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GODY,A.T. Office of Nuclear Reactor Regulation, Director (Post 870411)

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SUBJECT: Responds to 941205 ltr re an update on status of certain proceedings involving util before FERC & courts.

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January 3, 1995

Mr. Anthony T. Gody
Chief, Inspection Program Branch
Directorate for Inspection and Support Programs
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

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

Dear Mr. Gody:

This responds to a letter to you dated December 5, 1994, from Robert A. Jablon and Bonnie S. Blair, attorneys for the Florida Municipal Power Agency ("FMPA"). The letter states that it was written in response to the request of a member of your staff for an update on the status of certain proceedings involving Florida Power & Light Company ("FPL") before the Federal Energy Regulatory Commission ("FERC") and the courts.

FMPA's letter encourages an inaccurate impression about the status of matters before the FERC. As described below, "network transmission service" is now indisputably available to FMPA under a rate schedule on file with the FERC. FMPA, however, has declined to commence service under that schedule, because it disagrees with the rates ordered by the FERC. There is no good reason for the Nuclear Regulatory Commission to inject itself into a rate issue that is properly and fully before the FERC. Accordingly, FMPA's gratuitous request for enforcement action should be denied.

FMPA is unhappy about the rates and related terms and conditions of transmission service that have been determined by

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the FERC for its transmission service. FMMPA was unhappy under the FERC's prior pricing policies. See Wisconsin Elec. Power Co., 46 FERC ¶ 61,019, reh'g denied, 48 FERC ¶ 61,247 (1989). And, it appears to be equally unhappy about the network transmission service pricing standard adopted by the FERC in a case initiated by FMMPA itself against FPL in 1993 (FERC Docket No. TX93-4 and EL93-51). By any other name, a rate dispute is a rate dispute.

FMMPA's letter misleads the NRC with its statement that FPL "is not selling network transmission service to FMMPA." The service, with "network" pricing as determined by the FERC, is available under a rate schedule submitted by FPL in accordance with the FERC's order. Thus, it is more accurate to say that FMMPA is not buying network transmission service. FMMPA does not like the price and is awaiting the FERC's action on its request for rehearing. It is free to do so. It is not at liberty to convert its reluctance to purchase into a refusal to sell. FMMPA suggests that both it and FPL are equally dissatisfied with the FERC's orders. As anyone who follows the FERC's decisions knows, FPL's basic pricing methodology was approved by the FERC; FMMPA's was soundly rejected (see both the FERC order in Docket No. TX93-4-000 at 67 FERC ¶ 61,167 (1994), and the attached news story on the FERC meeting where the order was voted upon).

The simple fact, as the FERC has recognized, is that FMMPA wants a free ride. It first proposed to FPL and then to the FERC that it receive network transmission service for all of its loads and resources, but pay only about sixty percent of its allocable share of FPL's transmission costs. The FERC found this to be "flawed", holding, instead, that if "FMMPA wants to be able to use the transmission system exactly as freely as does Florida Power, it must pay a rate that reflects that equality." 67 FERC at 61,482. Then, under the guise of protesting the compliance filing made by FPL at the FERC, FMMPA suggested, based on a strained interpretation of a footnote in the FERC's order, that it was entitled to the service for nothing.

A United States District Court in Florida had no difficulty determining, based largely on FMMPA's own statements, that FMMPA's complaint was with FPL's FERC-filed rates, and that rate issues were within the exclusive province of the FERC. That ruling, granting FPL's motion for summary judgment, as well as the question whether FMMPA should be sanctioned for abusive discovery behavior, is pending in the United States Court of Appeals for the Eleventh Circuit. FMMPA now seeks proceedings in yet another forum to pursue the same fanciful argument.

The FERC has issued a final order granting FMMPA the right to network transmission service on terms and conditions that FERC found to be just and reasonable. That should put to rest this whimsical request for enforcement of the St. Lucie Unit No. 2 license conditions. Assuming, without conceding, that the NRC license conditions contemplate that FPL provide "network"



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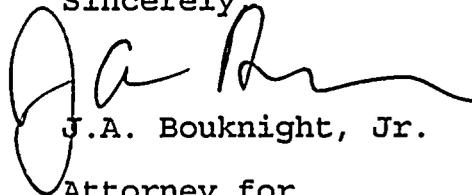
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transmission service to FMPA, this service is now available to FMPA any day that it chooses to start receiving it. There is no reason for this Commission to expend its resources second-guessing the FERC's rate determination, a subject which this Commission has repeatedly recognized to be within the exclusive jurisdiction and expertise of the FERC. ^{1/}

The incessant forum-shopping that has become FMPA's trademark imposes gratuitous, expensive and wasteful burdens on every agency within the sweep of FMPA's imagination. It should not be countenanced, let alone encouraged. FMPA's petition for enforcement should be rejected forthwith without the expenditure of any more of this Commission's or FPL's resources.

Sincerely,



J.A. Bouknight, Jr.

Attorney for
Florida Power & Light Company

cc: Joseph Rutberg, Esquire
Robert A. Jablon, Esquire

^{1/} See Kansas Gas and Elec. Co. and Kansas City Power and Light Co., 1 N.R.C. 415 (Atomic Safety and Licensing Board 1975) ("It is unreasonable to require this Commission to frame detailed rate and interconnection provisions, dealing with relatively minute specifics, for the 40-year period to be covered by the proposed license." . . . Clearly the Federal Power Commission has the requisite jurisdiction and expertise to resolve the issues of fairness of the instant transmission rates and rate schedule. Comity between sister commissions, as well as considerations of avoiding duplication of effort, would indicate that the pending FPC proceedings provide an adequate forum") See also Louisiana Power and Light Co., 8 A.E.C. 718 (Atomic Safety and Licensing Bd. 1974) ("supervision over rates is the particular province of the Federal Power Commission and the [Licensing] Board is neither qualified nor authorized to pass on the appropriateness of transmission rates").

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SOUTHEAST POWER REPORT
MAY 20, 1994

**FIRST FERC SECTION 211 WHEELING ORDER
GREETED POSITIVELY BY FP&L, MUNI GROUP**

Both Florida Power & Light and the Florida Municipal Power Agency said last week they are pleased with the final decision reached by the Federal Energy Regulatory Commission in a key case involving network transmission access and how much a utility can charge for premium transmission service (TX93-4).

The case is the first in which FERC has ordered a utility to provide comprehensive and flexible network service. And after FP&L failed to agree on the price for the FERC-order service, it also became the first case in which the commission ordered wheeling and set the terms and conditions for the service under Section 211 of the Federal Power Act (TX-93-4 and EL93-51).

FERC granted FMPA's request that it get transmission service that provides it with essentially the same use of the grid that FP&L itself enjoys. On the other hand, FERC sided with FP&L on the issue of how to price such service.

FP&L wanted the munis to pay based on their total load of about 450 MW, arguing that because the munis wanted to use the network to integrate their load, they should pay for service based on the amount of that load—the same way FP&L calculates its transmission costs for native load customers.

But FMPA said it does not need 450 MW of transmission service and wants to pay based on its use of the system, which it expects would amount to no more than about 240 MW at any one time.

Said commissioner Donald Santa: "The first moral of this

story is be careful what you ask for, you may have to pay for it."

An FP&L spokeswoman said the utility was quite pleased with the decision and felt that FERC had decided the pricing issue fairly.

FMPA also said it felt the decision is a fair one. "We are very pleased that this matter has been decided so equitably," a spokesman said. "Now, we can move on to implement that network service, which will allow us to achieve greater operating efficiency and, thus, save money for electric customers."

The FMPA spokesman noted it will receive credit for its and its members existing transmission facilities. He added FMPA had received the access it sought, while FP&L received the price it wanted, "so a bargain is struck."

The order said the price of the service will be determined on a load-ratio share basis, with the munis paying based on their share of total load, which equals about 3%, compared to FP&L's 97%. However, a FERC staffer noted, the load-ratio share is "not the be-all and end-all"—other formulas may also be acceptable.

Staffers also noted that the order establishes how FERC will "mesh" Sections 211 and 205 of the Federal Power Act. FP&L was ordered to provide the service under Section 211; it will file the rates to provide the service, however, under Section 205. Any future revisions to the rates for the service must be filed under 205, with one exception: if FP&L proposes to cease providing all or any part of the service.

Staffers also noted that the order clarifies a provision under Section 211 that prohibits FERC from ordering wheeling when it would mean the customer would use the wheeling to replace power it is under contract to buy. FERC said parties under contract for their power requirements are free to request an order, and FERC can issue an order, as long as order is not effective until the end of the existing contract.

That clarification means third parties are free to line up alternative suppliers and get the necessary wheeling order while still under contract to buy their power from their current supplier.

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LEVEL 1 - 5 OF 14 STORIES

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FORTNIGHTLY

June 15, 1994

SECTION: Vol. 132 No. 12 INSIDE WASHINGTON; Pg. 16

LENGTH: 384 words

HEADLINE: Florida Network Service Order Is Final

BYLINE: Inside Washington articles were written by Lori A. Burkhart, an associate legal editor of the FORTNIGHTLY.

BODY:

The Federal Energy Regulatory Commission (FERC) has issued its first final order requiring "network" transmission service under section 211 of the Federal Power Act. The order sets the price for transmission service provided by Florida Power & Light Co. (FPL) for Florida Municipal Power Agency (FMPA) (Docket Nos. TX93-4-000, EL93-51-000), based on FMPA's share of FPL's peak transmission load.

The FERC had issued a proposed order last October 17. That order required FPL to provide network transmission service, but offered only general pricing guidance, leaving the parties to negotiate specific rates, terms, and conditions of service. The parties failed to agree. The final order, issued May 11, notes that the parties agree on the basic principle of equal access to FPL's transmission system, but disagree on how to share the costs.

FMPA said it needed only 240 MW of firm transmission service, and that the costs should reflect peaking demand on its own system. The municipal proposed a monthly rate per kilowatt of network service that would equal the average embedded annual costs of FPL's transmission system, divided by FMPA's annual peak load on the system.

FPL proposed pricing based on a "load-share" basis, which called for FMPA to pay a share of total transmission costs, proportionate to FMPA's customer load on the network. Specifically, FPL proposed recovering its fixed costs through a monthly charge that reflects the ratio of FMPA's peak network service load coincident with FPL's system peak load. The primary component of the monthly charge for network service would be a fixed investment charge equal to the costs of the FPL transmission system, multiplied by the ratio of FMPA's network load to FPL's total load.

The FERC adopted FPL's proposal, with some modification, finding it logical for each to pay based on its contribution to the system loads to be served by the transmission network.

The FERC also ruled that if FMPA wants to export power to other utilities from network resources located in FMPA's control area (where if FPL were making the sale it would charge itself and credit the revenue back to its transmission



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system), then revenues should be shared by FPL and FMPA for the benefit of their native loads on the same basis as the costs.

LANGUAGE: ENGLISH