be participating in the St. Lucie project but not receiving delivery of St. Lucie capacity and energy, would continue to be charged at the all-requirements rates.

It should be recognized that implementation of this proposal is dependent upon the acceptance of the Agency members and on the continuation of the economic factors upon which the proposal is based. Should the members not respond favorably to the proposal, or should the economic factors change at some future time we would, upon sufficient notice to you, request that deliveries be rescheduled to the participating members of the project so requesting delivery.

As we discussed it is important for the Agency to submit its contracts and bond resolution for validation at the earliest possible date. Since there will be changes to the documents for implementation of this plan and since there is a meeting of the Executive Committee scheduled for May 21, your response by no later than May 14 would assist us in being ready for the Executive Committee meeting.

Our discussion of May 3 covered all of the details we could think of at the time regarding this proposal. However, should you have any additional questions or need additional information please don't hesitate to contact me.

Sincerely yours,


Calvin R. Henze

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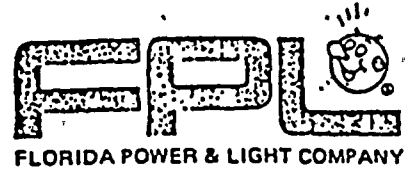






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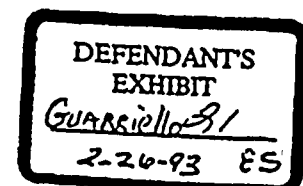
Mr. Calvin R. Henze
General Manager
Florida Municipal Power Agency
Orlando Central Park Suite 100
7201 Lake Ellenor Drive
Orlando, FL 32809

Dear Cal:

This letter is in response to your letter to Bob Gardner of June 27, 1985, and to Bob Williams' letter to me of July 10, 1985, where FMPPA requests a commitment from FPL for the firm transmission of 83.5 MW of the output of Stanton Unit No. 1 to the Cities of Fort Pierce, Homestead, Key West, Lake Worth, Starke, and Vero Beach.

We have conducted studies which indicate that, based on the revised assumptions described in Bob Williams' letter of July 10, 1985, FPL has the ability of providing the requested transmission service. As stated in my letter to Bob Williams of July 12, 1985, any commitment to provide transmission service by FPL is conditioned upon there being no significant changes to the assumptions provided by FMPPA which were utilized in the analysis of the instant request between now and the time when the appropriate contractual arrangements for transmission service are executed. FMPPA should notify us in a timely manner if there are any changes to these assumptions to enable us to properly evaluate their impact on the FPL system.

Our study has revealed that beginning in 1989, under certain conditions, the provision of the requested transmission service impairs FPL's ability to purchase economy energy that FPL anticipates will be available from neighboring utilities. As such, it may be necessary for the contractual arrangements for the requested transmission service to recognize this limitation with the incorporation of appropriate provisions which specify either (a) that FMPPA will compensate FPL for any economic penalties it may incur as the result of providing the requested transmission service, or (b) that FMPPA will bear the cost of any facilities required to eliminate this limitation. In addition, the contractual arrangements will require that the aforementioned FMPPA member cities provide sufficient reactive compensation and control to maintain voltages and reactive flows within the appropriate limits.





UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

v.

FLORIDA POWER & LIGHT COMPANY,
a Florida Corporation,

Defendant.

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

RESPONSE OF PLAINTIFF FLORIDA MUNICIPAL POWER AGENCY
TO DEFENDANT FLORIDA POWER & LIGHT COMPANY'S
REQUESTS FOR ADMISSIONS

1. On May 26, 1981, the Nuclear Regulatory Commission, pursuant to a Memorandum and Order by the Atomic Safety and Licensing Board dated April 24, 1981, issued the St. Lucie Unit No. 2 License Conditions as Amendment No. 3 to the St. Lucie Plant Unit No. 2 Construction Permit.

Deny, but admit that on May 26, 1981, the Nuclear Regulatory Commission ("NRC") gave notice that by Memorandum and Order by the Atomic Safety and Licensing Board dated April 24, 1981, the NRC issued the St. Lucie Unit No. 2 License Conditions as Amendment No. 3 to the St. Lucie Plant Unit No. 2 Construction Permit.

2. The St. Lucie Unit No. 2 License Conditions became effective on or shortly after April 24, 1981.



Licensing Board of the Nuclear Regulatory Commission on March 10, 1982.

Admit.

15. FMPA was aware of the St. Lucie Unit No. 2 License Conditions at the time they became effective.

Admit.

16. FMPA was aware of the other documents listed in paragraph 15 of FMPA's Supplemented Amended Complaint at the time they took effect or were filed.

Admit.

17. FMPA was represented in the negotiations for the Existing Transmission Contracts and the Superseded Transmission Contract by counsel and other negotiators who understood FMPA's rights under the St. Lucie No. 2 License Conditions and other documents listed in paragraph 15 of FMPA's Supplemented Amended Complaint.

Admit.

18. FMPA was represented in the negotiations for the Existing Transmission Contracts and the Superseded Transmission



**ENERGY SUPPLIED BY FP&L IN RELEVANT MARKET
1981-1992**

<u>Year</u>	<u>Total Energy Requirements</u>	<u>FP&L Sales</u>	<u>FP&L's Share</u>
	- - - - - (GWh) - - - - -		(Percent)
1981	2,543	1,264	49.7
1982	2,467	808	32.7
1983	2,357	852	36.2
1984	2,372	649	27.4
1985	2,684	738	27.5
1986	2,750	744	27.1
1987	2,901	843	29.1
1988	3,060	674	22.0
1989	3,257	615	18.9
1990	3,280	590	18.0
1991	3,339	392	11.8
1992	3,285	491	15.0



SOURCES OF CAPACITY FOR RELEVANT MARKET
Summer 1992

	<u>MW</u>	<u>Percent</u>
FP&L Supplied	92.0	9.7
Local Generation	542.0	57.2
Remote Generation	213.4	22.5
Other Suppliers	<u>100.0</u>	<u>10.6</u>
Total	947.4	100.0



1. 1992年12月25日
 2. 1993年1月1日
 3. 1993年1月1日



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IDO WEST RESULTS

Case 1 - All Systems Participate

As can be seen on Table 11, IDO West Case 1 resulted in projected cumulative savings of \$168.4 million on a total basis during the Study Period (\$87.2 million on a present worth basis). Although the cumulative savings for all systems shown on Table 11 are positive, as can be seen on Table 12, annual losses are projected for several systems in one or more years.

Case 2 - Without Tallahassee

Tables 13 and 14 summarize the results for IDO West Case 2, which assumes that the City of Tallahassee does not participate in the Project. As can be seen on Table 13, cumulative Study Period savings are projected to be \$113.8 million (\$58.1 million on a present worth basis), which savings are about 32% less than those projected for Case 1. However, projected individual systems savings shown on Table 14 for Case 2 increased slightly as compared to Case 1.

Case 3 - Without Tallahassee and Gainesville

As compared to Case 1, the projected cumulative savings assuming that neither Tallahassee nor Gainesville participate are about 65% less than the Case 1 results. As can be seen on Table 15, projected cumulative savings for Case 3 of \$60.1 million (\$30.0 million on a present worth basis) are projected for the Study Period. In addition to the total group savings being reduced in Case 3 as compared to Case 1, the projected individual system results contained on Table 16 also show reduced savings for all systems.

It must be noted that the projected total economic benefits of the IDO Project are extremely sensitive to the assumptions made regarding generation expansion plans, the arrangements between Participants, the



Integrated Dispatch and Operation Study
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availability of and pricing of transmission service over the FPC and FPL systems, and other contractual arrangements between FMPA and third parties that would be necessary in the Alternative Arrangements. Differences between generation expansion plans or contractual arrangements finally developed and those assumed herein, such as obtaining transmission service from FPL and FPC under an annual or monthly contract demand basis as is currently used in many existing agreements in lieu of a \$/MWh energy basis as is assumed herein, could significantly increase the costs projected under the Alternative Arrangements and could reduce or eliminate the projected benefits of the IDO Project contained herein or could result in projected losses.

PRINCIPAL CONSIDERATIONS AND ASSUMPTIONS

In the preparation of this Report, we have made certain assumptions with respect to conditions which may occur in the future and with respect to transmission and other arrangements that would be available in the future. These assumptions are dependent on future events, and actual conditions and arrangements could differ significantly from those assumed herein. To the extent future conditions and/or arrangements differ from those assumed herein, the projected economic benefits of the IDO Project contained herein could be reduced, eliminated or could result in losses.

In addition, for our projections, estimates and studies, we have used and relied upon certain information provided to us or prepared by others including (i) information and assumptions provided by FMPA or by the participating systems; (ii) reports filed by FPL, FPC and the participating systems with state and federal agencies or associations such as the FPSC, the FCG and the FERC; (iii) information developed by FCG related to fuel cost projections and other cost and operating data; and (iv) other data and information available in reports published by state or national organizations. While we believe the sources of such information and assumptions to be reliable and the use thereof to be reasonable for purposes of this Report, we offer no other assurances with respect thereto, other than



OFFICIAL TRANSCRIPT
BEFORE THE

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

FLORIDA MUNICIPAL POWER AGENCY,

Plaintiff,

v.

Case No.
92-35-Civ-Orl-22

FLORIDA POWER & LIGHT COMPANY,
a Florida corporation,

Defendant.

Washington D.C.
Wednesday, January 6, 1993

Deposition of WILLIAM LOCKE

ALDERSON REPORTING COMPANY, INC.
1111 FOURTEENTH STREET N.W.
SUITE 400
WASHINGTON, D.C. 20005
(202) 289-2260



1 Q. But do you recall any other information which
2 FMPA failed to give you which you believed to be
3 necessary apart from how FMPA intended to dispatch its
4 system?

5 A. I can only recall a couple of other items that
6 was discussed and that was any new resources that you
7 anticipated and any retirement of resources that you
8 anticipated. But, again, I do not want to represent
9 that's a full list, and others had looked at that.

10 Q. And you asked for that information?

11 A. As I recall, we did.

12 Q. Did FMPA give Florida Power & Light, do you
13 know, information how it would anticipate it would
14 operate its units under an average and worse case
15 scenarios?

16 A. I do not recall specifically.

17 Q. One way or the other?

18 A. One way or the other.

19 Q. What kind of information does FP&L have
20 available to it as to how it intends to dispatch its own
21 units in the future?

22 A. Mr. Jablon, that is an area which I am not



FLORIDA MUNICIPAL POWER AGENCY IDO Project Damage Study

Summary of Economic Damages

Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
SUMMARY OF COSTS																				
Independent Arrangement																				
Annual - Nominal Dollars	\$(000)	101,459	113,066	128,962	116,390	119,186	127,233	142,849	158,205	173,090	185,529	206,626	229,999	246,457	269,543	299,836	322,108	347,979	372,376	408,993
Cumulative - Nominal Dollars	\$(000)	101,459	214,525	335,487	451,877	571,062	698,295	841,163	999,368	1,172,458	1,357,987	1,564,613	1,794,612	2,041,070	2,310,612	2,609,648	2,931,756	3,279,735	3,652,111	4,061,104
Annual - Present Worth (\$1993)	\$(000)	143,972	149,597	149,224	133,878	127,826	127,233	133,211	117,539	140,308	148,224	145,613	151,127	150,994	153,975	159,275	159,966	161,132	160,773	164,646
Cumulative - Present Worth (\$1993)	\$(000)	143,972	293,569	442,793	576,671	704,497	831,730	964,941	1,102,479	1,242,787	1,383,011	1,528,623	1,679,750	1,830,745	1,984,719	2,143,994	2,303,960	2,465,093	2,625,866	2,790,512
IDO Arrangement																				
Annual - Nominal Dollars	\$(000)	96,289	109,660	117,476	109,633	112,614	119,683	135,704	149,880	160,288	172,326	192,233	214,858	232,947	254,790	281,453	302,178	329,203	355,442	390,423
Cumulative - Nominal Dollars	\$(000)	96,289	205,949	323,424	433,058	545,671	665,354	801,058	950,938	1,111,226	1,283,552	1,475,786	1,690,644	1,923,591	2,178,381	2,459,834	2,762,012	3,091,214	3,446,657	3,837,080
Annual - Present Worth (\$1993)	\$(000)	136,635	145,890	144,924	126,107	120,778	119,683	126,530	130,302	129,930	130,245	135,470	141,178	142,717	145,547	149,910	150,069	152,438	153,462	157,170
Cumulative - Present Worth (\$1993)	\$(000)	136,635	281,725	426,649	552,755	673,533	793,216	919,746	1,050,048	1,179,978	1,310,223	1,445,693	1,586,871	1,729,588	1,875,136	2,025,045	2,175,114	2,327,552	2,481,014	2,638,185
SUMMARY OF COST DIFFERENCES																				
IDO Arrangement Costs Higher (Lower)																				
Annual - Nominal Dollars	\$(000)	(5,170)	(3,606)	(3,486)	(6,756)	(6,572)	(7,550)	(7,165)	(8,324)	(12,802)	(13,203)	(14,393)	(15,141)	(15,510)	(14,753)	(17,583)	(19,930)	(18,777)	(16,934)	(18,570)
Cumulative - Nominal Dollars	\$(000)	(5,170)	(8,777)	(12,063)	(18,819)	(25,391)	(32,940)	(40,105)	(48,430)	(61,232)	(74,435)	(88,828)	(103,969)	(117,479)	(132,232)	(149,814)	(169,744)	(188,521)	(205,455)	(224,024)
Annual - Present Worth (\$1993)	\$(000)	(7,337)	(4,507)	(4,301)	(7,771)	(7,048)	(7,550)	(6,680)	(7,237)	(10,378)	(9,979)	(10,143)	(9,949)	(8,277)	(8,427)	(9,365)	(9,898)	(8,695)	(7,311)	(7,475)
Cumulative - Present Worth (\$1993)	\$(000)	(7,337)	(11,844)	(16,144)	(23,915)	(30,964)	(38,514)	(45,194)	(52,431)	(62,809)	(72,787)	(82,930)	(92,879)	(101,156)	(109,584)	(118,949)	(128,846)	(137,541)	(144,852)	(152,328)
SUMMARY OF ECONOMIC DAMAGES																				
Economic Damages To FMIPA																				
Annual - Nominal Dollars	\$(000)	5,170	3,406	3,486	6,756	6,572	7,550	7,165	8,324	12,802	13,203	14,393	15,141	15,510	14,753	17,583	19,930	18,777	16,934	18,570
Cumulative - Nominal Dollars	\$(000)	5,170	8,577	12,063	18,819	25,391	32,940	40,105	48,430	61,232	74,435	88,828	103,969	117,479	132,232	149,814	169,744	188,521	205,455	224,024
Annual - Present Worth (\$1993)	\$(000)	7,337	4,507	4,301	7,771	7,048	7,550	6,680	7,237	10,378	9,979	10,143	9,949	8,277	8,427	9,365	9,898	8,695	7,311	7,475
Cumulative - Present Worth (\$1993)	\$(000)	7,337	11,844	16,144	23,915	30,964	38,514	45,194	52,431	62,809	72,787	82,930	92,879	101,156	109,584	118,949	128,846	137,541	144,852	152,328



Case 01 - IDO Project Has Network
Service All Years
Independent Arrangement: IND01
ID02 Arrangement: ID001

FLORIDA MUNICIPAL POWER AGENCY
IDO Project Damage Study

Independent Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
TOTAL COST SUMMARY																					
Energy Related Costs:																					
1	Fuel & Purchased Energy	\$(000)	78,377	90,135	97,480	91,704	94,245	97,555	107,977	110,203	121,689	130,957	146,633	162,176	183,538	199,263	220,932	235,265	255,660	272,719	290,495
2	Startup	\$(000)	414	464	476	438	476	454	539	594	574	524	594	671	824	881	1,044	1,105	1,429	1,539	1,669
3	Variable O & M	\$(000)	2,859	3,623	3,918	4,009	4,529	5,375	5,597	8,373	8,130	7,327	7,787	8,329	9,419	10,105	10,970	11,229	14,277	14,495	14,894
4	Energy Related Transmission	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5	Subtotal	\$(000)	81,650	94,222	101,874	96,151	99,250	103,384	114,113	119,170	130,393	138,808	155,014	171,176	193,781	210,249	232,946	247,599	271,346	288,753	315,058
6	Economy Energy Adjustments	\$(000)	(2,296)	(2,470)	(3,772)	(3,347)	(3,544)	(3,660)	(4,060)	(4,144)	(4,576)	(4,924)	(5,513)	(6,098)	(6,901)	(7,492)	(8,307)	(8,846)	(9,613)	(10,254)	(11,223)
7	FMPA A&G	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8	Transmission Losses	\$(000)	1,244	1,230	1,374	1,439	1,443	1,550	1,597	1,741	2,041	2,484	2,369	2,542	2,720	2,917	3,038	3,131	3,413	3,638	3,792
9	Total Energy Related Costs	\$(000)	80,608	92,982	99,477	94,243	97,170	101,265	111,650	114,767	127,879	136,370	151,870	167,621	189,600	205,674	227,677	241,884	265,166	282,137	307,627
Purchased Capacity Costs:																					
10	FPL FR - CLE	\$(000)	2,377	2,457	2,354	758	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11	SFCA - LWU	\$(000)	0	0	0	1,043	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12	FPL ST - LWU/FMPA	\$(000)	670	0	137	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13	FPL ST - KEY	\$(000)	1,052	1,103	1,170	1,222	1,366	582	0	0	0	0	0	0	0	0	0	0	0	0	0
14	FPL LT - KEY	\$(000)	0	0	0	0	0	3,106	5,600	6,716	6,925	7,122	7,714	8,647	9,489	11,047	11,584	12,227	13,271	14,065	15,128
15	HST D - ARP	\$(000)	0	0	0	121	187	194	202	0	0	0	0	0	0	0	0	0	0	0	0
16	FPL PR - ARP	\$(000)	4,524	4,292	4,267	5,850	5,896	5,069	5,644	6,771	7,687	9,348	10,970	12,582	14,139	16,560	19,264	22,365	21,412	21,406	24,650
17	FPL PR - FPV	\$(000)	1,525	1,396	1,306	1,060	749	531	209	0	0	0	0	0	0	0	0	0	0	0	0
18	FPC PR - ARP	\$(000)	6,889	6,908	8,061	7,787	9,322	11,458	14,470	11,833	13,250	14,351	17,242	21,758	17,247	15,802	19,771	24,607	20,562	26,602	33,101
19	Total Purchased Capacity Costs	\$(000)	17,039	16,156	17,295	17,841	17,520	20,960	26,145	25,320	27,862	30,841	35,935	42,987	36,876	43,408	50,619	59,198	55,244	62,074	72,878
Unit Fixed Costs (Capital & Fixed O & M):																					
20	King of the Hill - CC	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5,066	5,104	5,122
21	Cane Island - CC#1	\$(000)	0	0	0	0	0	0	0	10,176	10,304	10,389	10,520	10,653	10,788	10,834	10,881	10,930	11,027	11,126	11,272
22	Total Unit Fixed Costs	\$(000)	0	0	0	0	0	0	0	10,176	10,304	10,389	10,520	10,653	10,788	10,834	10,881	10,930	16,113	16,229	16,395
FPL Transmission Costs:																					
23	Point-to-Point Service	\$(000)	3,821	3,928	4,189	4,306	4,496	5,007	5,074	5,942	7,046	7,929	8,302	8,738	9,194	9,627	9,858	10,095	11,457	11,936	12,093
24	Network Service	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
25	Total FPL Transmission Costs	\$(000)	3,821	3,928	4,189	4,306	4,496	5,007	5,074	5,942	7,046	7,929	8,302	8,738	9,194	9,627	9,858	10,095	11,457	11,936	12,093
Total Costs:																					
26	Annual - Nominal Dollars	\$(000)	101,459	113,066	120,962	116,390	119,186	127,233	142,849	158,205	173,090	185,529	206,626	229,999	246,457	269,543	299,036	322,108	347,979	372,376	400,993
27	Cumulative - Nominal Dollars	\$(000)	101,459	214,525	335,487	451,877	571,062	698,295	841,163	999,348	1,172,458	1,357,987	1,564,613	1,794,612	2,041,070	2,310,612	2,609,648	2,931,756	3,279,735	3,652,111	4,061,104
28	Annual - Present Worth (\$1993)	\$(000)	143,972	149,597	149,224	133,878	127,826	127,233	133,211	137,539	140,308	140,224	145,613	151,127	150,994	153,975	159,275	159,966	161,132	160,773	164,644
29	Cumulative - Present Worth (\$1993)	\$(000)	143,972	293,569	442,793	576,671	704,497	831,730	964,941	1,102,479	1,242,787	1,383,011	1,528,623	1,679,750	1,830,745	1,984,719	2,143,994	2,303,960	2,465,093	2,625,866	2,790,512



Case 01 - IDO Project Has Network
Service All Years
Independent Arrangement: IND01
IDO Arrangement : IDO01

FLORIDA MUNICIPAL POWER AGENCY

IDO Project Damage Study

Independent Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
ENERGY RELATED COST SUMMARY																					
Fuel Costs by Station Group:																					
30	CT	\$(000)	1,306	1,144	1,816	1,591	1,997	1,364	1,641	3,990	4,064	3,876	4,843	5,096	11,861	12,387	15,265	15,123	26,249	25,097	27,343
31	CC	\$(000)	5,832	11,344	11,377	10,458	10,182	15,469	16,725	26,133	27,854	26,762	29,306	32,971	36,499	40,023	43,933	45,975	63,485	65,538	68,301
32	Purchases (Non-FPL/FPC)	\$(000)	12,852	17,443	17,727	18,202	21,027	21,510	26,399	13,701	14,561	14,853	18,916	20,461	34,329	35,389	37,578	35,172	12,044	7,361	3,444
33	FPL - CLE (FR)	\$(000)	2,232	2,179	2,453	751	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
34	Nuclear	\$(000)	3,387	2,783	2,417	3,180	3,097	3,148	3,326	3,595	3,204	4,024	3,806	3,916	4,302	4,614	4,291	5,289	4,535	5,495	5,343
35	Coal	\$(000)	11,110	10,574	8,965	10,204	10,649	11,005	11,423	12,007	18,667	25,016	25,892	27,316	27,877	29,567	30,037	32,578	35,545	37,665	39,501
36	FPL - PR	\$(000)	5,409	6,719	4,774	4,661	3,535	3,893	6,751	8,303	9,819	7,550	13,922	16,160	16,617	19,264	22,116	26,210	29,854	31,485	36,198
37	FPC - PR	\$(000)	12,451	11,632	17,025	15,648	15,012	18,455	17,446	15,490	16,987	23,449	20,815	23,470	15,649	17,582	21,362	25,730	36,406	47,950	61,358
38	Gas/Steam	\$(000)	14,236	12,656	14,308	11,173	11,172	6,632	8,395	9,264	8,392	6,445	8,115	9,509	10,330	11,724	15,162	15,492	10,875	11,611	12,715
39	Diesel	\$(000)	131	121	210	223	627	552	713	850	742	759	809	1,393	1,102	1,195	1,911	1,991	2,318	3,286	4,098
40	FPL/STAT	\$(000)	5,747	7,943	9,791	9,510	10,650	9,144	8,263	8,991	9,341	9,666	10,280	11,227	12,032	12,874	14,027	14,994	16,073	17,190	18,489
41	Oil/Steam	\$(000)	3,943	5,066	6,062	5,313	5,539	5,879	6,295	7,250	7,385	7,904	9,175	9,891	11,880	13,380	13,804	15,154	16,573	18,402	19,874
42	Cogen	\$(000)	227	336	383	351	364	398	435	475	521	579	623	682	764	801	839	881	923	968	1,033
43	Subtotal Fuel Costs	\$(000)	78,163	89,940	97,308	91,265	93,851	97,449	107,832	110,049	121,559	130,874	146,522	162,092	183,242	198,800	228,325	234,589	254,888	272,048	297,719
44	Energy Not Served (ENS)	\$(000)	246	229	252	491	455	133	183	212	148	174	187	147	380	550	693	785	847	754	861
45	Dump Energy	\$(000)	(33)	(34)	(80)	(52)	(61)	(27)	(38)	(58)	(18)	(91)	(76)	(63)	(84)	(87)	(86)	(109)	(67)	(83)	(85)
46	Total Fuel Costs	\$(000)	78,377	90,135	97,480	91,704	94,245	97,555	107,977	110,203	121,689	130,957	146,633	162,176	183,538	199,263	228,932	235,265	255,660	272,719	298,495
Start-up Costs by Station Group:																					
47	CT	\$(000)	18	14	36	31	45	41	47	37	33	37	51	47	236	239	295	301	723	770	823
48	CC	\$(000)	0	2	1	2	14	47	70	75	81	92	98	104	95	101	110	131	235	272	309
49	Purchases (Non-FPL/FPC)	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
50	FPL - CLE (FR)	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
51	Nuclear	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
52	Coal	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
53	FPL - PR	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
54	FPC - PR	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
55	Gas/Steam	\$(000)	244	369	343	347	374	325	377	430	411	344	391	443	436	486	562	589	380	400	426
56	Diesel	\$(000)	5	7	10	9	30	29	31	37	35	36	39	58	37	40	56	62	71	75	88
57	FPL/STAT	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
58	Oil/Steam	\$(000)	147	72	86	49	13	12	14	15	14	15	15	19	20	15	21	22	20	22	23
59	Cogen	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
60	Total Start Costs	\$(000)	414	464	476	438	476	454	539	594	574	524	594	671	824	881	1,044	1,105	1,429	1,539	1,669



Case 01 - IDO Project Has Network
Service All Years
Independent Arrangement: IND01
IDO Arrangement: IDO01

FLORIDA MUNICIPAL POWER AGENCY
IDO Project Damage Study

Independent Arrangement

Ln	Description	Units	1998	1999	2000	2001	2002	2003	2004	2005	2006
ENERGY RELATED COST SUMMARY (con'd)											
Variable O & M Costs by Station Group:											
61	CT	\$(000)	63	62	112	112	171	125	153	598	572
62	CC	\$(000)	828	1,759	1,810	1,894	2,147	3,564	3,587	5,692	5,698
63	Purchases (Non-FPL/FPC)	\$(000)	0	0	0	0	0	0	0	0	0
64	FPL - CLE (FR)	\$(000)	0	0	0	0	0	0	0	0	0
65	Nuclear	\$(000)	519	432	404	504	474	464	489	529	471
66	Coal	\$(000)	0	0	0	0	0	0	0	0	0
67	FPL - PR	\$(000)	0	0	0	0	0	0	0	0	0
68	FPC - PR	\$(000)	0	0	0	0	0	0	0	0	0
69	Gas/Steam	\$(000)	1,099	923	1,096	1,005	1,189	672	799	920	786
70	Diesel	\$(000)	8	7	11	13	42	38	47	54	45
71	FPL ST<	\$(000)	0	0	0	0	0	0	0	0	0
72	Oil/Steam	\$(000)	342	440	485	481	506	510	522	580	558
73	Cogen	\$(000)	0	0	0	0	0	0	0	0	0
74	Total Variable O & M Costs	\$(000)	2,859	3,623	3,918	4,009	4,529	5,375	5,597	8,373	8,130
Total Costs by Station Group:											
75	CT	\$(000)	1,387	1,220	1,964	1,734	2,213	1,530	1,841	4,625	4,691
76	CC	\$(000)	5,860	13,105	13,108	12,354	12,343	19,082	20,382	31,900	33,633
77	Purchases (Non-FPL/FPC)	\$(000)	12,852	17,443	17,727	18,202	21,027	21,510	26,399	13,701	14,561
78	FPL - CLE (FR)	\$(000)	2,232	2,179	2,453	751	0	0	0	0	0
79	Nuclear	\$(000)	3,906	3,215	2,821	3,684	3,571	3,612	3,815	4,124	3,675
80	Coal	\$(000)	11,110	10,574	8,965	10,204	10,449	11,005	11,423	12,007	18,667
81	FPL - PR	\$(000)	5,409	6,719	4,774	4,641	3,535	3,893	6,751	8,303	9,819
82	FPC - PR	\$(000)	12,451	11,632	17,025	15,648	15,012	18,455	17,446	15,400	16,987
83	Gas/Steam	\$(000)	15,579	13,948	15,747	12,525	12,735	7,629	9,571	10,614	9,589
84	Diesel	\$(000)	144	135	231	245	699	619	791	941	822
85	FPL ST<	\$(000)	5,747	7,943	9,791	9,510	10,650	9,144	8,263	8,991	9,341
86	Oil/Steam	\$(000)	4,432	5,578	6,633	5,843	6,058	6,401	6,831	7,845	7,957
87	Cogen	\$(000)	327	316	383	351	344	398	435	475	521
88	Subtotal Total Costs	\$(000)	81,436	94,027	101,702	95,712	98,856	103,278	113,968	119,016	130,263
89	Energy Not Served (ENS)	\$(000)	246	229	252	491	455	133	183	212	148
90	Dump Energy	\$(000)	(33)	(34)	(80)	(52)	(61)	(27)	(38)	(58)	(18)
91	Total Total Costs	\$(000)	81,650	94,222	101,874	96,151	99,250	103,384	114,113	119,170	130,393
Additional FMFAA & G											
92	Additional RTU's	\$(000)	0	0	0	0	0	0	0	0	0
93	RTU Operations/Maintenance	\$(000)	0	0	0	0	0	0	0	0	0
94	Miscellaneous A & G	\$(000)	0	0	0	0	0	0	0	0	0
95	Additional Staff	\$(000)	0	0	0	0	0	0	0	0	0
96	Total FMFAA Add. A&G	\$(000)	0	0	0	0	0	0	0	0	0



Case 01 - IDO Project Has Network
Service All Years
Independent Arrangement: (IND01)
ID01 Arrangement: (ID04)

FLORIDA MUNICIPAL POWER AGENCY
IDO Project Damage Study

Independent Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
PURCHASED CAPACITY COST SUMMARY																					
FPL Short Term - KEY:																					
97	Average Capacity	(MW)	36.0	33.3	36.0	37.0	38.0	15.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
98	Average Unit Cost	(\$/kW-yr)	35.06	33.11	32.50	33.03	35.94	36.77	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
99	Cost	\$(000)	1,052	1,103	1,170	1,222	1,344	582	0	0	0	0	0	0	0	0	0	0	0	0	0
FPL Long Term - KEY:																					
100	Average Capacity	(MW)	0.0	0.0	0.0	0.0	0.0	26.3	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0	45.0
101	Average Unit Cost	(\$/kW-yr)	0.00	0.00	0.00	0.00	0.00	118.34	124.44	149.24	153.88	158.26	171.42	192.15	210.87	245.48	257.42	271.70	294.91	312.55	336.18
102	Cost	\$(000)	0	0	0	0	0	3,106	5,600	6,716	6,925	7,122	7,714	8,647	9,489	11,047	11,584	12,227	13,271	14,065	15,128
Homestead D - ARP:																					
103	Average Capacity	(MW)	0.0	0.0	0.0	3.3	5.0	5.0	5.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
104	Average Unit Cost	(\$/kW-yr)	0.00	0.00	0.00	36.36	37.33	38.82	40.38	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
105	Cost	\$(000)	0	0	0	121	187	194	202	0	0	0	0	0	0	0	0	0	0	0	0
FPL Partial Requirements:																					
Average Capacity:																					
106	- FPV	(MW)	9.8	9.0	8.4	6.8	4.8	3.4	1.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
107	- JBH	(MW)	24.6	23.1	22.9	28.5	27.2	22.8	23.8	26.2	30.5	37.7	42.2	45.3	48.2	51.3	57.4	62.4	54.7	50.9	55.3
108	- GCS	(MW)	4.6	4.6	4.6	4.4	4.4	4.6	5.6	5.4	5.6	6.6	7.6	8.6	9.0	9.6	11.8	13.0	13.6	13.6	14.6
109	- CLE	(MW)	0.0	0.0	0.0	4.8	6.4	5.4	4.4	4.6	4.4	4.6	5.0	5.0	5.6	6.6	7.6	7.4	7.0	7.6	7.6
110	- FMP	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
111	- Total	(MW)	39.0	36.7	35.9	44.5	42.8	36.2	35.1	36.2	40.5	48.9	54.8	58.9	62.2	65.9	73.6	81.8	75.1	71.5	77.5
112	Average Unit Cost	(\$/kW-yr)	155.16	155.16	155.16	155.16	155.16	167.56	187.05	189.81	191.58	200.35	213.62	227.32	251.29	261.74	273.41	285.11	299.39	318.06	318.06
Cost:																					
113	- FPV	\$(000)	1,525	1,396	1,306	1,060	749	531	209	0	0	0	0	0	0	0	0	0	0	0	0
114	- ARP	\$(000)	4,524	4,292	4,267	5,850	5,896	5,089	5,644	6,771	7,487	9,348	10,979	12,582	14,139	16,560	19,264	22,345	21,412	21,406	24,650
FPC Partial Requirements:																					
115	Average Capacity	(MW)	73.4	78.3	91.4	88.3	105.7	116.3	123.9	94.1	99.3	102.8	111.1	119.4	72.5	80.6	101.2	122.3	102.5	127.7	153.4
116	Average Unit Cost	(\$/kW-yr)	93.84	88.19	88.19	88.19	88.19	98.52	116.79	125.75	133.43	139.60	155.19	182.23	182.72	194.05	195.37	201.20	200.60	208.32	215.78
117	Cost	\$(000)	6,889	6,908	8,061	7,787	9,322	11,458	14,470	11,833	13,250	14,351	17,242	21,758	13,247	15,802	19,771	24,607	20,562	26,602	33,101
UNIT FIXED COST SUMMARY																					
King 6/10 Combined Cycle:																					
118	Net Debt Service	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4,691	4,691	4,691
119	Fixed O & M, A & G, Insurance	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	395	413	431
120	Total	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5,086	5,104	5,122
Cane Island Combined Cycle #1:																					
Fixed Costs:																					
121	Net Debt Service	\$(000)	0	0	0	0	0	0	0	5,595	5,595	5,595	5,595	5,595	5,595	5,595	5,595	5,595	5,595	5,595	5,595
122	Fixed O & M, A & G, Insurance	\$(000)	0	0	0	0	0	0	0	708	740	773	806	844	882	922	963	1,007	1,052	1,100	1,149
123	OUIC Transmission	\$(000)	0	0	0	0	0	0	0	542	547	553	558	564	570	575	581	587	593	599	605
124	Subtotal - Unit Fixed	\$(000)	0	0	0	0	0	0	0	6,845	6,882	6,921	6,961	7,003	7,047	7,092	7,140	7,189	7,240	7,293	7,349
Phase III Gas Transportation:																					
125	Average Capacity	(mmBtu/d)	0	0	0	0	0	0	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500
126	Average Unit Cost	(\$/mmBtu)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.73	0.75	0.76	0.78	0.80	0.82	0.82	0.82	0.82	0.83	0.84	0.84
127	Subtotal - Fixed Gas Trans.	\$(000)	0	0	0	0	0	0	0	3,331	3,422	3,468	3,559	3,650	3,741	3,741	3,741	3,741	3,787	3,833	3,924
128	Total Unit Fixed Costs	\$(000)	0	0	0	0	0	0	0	10,176	10,304	10,389	10,520	10,653	10,788	10,834	10,881	10,930	11,027	11,126	11,272



Case 01 - IDO Project Has Network
Service All Years
Independent Arrangement: IND01
IDO Arrangement : IDO01

FLORIDA MUNICIPAL POWER AGENCY
IDO Project Damage Study

Independent Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
FPL TRANSMISSION COST SUMMARY																					
Point-to-Point Service:																					
Average Capacity:																					
129	St. Lucie Project	(MW)	52.3	52.3	52.3	52.3	52.3	52.3	52.3	52.3	52.3	52.3	52.3	52.3	52.3	52.3	52.3	52.3	52.3	52.3	52.3
130	Stanton/Tri-City Projects	(MW)	62.7	62.7	62.7	62.7	62.7	62.7	62.7	62.7	62.7	62.7	62.7	62.7	62.7	62.7	62.7	62.7	62.7	62.7	62.7
131	Stanton II Project	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	25.0	50.0	50.0	50.0	50.0	50.0	50.0	50.0	50.0	50.0	50.0
132																					
All-Requirements Project TSA:																					
Annual:																					
133	- JBH	(MW)	23.4	24.9	29.4	30.3	34.4	63.8	63.8	74.8	70.9	52.1	52.1	52.1	52.1	52.1	45.1	45.1	81.4	81.4	81.4
134	- GCS	(MW)	3.8	4.4	4.8	4.9	5.4	8.4	8.4	10.4	9.7	9.1	9.1	9.1	9.1	9.1	9.1	4.1	7.1	7.1	7.1
135	- CLE	(MW)	0.0	0.0	0.0	0.0	1.2	5.0	5.0	7.0	8.5	8.1	8.1	8.1	8.1	8.1	8.1	5.1	7.1	7.1	7.1
136	- Total	(MW)	27.2	31.3	34.2	35.2	41.0	77.2	77.2	92.2	89.2	69.2	69.2	69.2	69.2	69.2	62.2	56.2	95.5	95.5	95.5
Monthly:																					
137	- JBH	(MW)	25.3	25.7	34.2	32.4	32.2	22.0	12.6	6.5	7.8	18.2	17.3	17.4	17.8	17.9	21.0	19.8	7.1	8.1	7.9
138	- GCS	(MW)	5.5	5.9	6.3	6.3	6.2	5.6	2.9	1.8	2.8	3.0	2.6	2.2	2.3	2.9	2.9	4.3	2.6	2.6	2.3
139	- CLE	(MW)	0.0	0.0	0.0	6.2	9.2	6.9	5.9	3.9	2.8	3.1	2.9	3.1	3.2	2.8	2.1	4.1	2.5	3.0	2.7
140	- Total	(MW)	30.8	31.6	40.5	44.8	47.6	34.5	21.4	12.2	13.4	24.3	22.8	22.7	23.3	23.6	26.0	28.2	12.2	13.7	12.9
141	Excess	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
142	Total Average Capacity	(MW)	173.0	177.9	189.7	195.0	203.6	226.8	213.6	216.4	242.6	258.5	257.0	256.9	257.5	257.8	253.2	249.5	272.8	274.3	273.5
143	Unit Cost	(\$/kW-yr)	22.00	22.00	22.00	22.00	22.00	22.00	23.75	27.00	29.04	30.67	32.30	34.01	35.70	37.34	38.93	40.47	42.00	43.52	44.22
144	Total Cost of Point-to-Point	\$(000)	3,821	3,928	4,189	4,306	4,496	5,007	5,074	5,942	7,046	7,929	8,302	8,738	9,194	9,627	9,858	10,095	11,457	11,936	12,093
Network Service:																					
145	Average Billing Demand	(MW)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
146	Unit Cost	(\$/kW-yr)	22.00	22.00	22.00	22.00	22.00	22.00	23.75	27.00	29.04	30.67	32.30	34.01	35.70	37.34	38.93	40.47	42.00	43.52	44.22
147	Total Cost of Network Service	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0



Case 01 - IDO Project 11 as Network
Service All Years
Independent Arrangement: IND01
IDO Arrangement: IDO01

FLORIDA MUNICIPAL POWER AGENCY
(IX) Project Damage Study

Independent Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
TRANSMISSION LOSSES SUMMARY																					
Stanton/Tri-City Project:																					
Deliveries to:																					
148	- FPV	(GWh)	270.4	253.7	204.0	227.6	233.3	232.3	242.0	232.9	342.4	501.9	498.2	506.1	486.8	488.8	447.7	482.7	510.9	520.0	518.4
149	- LWU	(GWh)	45.1	50.5	40.9	51.5	57.2	55.4	53.4	60.8	92.8	98.1	100.4	104.2	103.2	106.1	105.9	102.7	109.9	107.9	107.7
150	- FKEC	(GWh)	86.1	83.1	68.4	82.3	89.1	89.3	86.5	86.6	123.2	155.5	155.4	157.4	158.9	158.9	155.2	159.5	160.2	161.3	162.2
151	- Total	(GWh)	401.6	387.3	313.3	361.4	379.6	377.0	381.9	380.3	558.4	755.5	754.0	771.7	748.9	753.8	728.8	744.9	781.0	789.2	788.3
152	Transmission Losses	(%)	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%
153	Transmission Losses	(GWh)	15.9	15.3	12.4	14.3	15.0	14.9	15.1	15.0	22.8	29.8	29.8	30.5	29.6	29.8	28.8	29.4	30.8	31.2	31.1
154	Energy Cost - Stanton	(\$/MWh)	18.69	18.50	19.30	18.95	18.90	19.56	20.27	20.96	21.81	22.59	23.54	24.36	25.57	26.92	28.19	29.65	31.02	32.59	34.17
155	Total Cost of Stanton Losses	\$(000)	296	283	239	271	283	291	306	315	498	674	701	743	756	802	812	872	957	1,016	1,044
ARP - Requirements Project:																					
Deliveries to:																					
156	- JBH	(GWh)	229.8	201.5	301.3	315.6	359.3	371.0	301.9	285.4	273.7	352.5	223.3	223.9	239.7	229.6	229.3	203.7	207.6	223.1	205.0
157	- CLE	(GWh)	0.0	0.0	0.0	28.2	42.0	39.1	34.4	41.7	45.1	54.4	41.3	43.5	45.5	41.8	37.4	27.3	27.5	29.6	25.9
158	- GCS	(GWh)	45.9	38.1	57.1	65.1	74.0	72.4	55.2	56.3	59.6	71.9	49.8	46.4	48.5	50.7	51.3	34.8	23.1	20.6	17.5
159	Total Deliveries	(GWh)	275.7	239.6	358.4	408.9	475.3	482.7	391.5	383.4	378.4	478.8	314.4	313.8	333.7	322.1	318.0	265.8	258.2	273.3	248.4
160	PR Deliveries Included	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
161	Net Deliveries	(GWh)	275.7	239.6	358.4	408.9	475.3	482.7	391.5	383.4	378.4	478.8	314.4	313.8	333.7	322.1	318.0	265.8	258.2	273.3	248.4
162	Transmission Losses	(%)	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%
163	Transmission Losses	(GWh)	10.9	9.5	14.2	16.2	18.8	19.1	15.5	15.1	14.9	18.9	12.4	12.4	13.2	12.7	12.6	10.5	10.2	10.8	9.8
164	Incremental Unit Cost - ARP (Avg)	(\$/MWh)	30.18	30.44	30.63	27.16	24.98	25.12	27.16	30.78	33.00	35.32	38.32	41.01	44.80	48.20	50.46	54.67	57.62	60.99	63.45
165	Transmission Losses	\$(000)	329	288	434	439	469	479	420	466	493	668	476	508	591	613	634	574	588	649	623
Deliveries to:																					
166	- FPV	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
167	- LWU	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
168	- FKEC	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
169	Transmission Losses	(%)	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%
170	Transmission Losses	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
171	Incremental Unit Cost - ARP (Peak)	(\$/MWh)	30.59	30.98	31.41	28.34	25.91	25.68	27.97	31.63	34.02	36.50	39.76	42.43	47.11	50.69	53.09	56.86	60.06	62.42	65.77
172	Transmission Losses	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
173	Total Cost of ARP Losses	\$(000)	329	288	434	439	469	479	420	466	493	668	476	508	591	613	634	574	588	649	623
ARG Resources to ARP:																					
Deliveries from:																					
174	- FPV to ARP	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	167.1	154.1	147.0
175	- LWU to ARP	(GWh)	96.9	77.7	69.6	88.6	65.3	62.7	66.1	65.5	71.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
176	- FKEC to ARP	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
177	Transmission Losses	(%)	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%
Transmission Losses:																					
178	- FPV to ARP	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.7	1.5	1.5
179	- LWU to ARP	(GWh)	1.0	0.8	0.7	0.9	0.7	0.6	0.7	0.7	0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
180	- FKEC to ARP	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Incremental Unit Cost:																					
181	- FPV to ARP	(\$/MWh)	28.80	28.44	28.85	26.15	23.24	23.23	25.70	26.66	27.99	29.43	31.74	34.69	34.85	37.89	39.77	42.73	54.35	59.34	63.04
182	- LWU to ARP	(\$/MWh)	27.51	32.43	34.62	28.80	35.31	33.15	36.02	37.54	41.00	33.61	37.73	42.11	51.35	54.37	63.28	64.12	73.48	77.15	81.26
183	- FKEC to ARP	(\$/MWh)	36.97	37.98	42.70	41.30	42.64	41.63	42.29	47.75	50.37	51.92	57.73	65.65	74.12	78.78	86.55	92.02	98.05	101.96	110.43
Total Cost of ARG Losses:																					
184	- FPV to ARP	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	91	91	93
185	- LWU to ARP	\$(000)	27	25	24	26	23	21	24	25	29	0	0	0	0	0	0	0	0	0	0
186	- FKEC to ARP	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
187	- Total	\$(000)	27	25	24	26	23	21	24	25	29	0	0	0	0	0	0	0	91	91	93



Case 61 - IDO Project Has Network
Service All Years
Independent Arrangement: IND01
IDO Arrangement : IDO01

FLORIDA MUNICIPAL POWER AGENCY
IDO Project Damage Study

Independent Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
TRANSMISSION LOSSES SUMMARY																					
(con'd)																					
ARW Resources to ARP:																					
Deliveries from:																					
188	- ARW to ARP	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
189	Transmission Losses	(%)	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%
190	Transmission Losses	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
191	Incremental Unit Cost	(\$/MWh)	23.11	25.96	25.69	23.73	23.83	25.10	27.37	28.81	31.32	32.09	35.03	37.90	40.86	43.60	45.63	47.93	51.01	53.50	56.84
192	Total Cost of ARW Losses	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FKEC to KEY:																					
193	Average Transmitted Capacity	(MW)	42.00	47.00	48.10	49.10	50.10	54.20	57.10	57.10	62.00	66.80	66.80	66.80	66.80	66.80	66.80	66.80	66.80	66.80	66.80
194	Capacity Losses	(%)	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%
195	Capacity Losses	(MW)	2.06	2.30	2.36	2.41	2.45	2.66	2.80	2.80	3.04	3.27	3.27	3.27	3.27	3.27	3.27	3.27	3.27	3.27	3.27
196	FPL PR Capacity Unit Cost	(\$/W-yr)	155.16	155.16	155.16	155.16	155.16	155.16	167.56	187.05	189.81	191.58	200.35	213.62	227.32	251.29	261.74	273.41	285.11	299.39	318.06
197	Cost of Losses - Capacity	\$(000)	319	357	366	373	381	412	469	523	577	627	656	699	744	823	857	895	933	960	1,041
198	Net Transmitted Energy	(GWh)	323.8	339.0	346.9	370.2	385.4	415.6	431.1	438.7	466.2	485.0	491.5	498.8	504.7	506.9	509.6	515.8	519.7	522.7	526.8
199	Energy Losses	(%)	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%
200	Energy Losses	(GWh)	10.7	11.2	11.4	12.2	12.7	13.7	14.2	14.5	15.4	16.0	16.2	16.5	16.7	16.7	16.8	17.0	17.2	17.2	17.4
201	FPL PR Energy Unit Cost	(\$/MWh)	25.77	24.67	27.39	27.09	24.15	25.26	26.61	28.45	30.17	32.30	33.07	35.90	37.75	40.63	43.78	46.42	49.21	52.29	55.89
202	Cost of Losses - Energy	\$(000)	275	276	314	331	307	346	379	412	464	517	536	592	629	680	736	790	844	902	972
203	Total Cost of FKEC Losses	\$(000)	595	633	679	704	688	759	847	935	1,041	1,144	1,192	1,291	1,373	1,502	1,593	1,685	1,777	1,882	2,013
204	TOTAL COST OF LOSSES	\$(000)	1,246	1,230	1,376	1,439	1,463	1,550	1,597	1,741	2,061	2,406	2,369	2,542	2,720	2,917	3,038	3,131	3,413	3,638	3,792
FPC WHEELING COSTS																					
205	Deliveries ARW to ARP	GWh	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
206	FPC Wheeling Rate	(\$/MWh)	1.40	1.35	1.37	1.37	1.47	1.83	2.11	2.57	3.10	3.44	3.56	3.65	3.74	3.80	3.87	3.96	4.04	4.12	4.21
207	FPC Wheeling Cost	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0



Case 01 - IDO Project Has Network
Service All Years
Independent Arrangement: IND01
IDO Arrangement : IDO01

FLORIDA MUNICIPAL POWER AGENCY
IDO Project Damage Study

IDO Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
TOTAL COST SUMMARY																					
Energy Related Costs:																					
1	Fuel & Purchased Energy	\$(000)	80,643	93,930	99,413	90,691	90,153	97,755	109,700	119,670	130,567	139,024	154,299	170,473	190,776	206,389	224,830	236,746	261,121	277,845	301,637
2	Startup	\$(000)	579	595	620	492	461	508	579	630	743	687	759	816	1,151	1,193	1,312	1,348	1,759	1,876	2,061
3	Variable O & M	\$(000)	3,555	3,325	3,585	3,390	3,725	5,622	5,836	7,816	8,342	7,604	8,181	8,564	10,086	10,440	11,196	10,967	14,396	14,304	14,780
4	Energy Related Transmission	\$(000)	1	0	5	0	6	0	1	0	0	0	0	1	0	0	2	9	8	36	76
5	Subtotal	\$(000)	84,778	97,850	103,823	94,581	94,345	103,885	116,206	128,116	139,652	147,315	163,239	179,854	202,013	218,022	237,340	249,090	277,284	294,061	318,564
6	Economy Energy Adjustments	\$(000)	(2,343)	(2,574)	(3,855)	(3,310)	(3,390)	(3,676)	(4,128)	(4,500)	(4,909)	(5,227)	(5,802)	(6,410)	(7,173)	(7,760)	(8,454)	(8,902)	(9,818)	(10,447)	(11,342)
7	FMPA A&G	\$(000)	184	194	201	208	216	224	233	242	251	261	271	282	293	304	316	329	342	356	370
8	Transmission Losses	\$(000)	1,854	2,066	2,165	2,096	2,128	2,205	2,430	2,704	2,994	3,345	3,591	4,002	4,227	4,599	4,930	5,173	5,308	5,612	6,022
9	Total Energy Related Costs	\$(000)	84,435	97,537	102,334	93,576	93,300	102,639	114,740	126,562	137,987	145,694	161,299	177,729	199,359	215,165	234,133	245,690	273,117	289,582	313,616
Purchased Capacity Costs:																					
10	FPL FR - CLE	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11	SFCA - LWU	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12	FPL ST - LWU/FMPA	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13	FPL ST - KEY	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14	FPL LT - KEY	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15	HST D - ARP	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
16	FPL PR - ARP	\$(000)	2,265	2,327	2,327	2,514	2,917	3,810	3,485	4,115	4,176	4,215	4,768	5,960	7,752	10,479	13,296	17,252	20,899	24,281	28,562
17	FPL PR - FPV	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
18	FPL PR - ARP	\$(000)	4,439	4,445	7,302	8,052	10,830	8,453	11,492	8,828	7,285	10,442	13,750	18,296	12,480	15,292	19,771	24,607	28,562	26,602	33,101
19	Total Purchased Capacity Costs	\$(000)	6,704	6,772	9,630	10,565	13,747	11,463	14,977	12,943	11,461	14,657	18,518	24,256	20,231	25,771	33,068	41,859	41,460	50,883	61,662
Unit Fixed Costs (Capital & Fixed O & M):																					
20	King 4/10 - CC	\$(000)	0	0	0	0	0	0	0	3,604	3,616	3,628	3,642	3,655	3,669	3,684	3,700	3,716	3,733	3,751	3,770
21	Cane Island - CC#1	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
22	Total Unit Fixed Costs	\$(000)	0	0	0	0	0	0	0	3,604	3,616	3,628	3,642	3,655	3,669	3,684	3,700	3,716	3,733	3,751	3,770
FPL Transmission Costs:																					
23	Point-to-Point Service	\$(000)	1,156	1,156	1,156	1,156	1,156	1,156	1,243	1,418	1,520	1,606	1,691	1,780	1,869	1,955	2,038	2,119	2,199	2,278	2,315
24	Network Service	\$(000)	3,974	4,195	4,356	4,337	4,412	4,425	4,743	5,354	5,703	6,241	7,083	7,438	7,818	8,215	8,514	8,794	8,694	8,948	9,061
25	Total FPL Transmission Costs	\$(000)	5,130	5,351	5,512	5,492	5,567	5,581	5,986	6,771	7,224	8,347	8,774	9,218	9,687	10,169	10,552	10,913	10,893	11,226	11,376
Total Costs:																					
26	Annual - Nominal Dollars	\$(000)	96,289	109,660	117,476	109,633	112,614	119,683	135,704	149,880	160,288	172,326	192,233	214,858	232,947	254,790	281,453	302,178	329,203	355,442	390,423
27	Cumulative - Nominal Dollars	\$(000)	96,289	205,949	323,424	433,058	545,671	665,354	801,058	950,938	1,111,226	1,283,552	1,475,786	1,690,644	1,923,591	2,178,381	2,459,834	2,762,012	3,091,214	3,446,657	3,837,080
28	Annual - Present Worth (\$1993)	\$(000)	136,635	145,090	144,924	126,107	120,778	119,683	126,530	130,302	129,930	130,245	135,470	141,178	142,717	145,547	149,910	150,049	152,438	153,462	157,170
29	Cumulative - Present Worth (\$1993)	\$(000)	136,635	281,725	426,649	552,755	673,533	793,216	919,746	1,050,048	1,179,978	1,310,223	1,445,693	1,586,871	1,729,588	1,875,136	2,025,045	2,175,114	2,327,552	2,481,014	2,638,185



Case 01 - IDO Project Has Network
Service All Years
Independent Arrangement: IND01
IDO Arrangement : IDO01

FLORIDA MUNICIPAL POWER AGENCY
IDO Project Damage Study

IDO Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
ENERGY RELATED COST SUMMARY																					
Fuel Costs by Station Group:																					
30	CT	\$(000)	1,163	1,412	2,584	1,969	1,868	2,794	3,506	6,308	7,464	7,310	8,156	8,827	16,760	18,301	21,538	20,934	33,671	34,588	37,928
31	CC	\$(000)	4,756	8,645	7,779	6,709	6,854	13,979	15,061	23,253	26,067	24,579	27,801	30,669	34,546	34,311	39,251	39,488	50,884	51,548	54,790
32	Purchases (Non-FPL/FPC)	\$(000)	19,241	43,224	41,267	37,661	35,181	37,393	41,219	41,812	41,832	43,151	45,841	49,925	56,741	59,788	53,072	46,425	20,660	14,046	6,650
33	FPL - CLE (FR)	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
34	Nuclear	\$(000)	3,387	2,763	2,397	3,160	3,087	3,140	3,323	3,588	3,202	4,023	3,805	3,915	4,301	4,614	4,291	5,289	4,535	5,495	5,343
35	Coal	\$(000)	11,878	10,254	8,659	10,489	11,452	11,577	12,382	12,638	19,572	26,643	27,203	28,429	29,882	31,599	32,489	35,307	37,240	39,375	41,409
36	FPL - PR	\$(000)	2,631	2,506	1,742	1,546	1,659	1,726	3,772	4,067	4,352	2,925	5,639	7,326	8,692	11,945	17,215	23,941	31,028	36,883	43,927
37	FPC - PR	\$(000)	9,093	6,513	13,178	12,635	15,283	11,705	13,559	9,961	8,259	13,784	16,477	20,475	14,067	17,315	27,197	36,632	40,651	53,275	67,626
38	Gas/Steam	\$(000)	24,295	13,150	15,832	10,817	9,492	9,870	11,020	11,632	12,707	9,407	10,940	12,017	15,842	15,762	19,842	17,413	29,982	28,787	29,481
39	Diesel	\$(000)	190	66	113	135	205	279	251	281	269	196	214	264	336	295	355	323	570	893	987
40	FPL STAT	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
41	Oil/Steam	\$(000)	3,518	5,051	5,653	5,207	4,477	4,879	5,251	5,654	6,321	6,827	7,580	7,932	8,844	9,634	9,534	10,153	10,930	11,942	12,455
42	Cogen	\$(000)	327	336	383	351	364	398	435	475	521	570	623	682	764	801	839	881	923	969	1,033
43	Subtotal Fuel Costs	\$(000)	80,479	93,920	99,589	90,679	90,122	97,740	109,779	119,649	130,566	139,015	154,299	170,461	190,775	206,365	224,823	236,746	261,103	277,840	301,629
44	Energy Not Served (ENS)	\$(000)	164	10	24	12	31	15	11	1	1	9	0	12	1	24	7	0	18	5	8
45	Dump Energy	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
46	Total Fuel Costs	\$(000)	80,643	93,930	99,613	90,691	90,153	97,755	109,790	119,670	130,567	139,024	154,299	170,473	190,776	206,389	224,830	236,746	261,121	277,845	301,637
Start-up Costs by Station Group:																					
47	CT	\$(000)	30	72	101	106	102	175	199	188	218	192	219	238	495	525	555	591	880	915	995
48	CC	\$(000)	22	62	68	81	82	68	82	127	149	189	197	203	204	223	222	271	241	303	347
49	Purchases (Non-FPL/FPC)	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
50	FPL - CLE (FR)	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
51	Nuclear	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
52	Coal	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
53	FPL - PR	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
54	FPC - PR	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
55	Gas/Steam	\$(000)	301	321	335	252	250	232	262	279	338	272	307	334	410	410	489	458	585	594	649
56	Diesel	\$(000)	11	5	6	5	14	21	22	21	24	19	21	22	22	20	25	26	33	42	47
57	FPL STAT	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
58	Oil/Steam	\$(000)	215	135	110	48	13	12	14	15	14	15	15	19	20	15	21	22	20	22	23
59	Cogen	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
60	Total Start Costs	\$(000)	579	595	620	492	461	508	579	630	743	687	759	816	1,151	1,193	1,312	1,368	1,759	1,876	2,061



Case 01 - IDO Project Has Network
Service All Years
Independent Arrangement: IND01
IDO Arrangement : IDO01

FLORIDA MUNICIPAL POWER AGENCY

IDO Project Damage Study

IDO Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
ENERGY RELATED COST SUMMARY																					
(con'd)																					
Variable O & M Costs by Station Group:																					
61	CT	\$(000)	60	136	276	217	330	529	618	964	1,081	1,014	1,093	1,149	1,992	2,107	2,412	2,317	3,568	3,520	3,796
62	CC	\$(000)	799	1,356	1,245	1,224	1,475	3,227	3,260	4,802	5,147	4,676	5,079	5,334	5,697	5,872	6,163	6,016	7,430	7,313	7,539
63	Purchases (Non-FPL/FPC)	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
64	FPL - CLE (FR)	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
65	Nuclear	\$(000)	519	429	400	500	472	463	488	528	471	592	559	577	632	680	631	778	667	809	785
66	Coal	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
67	FPL - PR	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
68	FPC - PR	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
69	Gas/Steam	\$(000)	1,862	963	1,210	971	1,038	972	1,029	1,068	1,160	833	930	962	1,222	1,195	1,408	1,242	2,060	1,915	1,907
70	Diesel	\$(000)	12	4	6	8	14	20	17	18	17	11	12	14	17	15	18	16	28	44	48
71	FPL/STAT	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
72	Oil/Steam	\$(000)	303	437	448	470	396	411	424	436	466	478	508	508	526	571	564	598	643	703	715
73	Cogen	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
74	Total Variable O & M Costs	\$(000)	3,555	3,325	3,585	3,390	3,725	5,622	5,836	7,816	8,342	7,604	8,181	8,564	10,086	10,440	11,196	10,967	14,396	14,304	14,790
Total Costs by Station Group:																					
75	CT	\$(000)	1,253	1,620	2,963	2,292	2,300	3,498	4,323	7,460	8,763	8,516	9,468	10,214	19,247	20,933	24,505	23,842	38,119	39,023	42,719
76	CC	\$(000)	5,577	10,063	9,092	8,014	8,411	17,274	18,403	28,182	31,363	29,444	33,077	36,226	40,447	42,406	45,636	45,735	58,555	59,184	62,676
77	Purchases (Non-FPL/FPC)	\$(000)	19,241	43,224	41,267	37,641	35,181	37,393	41,219	41,812	41,832	43,151	45,861	49,925	56,741	59,788	53,072	46,425	20,660	14,046	6,650
78	FPL - CLE (FR)	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
79	Nuclear	\$(000)	3,906	3,192	2,797	3,660	3,559	3,603	3,811	4,116	3,673	4,615	4,364	4,492	4,933	5,294	4,922	6,067	5,202	6,304	6,128
80	Coal	\$(000)	11,878	10,254	8,659	10,489	11,452	11,577	12,382	12,638	19,572	26,043	27,203	28,429	29,882	31,599	32,489	35,307	37,269	39,375	41,409
81	FPL - PR	\$(000)	2,631	2,506	1,742	1,546	1,659	1,726	3,772	4,067	4,352	2,925	5,639	7,326	8,492	11,945	17,215	23,941	31,028	36,883	43,927
82	FPC - PR	\$(000)	9,093	6,513	13,178	12,635	15,283	11,705	13,559	9,961	8,259	13,784	16,477	20,475	14,067	17,315	27,197	36,632	40,651	53,275	67,626
83	Gas/Steam	\$(000)	26,458	14,434	17,377	12,040	10,980	11,074	12,311	12,979	14,205	10,712	12,177	13,313	17,474	17,367	20,939	19,113	32,627	31,296	32,037
84	Diesel	\$(000)	213	75	125	148	233	320	290	320	310	226	247	300	375	330	398	365	631	979	1,062
85	FPL/STAT	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
86	Oil/Steam	\$(000)	4,036	5,623	6,211	5,725	4,886	5,302	5,689	6,105	6,801	7,320	8,103	8,459	9,390	10,220	10,119	10,773	11,593	12,687	13,193
87	Cogen	\$(000)	327	336	383	351	364	398	435	475	521	570	623	682	764	801	839	881	923	968	1,033
88	Subtotal Total Costs	\$(000)	84,613	97,840	103,794	94,561	94,308	103,870	116,194	128,115	139,651	147,315	163,239	179,841	202,012	217,998	237,331	249,081	277,258	294,020	318,480
89	Energy Not Served (ENS)	\$(000)	164	10	24	12	31	15	11	1	1	9	0	12	1	24	7	0	18	5	8
90	Dump Energy	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
91	Total Total Costs	\$(000)	84,777	97,850	103,818	94,573	94,339	103,885	116,205	128,116	139,652	147,315	163,239	179,853	202,013	218,022	237,338	249,081	277,276	294,025	318,488
Additional FMPA A & G																					
92	Additional RTU's	\$(000)	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35	35
93	RTU Operations/Maintenance	\$(000)	41	43	45	47	49	51	54	56	59	61	64	67	70	73	76	80	83	87	91
94	Miscellaneous A & G	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
95	Additional Staff	\$(000)	119	116	121	126	132	138	144	151	157	165	172	180	188	196	205	214	224	234	244
96	Total FMPA Add. A & G	\$(000)	186	194	201	208	216	224	233	242	251	261	271	282	293	304	316	329	342	356	370



Case 01 - IDO Project (Gas Network)
Service All Years
Independent Arrangement: IND01
IDO Arrangement : IDO01

FLORIDA MUNICIPAL POWER AGENCY
IDO Project Damage Study

IDO Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
PURCHASED CAPACITY COST SUMMARY																					
FPL Short Term - KEY:																					
97	Average Capacity	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
98	Average Unit Cost	(\$/kW-yr)	35.00	33.11	32.50	33.03	35.94	36.77	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
99	Cost	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FPL Long Term - KEY:																					
100	Average Capacity	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
101	Average Unit Cost	(\$/kW-yr)	0.00	0.00	0.00	0.00	0.00	118.34	124.44	149.24	153.88	158.26	171.42	192.15	210.87	245.48	257.42	271.70	294.91	312.55	336.18
102	Cost	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Homes and D - ARP:																					
103	Average Capacity	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
104	Average Unit Cost	(\$/kW-yr)	0.00	0.00	0.00	36.36	37.33	38.82	40.38	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
105	Cost	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FPL Partial Requirements:																					
Average Capacity:																					
106	- FPV	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
107	- JBH	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
108	- GCS	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
109	- CLE	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
110	- FMP	(MW)	14.6	15.0	15.0	16.2	18.8	19.4	20.8	22.0	22.0	22.0	23.8	27.9	34.1	41.7	50.8	63.1	73.3	81.1	89.8
111	- Total	(MW)	14.6	15.0	15.0	16.2	18.8	19.4	20.8	22.0	22.0	22.0	23.8	27.9	34.1	41.7	50.8	63.1	73.3	81.1	89.8
112	Average Unit Cost	(\$/kW-yr)	155.16	155.16	155.16	155.16	155.16	155.16	167.56	187.05	189.81	191.58	200.35	213.62	227.32	251.29	261.74	273.41	285.11	299.39	318.06
113	Cost	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
114	- ARP	\$(000)	2,265	2,327	2,327	2,514	2,917	3,010	3,485	4,115	4,176	4,215	4,768	5,960	7,752	10,479	13,296	17,252	20,899	24,281	28,562
FPC Partial Requirements:																					
115	Average Capacity	(MW)	47.3	50.4	82.8	91.3	122.8	85.8	98.4	70.2	54.6	74.8	88.6	100.4	68.3	78.0	101.2	122.3	102.5	122.7	153.4
116	Average Unit Cost	(\$/kW-yr)	93.84	88.19	88.19	88.19	88.19	98.52	116.79	125.75	133.43	139.60	155.19	182.23	182.72	196.05	195.37	201.20	200.60	208.32	215.78
117	Cost	\$(000)	4,439	4,445	7,302	8,052	10,830	8,453	11,492	8,828	7,285	10,442	13,750	18,296	12,480	15,292	19,771	24,607	20,562	26,602	33,101
UNIT FIXED COST SUMMARY																					
King 6/10 Combined Cycle:																					
118	Net Debt Service	\$(000)	0	0	0	0	0	0	0	3,338	3,338	3,338	3,338	3,338	3,338	3,338	3,338	3,338	3,338	3,338	3,338
119	Fixed O & M, A & G, Insurance	\$(000)	0	0	0	0	0	0	0	266	278	290	304	317	331	346	362	378	395	413	432
120	Total	\$(000)	0	0	0	0	0	0	0	3,604	3,616	3,628	3,642	3,655	3,669	3,684	3,700	3,716	3,733	3,751	3,770
Cane Island Combined Cycle #1:																					
Fixed Cost:																					
121	Net Debt Service	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
122	Fixed O & M, A & G, Insurance	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
123	OUC Transmission	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
124	Total	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Phase III Gas Transportation:																					
125	Average Capacity	(mmBtu/d)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
126	Average Unit Cost	(\$/mmBtu)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.73	0.75	0.76	0.78	0.80	0.82	0.82	0.82	0.82	0.83	0.84	0.84
127	Subtotal - Fixed Gas Trans.	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
128	Total Unit Fixed Costs	\$(000)	0	0	0	0	0	0	0	3,604	3,616	3,628	3,642	3,655	3,669	3,684	3,700	3,716	3,733	3,751	3,770

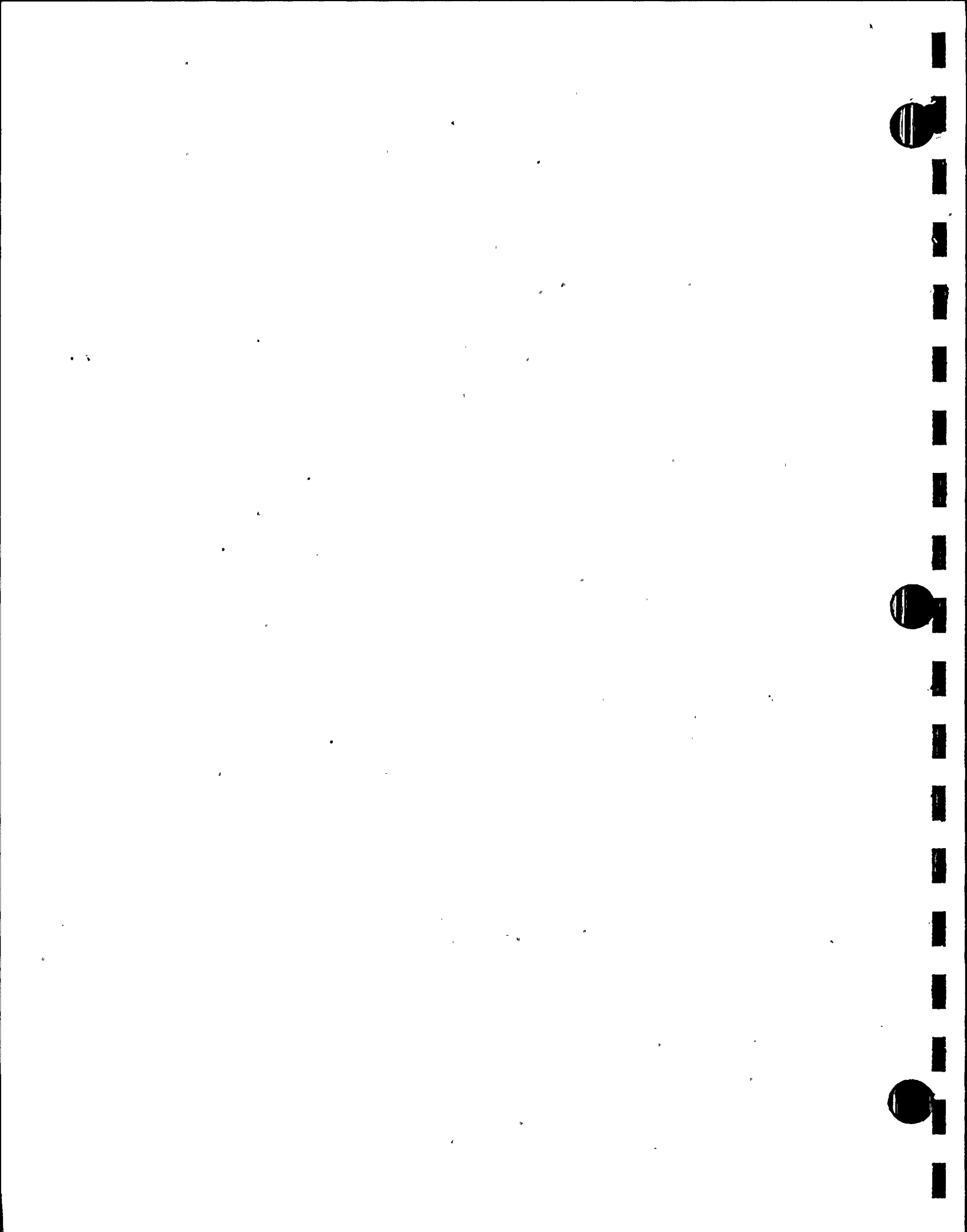


Case 01 - IDO Project Has Network
Service All Years
Independents Arrangement: IND01
IDO Arrangement: IDO01

FLORIDA MUNICIPAL POWER AGENCY
IDO Project Damage Study

IDO Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
FPL TRANSMISSION COST SUMMARY																					
Point-to-Point Service:																					
Average Capacity:																					
129	St. Lucie Project	(MW)	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3
130	Stanton/Tri-City Projects	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
131	Stanton II Project	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
132																					
All-Requirements Project TSA:																					
Annual:																					
133	- JBH	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
134	- GCS	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
135	- CLE	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
136	- Total	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Monthly:																					
137	- JBH	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
138	- GCS	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
139	- CLE	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
140	- Total	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
141	Excess	(MW)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
142	Total Average Capacity	(MW)	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3	\$2.3
143	Unit Cost	(\$/W-yr)	22.08	22.08	22.08	22.08	22.08	22.08	23.75	27.06	29.84	30.67	32.30	34.01	35.70	37.34	38.93	40.47	42.00	43.52	44.22
144	Total Cost of Point-to-Point	\$(000)	1,156	1,156	1,156	1,156	1,156	1,156	1,243	1,418	1,520	1,406	1,491	1,780	1,849	1,955	2,038	2,119	2,199	2,278	2,315
Network Service:																					
145	Average Billing Demand	(MW)	180.0	190.0	197.3	196.4	199.8	200.4	199.7	197.7	196.4	210.8	219.3	218.7	219.0	228.0	218.7	217.3	207.0	205.6	204.9
146	Unit Cost	(\$/W-yr)	22.08	22.08	22.08	22.08	22.08	22.08	23.75	27.06	29.84	30.67	32.30	34.01	35.70	37.34	38.93	40.47	42.00	43.52	44.22
147	Total Cost of Network Service	\$(000)	3,974	4,195	4,356	4,337	4,412	4,425	4,743	5,354	5,703	6,741	7,083	7,438	7,818	8,215	8,514	8,794	8,694	8,948	9,061



Case #1 - IDO Project Has Network
Service All Years
Independent Arrangement: IND01
IDO Arrangement : IDO01

FLORIDA MUNICIPAL POWER AGENCY
IDO Project Damage Study

IDO Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
TRANSMISSION LOSSES SUMMARY																					
Stanton/Tri-City Projects:																					
Deliveries to:																					
148	- FPV	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
149	- LWU	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
150	- FKEC	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
151	- Total	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
152	Transmission Losses	(%)	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%
153	Transmission Losses	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
154	Energy Cost - Stanton	(\$/MWh)	18.69	18.50	19.30	18.95	18.90	19.56	20.27	20.96	21.81	22.59	23.54	24.36	25.57	26.92	28.19	29.65	31.02	32.59	34.17
155	Total Cost of Stanton Losses	\$(000)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
All - Requirements Project:																					
Deliveries to:																					
156	- FPL Net to JBH	(GWh)	358.1	401.3	421.0	428.4	446.3	467.4	477.4	494.1	516.4	525.0	542.6	563.4	572.1	590.0	609.6	616.4	643.0	652.2	668.7
157	- FPL Net to CLE	(GWh)	72.6	77.4	79.8	78.4	77.8	80.6	79.7	80.0	81.7	80.3	81.9	84.0	84.3	85.8	86.6	87.2	90.0	89.2	89.9
158	- FPL Net to GCS	(GWh)	74.4	77.3	82.6	86.8	91.0	94.8	97.7	101.4	105.8	107.9	111.3	115.7	112.7	121.3	125.2	122.1	132.1	134.4	137.7
159	Total Deliveries	(GWh)	505.1	556.0	583.4	593.6	615.1	642.8	654.8	675.5	703.9	713.2	735.8	763.1	774.1	797.1	823.4	830.7	865.1	875.8	896.3
160	PR Deliveries Included	(GWh)	102.1	101.6	63.6	57.1	68.7	68.3	141.7	142.9	144.2	90.6	170.5	203.6	230.2	294.0	393.2	515.7	630.5	705.4	785.9
161	Net Deliveries	(GWh)	403.0	454.4	519.8	536.5	546.4	574.5	513.1	532.6	559.7	622.6	565.3	559.5	543.9	503.1	430.2	315.0	234.6	170.4	110.4
162	Transmission Losses	(%)	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%
163	Transmission Losses	(GWh)	15.9	17.9	20.5	21.2	21.6	22.7	20.3	21.0	22.1	24.6	22.3	22.1	21.5	19.9	17.0	12.4	9.3	6.7	4.4
164	Incremental Unit Cost - ARP (Avg)	(\$/MWh)	29.26	25.56	24.90	22.91	20.99	22.33	24.64	27.25	29.70	30.24	33.86	36.64	39.20	41.63	45.63	48.77	55.42	58.44	62.01
165	Transmission Losses	\$(000)	466	459	511	486	453	507	499	573	657	744	756	810	842	827	775	607	514	393	270
Deliveries to:																					
166	- FPL Net to FPV	(GWh)	150.2	408.1	375.8	396.0	378.9	229.8	242.4	158.3	158.2	256.7	241.8	259.9	223.4	253.3	255.5	318.0	189.5	245.4	278.3
167	- FPL Net to LWU	(GWh)	31.5	70.2	102.4	97.9	116.6	107.2	108.2	102.1	111.4	128.0	134.1	147.7	141.0	151.2	156.6	151.6	155.4	149.2	155.8
168	- FPL Net to FKEC	(GWh)	338.7	341.5	359.5	374.8	428.0	450.3	468.5	486.7	498.3	515.4	527.1	545.4	559.6	570.1	588.6	601.6	609.1	616.1	631.9
169	Transmission Losses	(%)	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%
170	Transmission Losses	(GWh)	29.6	32.4	33.1	34.3	36.5	31.1	32.0	29.5	30.3	35.6	35.7	37.6	36.5	38.5	39.5	42.3	37.7	39.9	42.1
171	Incremental Unit Cost - ARP (Peak)	(\$/MWh)	31.33	28.24	27.39	25.25	22.84	23.87	26.51	29.55	32.43	32.99	37.84	40.15	42.53	45.54	49.47	52.47	58.89	62.23	65.87
172	Transmission Losses	\$(000)	644	914	906	866	833	742	849	872	984	1,173	1,321	1,511	1,552	1,753	1,955	2,220	2,219	2,484	2,774
173	Total Cost of ARP Losses	\$(000)	1,110	1,373	1,418	1,352	1,286	1,249	1,349	1,445	1,640	1,917	2,077	2,321	2,394	2,580	2,731	2,827	2,733	2,878	3,044
ARG Resources to ARP:																					
Deliveries from:																					
174	- FPV to ARP	(GWh)	131.3	61.6	100.0	50.2	24.6	100.9	87.9	223.6	216.7	116.2	118.4	99.4	147.6	121.3	130.2	97.3	210.5	164.9	145.7
175	- LWU to ARP	(GWh)	101.6	53.2	30.6	38.8	19.0	32.7	29.0	38.7	27.7	22.9	19.7	20.8	11.3	11.2	8.4	11.9	8.8	8.4	9.3
176	- FKEC to ARP	(GWh)	2.2	1.3	0.3	0.2	0.3	0.1	0.0	0.1	0.2	0.2	0.1	0.0	0.0	0.0	0.1	0.0	0.1	0.1	0.1
177	Transmission Losses	(%)	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%	1.00%
Transmission Losses:																					
178	- FPV to ARP	(GWh)	1.3	0.6	1.1	0.5	0.2	1.0	0.9	2.2	2.2	1.2	1.2	1.0	1.5	1.2	1.3	1.0	2.1	1.6	1.5
179	- LWU to ARP	(GWh)	1.0	0.5	0.3	0.4	0.2	0.3	0.3	0.4	0.3	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
180	- FKEC to ARP	(GWh)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Incremental Unit Cost:																					
181	- FPV to ARP	(\$/MWh)	32.32	29.74	28.09	26.19	24.05	25.25	28.28	30.73	34.02	34.00	38.64	42.28	44.91	48.20	52.10	55.10	61.87	65.53	69.23
182	- LWU to ARP	(\$/MWh)	32.10	29.71	28.63	26.85	25.04	25.52	28.57	31.02	34.59	35.21	40.37	44.77	54.44	58.88	62.79	64.23	68.43	72.76	75.88
183	- FKEC to ARP	(\$/MWh)	35.09	34.00	36.59	36.67	30.73	28.57	31.25	34.30	37.90	37.43	42.75	47.55	50.32	54.12	58.38	61.08	65.96	69.63	73.72
Total Cost of ARG Losses:																					
184	- FPV to ARP	\$(000)	42	18	30	13	6	25	25	69	74	40	46	42	66	58	68	54	130	108	101
185	- LWU to ARP	\$(000)	33	16	9	10	5	8	8	12	10	8	8	9	6	7	5	6	6	6	7
186	- FKEC to ARP	\$(000)	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
187	- Total	\$(000)	76	35	39	24	11	34	33	81	83	48	54	51	72	65	73	61	136	114	108



Case 01 - IDO Project Has Network
Service All Years
Independent Arrangement: IND01
IDO Arrangement : IDO01

FLORIDA MUNICIPAL POWER AGENCY
IDO Project Damage Study

IDO Arrangement

Ln	Description	Units	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
TRANSMISSION LOSSES SUMMARY																					
(con'd)																					
ARW Resources to ARP:																					
Deliveries from:																					
188	- ARW to ARP	(GWh)	0.4	0.1	3.5	6.2	4.4	0.1	0.3	0.0	0.0	0.0	0.1	0.4	0.0	0.0	0.4	2.2	2.1	8.7	18.1
189	Transmission Losses	(%)	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%	3.63%
190	Transmission Losses	(GWh)	0.0	0.0	0.1	0.2	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.1	0.3	0.7
191	Incremental Unit Cost	(\$/MWh)	23.11	25.96	25.69	23.73	23.83	25.10	27.37	28.81	31.32	32.09	35.03	37.90	40.86	43.60	45.63	47.93	51.01	53.50	56.84
192	Total Cost of ARW Losses	\$(000)	0	0	3	5	4	0	0	0	0	0	0	1	0	0	1	4	4	17	37
FKEC to KEY:																					
193	Average Transmitted Capacity	(MW)	50.00	50.00	50.00	50.00	63.90	71.90	77.50	78.70	83.20	88.60	90.10	93.80	95.40	96.60	99.40	101.50	103.50	105.00	107.00
194	Capacity Losses	(%)	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%	4.90%
195	Capacity Losses	(MW)	2.45	2.45	2.45	2.45	3.13	3.52	3.80	3.86	4.08	4.34	4.41	4.60	4.67	4.73	4.87	4.97	5.07	5.15	5.24
196	FPL PR Capacity Unit Cost	(\$kW-yr)	155.16	155.16	155.16	155.16	155.16	155.16	167.56	187.05	189.81	191.58	200.35	213.62	227.32	251.29	261.74	273.41	285.11	299.39	318.06
197	Cost of Losses - Capacity	\$(000)	380	380	380	380	486	547	636	721	774	832	885	982	1,063	1,189	1,275	1,360	1,446	1,540	1,648
198	Net Transmitted Energy	(GWh)	338.7	341.5	359.5	374.8	428.0	450.3	468.5	486.7	498.3	515.4	527.1	545.4	559.6	570.1	588.6	601.6	609.1	616.1	631.9
199	Energy Losses	(%)	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%	3.30%
200	Energy Losses	(GWh)	11.2	11.3	11.9	12.4	14.1	14.9	15.5	16.1	16.4	17.0	17.4	18.0	18.5	18.8	19.4	19.9	20.1	20.3	20.9
201	FPL PR Energy Unit Cost	(\$/MWh)	25.77	24.67	27.39	27.09	24.15	25.26	26.61	28.45	30.17	32.30	33.07	35.98	37.75	40.63	43.78	46.42	49.21	52.29	55.89
202	Cost of Losses - Energy	\$(000)	288	278	325	335	341	375	411	457	496	549	575	648	697	764	850	922	989	1,063	1,165
203	Total Cost of FKEC Losses	\$(000)	668	658	705	715	827	922	1,048	1,178	1,270	1,381	1,460	1,629	1,760	1,954	2,125	2,281	2,435	2,603	2,833
204	TOTAL COST OF LOSSES	\$(000)	1,854	2,066	2,165	2,096	2,128	2,205	2,430	2,704	2,994	3,345	3,591	4,002	4,227	4,599	4,930	5,173	5,308	5,612	6,022
FPC WHEELING COSTS																					
205	Deliveries ARW to ARP	GWh	0.4	0.1	3.5	6.2	4.4	0.1	0.3	0.0	0.0	0.0	0.1	0.4	0.0	0.0	0.4	2.2	2.1	8.7	18.1
206	FPC Wheeling Rate	(\$/MWh)	1.40	1.35	1.37	1.37	1.47	1.83	2.11	2.57	3.10	3.44	3.56	3.65	3.74	3.80	3.87	3.96	4.04	4.12	4.21
207	FPC Wheeling Cost	\$(000)	1	0	5	8	6	0	1	0	0	0	0	1	0	0	2	9	8	36	76



FACT SHEET

FMPA Defined

- A joint action agency formed in 1978.
- 27 municipal electric systems are members...potential for 33.
- Developed as a project oriented agency...members may choose to participate in more than one project, but each of the Agency's four projects are independent.

FMPA Projects

1. St. Lucie Project

- 8.806% (75 MW) ownership interest in FPL's St. Lucie Unit No. 2 nuclear power plant.
- Original issue \$290,000,000 long-term bonds in April 1983.
Net interest: 9.42%
- Refunding issue \$284,810,000 long-term bonds in March 1986.
Net interest: 7.277%
- 16 participants.

- The next three projects have an ownership interest in the Stanton Energy Center Unit No. 1. Combined, the projects own 26.625% (110.5 MW) of the coal-fired plant. Generating members participate in the first two projects. Non-generating members participate in the last.

2. Stanton Project

- 14.8193% (61.5 MW) ownership interest in Unit No. 1.
- Original issue \$125,000,000 variable rate bonds in August 1984. Net interest: 5.324%
- Crossover refunding \$96,100,000 invested in a two-year FannieMae put bond at 8.625% in December 1985.
Net interest: 6.375%
- 5 participants: Fort Pierce (15 MW), Homestead (15 MW), Lake Worth (10 MW), Starke (1.5 MW), and Vero Beach (20 MW).

3. Tri-City Project

- 5.3012% (22 MW) ownership interest in Unit No. 1.
- Original issue \$46,500,000 long-term bonds in July 1985.
Net interest: 9.04%
- Refunding issue \$47,675,000 long-term bonds in April 1986
Net interest: 7.172%
- 3 participants: Fort Pierce (5 MW), Homestead (5 MW), and Key West (12 MW).



4. All-Requirements Project

- 6.506% (27 MW) ownership interest in Unit No. 1.
- Original issue \$55,000,000 long-term bonds in June 1985
 Net interest: 9.065%
 \$30,000,000 variable rate bonds in June 1985
 Net interest: 5.004%
- Refunding issue long-term bonds only
 \$59,290,000 long-term bonds January 1987
 Net interest: 6.68%
- Contracts for additional power purchases -- 325 MW.
- Supplies all power requirements, including load regulation,
 to 5 participants: Bushnell, Green Cove Springs,
 Jacksonville Beach, Leesburg, and Ocala.
- Began operation May 1, 1986.
- Savings through Sept. 30, 1986, \$6.2 million, or 19% less
 than the participants would have paid if they remained
 with their previous suppliers.

Future Projects

- Pooled Loan Project
 - Agency borrow funds to loan to members for capital improvement projects.
 - 15 members expressed interest totaling \$95,400,000.
 - House and Senate Conference Committee on tax legislation announcement at 3 p.m. on July 17 precluded FMFA from closing at 10 a.m. on July 18.
 - Will request that the Florida Congressional Delegation pursue inclusion of Pooled Loan Project in a technical corrections bill to the 1986 Tax Reform Act.
- Self-insurance Pool Project
 - Inability to find directors and officers and general liability insurance at affordable rates has caused members to request that the Agency investigate a self-insurance pool.
 - The Wyatt Company has been retained to perform an actuarial study that will evaluate the feasibility of a "captive" insurance company or other alternatives to provide D&O plus general liability for FMFA and its members.
 - Insurance surveys sent to members...report expected May 1.
- Long Range Planning Project
 - Study of demand projections and supply options for each FMFA city through 1997 to determine supply excesses or deficiencies by load characteristics.



The Bottom Line

- 1986 was a landmark year.

1. FMFA became a full service operating utility with the implementation of the All-Requirements Project. This project provides the nucleus for other members to join.
2. We reduced our low debt service costs even further.
3. With commercial operation of the Stanton plant, the Agency and its members will have a good diversification of generating resources.



MINUTES
FMFA EXECUTIVE COMMITTEE MEETING
MARCH 23, 1990
GOLD KEY INN
7100 SOUTH ORANGE BLOSSOM TRAIL
ORLANDO, FLORIDA

COMMITTEE
MEMBERS
PRESENT

Ted Biggs	Green Cove Springs
Leo L. Carey	Key West
John C. L'Engle	Lake Worth
John V. Little	Vero Beach
Keith Roberts	Jacksonville Beach
Vince Ruano	Bushnell
Harry M. Schindehette	Fort Pierce
Dean G. Shaw	Ocala
Joseph M. Tardugno	Leesburg
B.W. "Pete" Wait III	Tallahassee
James C. Welsh	Kissimmee

OTHERS PRESENT

C.F. Blair, Clewiston
Michael Brabant, Goldman Sachs
Fred M. Bryant, Moore, Williams, Bryant, Peebles &
Gautier, P.A.
Joe Calhoun, Sebring
William T. Cates, Key West
John S. Dey, Evensen Dodge, Inc.
Craig Dunlap, Evensen Dodge, Inc.
Paul H. Elwing, Lakeland
Shannon M. Gaffney, Merrill Lynch
Tom Gibian, Goldman Sachs
Rex W. Jerrim, Homestead
Kristen Johanson, Smith Barney, Harris Upham and
Company, Inc.
R. Ronald Hagen, New Smyrna Beach
Al Malmsjo, R.W. Beck
Jim O'Connor, Bartow
John H. Robinson, Key West
Craig Scully, Mudge Rose Guthrie Alexander & Ferdon
C.W. Smith, Smith & Gillespie
Bill Weldon, Starke
Olin P. Wright, Homestead

STAFF PRESENT

Calvin R. Henze, General Manager
Melinda S. Short, Controller
Robert C. Williams, Director of Engineering
Joseph J. Krupar, Operations Manager
Mark McCain, Communication Specialist
Donald E. Sells, Nuclear Specialist
Sandy Lapiska, Secretary



engineer, Smith & Gillespie, and a decision from the City Council make come sometime in April.

The efforts to add the City of Clewiston to All-Requirements are proceeding on several fronts, Mr. Williams said. He directed the Executive Committee's attention to a memorandum included in the Agenda Package which detailed the current project plan and the schedule for completion. Staff has targeted completion of all agreements necessary to commit FMPA funds by May 25, 1990. It is expected that an FMPA Board of Directors meeting may be required for approval of the final agreements.

INTEGRATED DISPATCH & OPERATIONS PROJECT (IDO):
Mr. Henze said a recent meeting with Florida Power & Light (FPL) did not prove successful in obtaining more detailed information about FPL's transmission analysis which showed that implementing IDO would overload some FPL transmission lines.

Lacking FPL's assumptions, the FMPA staff must run its own load flow study with its own assumptions. The Agency now has this capability since it bought a load flow computer program like FPL's last January.

Mr. Henze said the next meeting with FPL concerning IDO is confirmed for May 1, 2 and 3. Meetings are tentatively scheduled for May 21, 22 and 23. By the May Executive Committee meeting, the Agency should have a better idea where we stand relative to implementing IDO, he said.

JOINT OWNERS' OVERSIGHT PROJECT:

Mr. Henze reported that in mid-March the staff began auditing cost allocations from the Stanton Energy Center Unit 1 to the three FMPA projects that have an ownership interest in this plant, as well as billings to Kissimmee Utility Authority which also owns part of Unit 1. The audit is expected to take approximately six weeks.

OLD BUSINESS:

Though it was not on the agenda, Chairman Shaw said there was one item of Old Business. In December 1989, the Executive Committee authorized the Agency staff to negotiate with National Australia Bank and Bank of America who together submitted a bid to provide three letters of credit for FMPA. Subsequently, the two banks withdrew their offer.

RESCIND STAFF
AUTHORIZATION TO
NEGOTIATE WITH
NATIONAL
AUSTRALIA BANK &
BANK OF AMERICA

