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SUBJECT: "Petition of Florida Municipal Power Agency for Declaration & Enforcement of Antitrust Licensing Conditions & to Impose Requirements by Order." W/Vols I & II of apps to petition.

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Antitrust

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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

PETITION OF FLORIDA MUNICIPAL POWER AGENCY
FOR DECLARATION AND ENFORCEMENT
OF ANTITRUST LICENSING CONDITIONS
AND TO IMPOSE REQUIREMENTS BY ORDER

Pursuant to 10 C.F.R. § 2.206, Florida Municipal Power Agency ("FMPA") requests several actions to enforce the Antitrust Conditions attached to Florida Power & Light Company's St. Lucie Plant Unit 2 nuclear license. 1/ As demonstrated below, the Antitrust Conditions require FPL to transmit power "among" the various sections of FMPA on a network basis, i.e. without imposing multiple charges for transmission among multiple receipt and delivery points, and FPL is refusing to do so. This refusal flouts FPL's express obligations under the Antitrust Conditions and sabotages the development of competitive bulk power markets, thereby injuring the public interest.

1/ The Antitrust Conditions were added to the St. Lucie Plant, Unit 2 license by Amendment No. 3, dated May 26, 1981, Construction Permit No. CPPR-144, in Docket No. 50-389. They were continued in the St. Lucie Plant, Unit 2 Facility Operating License, No. NPF-16, Appendix C, dated April 6, 1983. Additional antitrust license requirements appear at Appendix D to the Facility Operating License.

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I. FACTS THAT CONSTITUTE THE BASIS FOR THE REQUEST

A. Background 2/

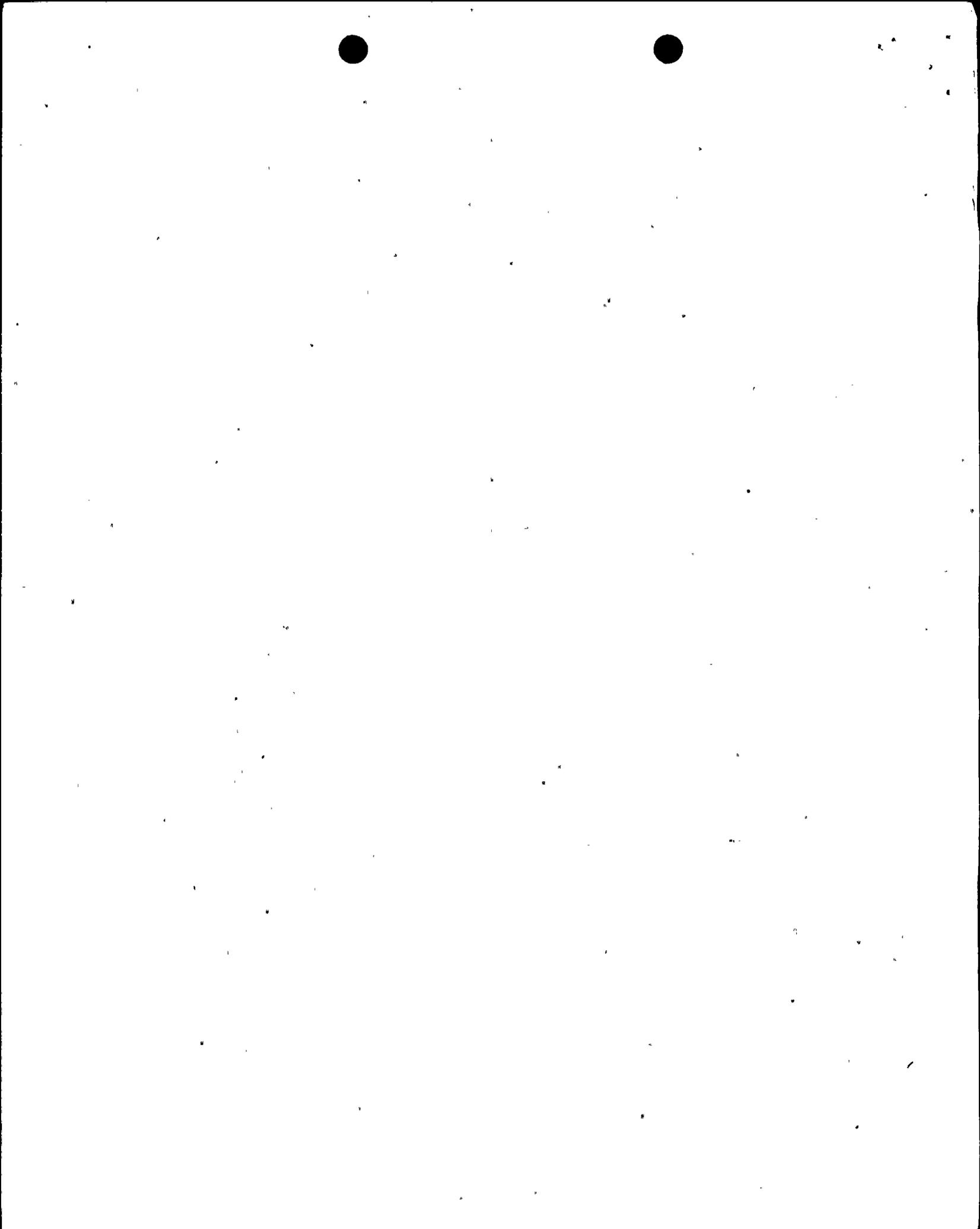
During the 1970's and early 1980's, a number of Florida cities brought legal actions against FPL, which included the filing of antitrust and other claims in the Southern District of Florida, 3/ and petitions and interventions before this Commission and its predecessor, the Atomic Energy Commission. Before this Commission, the Justice Department and the NRC staff, as well as the Florida cities, sought to attach antitrust conditions to FPL's St. Lucie nuclear license. Florida Power & Light Company (St. Lucie Plant, Unit No. 2), NRC Docket No. 50-389A ("St. Lucie").

FPL, the NRC Staff, and the DOJ entered into a settlement agreement to resolve their differences in the St. Lucie proceeding. 4/ FPL agreed to antitrust license conditions ("Antitrust Conditions," Appendix A-13), which "assure the Cities

2/ Additional details of the following history are supplied in the April 29, 1993 affidavits of Robert Bathen (Appendix A-11) and Nicholas Guarriello (Appendix A-12).

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

4/ See September 12, 1980 Joint Motion of Department of Justice, NRC Staff, and Applicant to Approve and Authorize Implementation of Settlement Agreement, St. Lucie, and appended Stipulation (Appendix A-14).



that FPL will provide transmission service in accordance with the license conditions during the operating life of St. Lucie Unit No. 2" and "set basic rules that FPL must follow in providing transmission service." ^{5/} These "basic rules" include the obligation to transmit "between two or among more than two" receipt and delivery points of "neighboring entities," including FMPA. The Conditions also require FPL to make filings with the Federal Energy Regulatory Commission ("FERC") as needed to implement the Conditions' bulk power supply policies, and in particular, to file transmission service agreements in the event of a dispute with regard to the terms of requested service.

The meaning of the transmission "among" requirement to which FPL agreed had been unambiguously established six years earlier by the Atomic Energy Commission. The AEC (acting through its Atomic Safety and Licensing Board and Appeal Board) defined transmission "among" to require "transmission from any member of a coordinating group to any other member of such group," where "[f]or each coordinating group of entities there shall be a single transmission charge." In the Matter of Louisiana Power and Light Company (Waterford Steam Generating Station Unit No. 3), Docket No. 50-382A, 8 AEC 718, 733, 744 (Atomic Safety and Licensing Bd. 1974), aff'd, 1 NRC 45 (Appeal Bd. 1975) ("LP&L"). The AEC insisted on the "among" requirement because it found that

^{5/} August 7, 1981 Response of Florida Power & Light Company to Cities' Motion to Establish Procedures, for a Declaration of Situation Inconsistent with the Antitrust Laws and for Related Relief at 72, St. Lucie (Appendix A-15).

the multiplicity of transmission charges inherent in point-to-point rates would not permit coordinated operations and development and therefore would not suffice to overcome a situation inconsistent with the antitrust laws. Id. at 733-34. The AEC explained that the purpose of this "among" requirement "is to prevent multiple transmission charges for transmission of a contracted transmission entitlement among a coordinating group of two or more entities." Id. at 737.

On February 11, 1982, March 3, 1982, and April 20, 1982, FPL entered settlement agreements with the various Florida cities. These settlements incorporate and build on the Antitrust Conditions. 6/ As envisioned in the settlement, 7/ FMPA began to develop into a functioning joint action agency providing power supply to participating members. To this end, FMPA in 1983 purchased a share of the St. Lucie nuclear power plant. In 1985

6/ For example, Section 13(a) of the March 3, 1982 Settlement Agreement (Appendix A-16) expressly provides that Florida cities will inform the NRC that "they accept the settlement License Conditions" (emphasis supplied). Further, the agreed-upon covenant not to sue (Appendix A-16) barred the cities from maintaining, among other things, an action in any court or agency forum based on matters alleged in the settled district court antitrust action, "except for enforcement of the Settlement Agreement...and the NRC License Conditions for St. Lucie Unit No. 2." The Antitrust Conditions are attached as Appendix A-13; relevant portions of other key documents memorializing the comprehensive FPL-Florida cities settlement agreement are attached as Appendix A-16. See Appendix A-17 for a list of other documents memorializing the comprehensive settlement but not included in Appendix A-16 to avoid unnecessary copying.

7/ As part of the comprehensive settlement, FPL agreed to support Florida legislation enabling FMPA to issue revenue bonds. See Appendix A-16.



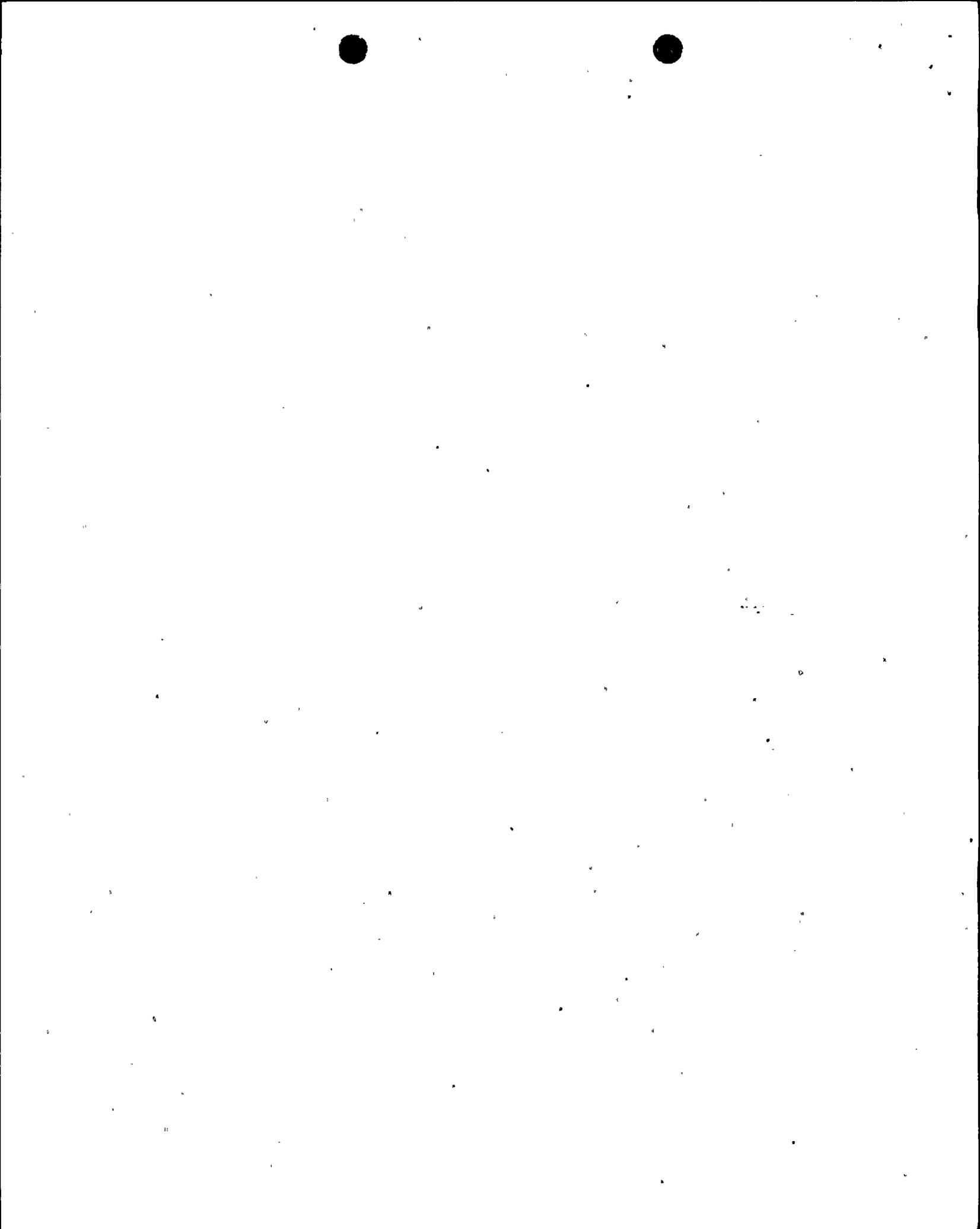
and 1986, FMPA purchased unit power shares from the Stanton coal plant. In 1985, FMPA became the All-Requirements supplier to several member cities which had no on-system generation resources of their own.

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

The four existing TSAs under which FMPA receives long-term wheeling service from FPL 8/ are:

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

8/ The Agreement to Provide Specified Transmission Service, dated April 24, 1986, FERC Electric Rate Schedule No. 86, is an additional rate schedule which provides for shorter-term transmission for interchange-type transactions (*i.e.*, shorter-term, economy and emergency services). Like the TSAs for long-term service, this rate schedule is restricted to point-to-point service and does not suffice to permit integrated planning, dispatch and operation. See June 3, 1992 Affidavit of Nicholas P. Guarriello at 5-7 (Appendix A-18).



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

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

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

None of the FPL-FMPA TSAs has been approved by the FERC. While they were accepted for filing, that does not constitute FERC approval. See 18 C.F.R. § 35.4. Copies of these TSAs, and of the 1985 All-Requirements TSA (FERC Electric Rate Schedule No. 84) which was superseded by the Restated and Revised TSA, are attached as Appendix A-19.

These FPL-FMPA TSAs provide transmission "between" pairs of delivery points, but fall short of providing transmission "among" as defined by the NRC in LP&L, i.e. network transmission. Although in each case FMPA requested network transmission, FPL refused and, in light of the time constraints on FMPA's economic resource commitments and the controlling necessity to obtain some form of timely transmission commitment from FPL, FMPA was forced to accept point-to-point service limitations in those TSAs. See April 29, 1993 affidavit of Nicholas P. Guarriello (Appendix A-12). However, FMPA did so in connection with Transmission Service Agreement provisions that expressly preserved FMPA's rights to obtain network transmission service.



Specifically, each FMPA-FPL TSA includes a "Unilateral Changes and Modifications" clause, expressly reserving to both FPL and FMPA broad rights to change the TSAs' terms, conditions, and charges. Every TSA also contains an atypically broad no-waiver clause providing that "[a]ny waiver at any time by either Party hereto of its rights with respect to the other Party or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter." See, e.g., All-Requirements TSA, Section 22.2. The All-Requirements TSA also contains an express "independent rights" clause, Section 22.13, which provides: "Nothing in this Agreement shall be construed as a waiver by FMPA of any of its rights independent of this Agreement... ." The independent rights clause was included in the TSA as originally executed in 1985, and as restated in 1990. The 1990 restatement also contains a clause providing for that TSA to be "supersede[d] or replace[d]" at any time. FPL witnesses have testified that the clause was added to facilitate replacing the TSA with one that would provide transmission for FMPA's IDO project. 9/

9/ Dean Gosselin, who negotiated with FMPA on behalf of FPL, testified on deposition (in the District Court case described below) that this provision was included "in contemplation of a transmission service agreement for the integrated dispatch operation project," so that "[i]n the event that a transmission service arrangement was negotiated which included the all-requirements cities, that this agreement would be able to be revised to accommodate such understanding that may have been reached." See Tr. 42-43 (Appendix A-4).

The IDO project represents the logical next step in FMPA's development. Integrating and coordinating its resources has been an important long-term FMPA goal. 10/ FMPA has previously sought to establish a Florida-wide power pool and, failing that, a FMPA-FPL power pool, but those efforts were rebuffed by FPL. The IDO project would establish an integrated dispatch and operations pool of certain FMPA members, thereby permitting substantially more economic and efficient use of their existing resources and planning for more economic future resources. These economies, which are quantified in the April 29, 1993 Affidavit of Albert B. Malmsjo (Appendix A-20), are projected to range from approximately \$7.5 million in 1993 to almost \$20 million in 2003. 11/

Bushnell, Clewiston, Ft. Pierce, Green Cove Springs, Jacksonville Beach, Key West, Lake Worth, Leesburg and Ocala have asked FMPA to provide their power supply through the IDO

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

11/ Thus, IDO would effectuate the purposes of the Federal Power Act, as expressed in FPA § 202(a), 18 U.S.C. § 824a(a), which promotes pooling as a means to "assur[e] an abundant supply of electric energy throughout the United States with the greatest possible economy," and FPA §§ 211 & 212(a), 18 U.S.C. §§ 824j & 824k(a), which facilitate transmission as a means to "promote the economically efficient transmission and generation of electricity," as well as the policies of the antitrust laws.

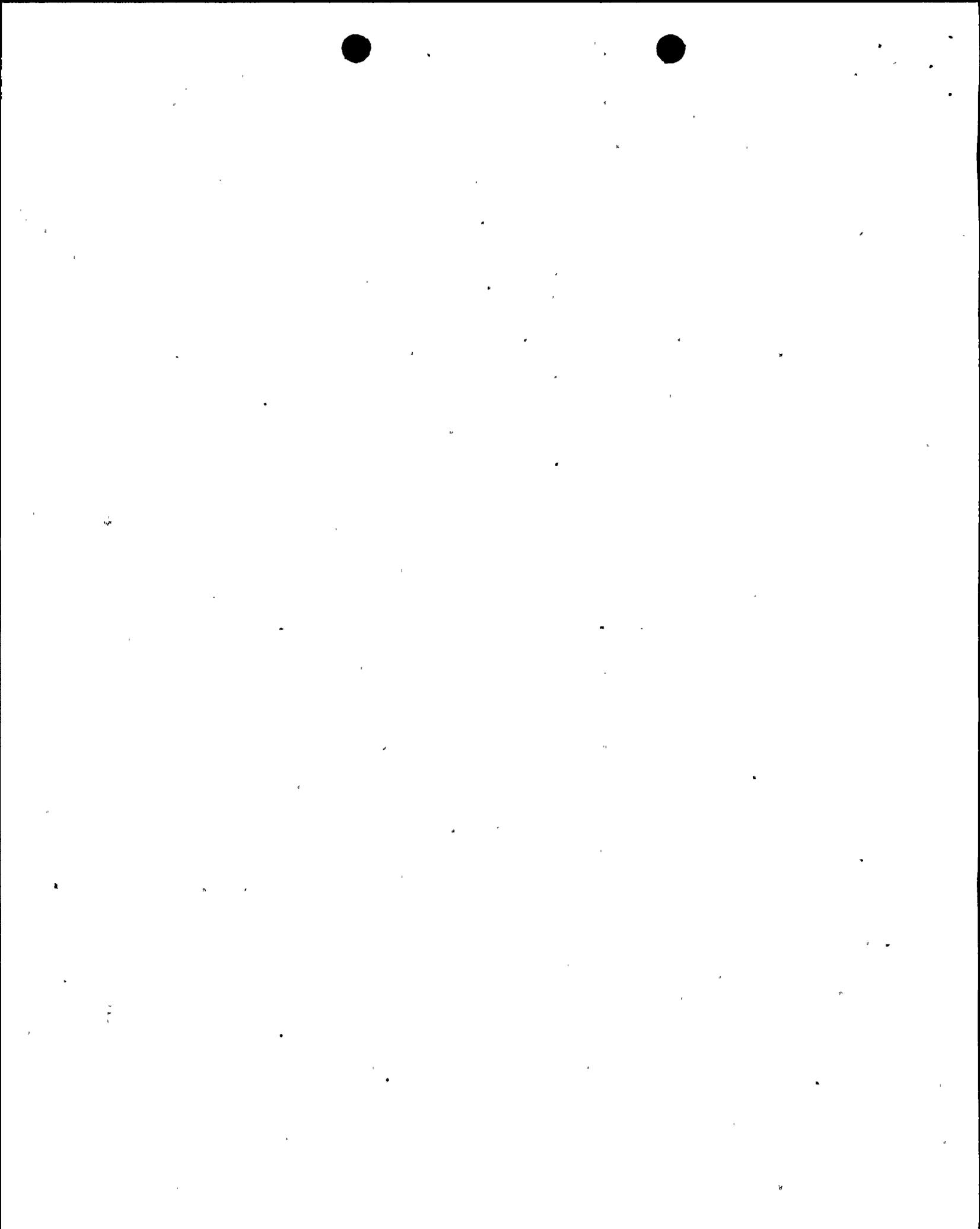


project. 12/ These cities are all located within or adjacent to Florida Power & Light Company's territory, or are interconnected directly or indirectly with FPL's transmission system.

FMPA began to actively consider the IDO project in June, 1987. Aware that FPL had refused previous requests to implement FMPA's right to transmission "among" through a TSA, FMPA did not begin negotiations for the requisite transmission arrangement until it had thoroughly studied the project's feasibility, had obtained agreements from interested members, and had drafted a proposed TSA, one sufficient to provide transmission for IDO and ready for filing at FERC. FMPA sent this proposal to FPL in September, 1989. Two years of attempts to negotiate with FPL followed, during which FPL never budged from its refusal to provide network transmission despite numerous significant concessions by FMPA. As a result, FMPA has not been able to implement its IDO project.

Finally convinced that litigation was necessary before FPL would honor its obligation to provide network transmission, FMPA filed a lawsuit in Florida state court on December 13, 1991,

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



asserting FMPA's right to network transmission under contract law and Florida's antitrust statute. FPL removed the case to the federal district court for the Middle District of Florida, where it is docketed as Florida Municipal Power Agency v. Florida Power and Light Co., Case No. 92-35-Civ-Orl-3A22 ("District Court case"), where discovery is largely complete 13/ and where trial is scheduled to begin this coming September. 14/

On March 19, 1993, FPL unilaterally submitted to the Federal Energy Regulatory Commission ("FERC") Commission (in FERC Docket No. ER93-465-000) a comprehensive restructuring of FPL's transmission, wholesale power, and interchange tariffs. FPL's "open access" tariff filing purports to establish a new regime for transmission service to which the TSAs will be conformed.

13/ Numerous fruits of discovery from the District Court case are cited in this petition and appended hereto. Unless otherwise indicated, references to depositions and to documents from FPL's files are to the District Court case discovery. A list identifying the various FPL deponents is attached as Appendix A-10.

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

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



See March 19, 1993 Letter from FPL Vice President William G. Walker III to the FERC ("Transmittal Letter"), at 43-44 (Appendix A-22). However, this exclusively "point-to-point" regime is inconsistent with FPL's network transmission obligations under the Antitrust Conditions. Despite its obligation to provide transmission "between or among," and despite FMPA's persistent requests for such service (including the filing of a lawsuit), FPL proposes to provide only "access between generation resources and bulk-power loads connected to FPL's system or [connected] to systems interconnected with FPL." Transmittal Letter at 6 (emphasis added) (Appendix A-22). 15/

FMPA and those of its members which do business with FPL jointly filed a timely protest and motion to intervene in FERC Docket No. ER93-465-000. Among other challenges to FPL's filing, Florida Cities demonstrated that FPL's failure to file a tariff for network transmission service was both anticompetitive and inconsistent with FPL's obligations under the Antitrust Conditions.

FPL has repeatedly sought to avoid a determination of its network transmission obligation. Indeed, FPL has raised technical jurisdictional objections to enforcement of the

15/ By letter Order dated May 18, 1993 (Appendix A-23), FPL's filing was found deficient in a number of respects, and FPL was ordered to make a conforming filing within 30 days. The deficiency letter did not reach the issue of network versus point-to-point service. FPL subsequently requested (and was granted) an extension until July 26, 1993 to submit a revised filing.

Antitrust Conditions by every forum called on to consider the issue. FPL has prevented enforcement by the Florida state courts, by removing FMPA's suit to federal district court; has unsuccessfully sought to dismiss that case from federal district court by arguing that this Commission has exclusive jurisdiction; 16/ has asserted that FERC is not the proper proceeding for adjudicating FMPA's entitlement to the network access required for IDO, going so far as to claim that FERC lacks authority to enforce or even interpret the Antitrust Conditions; 17/ and has argued in the District Court case that only FERC has jurisdiction to determine whether FERC-filed rate schedules comport with the Antitrust Conditions 18/ -- necessarily implying that this Commission lacks jurisdiction.

FMPA seeks a speedy determination of its right to purchase network transmission. As demonstrated below, the rate schedules filed (and proposed) by FPL to date clearly fail to fulfill FPL's Antitrust Condition obligations. Each day that FMPA is thereby prevented from integrating and coordinating its

16/ The District Court rejected this argument by Order of April 9, 1992 (Appendix A-27).

17/ See FPL's April 27, 1993 Answer in FERC Docket No. ER93-465-000, at 260 (Appendix A-24).

18/ See FPL's March 20, 1992 Motion to Dismiss at 12-15 (Appendix A-25), and its April 15, 1993 Motion for Summary Judgment at 15-19 (Appendix A-26).



resources costs the Florida economy tens of thousands of dollars in irrevocably lost efficiencies. 19/

Notwithstanding FPL's arguments, the District Court, the FERC, and this Commission all have jurisdiction to determine FPL's network transmission obligation, and each has its own, partially overlapping, array of remedies for FPL's breach of that obligation. This Commission plainly has jurisdiction to enforce conditions attached to FPL's nuclear license, including the provisions of Antitrust Conditions X(b) and XII which require FPL to file implementing transmission rate schedules and agreements with the FERC. 20/ FMPA is filing this petition so as to leave no escape route for FPL's forum evasion tactics. 21/

B. The Antitrust Conditions Require FPL to Provide Transmission Over its Network Among Delivery Points of FMPA Without Imposing Multiple Transmission Charges

Article X of FPL's Antitrust Conditions (Appendix A-13 at 24) requires FPL to provide transmission over its network "between two or among more than two neighboring entities, or

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

20/ The District Court has parallel jurisdiction to enforce FPL's obligations under its agreements and under the antitrust laws, and the FERC likewise has parallel jurisdiction to ensure that transmission rates are "just and reasonable," in the public interest, and in accordance with FPL's prior agreements.

21/ FMPA is also filing today a complaint with the FERC, to ensure that those remedies available exclusively from the FERC can be applied once FMPA obtains a determination of its rights.

sections of a neighboring entity's system which are geographically separated, with which, now or in the future, Company is interconnected." 22/ FPL's obligation under this requirement is clear. Long before the "among" requirement was agreed to by FPL, the term had been given a specific and well-established meaning by the AEC in the LP&L case. Accordingly, the Commission should by summary disposition establish the legal effect of FPL's unambiguous contractual obligation.

In LP&L, the DOJ, AEC Staff and LP&L proposed license conditions that required LP&L to transmit only "between" pairs of Louisiana entities, with a separate charge imposed for transmission in each direction. Id. at 739-40. The AEC Atomic Safety and Licensing Board 23/ held a hearing to determine whether this proposal was sufficient to overcome a situation inconsistent with the antitrust laws. Id. at 733-34. The AEC recognized that, as a matter of straight-forward mathematics, LP&L's proposed transmission "between" commitment would result, for transmission connecting multiple entities, in charges totaling many times LP&L's standard transmission rate. 24/

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

23/ The Licensing Board and the Appeal Boards exercise the delegated authority of the AEC, as testified by former NRC Commissioner Roberts, offered by FPL as an expert witness in the District Court case, and by former Commissioner Gilinsky, offered by FMPA. Roberts Tr. 15-16 (Appendix A-7); Gilinsky Tr. 53-54 (Appendix A-3). For convenience, we refer to the Licensing Board as the "AEC" herein.

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

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

The payment of 6 to 20 or more transmission charges by a single group of entities is deemed unreasonable.

The limitation of [transmission] "between two entities" in Applicant's Commitment No. 5 is not an adequate provision designed to permit coordination (both operation and development) sufficient to overcome a situation inconsistent with the antitrust laws.

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

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]

If two small entities wish transmission from A to B and from B to A they must execute two contracts and pay two transmission charges... . This can be expressed mathematically as two permutations taken two at the time (P 2/2) which is $2 \times 1 = 2$ transmission charges. For three entities -- the expression is P 3/2 -- 3×2 or six transmission charges. For four entities -- P 4/2 -- 4×3 or 12 transmission charges. For five entities -- P 5/2 -- 5×4 or 20 transmission charges.



In order to permit coordinated operation of generating resources controlled by smaller utilities, the AEC revised the proposed license conditions to provide for transmission "among" multiple entities, id. at 734, that is "transmission from any member of a coordinating group to any other members of such group," id. at 733. The AEC stated:

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

Id. at 737 (emphasis added). The referenced "clarifying sentence" makes the meaning of the "among" requirement crystal clear: "For each coordinating group of entities there shall be a single transmission charge." Id. at 744 (emphasis in original). 25/

Transmission "among" thus requires "network transmission." The coordinating group pays a single charge based on the amount transmitted on its behalf (at any one

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

time) over the transmission network as a whole, without regard to the distribution of that transmission among the delivery points of the coordinating group. The proposal in LP&L to transmit only "between" locations was rejected because it left room for multiplicative transmission charges based on the number of receipt and delivery points at which power is added to and taken from the network.

The same requirement for transmission "among," with the specific meaning that it carries under LP&L, was written into the FPL Antitrust Conditions. Because Antitrust Condition X(a)(2) (Appendix A-13) plainly and unambiguously requires more than transmission "between" delivery points, FPL cannot avoid summary disposition by claiming that it intended otherwise. See Hashwani v. Barbar, 822 F.2d, 1038 (11th Cir. 1987). Significantly, the "among" requirement appears only in Condition X(a)(2); other Antitrust Condition provisions such as X(a)(1) (which applies to transmission of power from FPL power sources to neighboring utilities) omit the "among" language and require only transmission "between" multiple power resources and load centers and neighboring distribution systems. If "among" signified mere grammar or bare access connecting multiple points through a concatenation of point-to-point services, it would appear in Condition X(a)(1) as well. 26/ In any event, FPL must be

26/ As a matter of grammar, "among" signifies one joint relationship as distinguished from several bilateral
[FOOTNOTE CONTINUED ON NEXT PAGE]



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

FPL is in no position to claim otherwise. Shortly after it agreed to the Antitrust Conditions, FPL recognized that their terms were carefully chosen to reflect AEC/NRC precedent. In the November 7, 1983 Answer of Florida Power & Light Company to Staff's Motion to Require Filing, Florida Power & Light Co., 26 FERC ¶ 63,019 (1984), vacated as moot, 30 FERC ¶ 52,230 (1985) (Appendix A-28), FPL (at 8) stated that "[t]he license conditions were negotiated over a long period of time with the NRC's antitrust staff. These negotiations included extensive discussion of the language

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
relationships. See, e.g., The New York Times Manual of Style and Usage 12 (1979) ("between is correct in reference to more than two when the items are related severally and individually: The talks between the three powers ended in agreement to divide the responsibility among them.") (emphasis retained); accord, William Strunk, Jr. and E.B. White, The Elements of Style 40 (3d ed. 1979). Thus, use of "among" to signify several point-to-point services would be grammatically incorrect.

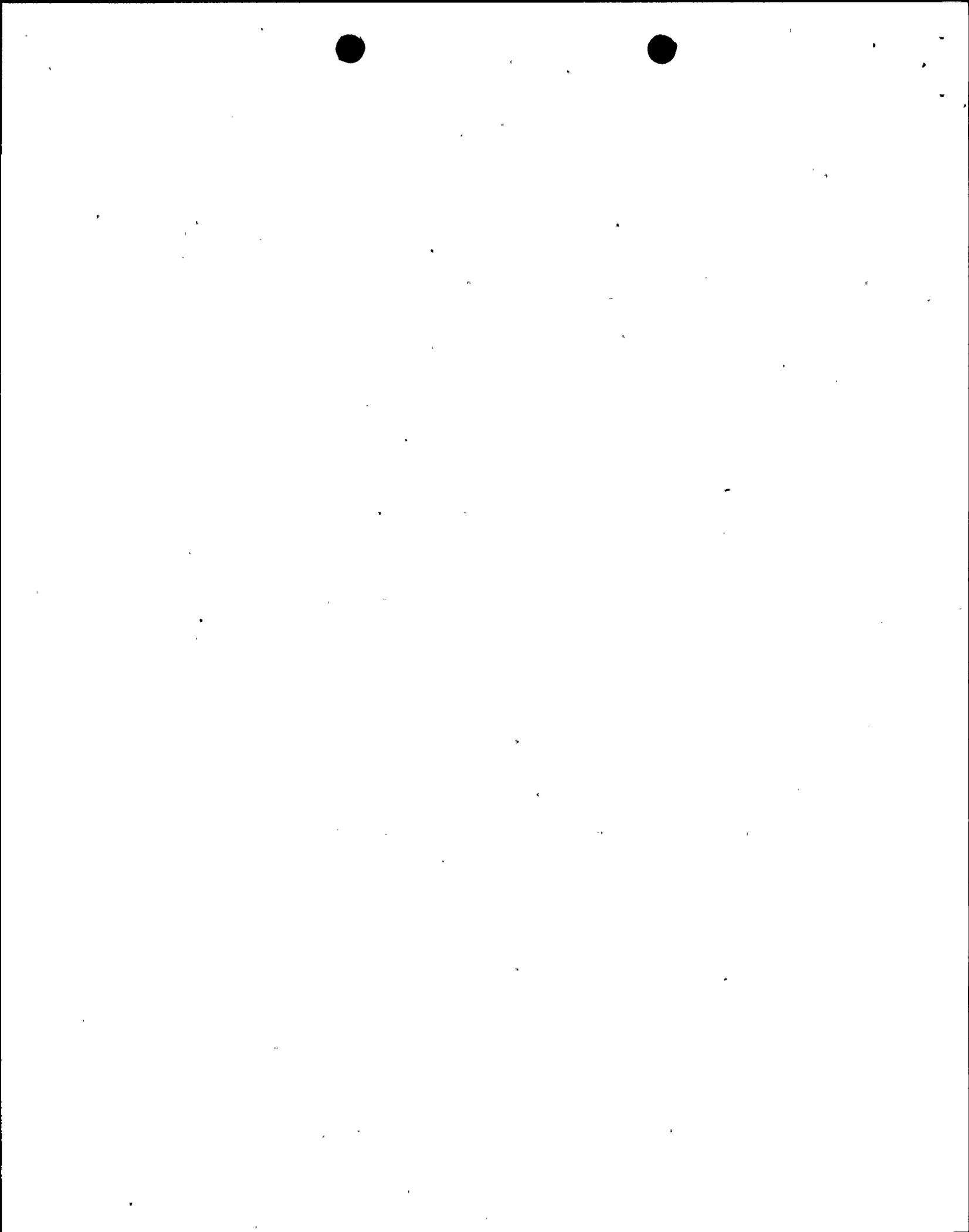
of the conditions, much of which was honed by the NRC Staff in negotiations with other licensees over a period of years."

The transmission "among" requirement discussed in LP&L plainly falls within the category of well-honed provisions to which FPL referred. LP&L points out (at 733) that the same requirement appears in the license conditions for the Grand Gulf nuclear plant, 38 Fed. Reg. 14877 (1973), and (at 735) that "both Justice and Staff are familiar with, understand, and have agreed to such language" in the proceedings concerning that plant. Essentially identical language appears in numerous other utilities' license conditions, for example, PG&E's Stanislaus Commitments attached to its Diablo Canyon license, see 41 Fed. Reg. 20225, 20227 (1976), and the conditions attached to Florida Power Corporation's license for the Crystal River Unit 3 nuclear plant, see 37 Fed. Reg. 3782 (1972). 27/ The requirement of transmission "among" is a standard "laundry list" item in antitrust licensing conditions, whose specific meaning was widely understood long before FPL agreed to it.

This commitment requires FPL to sell defined transmission services to FMPA. 28/ In the Joint Motion and

27/ The Federal Register publications of the Stanislaus Commitments, Grand Gulf and Crystal River transmission requirements are attached as Appendix A-29.

28/ FPL must also sell transmission to other neighboring entities and neighboring distribution systems, including individual FMPA
[FOOTNOTE CONTINUED ON NEXT PAGE]



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

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

September 12, 1980 Joint Motion of DOJ, NRC Staff, and Applicant to Approve and Authorize Implementation of Settlement Agreement at 1-2 (Appendix A-14).

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

September 12, 1980 Stipulation between DOJ, the NRC Staff and FPL at 1-2 (Appendix A-14).

FMPA qualifies as a neighboring entity under the definition set forth in Article I(c) of the FPL Antitrust Conditions and is specifically named as a neighboring entity in Article X(d). Therefore, FPL must sell FMPA network transmission -- transmission "among...sections of a neighboring entity's system which are geographically separated, with which...company

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
member cities. Individual FMPA member cities experience additional adverse impacts from the unavailability of network service.

is interconnected." Article X(a)(2) (Appendix A-13). The coordinated system which FMPA has been contracted to operate currently includes FMPA's power sources and the points at which it delivers power to its members. The FPL network is interconnected with the geographically separate sections of FMPA's system either directly or through another utility (at locations referred to herein for simplicity as "delivery points," or sometimes as "receipt and delivery points.") Accordingly, FMPA is entitled to transmission among these separate sections.

FPL cannot be heard to complain now that it did not understand the Antitrust Conditions to which it agreed. Like LP&L, FPL is prohibited from multiplying transmission charges for transmission connecting receipt and delivery points of a single coordinating group. By agreeing to the Antitrust Conditions, FPL obligated itself, inter alia, to provide transmission "among" these geographically separate sections of FMPA's system for a single charge.

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

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

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

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

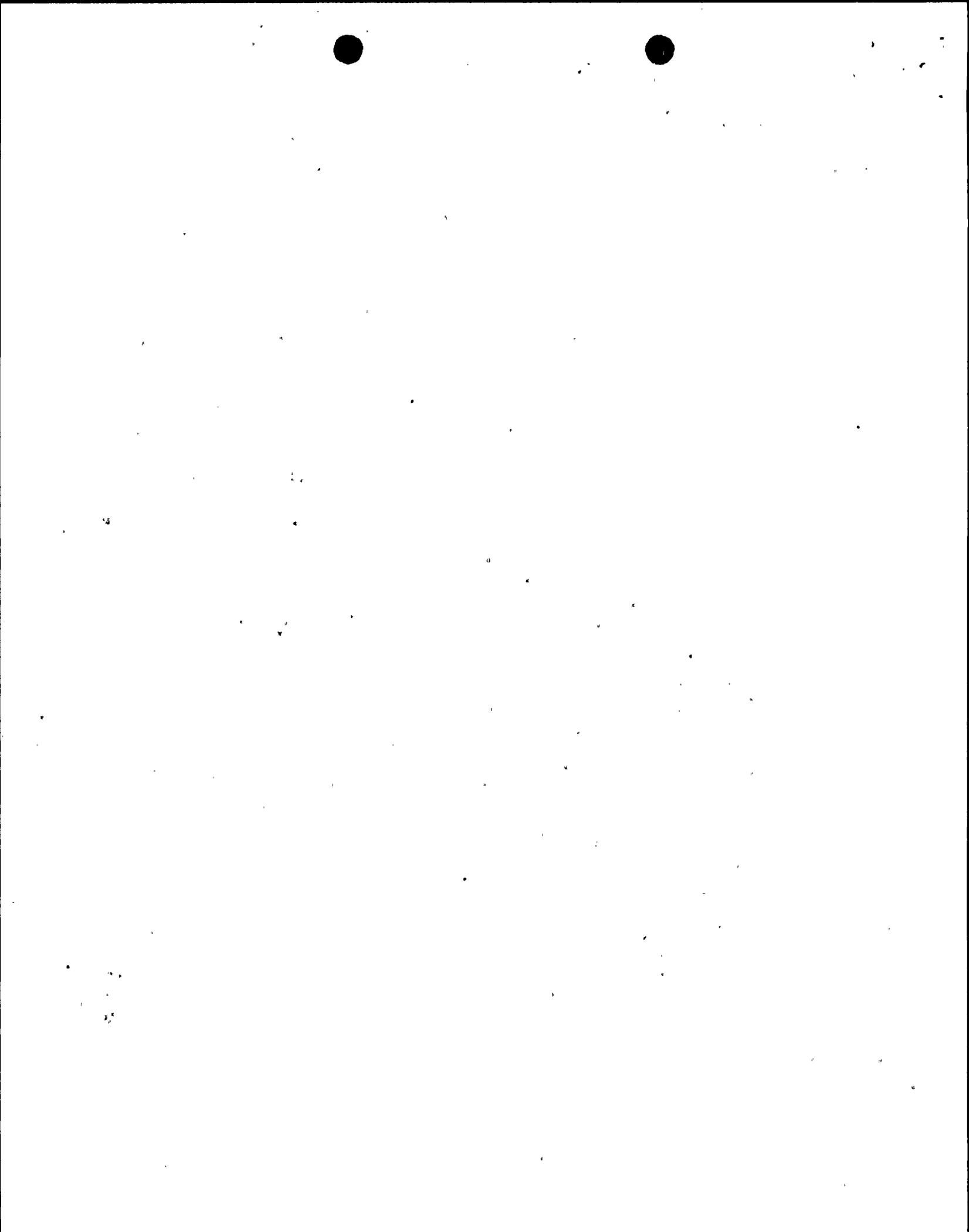
The unreasonableness of this limitation is increased by the fact that FPL's transmission charges have nothing to do with the cost of transmission from points A to B, etc., but rather reflect FPL's total transmission system costs. Thus, if FMPA desires to coordinate and integrate its generation on FPL's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

transmission costs for each MW of system capability actually used (i.e., six times the 50 MW maximum usage at any one time in the examples above).

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

1. Existing TSAs

Each of FPL's existing TSAs contains point-to-point restrictions, under which FPL provides service only "between"



pairs of interconnection points where electricity is received onto and delivered from the FPL system. FPL insisted on these restrictions despite FMPA's repeated requests, in negotiating each TSA, for network transmission rights. 29/

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

FPL shall provide transmission service for the power and energy produced by each City's Stanton Resources from the point of interconnection between FPL's transmission system and OUC's transmission system to each such City's delivery point... .

* * *

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

* * *

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



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

Rate Schedule No. 109, as amended on May 1, 1991, at 13, §§ 3.2, 3.4.1 and 3.4.2 (Appendix A-19). For each receipt-delivery point pair, FMPA must pay an additional, cumulative transmission charge. See id., Articles VII and XI. FPL recently stated that "[t]ransmission service provided by FPL to FMPA is priced on a 'point-to-point' basis." FPL's April 15, 1993 Memorandum of Law in Support of its Motion for Summary Judgment in the District Court case ("FPL Memo"), at 4 (Appendix A-26). "Under point-to-point pricing, FMPA must pay separately for each 'contract demand' between each point of receipt of power on FPL's system, and each point of delivery from the FPL system." Id. at n.2 (Appendix A-26).

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



described this pricing methodology, approvingly, to the D.C. Circuit Court of Appeals in FPL's brief in Ft. Pierce Utils. Auth. v. FERC, 730 F.2d 778 (D.C. Cir. 1984) ("D.C. Circuit brief") (September 8, 1983, at 4, 5-6) (Appendix A-30):

As part of its business of providing its customers with a reliable supply of electric energy, Florida Power & Light Company, as herein relevant, has built and operates an electric transmission network that extends over eastern and southern Florida and is interconnected with neighboring utility systems, including certain Florida cities... .

The Company recovers its transmission costs from all its wholesale and retail customers... . The specific rate design methodology by which FPL recovers transmission costs is through a "postage stamp" rate. As the term implies, all FPL customers are allocated a share of transmission costs without specifically identifying the cost of transmission facilities on which the electricity for each customer travels. This is done because the determination of what facilities are "used" by which customer in what proportions, and what these facilities cost, is not possible. ^{1/} FPL's transmission network is constructed to meet the peak demand of all its customers in its service area throughout the year. Therefore, allocation of costs on the basis of peak demand on its system is, and always has been, determined to be the fairest method of apportioning transmission capacity costs... .

^{1/} This would be true even if electricity travelled through a transmission network on a shortest-distance-between-two-points basis. But electricity does not; rather, it travels on a path of least resistance... . The path of electrons will change constantly as load conditions change.

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

The Commission has long held that an integrated transmission grid is a cohesive network moving energy in bulk. Because the grid operates as a single piece of equipment, the Commission has consistently priced transmission service based on the cost of the grid as a whole. The Commission has rejected the direct cost assignment of grid facilities... .

* * *

Nothing in the Commission's new pricing policy changes or undermines these fundamental premises. There continues to be only one service -- service over the entire grid -- and both native load and third-party customers "use" the entire grid, including any expansion.

Public Service Company of Colorado, 62 FERC ¶ 61,013 at 61,061 (1993). However, the service limitations in each FPL TSA constrain transmission customers to buy extra "postage stamps" for each contract demand between two points. This postage-stamp-per-contract-demand rate design is the basis on which FMPA is being charged under each of the existing TSAs. 30/

30/ FPL is of two minds concerning whether its existing TSAs are limited to point-to-point service. On the one hand, FPL states that these TSAs "combine some features of point-to-point service with features of network service and thus provide FMPA with considerable flexibility." FPL's April 27, 1993 Answer in FERC Docket No. ER93-465-000, at 32 (Appendix A-24). In the District Court case, however, FPL has argued that FMPA's efforts to obtain network service for the IDO project were "futile" because FMPA was aware that FPL had a "continuing policy" under which FPL's responses to requests for network service "were not merely 'no,' but 'hell no.'" FPL's April 15, 1993 Memorandum of Law in Support of Its Motion for Summary Judgment in the District Court
[FOOTNOTE CONTINUED ON NEXT PAGE]

2. Transmission for IDO

Throughout two years of negotiations in which FMPA pursued transmission for the IDO project, FMPA requested the ability to distribute a given quantity of transmission network usage among various receipt and delivery points, without paying multiple transmission charges. That is, FMPA sought to have its transmission contract demand measured by the coincident FMPA transmission load on the FPL transmission system (and not by the

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]

case at 8-10 (quoting deposition of FMPA General Counsel Fred M. Bryant at Tr. 98-99) (Appendix A-26). However, whether FPL's TSAs are marginally more flexible than absolutely rigid point-to-point service is not the issue. The TSAs contain substantial point-to-point restrictions which preclude economic coordination and breach FPL's Antitrust Condition obligations.

As quoted in the text, FPL clearly recognizes that it does not provide true network service to transmission customers. When it chooses to depict the TSAs as containing "features" of network service, FPL refers to several provisions in the Restated and Revised TSA (namely, "Replacement Transmission Service" (Article IV), "Superseding Transmission Service" (Section 6.1) and transmission for "New FMPA Resources" (Section 6.5) and to less extensive replacement transmission provisions in other TSAs. See Answer at 32 n.41 (Appendix A-24). The provisions make the TSAs in which they appear slightly less unreasonable than they would otherwise be, but do not make those TSAs either reasonable or a sufficient vehicle for providing transmission among separate sections of FMPA. Even with these provisions, none of these TSAs enable the resources transmitted thereunder to be used efficiently, *i.e.* integrated into a generation mix that is planned and operated together to supply changing loads. Rather, each TSA imposes multiplicative transmission charges calculated as a function of the contract demands hypothetically delivered from each resource to each city, prohibiting integrated planning, dispatch and operations and violating FPL's Antitrust Condition obligation. The TSAs' inadequacy is especially damaging when the resources transmitted under them are part of a normal mix of transmitted generation -- one that is not artificially restricted to baseload units by restrictive transmission -- making delivery flexibility more important.

sum of the highest number of MW that could be delivered through each FMPA delivery point on a non-coincident basis). FPL never offered to transmit on that basis. FMPA did not simply propose one network transmission rate and insist that FPL accept it. Rather, FMPA suggested numerous potential network transmission arrangements, and invited FPL to propose others. However, FPL adamantly rejected the network transmission concept and each implementing FMPA proposal.

FMPA repeatedly requested FPL to file a network rate at the FERC, pursuant to FPL's express obligation to file a rate schedule in the event there is no agreement regarding requested transmission services. See Antitrust Conditions X(b) and XII (Appendix A-13); see also Pacific Gas & Elec. Co., 31 NRC 595, 602 (1990) (concurring in District Court finding that PG&E had violated a similar filing obligation). FMPA repeated that request through counsel in a March 25, 1993 letter from R. Jablon to L. Bouknight (Appendix A-31). FPL's counsel responded, in a March 29, 1993 letter (Appendix A-32), with a resounding no. See id. at 2 (calling FMPA's request a "waste [of]... time").

Even FPL's "hub" concept, which was floated in negotiations with FMPA, calls for multiple charges for transmission connecting a group of coordinating entities. 31/

31/ The hub concept, as described in FPL's April 27, 1990 letter to FMPA (Exhibit B to Appendix A-33), merely substitutes a hypothetical "FMPA hub" as one end of each separate directional transaction to and from FMPA receipt and delivery points. Thus, a transaction from B to A becomes one transaction (with one charge) from B to the hub and a second transaction (with a second
[FOOTNOTE CONTINUED ON NEXT PAGE]



Indeed, FPL's letter to FMPA describing the hub concept characterizes it as "modified point - point, directional service." 32/ While the hub concept may appear on the surface to be a small step towards compliance with FPL's obligation to sell network service, there is abundant evidence that it was put forward in bad faith. Numerous FPL witnesses have testified in the District Court case that the "hub" concept was never seriously studied by FPL. 33/ Moreover, FPL never told FMPA how it would develop the price for service under the hub concept. 34/

Thus, FPL has not been willing to sell FMPA transmission at a single charge reflecting FMPA's use of FPL's network. By its own admission, FPL has insisted on multiple charges for transmission connecting a single coordinated group -- charges

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]

charge) from the hub to A. A transaction from A to B on another day would result in two more charges. In this example, even if the maximum amount of electricity FMPA seeks to move on the FPL network at any one time is 100 MW, FPL would charge FMPA for 400 MW of transmission or four times the amount it would charge for point-to-point transmission from A to B. By contrast, in this example, transmission "among" would result in a charge for 100 MW of transmission.

32/ A copy of this letter is appended to the April 30, 1993 Affidavit of Nicholas P. Guarriello (Appendix A-33) as Exhibit B. As described in ¶ 16 of the Affidavit, in oral negotiations, FPL discussed several variants of its hub concept, but never developed them in concrete terms, never proposed the rate that might apply, and ultimately took these variants off the table.

33/ Rey Tr. 17 (Appendix A-6); Enjamio Tr. 122-23, 125-27 (Appendix A-1); Locke Tr. 107-11 (Appendix A-5); Schoneck Tr. 119-20 (Appendix A-8); Stepenovitch Tr. 175-80 (Appendix A-9).

34/ See Gosselin Tr. 63-65 (Appendix A-4); Locke Tr. 182 (Appendix A-5).

that vary with the number of FMPA receipt and delivery points involved and the amount of power that can be delivered to and from each such point. FPL has not offered to charge based on FMPA's proportionate (i.e., peak demand) use of the network.

3. "Open Access" Tariff

FPL's "open access" transmission tariffs submitted to FERC in Docket No. ER93-465-000 (and currently being revised by FPL, see supra) are part of a comprehensive revision of FPL's existing wholesale services (transmission, interchange, and requirements power) and the framework for future wholesale transactions. The proposed new regime would effectively govern all future FPL wholesale dealings. FPL proposes to conform its existing TSAs to this new regime. ^{35/} This new regime, like FPL's existing TSAs but unlike the Antitrust Conditions, would only provide for point-to-point services. See, e.g., Tariff No. 1, Article VII, Section 7.3 at 27; Tariff No. 3, Articles I and VI, Sections 1.15 and 6.1 at 4, 15 (Appendix A-34). Transmission customers must reserve and pay for separate contract demands equal to the maximum amount of transmission they will use from each point of receipt to each point of delivery. Tariff No. 1, Article I, Sections 1.5, 1.19, 1.20 at 1-2, 5 (Appendix A-34). Despite its obligation to provide transmission "between or among," FPL proposes to provide only "access between generation resources and bulk-power loads connected to FPL's system or

^{35/} See Transmittal Letter at 44 (Appendix A-22).

[connected] to systems interconnected with FPL." Transmittal Letter at 6 (emphasis added) (Appendix A-22).

D. Summary of Facts Constituting the Basis for the Request

In sum, in its existing TSAs and the negotiations preceding them, in its responses to FMPA's requests for transmission for the IDO project, and in its recent comprehensive FERC tariff filing, FPL has repeatedly violated the transmission obligations in the Antitrust Conditions attached to its St. Lucie 2 nuclear license. Part of the roots of FPL's failure to heed the Antitrust Conditions were revealed in a November 19, 1992 deposition of FPL President and Chief Operating Officer Stephen Frank in the District Court case. Mr. Frank testified that he had never read the Antitrust Conditions or had them explained to him, has not issued policy statements, directives, guidelines, or the like to attempt to secure compliance, and that to his knowledge no FPL employee had conducted an audit to ascertain FPL's license condition obligations. See Frank Tr. 9-14 (Appendix A-2).

II. THE ACTION REQUESTED

FMPA does not ask the Commission to set an actual rate or to involve itself with the details of utility rate-making (e.g. through establishing specific rates of return, depreciation cost or the like). FMPA does ask the Commission to enforce core provisions of the Antitrust Conditions, which require FPL to provide "among" transmission service and require that in the



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event of a disagreement regarding transmission service, FPL shall immediately file with the FERC a service agreement providing for such service, reflecting costs reasonably allocable to the service, and including a refund provision, so that FERC can resolve costing or pricing differences and so that service can begin. See Antitrust Conditions §§ X(b) and XII (Appendix A-13).

FMPA requests that the Director take several actions:

One, declare that FPL is obligated to provide network transmission among geographically separated sections of FMPA without imposing multiple charges for transmission among multiple delivery points.

Two, issue a Notice of Violation of that obligation, requiring FPL to submit a timely written reply admitting or denying that FPL is in violation of that obligation, setting forth the steps it is taking to ensure that its employees comply with the Antitrust Conditions, and providing other compliance information. 36/

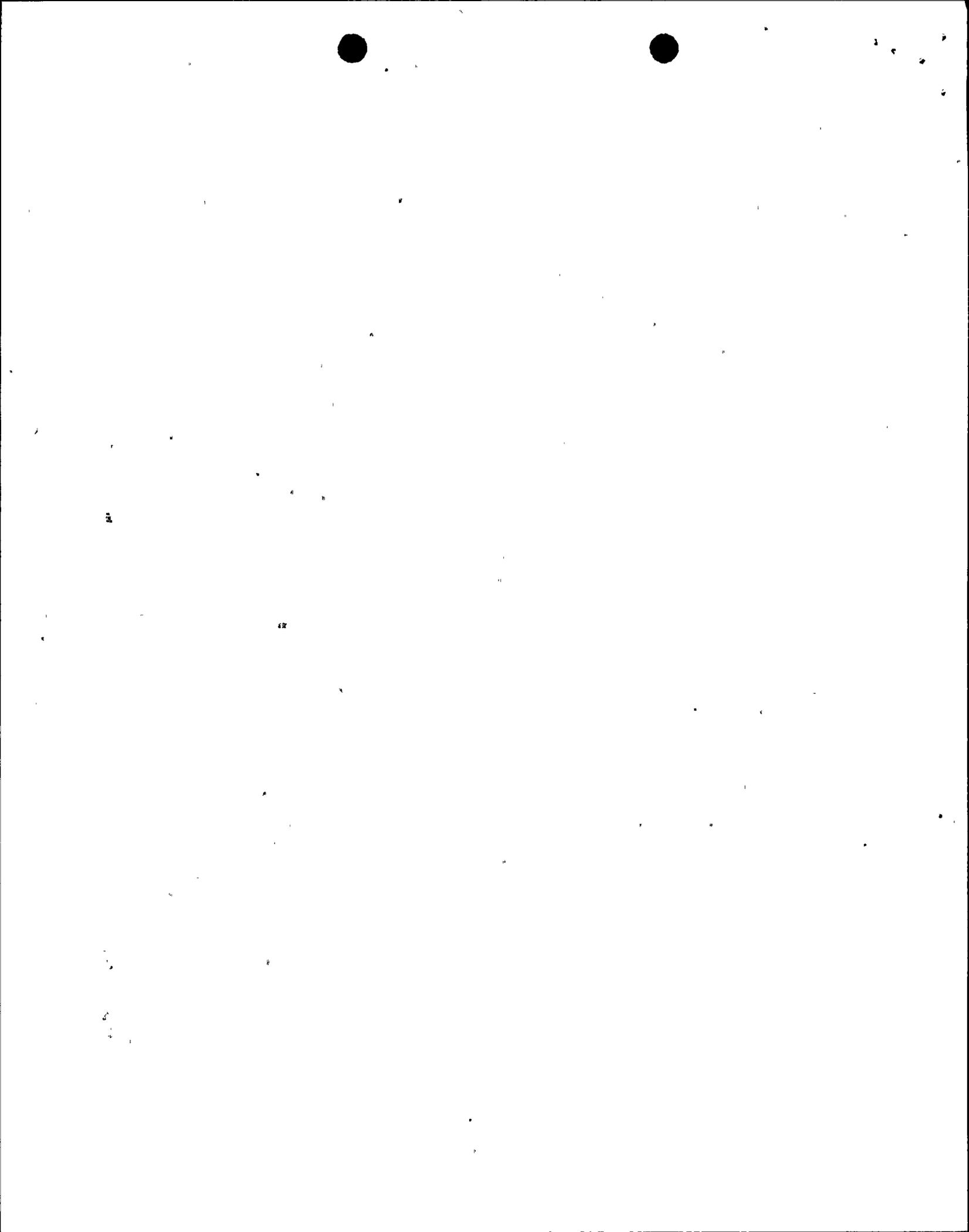
Three, impose a requirement by order directing FPL to immediately file with the Federal Energy Regulatory Commission a rate schedule that provides for transmission over the FPL system of the generating resources involved in FMPA's IDO project to the delivery points involved in that project in a manner that complies with the Antitrust Conditions.

36/ A proposed form of Notice is attached, for the Director's convenience and as a further specification of this request. See Appendix B-1.

Four, take such other action as may be proper, including, if necessary to achieve compliance with the Antitrust Conditions, ordering FPL to show cause why it should not be compelled to pay civil penalties or be subject to further sanctions.

Five, in accordance with Commission procedures, see NRC Office of Nuclear Reactor Regulation, Procedures for Meeting NRC Antitrust Responsibilities, NUREG-0970 at 14 (1975), publish a Federal Register notice of this petition within 30 days, and in doing so state when the Commission expects to decide whether to take action in response to this petition. Because proceedings which present issues overlapping with those presented herein are pending before the District Court and FERC, FMPA requests that the Commission publish in that notice an estimate of the time within which action hereon pursuant to 10 C.F.R. § 2.206(b) may be expected, so that the District Court and FERC may be advised of the Commission's plans in scheduling their own proceedings. To the extent that the Commission intends to defer to proceedings before the District Court and FERC, it should state that intention, so as to avoid an Alphonse-and-Gaston situation of mutual deference. 37/

37/ See Pacific Gas and Elec. Co (Diablo Canyon Nuclear Power Plant, Units 1 and 2), 31 NRC 595, 596-97 (Director of the Office of Nuclear Reactor Regulation 1990) (after meeting with parties to discuss where issues would be resolved, Director withheld decision "in anticipation of a resolution of the issues among the parties, either through a combination of negotiation, arbitration or litigation"); Florida Power & Light Company (St. Lucie Plant, Unit No. 2), 14 NRC 333, 339-40 (Atomic Safety & Licensing Bd. [FOOTNOTE CONTINUED ON NEXT PAGE]



No evidentiary hearing is required before the Director may take these actions. As demonstrated in Part I supra, no genuine issues of material fact need be resolved in order to declare that FPL's St. Lucie Unit 2 nuclear license requires network transmission among geographically separated sections of FMPA without imposing multiple charges for transmission among multiple points, and that FPL has refused and is refusing to provide such transmission. 38/ Similar action was taken without evidentiary hearing in, for example, Mississippi Power and Light Company, (Grand Gulf Nuclear Station, Units 1 and 2), NRC Docket No. 50-416A and 50-417A, by letter and Notice of Violation dated May 29, 1980. Moreover, the compliance report requested above requires no more than was ordered without an evidentiary hearing in that case and in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), 31 NRC 595, 596-97 & n.** (1990).

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
1981) (stating that NRC would deny intervention request to avoid a lengthy hearing on the merits of issues already before FERC, and regarding which FERC had expertise).

38/ If summary disposition is denied, an evidentiary hearing at which Florida Cities would have the opportunity to prove the above claims would be called for.



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III. CONCLUSION

WHEREFORE, for the reasons stated above, the Director should act to enforce the Antitrust Conditions attached to FPL's nuclear license.

Respectfully submitted,

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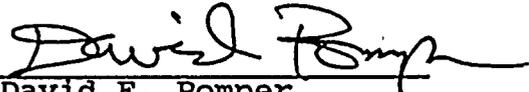
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July 2, 1993

CERTIFICATE OF SERVICE

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

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


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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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

APPENDICES TO
PETITION OF FLORIDA MUNICIPAL POWER AGENCY
FOR DECLARATION AND ENFORCEMENT
OF ANTITRUST LICENSING CONDITIONS
AND TO IMPOSE REQUIREMENTS BY ORDER

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1-1

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1-1

1-1

1-1

1-1

1-1

INDEX OF APPENDICES

PETITION OF FLORIDA MUNICIPAL POWER AGENCY
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OF ANTITRUST LICENSING CONDITIONS
AND TO IMPOSE REQUIREMENTS BY ORDER

Appendix

EXCERPTS FROM DEPOSITIONS IN DISTRICT COURT CASE NO.
92-35-CIV-ORL-3A22 (formerly 92-35-CIV-ORL-18)

Deposition of Juan E. Enjamio, November 4, 1992, Tr. 122-123, 125-128.....	A-1
Deposition of Stephen Frank, November 19, 1992, Tr. 5, 9-14	A-2
Deposition of Victor Gilinsky, February 18, 1993, Tr. 52-54	A-3
Deposition of Dean R. Gosselin, November 2, 1992, Tr. 42-43, 63-65.....	A-4
Deposition of William C. Locke, Jr., February 23, 1993, Tr. 107-111; January 7, 1993: 182.....	A-5
Deposition of Raimundo Rey, November 16, 1992, Tr. 17.....	A-6
Deposition of Thomas M. Roberts, February 19, 1993, Tr. 15-16.....	A-7
Deposition of William Robert Schoneck, November 11, 1992, Tr. 119-120.....	A-8
Deposition of Joseph P. Stepenovitch, November 3, 1992, Tr. 175-180.....	A-9
Identification of FPL Deponents.....	A-10

OTHER MATERIALS

Affidavit of Robert E. Bathen, April 29, 1993.....	A-11
Affidavit of Nicholas P. Guarriello, April 29, 1993.....	A-12
St. Lucie Plant Unit No. 2 Construction Permit and Notice of Issuance of Amendment to Construction Permit, attaching the antitrust conditions, NRC Docket No. 50-389, May 26, 1981.....	A-13
Joint Motion of Department of Justice, NRC Staff, and Applicant to Approve and Authorize Implementation of Settlement Agreement with attached Stipulation, NRC Docket No. 50-389A, September 12, 1980.....	A-14
Response of Florida Power & Light Company to Cities' Motion to Establish Procedures, for a Declaration that a	

1948

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

21-2

Situation Inconsistent with the Antitrust Laws Presently Exists and for Related Relief, NRC Docket No. 50-389A, August 7, 1981, at p. 72.....	A-15
Selected portions of Settlement Agreements between Florida Power & Light Company and Florida Cities resolving NRC Docket No. 50-389A and U.S. District Court Case No. 79-5101-CIV-JLK, dated February 11, 1982, March 3, 1982, and April 20, 1982.....	A-16
List of other documents memorializing the Settlement not included in full due to their volume.....	A-17
Affidavit of Nicholas P. Guarriello, June 3, 1992.....	A-18
St. Lucie Delivery Service Agreement, dated June 27, 1983, FERC Electric Rate Schedule No. 72; Stanton Tri-City Transmission Service Agreement, dated November 25, 1986, FERC Electric Rate Schedule No. 93; Stanton Transmission Service Agreement, dated November 25, 1986, FERC Electric Rate Schedule No. 92; Restated and Revised Transmission Service Agreement Between FPL and FMFA, dated October 2, 1990, FERC Electric Rate Schedule No. 109 (superseding FERC Electric Rate Schedule No. 84); Transmission Service Agreement Between FPL and FMFA (The "All-Requirements" TSA), dated March 30, 1985, FERC Rate Schedule No. 84 (superseded by FERC Electric Rate Schedule No. 109).....	A-19
Affidavit of Albert B. Malmsjo, April 29, 1993.....	A-20
Florida Cities' Motion for Discovery Order, FERC Docket No. ER93-465-000, June 21, 1993.....	A-21
Transmittal Letter enclosing Florida Power & Light Company's Proposed Rate Schedules, FERC Docket No. ER93-465-000, March 19, 1993, at pp. 1, 6, 43-44.....	A-22
Letter to William G. Walker III, FPL, from Donald J. Gelinas, FERC, advising FPL that their March 19, 1993 filing was deficient, FERC Docket No. ER93-465-000, dated May 18, 1993.....	A-23
Answer of Florida Power & Light Company to the Motions filed by Florida Cities, Seminole Electric Cooperative, Inc., Tampa Electric Company, Jacksonville Electric Authority, and Utilities Commission, City of New Smyrna Beach, FERC Docket No. ER93-465-000, April 27, 1993, at pp. 32, 260-261.....	A-24
Defendant Florida Power & Light Company's Motion to Dismiss All Counts for Lack of Standing, and to Dismiss Count I for Lack of Subject Matter Jurisdiction, with Supporting Memorandum of Law, U.S. District Court Case No. 92-35-CIV-ORL-18, March 20, 1992, at pp. 12-15.....	A-25

SECRET

8-28

8-28

8-28

8-28

8-28

8-28

8-28

8-28

8-28

8-28

Defendant Florida Power & Light Company's Motion for Summary Judgment at 1 and its Memorandum of Law in Support of its Motion for Summary Judgment, U.S. District Court Case No. 92-35-CIV-ORL-22, April 15, 1993, at pp. 4, 8-13, 15-19, 35..... A-26

Order of Judge G. Kendall Sharp Denying Florida Power & Light Company's Motion to Dismiss all Counts for Lack of Standing, and to Dismiss Count I for Lack of Subject Matter Jurisdiction, U.S. District Court Case No. 92-35-CIV-ORL-18, April 9, 1992..... A-27

Answer of Florida Power & Light Company to Staff's Motion to Require Filing, FERC Docket No. ER83-523-000, November 7, 1983..... A-28

Federal Register Notices Containing Antitrust License Conditions for the Stanislaus Nuclear Plant, Unit 1; Grand Gulf Nuclear Unit Stations 1 and 2; and Crystal River Nuclear Generating Plant, Unit 3..... A-29

Brief of Florida Power & Light Company In Fort Pierce Utils. Authority v. FERC, U.S. Court of Appeals, D.C. Circuit. Case No. 83-1286, September 3, 1983, at pp. 1, 4-6..... A-30

Letter to J.A. Bouknight, Esq. from Robert A. Jablon, Esq., March 25, 1993..... A-31

Letter to Robert A. Jablon, Esq. from J.A. Bouknight, Esq., March 29, 1993..... A-32

Affidavit of Nicholas P. Guarriello with Exhibit B, April 30, 1992..... A-33

FPL Proposed Transmission Service Tariff No. 1, Article I at pp. 1, 2, 5, 27; FPL Proposed Transmission Service Tariff No. 3, at pp. 4, 15, FERC Docket No. ER93-465-000, filed March 19, 1993..... A-34

Proposed Form of Notice..... B-1

APPENDIX A-1

11-11-11



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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

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

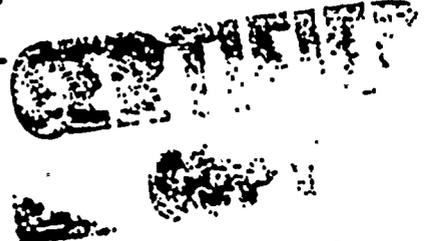
FLORIDA MUNICIPAL POWER AGENCY,)
)
 PLAINTIFF,)
)
 v.)
)
 FLORIDA POWER & LIGHT COMPANY,)
)
 DEFENDANT.)

----- x

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

DEPOSITION OF JUAN E. ENJAMIO

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



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1 information.

2 Q. If you could turn back one page, please. Let
3 me direct your attention to the bottom of the page,
4 where it says, "Table 4."

5 Was this information, the specific
6 projections provided in table 4, used as assumptions in
7 your study?

8 A. Some of that information was used as
9 assumptions. I'm not sure we used the assumptions in
10 table four.

11 Q. Why didn't you?

12 A. Because in the load flow model, I cannot
13 model the -- as an input assumption for one, I cannot
14 model the flow interconnection.

15 Q. Could you explain why that is?

16 A. We model loads and generation resources, and
17 the transmission system and the flow takes care of
18 itself. It's an output of the model, not an input.

19 Q. Are you familiar with something called the
20 HUB proposal?

21 A. Am I familiar with it? I've heard about it,
22 yes.

23 Q. Were you involved in formulating the HUB
24 proposal?

25 A. I was involved in some discussions of the

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1 proposal. I did not formulate it. I'm not sure what
2 you mean by "involved." I did participate in some
3 discussions of the proposal."

4 Q. The HUB proposal is something that FPL
5 proposed to FMPA, is that correct?

6 A. That's right.

7 Q. Were you involved in discussing the proposal
8 before it was presented to FMPA?

9 A. I believe so, yes.

10 Q. Did you conduct any analyses during that
11 time?

12 A. What analysis?

13 Q. Well, that's what I'm asking, but did you
14 conduct any analyses of how transmission -- any
15 analyses of the effect of the HUB proposal on the
16 transmission system?

17 A. No, we didn't.

18 Q. Did you analyze how power flows under the HUB
19 proposal would differ as compared to the transmission
20 requested by FMPA?

21 A. As far as I remember, the HUB proposal never
22 got off the conceptual stage and was discussed with
23 FMPA, but no studies that I know of, that I'm aware of,
24 were done to test the impact of the HUB proposal.

25 Q. Are you aware of whether FMPA has requested

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1 A. Not to my knowledge.

2 Q. By Corp., I meant Florida Power Corp. I
3 assume you understood that.

4 A. Yes.

5 Q. Sitting here today, can you identify any
6 differences in the power flows under the HUB proposal
7 as compared with the power flows under the IDO
8 proposal?

9 A. I did not study any HUB proposal, and I'm not
10 even sure what -- how we would go about modeling, since
11 I don't recall the details of it. We did not do any
12 studies of a HUB proposal, any technical studies of
13 load flows.

14 Q. So the short answer is no. You can't
15 identify any differences sitting here.

16 A. Right. No, no, I take that back. The short
17 answer to your question is not no. The short answer to
18 the question is, I don't know. We never did the
19 studies that would show there was an impact or not.

20 Q. Do you know whether anybody else at FPL did a
21 study of the HUB proposal, of the type we've been
22 discussing, the power flows that would result under it?

23 A. I'm not aware of any technical studies.

24 Q. How did FPL know that the HUB proposal was
25 technically feasible?

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1 A. The HUB proposal made technical sense, you
2 know, in our judgment of those involved. It was never
3 tested.

4 Q. What was the basis of that judgment?

5 A. Experience. There was nothing in it that
6 would lead us to believe it wouldn't work, technically.

7 Q. Do you have any experience with transmission
8 pricing?

9 A. Not really.

10 Q. In doing transmission planning for FPL, what
11 information does FPL have concerning the plans of large
12 retail industrial customers?

13 A. Repeat the question.

14 Q. What information do FPL's transmission
15 planners have concerning the plans of large retail
16 industrial customers?

17 A. The information that we have concerning the
18 plans of large retail customers, are their load
19 projections, current loads and projected loads.

20 Q. Those are projected loads developed by FPL?

21 A. I'm not sure. It could be provided to us by
22 the retail customer. It could be an FPL derived
23 assumption, projection.

24 Q. I believe you said earlier, and correct me if
25 I'm wrong, that you didn't have a reason to believe the

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1 HUB proposal was not technically feasible. I think the
2 quote was "not really."

3 What did you mean by "not really"?

4 A. What I believe I said was that in our
5 experience, there was nothing in the HUB proposal that
6 would make us believe it wasn't technically feasible.
7 I don't recall what I meant by "not really."

8 Q. Under the HUB proposal, could Vero Beach shut
9 off all of its generation?

10 A. As far as I understand, yes.

11 Q. It was technically feasible to continue
12 supplying power, under the HUB proposal that would not
13 cause a reliability problem, is that correct?

14 A. It's technically feasible to do anything, if
15 you take adequate measures to make up for whatever
16 impact on reliability there may be.

17 Q. Is that true of the IDO proposal presented by
18 FMPA, also, that it's technically feasible, provided
19 adequate measures are taken?

20 A. It's technically feasible, very likely, if
21 all the -- the impacts on the system or whatever, are
22 taken care of, are identified and properly accounted
23 for.

24 Q. When you say "accounted for," how would
25 impacts be accounted for?

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1 A. Impacts are accounted for by building
2 facilities or by redispaching your resources in a
3 different manner, an economic manner, in different
4 ways.

5 Q. Are there other ways you would take account?

6 A. Well, those are the main two. If there's a
7 negative impact, you have to put together, to offset,
8 either because of its cost or reliability impact. You
9 can spend money to build facilities, add facilities to
10 your system, or in some cases, it may be feasible to
11 incur economic dispatch costs, to overcome whatever
12 proposal -- to overcome whatever problem there may be.

13 Q. Let me get back for a minute to retail
14 industrial customers. Do their actual loads differ
15 from projected loads?

16 A. A forecast is a forecast, and the actuals are
17 almost always different from a forecast.

18 Q. Can you give an order of magnitude on how
19 much that can differ? Can it be as much as 30
20 megawatts?

21 A. I can't. I don't know of any general rule or
22 percentage of error.

23 Q. Does 30 megawatts sound too large to be
24 possible?

25 A. For what?

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APPENDIX A-2

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, DIVISION

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

FLORIDA MUNICIPAL POWER AGENCY,)
)
 PLAINTIFF,)
)
 v.)
)
 FLORIDA POWER & LIGHT COMPANY,)
)
 DEFENDANT.)
----- x

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

DEPOSITION OF STEPHEN FRANK

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

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

3 A. Okay.

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

9 A. Yes.

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

12 A. Yes.

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

15 A. Is that a question?

16 Q. Yes. Is that your understanding?

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

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

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

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

25 THE WITNESS: I don't know.

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1 (The question referred to was thereupon
2 read by the reporter as above recorded.)

3 THE WITNESS: Read the first part of the
4 question again.

5 (The question referred to was thereupon
6 read by the reporter as above recorded.)

7 THE WITNESS: I understand that they are
8 different. I could not tell you the
9 differences.

10 BY MR. JABLON:

11 Q. Mr. Locke would be conversant with the
12 differences?

13 A. He would.

14 Q. Are you aware that FMPA has based its claim
15 to be able to purchase transmission services on a
16 network basis in part based on the Nuclear Regulatory
17 Commission, St. Lucie II antitrust licensing
18 conditions?

19 A. Yes.

20 Q. Does FPL consider it to be legally bound by
21 the St. Lucie II antitrust licensing conditions?

22 MR. DAVIS: Object to the question, calls
23 for a legal conclusion on the part of this
24 witness.
25

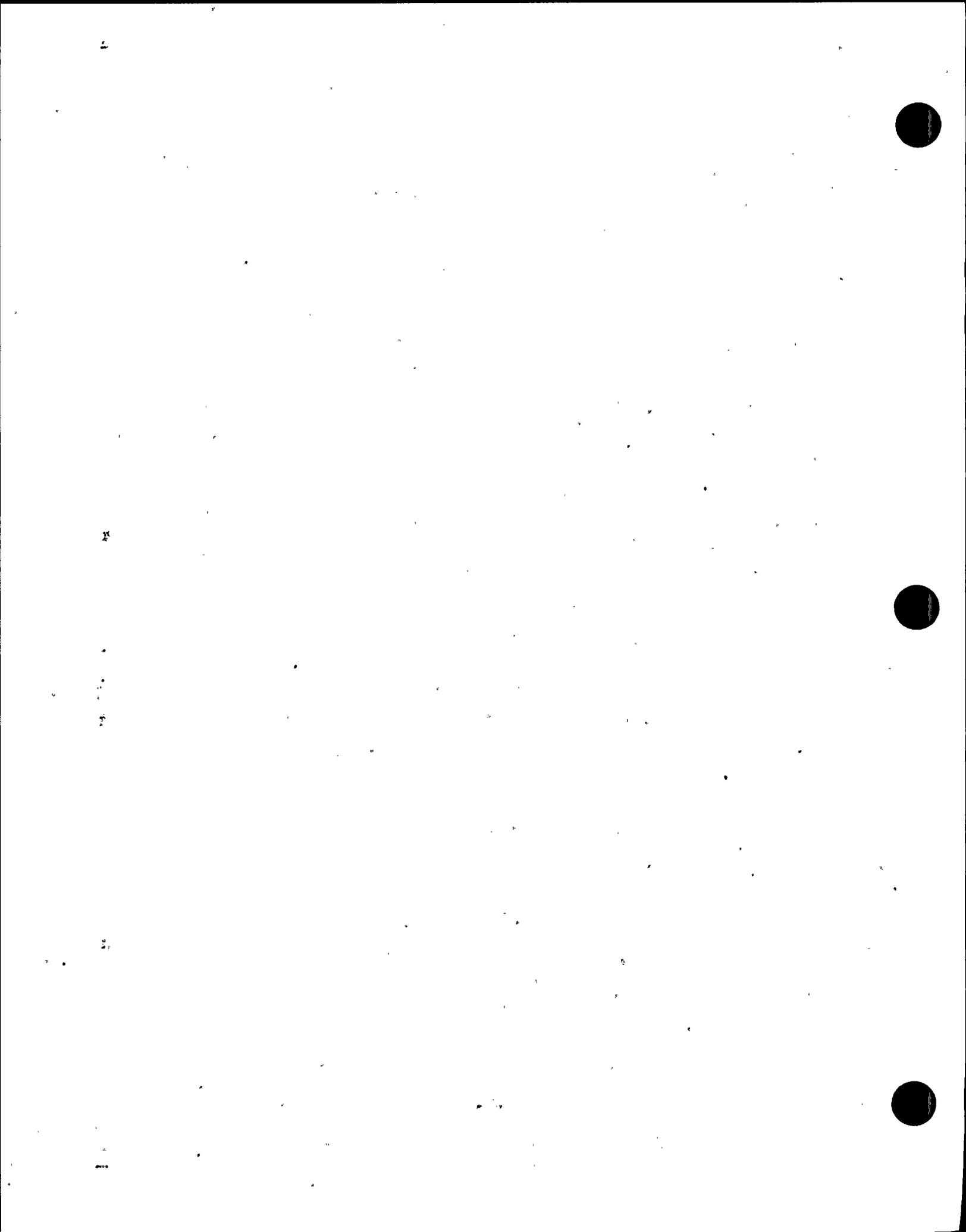
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1 BY MR. JABLON:

2 Q. You may answer.

3 A. Yes.

4 MR. JABLON: I'm asking for his
5 understanding, Mr. Davis.

6 BY MR. JABLON:

7 Q. Have you read the conditions?

8 A. No.

9 Q. Have you had them explained to you?

10 A. No.

11 Q. If I were to ask you your understanding of
12 the transmission section of the conditions, would you
13 be able to give an understanding of what they say?

14 A. No.

15 Q. But I assume that to the extent the
16 conditions constitute a legal obligation, that you
17 would want FPL to live up to them; is that correct?

18 A. It is my understanding that we comply with
19 the conditions.

20 Q. And you would want to be assured that you
21 do comply with the conditions?

22 A. Yes.

23 Q. Do you have any understanding of whether
24 the Florida Municipal Power Agency is entitled to the
25 benefits of the conditions?

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1 A. No.

2 Q. You don't know one way or the other?

3 A. I do not know one way or the other.

4 Q. Do you have any understanding whether its
5 member cities or some of its member cities are
6 entitled to the benefits of the conditions?

7 A. I don't know.

8 Q. Do you know whether Florida Power & Light
9 is contractually obligated or do you have an
10 understanding of whether Florida Power & Light is
11 contractually obligated to the Florida Municipal
12 Power Agency to provide it with any kind of
13 transmission services?

14 A. No.

15 Q. Are you aware that there were certain
16 settlements or are you aware whether there were
17 certain settlements between the Department of
18 Justice, the Nuclear Regulatory Commission staff and
19 Florida Power & Light which led up to adoption of the
20 license conditions?

21 MR. DAVIS: Could you fix a time for your
22 question, please?

23 MR. JABLON: At any time.

24 THE WITNESS: I just don't know the details
25 of the agreement.

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1 BY MR. JABLON:

2 Q. You don't know whether there was an
3 agreement between the Department of Justice and the
4 NRC staff?

5 A. I don't know what the details of the
6 agreement are, so therefore I don't know what
7 agreements -- who might be in them.

8 Q. Or even if there was an agreement?

9 A. Or even if there was an agreement.

10 Q. And do you know whether there was a
11 settlement agreement of certain antitrust and other
12 litigation between member cities of the Florida
13 Municipal Power Agency and Florida Power & Light?

14 A. I believe there was, but that's the sum of
15 my knowledge on it.

16 Q. As president of the Florida Power & Light
17 Company, what do you do to insure that you are in
18 compliance with the NRC license conditions?

19 A. I basically put the people in the jobs that
20 deal with those issues that I have confidence will
21 see to it that that gets done.

22 I don't personally deal with those issues.

23 Q. In view of the litigation, have you asked
24 the people in charge to report to you as to the
25 method of compliance?

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1 A. No.

2 Q. Have you asked them to report to you in any
3 way to insure that there is compliance?

4 A. No.

5 Q. When you refer to the people in charge, to
6 whom are you referring?

7 A. Primarily our general counsel.

8 Q. Who is that?

9 A. Dennis Coyle.

10 Q. Have you had discussions with him about
11 compliance --

12 A. No.

13 Q. -- or about your obligations under the
14 license conditions --

15 A. No.

16 Q. -- or under the contracts?

17 A. No.

18 Q. Have you issued policy statements or
19 directives or guidelines or the like to attempt to
20 ensure compliance?

21 A. No.

22 Q. Have you or has anybody in Florida Power &
23 Light to your knowledge conducted an audit to
24 ascertain your obligations?

25 MR. DAVIS: Object to the form of the

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1 question. What's an "audit," for purposes of
2 this question?

3 THE WITNESS: Not to my knowledge.

4 BY MR. JABLON:

5 Q. Do you understand that FMPA gave Florida
6 Power & Light a proposal for transmission for IDO to
7 which it wanted Florida Power & Light's agreement?

8 A. Would you repeat that, please?

9 MR. JABLON: Could you read that back.

10 (The question referred to was thereupon
11 read by the reporter as above recorded.)

12 THE WITNESS: What is IDO?

13 BY MR. JABLON:

14 Q. Integrated Dispatch and Operations project,
15 or it's another name for the expanded requirements
16 project?

17 A. Yes. I understand that we have looked at a
18 proposal.

19 Q. If FPL had agreed to that proposal, do you
20 know whether it could have filed the agreement with
21 the Federal Energy Regulatory Commission?

22 A. I don't know.

23 Q. Do you know whether the Federal Energy
24 Regulatory Commission regulates the rates, terms and
25 conditions for transmission service which Florida

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APPENDIX A-3



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

- - - - - X
FLORIDA MUNICIPAL POWER AGENCY, :
Plaintiff, : Case No.
v. : 92-35-Civ-Orl-22
FLORIDA POWER & LIGHT CO., :
Defendant. :
- - - - - X

Washington, D.C.
Thursday, February 18, 1993

Deposition of VICTOR GILINSKY, a witness
herein, called for examination by counsel for Defendant
in the above-entitled matter, pursuant to notice, the
witness being duly sworn by SHARON M. HUTTON, a Notary
Public in and for the District of Columbia, taken at the
offices of Newman & Holtzinger, 1615 L Street, N.W.,
Washington, D.C., at 9:44 a.m., Thursday, February 18,
1993, and the proceedings being taken down by Stenotype
by SHARON M. HUTTON and transcribed under her direction.

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1 A. I don't believe I was aware of it one way or
2 the other.

3 Q. Where else was it defined other than the
4 Waterford decision?

5 A. I'm not aware of it being defined anywhere
6 else.

7 Q. Where else was it used other than the Waterford
8 decision?

9 A. It's used in numerous licenses.

10 Q. Can you give me some illustrations of what
11 licenses it's used in?

12 A. I would guess it's used in half the licenses;
13 perhaps more. I don't know.

14 Q. But what does it mean, this term of art?

15 A. As defined by -- in that particular case by the
16 licensing board, it means that when a group of entities
17 want to engage in coordinating to gain the advantages of
18 exchanges of energy, that the price for transmission in
19 that situation should be a single price and should not be
20 a price which is the sum of the individual prices for the
21 individual paths or possible paths of transmission,
22 because they mount up to be a rather large number.

1 Q. Now, in that decision, the applicant was
2 initially refusing to agree to provide service among a
3 number of entities, was it not?

4 A. Yes, I believe so.

5 Q. The applicant only wanted to agree to deliver
6 between two entities.

7 A. I believe that's right.

8 Q. And the board required the applicant to deliver
9 among more than two entities, did it not?

10 A. In the sense that the board was using that.

11 Q. To your knowledge, has FPL ever refused to
12 provide transmission services among entities as that term
13 of art is used in the NRC?

14 A. The among here is not talking about a physical
15 act, but the way you price that act in effect.

16 Q. Okay. And what role did the NRC have in
17 pricing of transmission services while you were on the
18 NRC?

19 A. Well, I think we're well aware that the acts of
20 the authorities for sitting or approving prices is with
21 the NRC. But the NRC has authority in the antitrust
22 area. And if the nature of the pricing scheme is such as

1 to cause antitrust problems, then the NRC has authority
2 in that area.

3 Q. Did the NRC ever act in that area while you
4 were on the NRC?

5 A. I don't recall any action in -- of course,
6 making the distinction the Waterford case came before
7 that. So the commission --

8 Q. You didn't recall that. I'm asking what you
9 recall.

10 A. Well, let's see. Let's draw a distinction
11 between what I knew at the time and --

12 Q. What you have learned since you were engaged in
13 this case.

14 A. Right. At the time I don't believe I was aware
15 of these matters, if that's what your question is.

16 Q. Are you aware of any other adjudications
17 involving the term between two or among more than two
18 other than the Waterford case?

19 A. No.

20 Q. Could you possibly diagram for me your
21 understanding of among and between as you described it,
22 just to illustrate it, just put four or five entities

APPENDIX A-4





11

11

1 is required through discussions with counsel.

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

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

8 A. To my knowledge, yes.

9 Q. And did you have an understanding as to
10 why FMPA wanted to include that language in Exhibit
11 2?

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

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

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

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

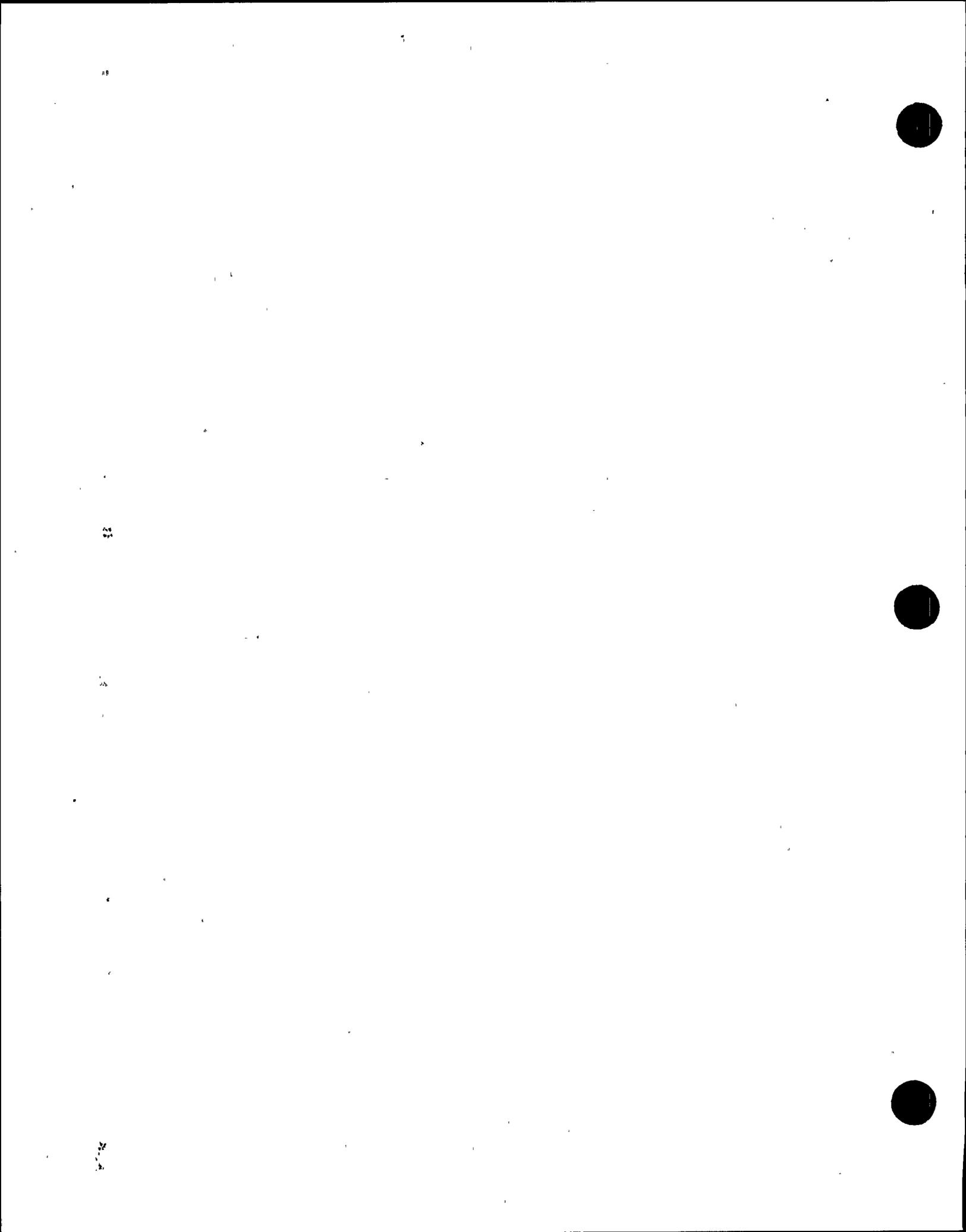
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1 still ongoing at the time?

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

6 Q. Did you have any understanding as to why
7 FMFA wanted this change to the language of Section
8 21.1?

9 A. Yes.

10 Q. And what was that understanding?

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

16 Q. And what was your understanding of FMFA's
17 desire based on?

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

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

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

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

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1 A. Within the context of this first proposal,
2 I believe the rate that was suggested was the same as
3 the annual rate that's offered under the St. Lucie
4 delivery service proposal.

5 Q. Did FPL subsequently indicate that the
6 rate would be higher?

7 A. Not to my knowledge.

8 Q. Was the original HUB proposal the one
9 that's reflected in Exhibit 3 for directional
10 service, meaning servicing one direction only?

11 A. Yes.

12 Q. And did FPL subsequently agree to provide
13 bi-directional service to and from the HUB?

14 A. At no point was agreement reached,
15 however, it did offer that as part of its negotiating
16 package.

17 Q. Did FPL ever identify the rate that it
18 proposed to make applicable to bi-directional service
19 under the HUB type concept?

20 A. Not that I recall.

21 Q. Under the HUB concept, if FMPA purchased
22 power from Gainesville for delivery to Jacksonville
23 Beach, would a contract demand from Gainesville to
24 the HUB be required?

25 A. It would be dependent on the type of

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1 service requested.

2 Q. What would be the options?

3 A. Firm or as-available type services.

4 Q. For firm service, would a contract demand
5 from Gainesville to the HUB be required?

6 A. Under this proposal, yes.

7 Q. Under the HUB concept, would the amount of
8 transmission purchased for Jacksonville Beach be
9 equal to its total load or its total load less FPL
10 partial requirements service provided to Jacksonville
11 Beach?

12 A. Its total load less partial requirements
13 services.

14 Q. Did FPL ever tell FMPA that FMPA could not
15 have non-firm transmission service under the HUB
16 proposal?

17 A. No.

18 Q. Did FPL ever tell FMPA that FMPA could
19 have non-firm transmission service under the HUB
20 proposal?

21 A. Yes.

22 Q. Do you know whether anybody ever came up
23 with a specific rate for bi-directional service under
24 the HUB proposal?

25 MR. DAVIS: The only question was did he

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1 give a rate to FMPA.

2 A. To my knowledge, I don't know of any rate.

3 Q. The development of a rate, is that
4 something that would have been done within the
5 utility markets?

6 A. No.

7 Q. Who would have been responsible for
8 developing such a rate?

9 A. The rate department at FPL.

10 Q. Do you know whether the rate department
11 was ever requested to develop a rate for
12 bi-directional service under the HUB concept?

13 A. Not to my knowledge.

14 Q. Going back to a discussion we had a while
15 earlier about neighboring entities and how that term
16 is used under the license conditions.

17 Did you ever have any discussion with
18 anyone other than legal counsel as to whether FMPA is
19 or is not a neighboring entity?

20 A. Yes.

21 Q. With whom did you have those kinds of
22 discussions?

23 A. Bill Locke.

24 Q. Did that happen on more than one occasion
25 or just one?

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APPENDIX A-5

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

4 - - - - - X

5 FLORIDA MUNICIPAL POWER AGENCY, :

6 Plaintiff, :

7 v. : Case No.

8 FLORIDA POWER & LIGHT COMPANY, : 92-35-Civ-Orl-22

9 a Florida corporation, :

10 Defendant. :

11 - - - - - X

12 Washington, D.C.

13 Wednesday, January 6, 1993

14 Deposition of WILLIAM LOCKE, a witness herein,
15 called for examination by counsel for Plaintiff in the
16 above-entitled matter, pursuant to notice, the witness
17 being duly sworn by JODY PARRISH, a Notary Public in and
18 for the District of Columbia, taken at the offices of
19 Newman & Holtzinger, 1615 L Street, S.W., Washington,
20 D.C., at 1:00 p.m., Wednesday, January 6, 1993, and the
21 proceedings being taken down by Stenotype by JODY
22 PARRISH and transcribed under her direction.

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(800) FOR DEPO

1 Q. Is it your belief that, if FMPA had said yes to
2 the FP&L HUB proposal, that that proposal was capable of
3 implementation?

4 A. Yes.

5 Q. Mr. Bouknight suggested that there might be or
6 might have been some additional construction necessary to
7 make the HUB proposal work.

8 Is that your understanding?

9 A. I'd like to make it more simple than that. In
10 order to finalize an understanding with FMPA, FP&L needs
11 to understand the cost of providing the service. That
12 simple.

13 Q. Now, what information did you need which FMPA
14 didn't give you to enable you to understand the cost of
15 implementing the proposal?

16 A. If I may, I'll give you an example based on the
17 last proposal that we discussed, and that is, we asked
18 that we participate in a study which allowed us to
19 understand how you plan to dispatch and operate your
20 generation resources, and with that information, we would
21 try to better understand the impact on FP&L's system and
22 better understand the contractual provisions which were

1 necessary to implement the HUB concept.

2 Q. Now, first of all, you focused in your response
3 that you needed additional information to determine the
4 cost to FP&L from implementing the HUB proposal; is that
5 correct?

6 A. Yes.

7 Q. Did you need additional information to
8 determine whether the proposal could work technically?

9 MR. BOUKNIGHT: Object to the form of the
10 question.

11 THE WITNESS: I'm not sure what you mean by
12 technically.

13 BY MR. JABLON:

14 Q. Was capable of implementation from an
15 electrical standpoint without creating reliability
16 problems or the like.

17 MR. BOUKNIGHT: Object to the form of the
18 question.

19 THE WITNESS: Florida Power & Light thought the
20 HUB concept would work. It would work. Again, it was a
21 concept to be worked through, the details of which had to
22 be worked through.

1 But your question comes to two parts, and that
2 is whether or not it could be done reliably. Having an
3 understanding of how you operate your system would have
4 given us an understanding about how to answer that
5 question and what, if anything, would have to be done.

6 BY MR. JABLON:

7 Q. Mr. Locke, I want to be clear in my questions
8 and where I'm going.

9 Was there a reasonable possibility that if FMPA
10 had said yes, we accept your HUB proposal, we are willing
11 to work with it, it is a good idea, that FP&L would have
12 then come back and said no, it is not technically
13 feasible?

14 A. Mr. Jablon, as I said throughout the
15 negotiations, this is a proposal that we think works and
16 meets the need of FMPA. If we can get agreement on the
17 general concept, we are willing and will roll up our
18 sleeves and negotiate a contract to accommodate your
19 needs.

20 Q. So the bottom line is, from a technical
21 standpoint, you thought it could work?

22 MR. BOUKNIGHT: Object to the form of the

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1 question.

2 BY MR. JABLON:

3 Q. Is that correct?

4 A. Again, I don't know what you mean by
5 technical. We put a proposal on the table that we
6 thought would work.

7 Q. Again, by technical, I mean being able to
8 transmit the power without creating undue reliability
9 problems on the Florida Power & Light transmission
10 system --

11 MR. BOUKNIGHT: I object --

12 BY MR. JABLON:

13 Q. -- or other engineering problems.

14 MR. BOUKNIGHT: I object to the form of the
15 question.

16 THE WITNESS: Mr. Jablon, I think I've already
17 answered that.

18 BY MR. JABLON:

19 Q. I think the answer is yes, but just for clarity
20 of the record, is that your answer?

21 MR. BOUKNIGHT: Mr. Locke, if you feel you have
22 already answered the question, you may say that.



1 THE WITNESS: I've already answered the
2 question.

3 MR. JABLON: Mr. Bouknight, it's an important
4 area and helps nobody to have an unclear record. If
5 he's -- I can't refer back to a transcript I don't have.
6 I'm asking the -- let me rephrase the question again, but
7 I think I'm entitled to an answer.

8 BY MR. JABLON:

9 Q. The question is, if FMPA had accepted the HUB
10 proposal, do you have a significant doubt in your mind
11 whether that proposal could have been implemented
12 electrically to provide transmission for IDO?

13 MR. BOUKNIGHT: Mr. Jablon, he's answered that
14 question. He's tried to answer it carefully. I think
15 the problem is with the question. It can't be answered
16 simply yes or no, and he's tried to give you a careful
17 answer and we've already been through this.

18 MR. JABLON: Well, if the answer -- I thank you
19 for your answer, but the witness --

20 MR. BOUKNIGHT: You are simply rephrasing a
21 question which he's told you he's already answered.

22 Mr. Locke, if you feel you have not answered

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF FLORIDA
3 ORLANDO DIVISION
4 - - - - - X
5 FLORIDA MUNICIPAL POWER AGENCY, :
6 Plaintiff, :
7 v. : Case No.
8 FLORIDA POWER & LIGHT COMPANY, : 92-35-Civ-Orl-22
9 a Florida corporation, :
10 Defendant. :

11 - - - - - X
12 Washington, D.C.
13 Thursday, January 7, 1993

14 Continued deposition of WILLIAM LOCKE, a
15 witness herein, called for examination by counsel for
16 Plaintiff in the above-entitled matter, pursuant to
17 agreement, the witness having been previously duly sworn
18 by JODY PARRISH, a Notary Public in and for the District
19 of Columbia, taken at the offices of Newman & Holtzinger,
20 1615 L Street, N.W., Suite 1000, Washington, D.C., at
21 9:30 a.m., Thursday, January 7, 1993, and the proceedings
22 being taken down by Stenotype by JODY PARRISH and

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1 A. I don't know what that implies. I'm not a rate
2 expert.

3 Q. Did you or Florida Power & Light
4 representatives communicate to FMPA that if FMPA were to
5 add a resource, a power supply resource, that there might
6 be additional transmission charges associated with the
7 addition of that resource to the charges encompassed
8 under the HUB proposal?

9 A. What I do recall about that matter is as
10 follows: While I did not attend, as you know, all the
11 negotiating sessions, it was my direction that with
12 regard to new resources or regard to resources that would
13 be shut down, that we would have to negotiate the
14 appropriate provisions.

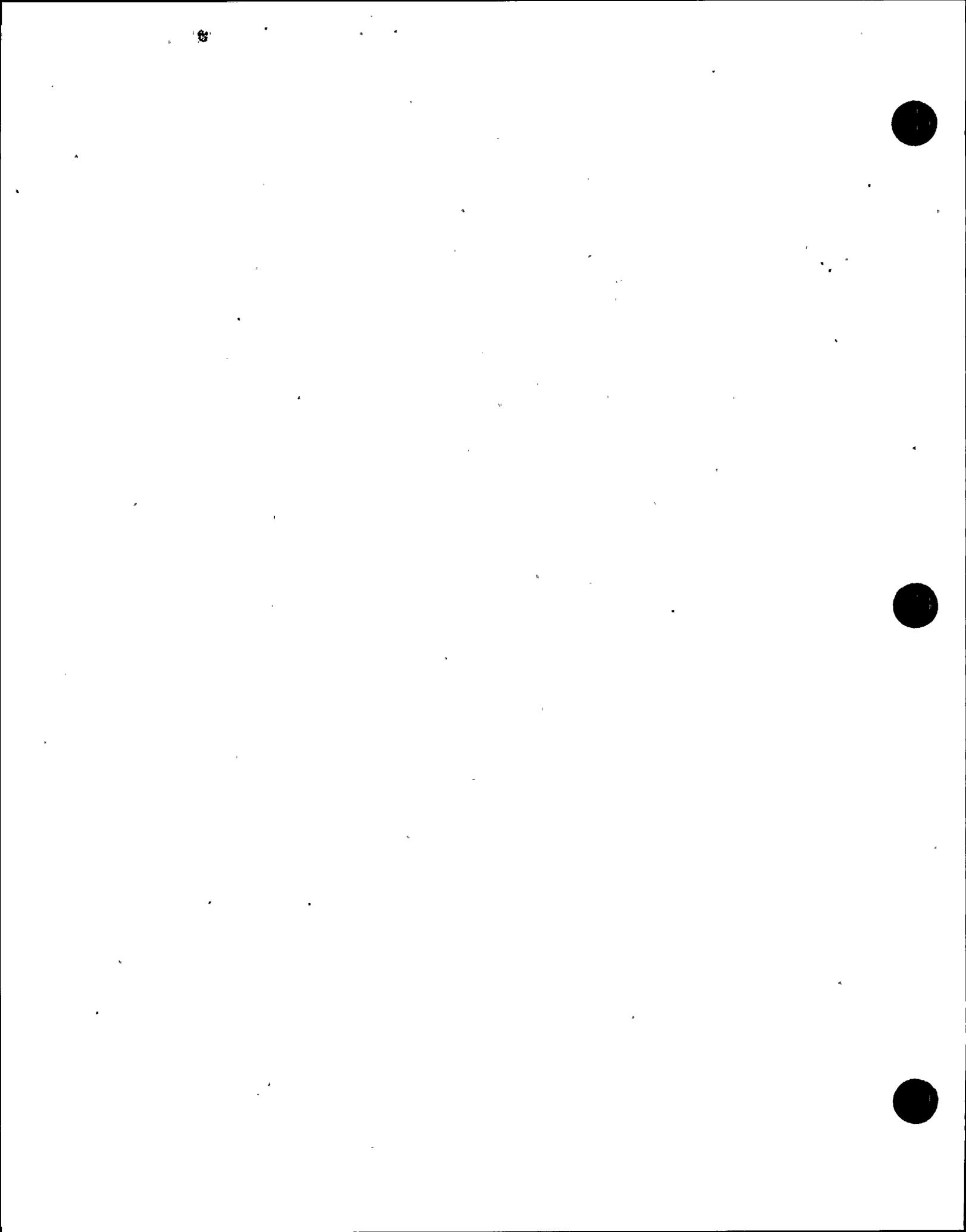
15 I do not recall any specific conversations
16 other than that at the moment.

17 Q. And no specific price or pricing methodology
18 was ever given for that?

19 A. Not from me.

20 Q. And not from any FPL representative that you
21 know of?

22 A. Not that I can recall.



APPENDIX A-6

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

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

5 FLORIDA MUNICIPAL POWER AGENCY,)
6 Plaintiff,)
7 v.)
8 FLORIDA POWER & LIGHT COMPANY,)
9 Defendant.)
-----x

10 200 South Biscayne Boulevard
11 Miami, Florida
12 November 16, 1992
13 11:35 a.m. - 2:00 p.m.

14 DEPOSITION OF RAIMUNDO REY

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

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1 A. No.

2 Q. Are you familiar with the HUB proposal
3 that FPL made to FMPA?

4 A. I heard the term but I am not familiar
5 with the details.

6 Q. Did you or to your knowledge anyone at FPL
7 ever evaluate the impact of that proposal on FPL
8 economic dispatch?

9 A. To the best of my knowledge, no.

10 Q. Is that something if FPL had studied you
11 expect you would be aware of?

12 A. Not necessarily.

13 Q. Have you done work for FPL that was
14 related to the FMPA IDO project?

15 A. We explored the capabilities of MAPS using
16 the scenario described as the integrated dispatch
17 proposal with FMPA.

18 MR. POMPER: Let me distribute a document
19 and ask that it be marked as Exhibit 1.

20 (Deposition Exhibit 1 was marked for
21 identification)

22 BY MR. POMPER:

23 Q. Do you recognize this document?

24 A. Yes.

25 Q. Could you please describe for me the

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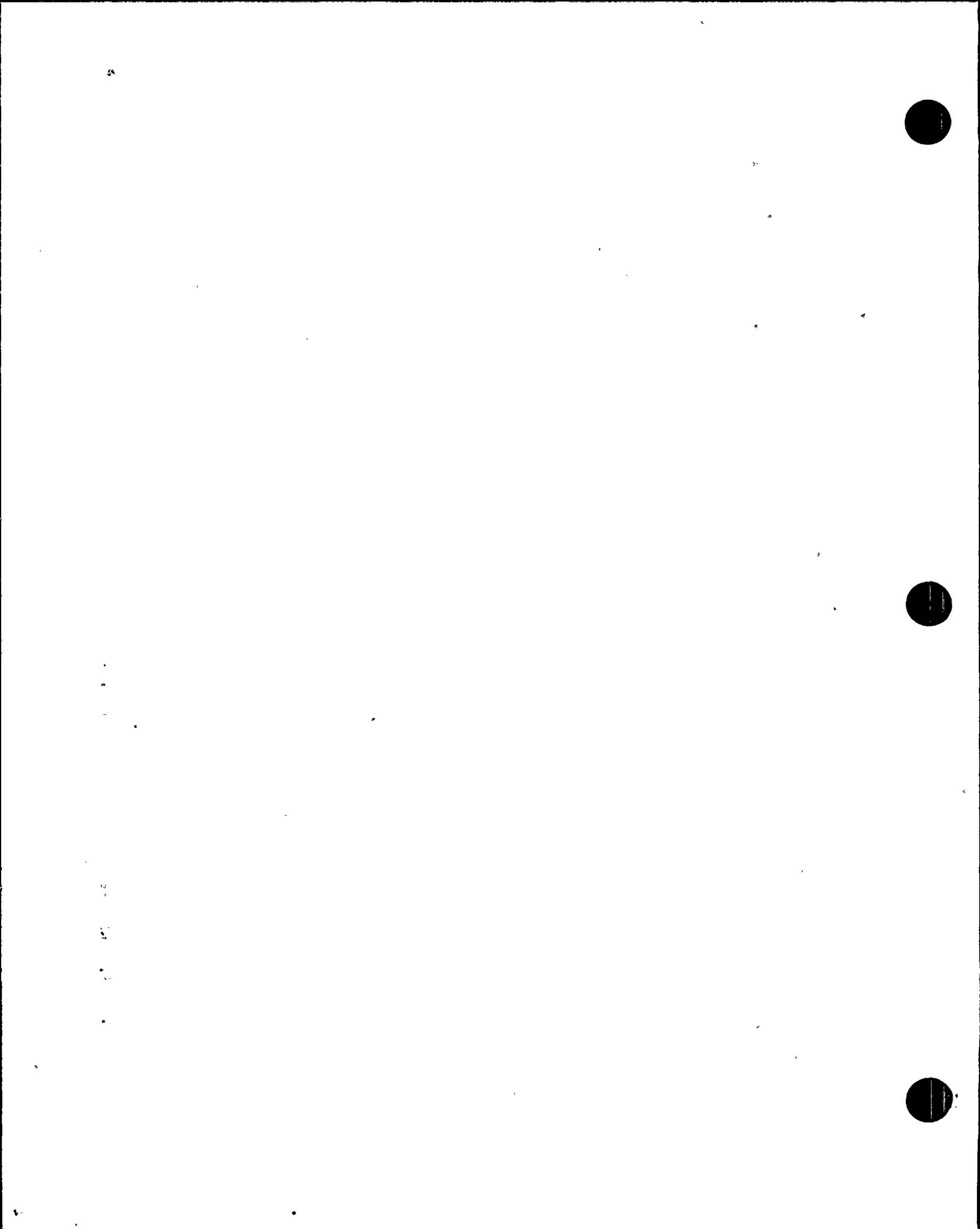
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APPENDIX A-7



ORIGINAL

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY, :
Plaintiff, :

v. : NO. 92-35-CIV-Or1-22

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

Defendant. :

Washington, D.C.
Friday, February 19, 1993

Deposition of

THOMAS M. ROBERTS

a Witness, called for examination by counsel for the
Plaintiff, pursuant to notice, held in the law offices of
Spiegel & McDiarmid, 1350 New York Avenue, Northwest,
Suite 1100, Washington, D.C. 20005, beginning at 10:15
o'clock, a.m., before Jane L. Vaughan, RPR, a Notary
Public in and for the District of Columbia, when there
were present on behalf of the respective parties:

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1 commissioners there is a career civil service staff who
2 conduct the day-to-day activities of the agency and the
3 commission is responsible for broad policy decisions.

4 Q With respect to antitrust and other matters does
5 the commission delegate broad authority to the staff?

6 A That is my view, yes.

7 Q And does it delegate authority to the licensing
8 boards and appeal boards?

9 A Yes.

10 Q So that if a licensing board or appeal board
11 renders a decision which is not appealed or otherwise
12 reviewed by the commission, does that decision speak for
13 the commission?

14 A I would say in general terms, yes.

15 Q Does the commission have the authority on its
16 own if it has a problem with an appeal board decision to
17 reach down and review it?

18 A Yes.

19 Q And does the appeal board stand in a similar
20 role with respect to the licensing boards?

21 A Yes.

22 Q Are there methods where if the staff believes a

1 licensing board or appeal board decision is incorrect.
2 that they can call their views to the attention of the
3 commissioners?

4 A Yes.

5 Q How is that done?

6 A There is a formal procedure for -- and this
7 would not apply only to a licensing board or appeal board
8 decision, but a mechanism called a differing professional
9 opinion.

10 Q Are you prepared to give additional opinions or
11 testimony with respect to how licensing board decisions
12 are reviewed and the effect of any reviews?

13 A No.

14 Q But licensing board decisions can be appealed to
15 the appeal boards; right?

16 A Yes.

17 Q The first sentence in the subsequent paragraph
18 states, quote, Mr. Roberts will also testify as to the
19 NRC's antitrust oversight activities in connection with
20 the licensing of nuclear power plants, closed quote.

21 What opinions or testimony are you prepared to
22 give on that matter?

APPENDIX A-8

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

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

5 FLORIDA MUNICIPAL POWER AGENCY,)
6)
7 Plaintiff,)
8 v.)
9 FLORIDA POWER & LIGHT COMPANY,)
10 Defendant.)
-----x

11 Southeast Financial Center
12 Miami, Florida
13 Wednesday, November 11, 1992
14 10:05 a.m.

15 DEPOSITION OF WILLIAM ROBERT SCHONECK
16 VOLUME II

17 Taken before BARNET I. ABRAMOWITZ, CSR-CM
18 and Notary Public in and for the State of Florida at
19 Large, pursuant to notice issued in the above cause.
20
21
22
23
24
25

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1 Q. Setting aside price, under the HUB
2 proposal, did FPL offer to transmit from the same
3 delivery points and to the same points of use as was
4 requested under FMPA's proposal?

5 A. I don't understand what you mean by "same
6 delivery points to the same points of use."

7 Q. Could FMPA get the same functional
8 transmission under the FPL HUB proposal as under the
9 proposals which FMPA made?

10 A. At points of the discussion, FPL believed
11 that all of the objectives that FMPA was trying to
12 achieve could be achieved through the HUB proposal.
13 However, we never got to the specific details of
14 exactly how the whole project would work because
15 discussions never proceeded that far.

16 Q. So is the answer to my last question that,
17 for whatever reason, the HUB proposal was never made
18 sufficiently specific so that you could tell whether
19 FMPA could get the same service under it as it could
20 under its proposal?

21 A. I'm not sure what you mean by "same
22 service." You could accomplish the objective of the
23 IDO project by the HUB proposal.

24 Q. What do you mean by "the objectives" as
25 you used that term in your previous answer?

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1 A. The integration of the various members'
2 resources in conjunction with all of the participants
3 of the project.

4 Q. Under the HUB proposal, could one, for
5 example, dispatch Stanton Power to any FMPA
6 designated delivery point?

7 A. We never got that far in the discussions.

8 Q. As you contemplated the HUB proposal,
9 would there have been limitations on the ability of
10 FMPA to deliver Stanton Power to any of its members'
11 delivery points?

12 A. We never got that far during the
13 discussions.

14 Q. Did you have a contemplation?

15 A. I think that if discussions had
16 progressed, that that may have been able to be
17 achieved, provided that we met those criteria which I
18 laid out to you previously about the ability to plan
19 and operate with no cross-subsidies, I believe that
20 could have been achieved.

21 Q. In terms of the ability to plan, what
22 contemplations did you have as to how the HUB concept
23 would work as compared to how FMPA's proposals would
24 work?

25 A. From the ability to plan what we were

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APPENDIX A-9

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, DIVISION

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

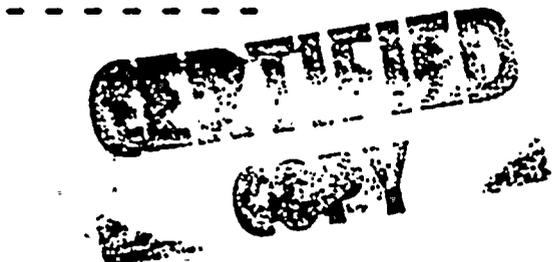
FLORIDA MUNICIPAL POWER AGENCY,)
)
 PLAINTIFF,)
)
 v.)
)
 FLORIDA POWER & LIGHT COMPANY,)
)
 DEFENDANT.)

----- X

Southeast Financial Center
Miami, Florida
November 3, 1992
9:40 a.m. - 5:30 p.m.

DEPOSITION OF JOSEPH P. STEPENOVITCH

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



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1 hub proposal?

2 A. I was at the meetings when all of that was
3 discussed.

4 Q. Are you referring to meetings with FMPA
5 representatives or internal FPL meetings?

6 A. Both.

7 Q. How many internal FPL meetings were there
8 to discuss the hub proposal?

9 A. I really don't know how many.

10 Q. Is it more than 10?

11 A. Not that I was involved with.

12 Q. Were there more than five that you were
13 involved with?

14 A. I can't remember. Honestly, I don't know
15 how many meetings I was involved with.

16 Q. Did you do any kind of analysis or
17 evaluation or study relating to the impact of the hub
18 proposal on FPL's operations?

19 A. Not on the transmission system, no.

20 Q. What about on the part of FPL's operations
21 that you are concerned with?

22 A. The hub was discussed to see if that could
23 work in our computer system and energy accounting and
24 all the things I'm involved with.

25 Q. So someone asked you to consider whether

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1 the hub proposal could work with respect to the
2 operations that you are concerned with?

3 A. Yes.

4 Q. And did you express the view that it could?

5 A. As far as there were many meetings that I
6 was involved with from the beginning to that point in
7 time. Now, whether it could work or it couldn't
8 work, the offer was on the table, I believe, and we
9 were willing to make that offer.

10 Q. Would FPL have been willing to make the
11 offer if it wouldn't work, from your point of view?

12 A. I really don't know. That's speaking for
13 Bill Locke. Whether he would have made that offer or
14 not, I don't know.

15 Q. If FMPA accepted the hub offer, could you
16 have made it work?

17 A. I would think that without all of the
18 information in front of me, I don't know if I could
19 make it work or make it not work.

20 Q. Did you ever tell Bill Locke or anybody in
21 his group that you didn't know whether the hub
22 proposal would work or not?

23 A. In our communications, again, this was
24 something that we found feasible that may work and
25 the offer was put out on the table. It never got to

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1 the point of actual details in the computer system.

2 Q. Let me make sure that I understand what
3 your situation was at that point in time. It was
4 your opinion that the hub proposal might work; is
5 that correct?

6 A. It was a condition that Mr. Schoneck and I
7 talked about -- and Dean Gosselin. It was something
8 feasible to move along the negotiations to hopefully
9 come up with a resolution that something may work
10 here. Again, it never got into the detail of can
11 this thing actually work.

12 Q. What did you mean by "feasible"?

13 A. "Feasible" meaning there were -- and again
14 I'm not in charge of negotiations -- they were going
15 back and forth and looking for something for both
16 parties.

17 Q. Did you ever express any view as to whether
18 the hub proposal should or shouldn't be put on the
19 table, as you call it, to FMPA?

20 A. To the best of my knowledge, I don't think
21 I had an opinion either way, whether it was good or
22 bad.

23 Q. Was there anybody else involved in
24 formulating the hub proposal who was responsible for
25 considering the potential impact of that proposal on

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1 the area of operations that you are involved with?

2 A. No. That was, again, dumped down because
3 it was such a long-term contract. I think it was a
4 long-term contract. To the best of my knowledge,
5 they were asking for 30 years. That was, again, in
6 the area of our system planning group.

7 Q. Did you or anyone under your supervision do
8 any kind of production cost modeling to evaluate the
9 effect of the hub proposal?

10 A. No.

11 Q. Did you or anyone in your group do any kind
12 of load flow analysis to evaluate the potential
13 impact of the hub proposal?

14 A. No.

15 Q. How would the power flows under the hub
16 proposal have differed as compared with the power
17 flows under the transmission arrangement that was
18 requested by FMPA?

19 A. Which transmission agreement is that?

20 Q. Under FMPA's request for the IDO project.

21 MR. ROSS: Can you fix a time? Since we
22 talked yesterday, those proposals moved over
23 time.

24 BY MS. BLAIR:

25 Q. Well, was there a point at which you were

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1 particularly involved?

2 Is there a point in the process that you
3 had the most knowledge of?

4 A. I believe I was equal all the way. I mean,
5 I was involved under my responsibilities all the way.

6 Q. Were you familiar with what -- I think you
7 said earlier you were familiar with what FMPA wanted
8 to do under its IDO project proposal; is that right?

9 A. The original, right.

10 Q. How would the power flows under the hub
11 proposal be different from the power flows that would
12 have occurred under the original FMPA IDO proposal?

13 A. Well, that's really hard to say only
14 because to me the two were -- are different. And
15 one, I think the original one was a request for
16 everything, you know, the full system requirements.
17 And I believe the hub was down to a point of only
18 needing a certain amount of transmission service.
19 That's my understanding, my remembrance.

20 Q. Did you ever make a comparison between the
21 two proposals to say, well, if we did it this way the
22 power flows would work like this; and if we did it
23 under the hub proposal, there would be these
24 differences in power flows?

25 A. I never did, no.

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1 Q. Do you know whether anybody else did?

2 A. No, I don't.

3 Q. Did you ever do a side-by-side comparison
4 of other characteristics of the two proposals, other
5 than power flows, to say well, this is how the FMPA
6 IDO proposal would work versus this is how the hub
7 proposal would work?

8 A. I think I had one conversation with
9 Mr. Schoneck where we drew some analysis -- not
10 analysis, but some pictures on a blackboard. Other
11 than that, you know, no analysis.

12 Q. What was the nature of the pictures or the
13 general subject matter of the pictures?

14 A. Again, it was scheduling. How would we
15 schedule for this and how would we schedule for this
16 and how would we monitor those flows. That type of
17 information was discussed.

18 Q. As you understood the hub proposal, was the
19 hub a real place, a physical place?

20 A. "Physical" meaning that Orlando would be
21 the controlling dispatcher?

22 Q. Orlando Utilities Commission.

23 A. That's the way I understood it. They were
24 the hub. FMPA was going to pay them as they pay them
25 now to operate their patrol area, and we would

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APPENDIX A-10

IDENTIFICATION OF FPL DEPONENTS

<u>FPL Deponent</u>	<u>Position</u>
Karabet Adjemian	FPL Manager of Transmission Planning.
Domingo Z. Alfonso	FPL Staff Engineer in the Power Supply Department.
Joseph P. Cresse	Designated FPL Expert
Juan Enjamio	FPL Supervisor of Local Area [Transmission] Planning.
Stephen Frank	President and Chief Operating Officer of FPL and a director of FPL Group.
Dean R. Gosselin	Former Coordinator of FPL's Interutility Markets Department, under the direction of William Locke and Robert Schoneck.
William Locke	FPL Manager of Interutility Markets and lead FPL negotiator with regard to FMPA's IDO Project and other FPL-FMPA activities.
Raimundo Rey	FPL senior engineer with experience in operations, generation planning and the bulk transmission planning departments
Thomas M. Roberts	Designated FPL Expert
William R. Schoneck	FPL Coordinator of Interutility Markets from 1985-91 and lead FPL negotiator, in conjunction with William Locke, with regard to FMPA's IDO project.
William H. Smith	Designated FPL Expert
Joseph P. Stepenovitch	FPL Manager of Interchange Operations responsible for implementing and administering interchange agreements, purchase power agreements and cogeneration agreements. Formerly FPL Operational Planning Supervisor.
Richard Larry Taylor	FPL Vice President of Power Delivery responsible for design, construction, installation and operation of FPL's transmission, substation, and interconnection facilities.

APPENDIX A-11



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY

Plaintiff,

v.

Case No. 92-35-CIV-Orl-3A22

FLORIDA POWER AND LIGHT COMPANY

Defendant.

AFFIDAVIT OF ROBERT E. BATHEN

ORLANDO, FLORIDA)

SS:

1. My name is Robert E. Bathen. I am a partner and the Managing Director of Consulting Services of the firm of R. W. Beck and Associates. Effective May 1, 1993 I will have retired as a partner and as Managing Director of Consulting Services, but will continue as a full time employee as an Executive Engineer and Senior Consultant.

2. My business address is 800 N. Magnolia Avenue, Suite 300, Orlando, Florida 32801.

3. A broad statement of my professional qualifications and experience is included as Attachment A. More specifically related to Florida, I have engaged in power supply studies, electric rate matters, contract negotiations, preparation of expert



testimony and settlement negotiations on behalf of various Florida cities since 1962 and in residence in Florida since 1965. As a result, I became deeply involved in identifying the needs of municipally owned electric systems in Florida and assisting them in their efforts to obtain reasonable access to bulk power supply markets including interconnection agreements, pooling, access to transmission and large scale generation, including nuclear plants. Part of my work on behalf of the Florida Cities and FMPA included negotiations with Florida Power and Light Company. During the period of the litigation leading up to the comprehensive agreement between FPL and the Florida Cities, including FMPA, which included, among other things, a Settlement Agreement, a Participation Agreement for ownership interests in St. Lucie Unit No. 2 Nuclear Unit, and acceptance of license conditions relating to the St. Lucie plant, I was retained to assist Florida Cities in a number of ways. These included preparation of statements and affidavits that were filed in connection with the litigation and negotiations with FPL leading to development of the contract documents including the Settlement Agreement. Had the litigation not been settled I would have testified on behalf of Florida Cities as both a fact witness and as an expert witness.

4. There are over 30 municipally-owned electric systems in the State of Florida. As is true for all utilities, these municipally-owned utilities need access to economic power supply, transmission services and contractual arrangements common to the industry to enable them to provide economic electric service to their residents.

During the 1970's, many of these municipally-owned utilities sought necessary rights from Florida Power & Light Company ("FPL"). FPL is Florida's largest electric utility. Its retail service area covers most of eastern and southern Florida.

5. As a result of their inability to obtain rights to which they believed they were entitled, in the late 1970's and early 1980's many of the cities, or municipal authorities, which owned these municipal electric utilities and the Florida Municipal Utilities Association ("FMUA"), a statewide organization of municipally owned electric systems, brought litigation against defendant, Florida Power & Light Company. These entities were known as the Florida Cities. During the course of this litigation, these cities formed plaintiff, Florida Municipal Power Agency ("FMPA"), to aid them in obtaining economical power supply through jointly owning, constructing, financing and operating electric power projects and contracting with other utilities for power purchases and other electric services, including transmission services.

6. In the litigation referred to above, the Florida Cities were seeking, among other things, rights under the antitrust laws to fair access to FPL's transmission system; rights of access to FPL's nuclear plants; rights to purchase wholesale power; a cessation of FPL's blocking through legislative action Florida Cities' ability to form an effective joint municipal finance agency (which later became FMPA); and an ability to have an "integrated power pool" to enable the operation of the most economic available



generation in Florida to serve electric loads.¹

7. The litigation between the Florida Cities and FPL included an antitrust action in the United States District Court for the Southern District of Florida, Ft. Pierce Utilities Authority of the City of Ft. Pierce, et al. v. Florida Power & Light Company, No. 79-5101-Civ-JLK, and interventions before the Nuclear Regulatory Commission, Florida Power & Light Company (St. Lucie Plant, Unit. No. 2), NRC Docket No. 50-389A. Among other claims, the Florida Cities contend that through illegal refusals to deal FPL was using its monopoly power to seek to acquire independent electric systems. Additional litigation took place before the Nuclear Regulatory Commission (formerly the Atomic Energy Commission), the Federal Energy Regulatory Commission (formerly the Federal Power Commission), the United States Courts of Appeals for the District of Columbia and Fifth Circuits and the Florida Public Service Commission.

8. Congress gave the NRC antitrust authority out of recognition that

"Power pools" and "coordination" arrangements are common in the electric utility industry. However, municipally-owned utilities often have been excluded from -- or treated unfavorably in -- these electric coordination arrangements. In essence, an integrated pool operates the lowest cost available generation on all systems in the pool, regardless of the ownership of that generation. Power pools create economic markets in which utilities compete with one another for [the sale and purchase] individual electric transactions on [economic] terms designed to enable the planning, construction and operation of the most economical available generation and transmission to serve the combined electric loads of the pool members.

nuclear power for commercial uses had been an outgrowth of federal investment and development, and in order to prevent nuclear technology licensed to private companies from being used for purposes of monopolization.

9. The Nuclear Regulatory Commission (previously the Atomic Energy Commission) ordered a proceeding to determine whether the grant of an unconditioned license for FPL's St. Lucie Unit 2 nuclear plant would "create or maintain a situation inconsistent with the antitrust laws," under the Atomic Energy Act. The United States Department of Justice and the Nuclear Regulatory Commission staff supported the imposition of antitrust conditions in the Nuclear Regulatory Commission St. Lucie Unit 2 antitrust licensing case.

10. On September 12, 1980, following a Justice Department antitrust review, which included extensive input from Florida cities, the Justice Department, the Nuclear Regulatory Commission staff and Florida Power & Light entered into a "Stipulation" in which those parties "stipulated and agreed" to accept the proposed antitrust license conditions for the St. Lucie unit, and assuming that the NRC made the license conditions effective immediately, FPL agreed to abide by the license conditions. The parties filed a joint motion with the Nuclear Regulatory Commission Licensing Board, stating that "they have reached a full and complete settlement of the differences between them," as reflected in the Stipulation. Among other things, in the agreed upon

license conditions, FPL agreed to deal with "neighboring entities" and "neighboring distribution systems" in entering into interconnection agreements, reserve coordination transactions, wholesale firm power sales, transmission services and for St. Lucie Unit 2 capacity. The company specifically agreed to "transmit power ... between two or among more than two neighboring entities, or sections of a neighboring entity's system which are geographically separated." It is my understanding that FPL does not dispute that FMPA is a "neighboring entity" under the license condition language.

11. After the Justice Department-NRC staff-FPL September 12, 1980, Stipulation was filed, Florida Cities argued to the Nuclear Regulatory Commission that the Justice Department settlement did not go far enough, and they pressed for additional relief. In a Joint Motion of the Department of Justice, NRC staff and FP&L before the Atomic Safety and Licensing Board of the NRC which was attached to the Stipulation, the joint movants in seeking approval of the Stipulation recognized and agreed that, although the license conditions were to be made effective immediately so that FP&L would be required to deal with other electric utilities in conformance with the license conditions, such effectiveness did not prejudice the NRC Board's authority to impose different or additional conditions. In addition, the joint movants requested that the Board direct Intervening Cities to set forth any objections to any of the license conditions, which Florida Cities did. In a Memorandum and Order dated April 24, 1981, the Licensing Board approved the Settlement License Conditions. These were then made

effective, subject to the right of the cities to proceed with litigation and to seek further relief. On December 11, 1981, the NRC Atomic Safety & Licensing Board granted summary disposition to Florida Cities on the merits and determined "that a situation inconsistent with the antitrust laws does exist." The Board provided for responses by the parties and future proceedings to determine relief in Florida Power & Light Company, St. Lucie Plant, Unit No. 2, 14 NRC 1167, (1981), vacated after settlement as moot, 15 NRC 639 at 642 (1992).

12. Subsequent to this decision, Florida Cities and Florida Power & Light Company entered into settlement discussions. I participated in these discussions on behalf of the Florida Cities. On February 11, 1982, attorneys for FPL and Florida Cities' representatives and officials entered into an "Agreement". The Agreement provided that Florida Cities would agree to "the issuance at any time by the Nuclear Regulatory Commission of an operating license for St. Lucie Unit No. 2, notwithstanding the pendency or status of any antitrust review;" that FPL would agree to "support the enactment of a bill" in the Florida legislature that would permit FMPA to finance; and that city representatives would recommend to the Florida Cities governing boards "that they approve and enter into the settlement agreement", which was attached as Appendix 2 to the Agreement and which had been approved by FPL. Because the Settlement Agreement had to be approved by individual municipal governing boards, it was signed by the individual cities after the Settlement was signed by their

representatives; however, the Agreement, Settlement Agreement and their attachments represented an integrated settlement of issues between FPL and Florida Cities.

13. On or about March 3, 1982, as provided for in the February 11 "Agreement," the parties executed "The Settlement Agreement." In the Settlement Agreement FPL agreed to give the Florida Cities and FMFA various rights in addition to those which were contained in the license conditions. Thus, this Settlement Agreement adopted the license conditions, but also expanded on the rights set forth in the license conditions. The Settlement Agreement provided that the parties would enter into various antitrust releases, that they would jointly move to dismiss the various litigation and vacate various orders which had been entered in the litigation, and that "Florida Cities [would] advise the Nuclear Regulatory Commission that they accept the settlement License Conditions which became effective April 27, 1981, in NRC [St. Lucie] Docket Nos. 50-389 and 50-389A" (Section 13(a), page 15.)

14. Florida Cities moved to dismiss the various proceedings in litigation and entered into Covenants Not to Sue, as provided for in the Settlement Agreement. In doing so, they received the benefits of the Agreement and Settlement Agreement, including FPL's agreement to the license conditions and FPL's agreement for necessary legislation to permit FMFA to finance, but they settled claims valued at hundreds of millions of dollars and gave up claims to substantial additional relief.



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15. The documents referred to above are a comprehensive contract. This was plainly understood. Specifically, Florida Power & Light Company, the Department of Justice and the Nuclear Regulatory Commission staff agreed that FPL would enter into antitrust license conditions under which neighboring entities and neighboring distribution systems would receive rights, which were spelled out in the agreement. The language was drafted so that, and it was plainly understood that, the Florida Municipal Power Agency was intended to be a beneficiary of the rights granted to "neighboring entities" and, indeed, Section X(d) on page 27 of the License Conditions refers to FMPA by name as a "neighboring entity".

16. As is evidenced by the Justice Department "advice letters" to the Nuclear Regulatory Commission and by its pleadings, it was also plainly understood that the Government was seeking to correct a "situation inconsistent with the antitrust laws" and, as such, its agreement to the license conditions sought to recognize needs of those municipal electric systems in Florida which were in competition with Florida Power & Light Company.

17. Although the Florida Cities did not join in the Justice Department, NRC staff, Florida Power & Light Company settlement, because they felt that the settlement did not provide sufficient relief to protect their rights, the Government settlement was specifically designed to protect the rights of those Florida Cities who were



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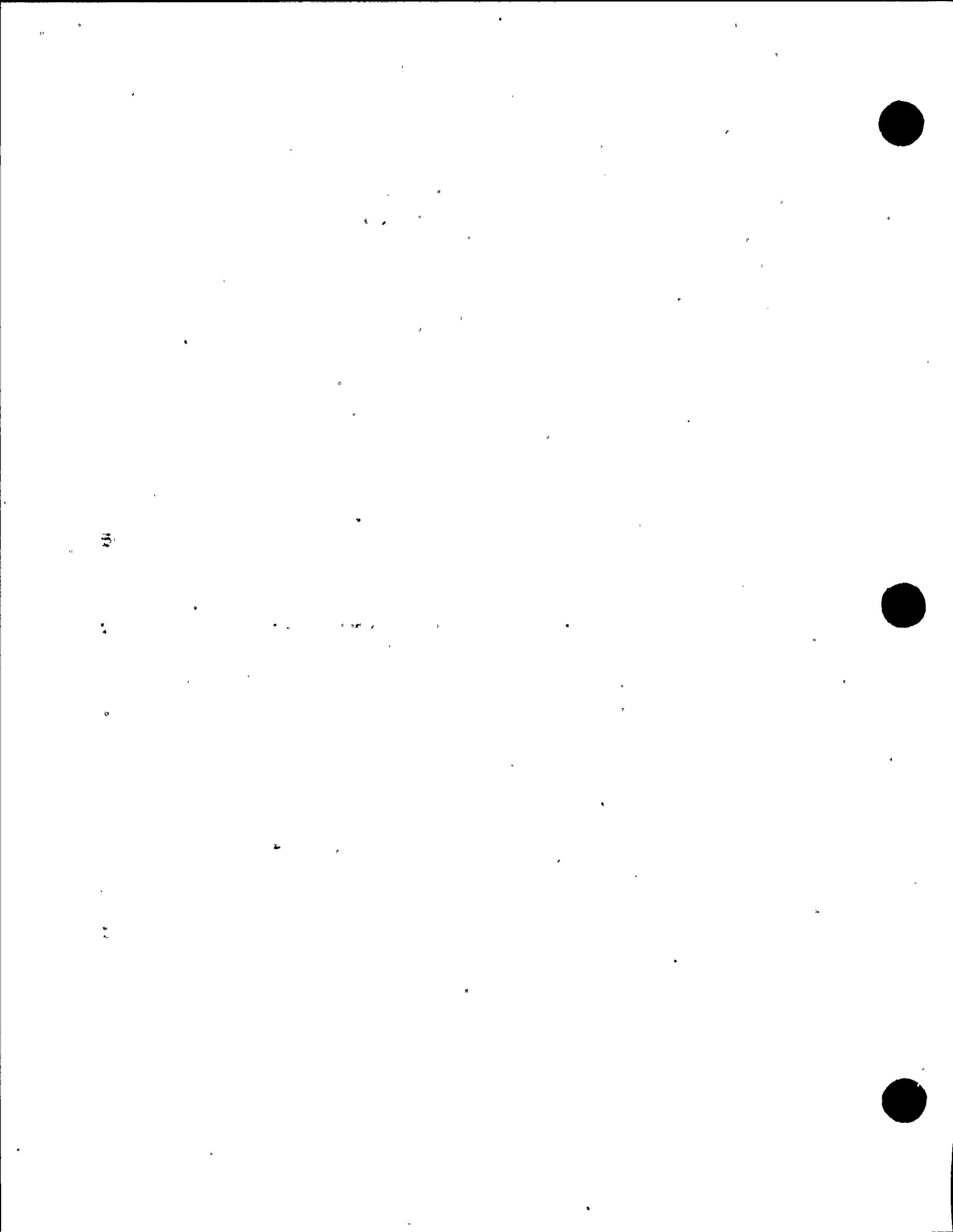
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determined to be "neighboring entities", which includes FMPA.

18. I and, to the best of my knowledge and belief, all negotiators for the Cities believed that when Florida Cities entered into the Agreement and Settlement Agreement with Florida Power & Light Company, they were entering into an enforceable agreement that included FPL's agreement to abide by the license conditions.

19. A major purpose of the comprehensive agreement was to permit the Florida Cities to operate through the Florida Municipal Power Agency in entering into, and financing, power supply and transmission arrangements, as is evidenced by the written agreements. FPL negotiators never gave any indication whatsoever that they did not believe that the legal documents which all parties signed were binding and enforceable, or that FPL did not believe that it was entering into a contract. Had FPL negotiators ever told us that it did not consider the comprehensive agreements were contractual, I would not have recommended them, and I am satisfied that the Cities never would have agreed to them.

20. Based upon my participation in the negotiations, as well as the plain meaning of the documents, it is incredible to me that FPL would now claim that it did not enter into binding and enforceable contracts with the Department of Justice and the Nuclear Regulatory Commission staff and with the Florida Cities, or that it did not



intend that the Florida Municipal Power Agency was an intended beneficiary of those contracts. The legal documents referred to, which settled years of litigation, plainly were intended to give binding and enforceable rights, which was the understanding of all parties to the negotiation.

21. I am informed by FMPA's attorneys that FPL has raised questions concerning the nature of the contract documents, which are attached to the complaint. Although FPL refers to FMPA's inclusion of the contract documents in a derisive manner, these documents evidence the complexity of the comprehensive agreement reached among the parties to settle their differences. The various documents were all part of, or directly relating to, a settlement resolving years of litigation and establishing obligations among the parties. Ultimately, the Justice Department, the NRC staff and FPL reached an agreement over the license conditions to benefit FMPA and other neighboring entities, and then the Florida Cities reached a subsequent agreement, including many components which included accepting the license conditions and expanding the rights set forth in the license conditions. Having agreed to the license conditions, FPL now seeks to avoid their enforceability.

Robert E. Bathen

Robert E. Bathen

STATE OF FLORIDA)

COUNTY OF ORANGE)

On this the twenty ninth day of April 1993, before me, Lee Ann Merritt, the undersigned officer, personally appeared Robert E. Bathen, known to me to be the person whose name is subscribed to the above instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Lee Ann Merritt

NOTARY PUBLIC STATE OF FLORIDA
MY COM. EXPIRES 12/31/94
BONDED 10000 GENERAL ENG. UND.

Attachment A

ROBERT E. BATHEN

Professional Qualifications and Experience

Robert E. Bathen's business address is 800 N. Magnolia Avenue, Suite 300, Orlando, Florida 32801. He is a partner and the Managing Director of Consulting Services of the firm of R. W. Beck and Associates. Effective May 1, 1993, Mr. Bathen will have retired as a partner and Managing Director of Consulting Services, but will continue as a full time employee as an Executive Engineer and Senior Consultant.

He has been continuously associated with R. W. Beck and Associates either as an employee or as a partner for over 35 years.

R. W. Beck and Associates is a firm of engineers and consultants performing general consulting engineering services primarily in the utility field for clients throughout the United States, including Alaska and Hawaii. This work includes long-range utility expansion planning, feasibility and financing studies for individual power projects, periodic analyses of the operation of utility systems, participation in utility rate matters relating to both cost of service of utility clients for determining revenue levels and participation in regulatory matters before state and federal commissions and courts. A large part of the practice of R. W. Beck and Associates has also included working with joint action public agencies in the development of long-range power supply programs and of the financing of those plans. The firm has been the engineer of record in connection with over \$85 billion of municipal electric revenue bond financings.

Mr. Bathen has a Bachelor's Degree in Engineering from Cleveland State University (formerly Fenn College) and also concluded two semesters of college level education at Omaha University and Creighton University in the field of business administration. He has



been working in the electric utility field since 1948. During his employment with R. W. Beck and Associates, he has prepared or has had direct supervisory responsibility for the preparation of rate studies, valuations, analyses of operations, long-range power supply studies, financial feasibility studies, and technical assistance in negotiations for clients throughout the United States.

He joined R. W. Beck and Associates in August 1957, and from 1957 until 1959, was employed in the Columbus, Nebraska, office of the firm where he performed design work on steam power plant construction and feasibility studies on multi-purpose water resource developments.

From 1959 to 1962, he was employed in the Seattle office of R. W. Beck and Associates where he served as client engineer to two of the state's county-wide public utility districts. During that time he also participated in feasibility studies on two large dams on the Columbia River.

From 1962 until 1965, he was head of the Consulting Services Department of the firm's Denver, Colorado, office and became a partner in 1964. During this three-year period he was responsible for all long-range planning studies, analyses of operations, feasibility studies, wholesale and retail rate studies, power supply planning, and pooling studies conducted by this major office of the firm.

From 1965 to 1988, he was Manager of R. W. Beck and Associates' Southeast Regional Office in Orlando, Florida. In that capacity he was responsible for the preparation of periodic analyses of electric system operations and power supply planning and pooling studies, including planning the financing and construction of generation and transmission facilities to



supply all or portions of the wholesale power requirements of municipal systems as an alternative to continued purchase of total requirements from integrated electric utility companies that previously served the total or the preponderance of their requirements.

From May 1986 to May 1991, he also served as Manager of the firm's Eastern Region which includes the Indianapolis, Nashville, Boston, and Orlando offices.

In May 1991, he was appointed a National Director for the firm's Consulting Operations and Consulting Services and since May 1992 he has served as the Managing Director of Consulting Services.

Mr. Bathen is a Registered Professional Engineer in the States of Ohio, Florida, Mississippi, Georgia, Alabama, South Carolina, North Carolina, Maryland, Colorado, Nebraska, Texas, Washington, and Michigan.

He is a member of the American Society of Civil Engineers and the Institute of Electrical and Electronic Engineers.

Mr. Bathen has appeared as an expert witness in matters dealing with a broad range of subjects including rate investigations of electric and other utility matters, antitrust matters, transmission service matters, and other issues. He has also participated in the negotiations leading to settlement in a number of the cases in which he either filed testimony or appeared as an expert witness.

On numerous occasions Mr. Bathen has provided the lead technical assistance on negotiating teams for various clients with respect to long-range power supply matters. These



have included major joint action agency arrangements with large investor-owned utilities on behalf of municipal power agencies in North Carolina, South Carolina, and Florida. In addition, he has participated in varying degrees in the provisions of similar services for such agencies in Georgia, Alabama, and Mississippi.

These negotiations encompassed a whole range of power supply matters including purchases of undivided ownership interests in generating plants in commercial operation or under construction, negotiation of backstand arrangements for these generating resources, negotiation of long-term transmission service arrangements in connection with these power supply programs, and all of the necessary purchase, operating, and fuel agreements associated with those arrangements. In many of these cases he also supervised the preparation of consulting engineer's reports in support of financing of such participation and ownership of generating plants.

APPENDIX A-12

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY

Plaintiff,

v.

Case No. 92-35-CIV-Orl-3A22

FLORIDA POWER AND LIGHT COMPANY

Defendant.

AFFIDAVIT OF NICHOLAS GUARRIELLO

ORLANDO, FLORIDA) SS:

1. My name is Nicholas P. Guarriello, I am a partner with R.W. Beck & Associates, 800 North Magnolia Avenue, Orlando, FL.

2. I am an Electrical Engineer. My professional experience and education are summarized in Exhibit A to my Affidavit dated April 30, 1992, which is Exhibit T to the Appendices to Plaintiff Florida Municipal Power Agency's Motion for Partial Summary Judgment on Essential Facilities, Transmission Market and Waiver and Estoppel Issues, filed with the Court on March 15, 1993.

3. For more than fourteen years, I have been assisting the Florida Municipal Power Agency ("FMPA") in its efforts to acquire electricity in the form of wholesale bulk power and to

provide that electricity to its member cities. I was one of the primary negotiators in essentially all of FMPA's negotiations with Florida Power & Light Company ("FPL") over FMPA's attempts to obtain transmission for its Integrated Dispatch and Operations project ("IDO") and in negotiations for transmission service agreements. I assisted Robert E. Bathen in negotiations in 1981 and 1982 on behalf of the Florida Cities, including the Florida Municipal Power Agency, to settle the outstanding litigation with Florida Power & Light Company.

4. As part of those negotiations, which are discussed in the Affidavit of Robert E. Bathen, Florida Power & Light Company agreed to certain antitrust conditions. These conditions are contained in the document titled, Florida Power & Light Company and Orlando Utilities Commission of the City of Orlando, Florida, NRC Docket No. 50-389, St. Lucie Plant Unit 2 Construction Permit, which is attached to FMPA's complaint as Appendix A-1.

5. In License Condition X, Florida Power & Light agreed to "transmit power (1) between Company power sources and neighboring entities or neighboring distribution systems with which Company is connected, (2) between two or among more than two neighboring entities, or sections of a neighboring entity's system which are geographically separated, with which, now or in the future, Company is interconnected, (3) between any



neighboring entity with whom, now or in the future, Company is interconnected and one or more neighboring distribution system(s) with whom, now or in the future, it is connected, (4) between any neighboring entity or neighboring distribution system(s) and any other electric utility outside the applicable area, and (5) from any qualifying cogeneration facility or small power production facility..." I and to the best of my knowledge and belief all those in the settlement negotiations interpreted these license conditions as being part of the settlement agreement and as being contractually binding on FPL. Before this lawsuit, I have never heard anyone deny that these conditions were binding. Although I was only assisting Mr. Bathen and had recently become involved in working for FMPA and the cities at the time, and although Mr. Bathen is more familiar with the negotiations than I am, I have no doubt that Florida Cities and FMPA understood that FPL was entering into a comprehensive and legally binding contract, including agreement to the license conditions, at the time of the settlement.

6. I understood the NRC antitrust license conditions, including License Condition X (which imposes transmission obligations), to establish broad rights which are available to FMPA and to other neighboring entities. The license conditions establish FPL's basic obligations to applicable neighboring electric systems. These are to be implemented by specific agreements when neighboring entities determine to take advantage

of them. Thus, for example, License Condition X establishes FMPA's right to transmission "between two or among more than two neighboring entities or sections of a neighboring entity's system" at the "cost of transmission reasonably allocable to the service in accordance with a transmission agreement, transmission tariff or on another mutually agreeable basis." License Condition X(a, b). A subsequently entered transmission service agreement would provide for a particular service, pursuant to the license condition.

7. Subsequent to the settlement agreements, FMPA requested transmission services to transmit power from its ownership share of the St. Lucie Nuclear Plant, Unit 2, to its member cities. A transmission service agreement was entered into. Later, FMPA entered into separate transmission service agreements with FPL to transmit power from its ownership share of the Stanton Coal Plant to its members and to transmit power to certain purchasers of wholesale power under FMPA's "All-Requirements" project. In addition, FMPA buys transmission from Florida Power & Light Company for certain specialized types of purchases and sales of electricity, such as "emergency power" for use when it has a system emergency, or "economy exchange" for use when it buys or sells certain short-term economic energy. In negotiating these various transmission service agreements and transmission contracts, FPL never asked FMPA to waive or relinquish its transmission rights under the license conditions.



FPL never said that FMPA was doing so. FMPA did not believe that it was doing so.

8. I am informed by FMPA's attorneys that FPL is now arguing that by entering into these transmission service agreements, FMPA was creating substitute contracts to the overall antitrust settlement contract or otherwise giving up its rights under the settlement agreement. I reiterate that in all of the negotiations for FMPA over the transmission service agreements, FPL never suggested to me, nor did I or FMPA ever understand, intend or agree, that the transmission service agreements would in any way extinguish, substitute for, limit or modify transmission rights which FMPA had under its antitrust settlement agreement with FPL or under the license conditions.

9. FPL has never informed FMPA that it has asked the NRC, the NRC Staff or the Justice Department, either formally or informally, to substitute for the antitrust license conditions or to otherwise modify the license conditions; nor, to the best of my knowledge, has FPL ever told the NRC that it does not consider its agreements to abide by the license conditions binding. FMPA considers its contractual rights under the license conditions to be extremely valuable. The license conditions are much broader in scope than the transmission service agreements and afford FMPA with valuable protections. In order to reduce those rights, it

would take a formal authorization by FMPA, which was never given and which in my judgment would not be given.

10. The various transmission service agreements between FPL and FMPA are for discrete transmission services specified in the agreements and are not intended to provide the rates, terms and conditions for transmission generally. FPL has insisted that the scope of its individual transmission contracts be limited in this way. Thus, for example, under the transmission agreement for the delivery of Stanton power to certain of FMPA's member cities, subject to limited qualifications, that power can only be transmitted from the Stanton Plant to the cities which are specifically listed in the transmission service agreement and in the amounts listed in the transmission service agreement for each city. If FMPA is to acquire a different power supply source or to provide power supply to different member cities, it needs a separate transmission service agreement. Thus, there is no basis for the assertion that these transmission service agreements, each of which provides for discrete transmission service, were intended to supersede the overall settlement agreement, including the license conditions. Not only were the agreements limited in their scope, but the agreements themselves presumed that, as the need arose, there would be additional or changed agreements for additional or broader transmission service.

11. I know of only one instance in which FPL requested a waiver by FMPA of one of FMPA's antitrust license condition rights. As is set forth in Plaintiff Florida Municipal Power Agency's Responses and Objections to Defendant Florida Power and Light Company's Second Set of Interrogatories Response 18 (February 10, 1993), Robert Gardner, Senior Vice President of FPL, told Fred Bryant, General Counsel of FMPA that FPL would consider FMPA's request to invest in the transmission network if FMPA agreed to give up all of its rights to purchase wholesale power under Section IX of the license conditions. The suggestion was rejected. I know of no other request made during the negotiations or otherwise that FMPA waive rights under the St. Lucie antitrust license conditions, and as I state above, FMPA would not agree to such a request.

12. FMPA recognized that the "point-to-point" transmission which was provided for in the transmission service agreements was more limited than the transmission to which it was entitled under Section X of the settlement license conditions. During the negotiations of the transmission service agreements, FMPA requested network transmission rights repeatedly, i.e., FMPA requested the ability to transmit from multiple power supply resources and to multiple delivery points (i.e., different cities), as applicable, up to the total amount of firm (i.e., non-interruptible) transmission which was being purchased. FPL refused.

13. FMPA was willing to enter into transmission service agreements on the limited basis offered by FPL because FMPA did not believe that it was limiting its ability to request network transmission in the future, should it become necessary for FMPA to obtain such transmission. As stated, transmission service agreements to which FMPA agreed were specifically limited to the services provided. In addition, the transmission service agreements all contained non-waiver clauses and specifically permitted either party to apply to change the rates, terms and conditions of service under Sections 205 and 206 of the Federal Power Act. Thus, FMPA had reserved the right at any time to request FPL to file for network transmission under these agreements in accordance with the license conditions.

14. Moreover, the transmission service agreements were to transmit power with respect to specific FMPA projects. Although network transmission would have been desirable for the St. Lucie, Stanton and All-Requirements projects, it was not essential. However, network transmission is essential for FMPA to establish an Integrated Dispatch and Operations project. Therefore, FMPA requested such network transmission for this project, which was intended to permit FMPA to integrate its generation and its power purchases and the generation and the power purchases of certain of its members for the benefit of all the members of this project and to operate that generation and

use the power purchases on a combined basis to obtain the lowest power supply costs.

15. FMPA did all it could do under the circumstances to get network rights in each of the individual transmission service agreements, but given FPL's attitudes, this could not be accomplished within the timeframes which were required to obtain transmission for the individual projects. To be more specific, FMPA was totally dependent upon Florida Power & Light for transmission between its various power supply resources and its member cities which were located within the FPL transmission area. If FMPA did not reach timely agreements with FPL for transmission, it risked losing the ability to finance its St. Lucie Nuclear project. The result would have been that FMPA would have lost hundreds of millions of dollars in potential savings to its members, and it is likely that the viability of the Agency would have been threatened. Likewise, if FMPA could not reach agreements with FPL to transmit power from the Stanton project, which was primarily owned by the Orlando Utilities Commission, or for transmission of power for the All-Requirements systems, these projects would have failed, again with the loss to FMPA of potentially hundreds of millions of dollars in the case of Stanton or tens of millions of dollars in the case of All-Requirements. Although FMPA could have pursued legal remedies, as a practical matter, FMPA would have lost the ability to participate in the projects, thereby creating irreparable injury



to FMPA. Moreover, FMPA would have to procure transmission from FPL for new arrangements. However, FMPA told FPL that it would need future network transmission, and obtained non-waiver and term change clauses in the individual transmission service agreements. Unlike the earlier projects, the IDO project could not proceed without network transmission. When FPL refused network transmission for FMPA's IDO project, FMPA was forced to litigate.

16. In all instances, FPL was aware of -- and took advantage of -- the deadlines by which FMPA needed transmission service agreements.

17. I attach responses 15 and 16 to Plaintiff Florida Municipal Power Agency's Responses and Objections to Defendant Florida Power & Light Company's Second Set of Interrogatories, February 10, 1993. Exhibit B. I worked on these responses. The responses identify my personal knowledge and input to which I attest. These responses demonstrate that the transmission service agreements between FPL and FMPA came about as a result of coercion or duress by FPL.

18. During the period from the mid-1987 until FMPA filed suit, I, my colleagues at R.W. Beck, FMPA employees, and FMPA counsel invested thousands of hours both in studying the IDO project and in our efforts to negotiate with FPL to obtain

network transmission for it. Our efforts included thousands of hours preparing for, conducting, and responding to meetings with FPL. I personally attended fourteen face-to-face negotiation meetings, many of them lasting all day, beginning with one on December 5, 1989, continuing with frequent meetings (very roughly, one per month) through October 29, 1990, and culminating with a July 8, 1991 meeting with Steven Frank, FPL's new President. FMPA hoped to reach an agreement, but FPL's actions made this impossible.

19. FMPA has always been willing to pay rates in accordance with Federal Energy Regulatory Commission cost of service principles on a "basis which compensates [FPL] for its costs of transmission reasonably allocable to the service," as set forth in License Condition X(b). Alternatively, FMPA has been willing to pay for its transmission use through making investments in the transmission system. Such investments would reduce the total cost of transmission plant which must be financed by FPL and charged to FPL's customers. As is set forth in Plaintiff Florida Municipal Power Agency's Responses and Objections to Defendant Florida Power & Light Company's Second Set of Interrogatories, Interrogatory No. 18 (February 10, 1993), FMPA has repeatedly requested the ability to invest in the transmission system, but has been denied. I have personally participated in the making of such requests and been at meetings where such requests were made by FMPA representatives. FPL's

refusals to consider such investments belie FPL's claim that it is acting in the best interests of its customers, when acceptance of FMPA's proposals would reduce necessary FPL investment in the transmission system.

20. FMPA has also consistently requested that FPL agree to power pooling, which provides for joint utility planning and centralized dispatch of units. Centralized dispatch refers to a practice common in the utility industry under which generating units in diverse locations, and often owned by different utilities, are dispatched from a central location so that the most economic generation available is used to serve electricity loads. Such centralized dispatch and pooling reduces electricity costs for all systems. Power pools and centralized dispatch arrangements exist elsewhere in the United States. Because units are operated based upon their incremental cost of operation (taking into account such additional factors as minimum loadings of units, fuel and environmental constraints, etc.), and because pools establish joint system planning, substantial savings result from pooling and centralized dispatch. Large utilities like FPL effectively form an internal pool of their company owned units so that when they pool with other, smaller systems, they tend to save less proportionately than the smaller systems. The only reason that I can think of for FPL's refusals to enter into pooling and centralized dispatch agreements with FMPA and its members would be that FPL is willing to forego savings for its

own customers in order to prevent smaller systems from getting larger proportionate savings.

[the following page is the signature page]



Nicholas P. Guarriello

Nicholas P. Guarriello

Subscribed And Sworn To Before Me
This 29 Day Of April 1993

Shelby Gene Risner

Notary Public

My Commission Expires:



SHELBY GENE RISNER
MY COMMISSION EXPIRES
July 31, 1995
BONDED THRU NOTARY PUBLIC UNDERWRITERS

APPENDIX A-13



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

FLORIDA POWER AND LIGHT COMPANY
AND
ORLANDO UTILITIES COMMISSION OF THE CITY OF ORLANDO, FLORIDA

DOCKET NO. 50-389

ST. LUCIE PLANT UNIT NO. 2

CONSTRUCTION PERMIT

Construction Permit No. CPPR-144
Amendment No. 3

Pursuant to a Memorandum and Order by the Atomic Safety and Licensing Board, dated April 24, 1981, the Nuclear Regulatory Commission has issued Amendment No. 3 to Construction Permit No. CPPR-144 by adding the following to Paragraph 3.F:

"3.F.(6) Florida Power and Light Company shall comply with the following antitrust conditions:

I. DEFINITIONS

(a) "Applicable area" means the area shown on the map which is Attachment A and any other area in the state of Florida in which, in the future, the Company will engage in generation, transmission or distribution of electric power; provided, however, that an area shall not be deemed to be included within the "applicable area" solely because the Company acquires an ownership interest of less than 50% in a generating facility located in such area.

(b) "The Company" means Florida Power & Light Company or any successor corporation, or any assignee of the Company.

(c) "Neighboring entity" means a private or public corporation, governmental agency or authority, municipality, rural electric cooperative, or lawful association of any of the foregoing, which owns, contractually controls, or operates or in good faith proposes to own, contractually control, or operate facilities for the generation or transmission of



electricity, which meets each of the following criteria:

(1) its existing or proposed facilities are actually interconnected or technically feasible of interconnection with those of the Company; (2) its existing or proposed facilities are full or partially within the applicable area; (3) it is, or upon commencement of operations, will be subject to regulation as a public utility with respect to rates or service under applicable state law, or under the Federal Power Act, or it is legally exempted from such regulation by law.

(d) "Neighboring distribution system" means a private or public corporation, governmental agency or authority, municipality, rural electric cooperative, or lawful association of any of the foregoing, which engages or in good faith proposes to engage in the distribution of electric energy at retail, whose existing or proposed facilities are connected or technically feasible of connection with those of the Company, and which meets each of the criteria numbered (2) and (3) in paragraph (c) above.

(e) "Costs" means all appropriate costs, including a reasonable return on investment, which are reasonably allocable to an arrangement between two or more electric systems under coordination principles or generally accepted industry practices. In determining costs, no value shall be included for loss of revenues from a sale of power by one party to a consumer which another party might otherwise serve.

(f) The cities of Gainesville, Key West, Jacksonville Beach, Green Cove Springs, Clewiston, Lake Helen, Orlando and Moore Haven and the Fernandina Beach Division of the Florida Public Utilities Company are considered to be

neighboring entities or neighboring distribution systems for the purpose of these license conditions, without regard for whether their facilities are technically feasible of interconnection with the Company. This provision creates specific exceptions to the definition of applicable area and shall not be construed to bring within the applicable area any system not located within the area shown on Attachment A or not listed here.

II. INTERCONNECTIONS

(a) The Company shall interconnect at any technically feasible point on its system and operate in parallel pursuant to a written agreement with any neighboring entity requesting such interconnection.

(b) To the extent it is technically feasible, interconnections shall not be limited to lower voltages when higher voltages are requested and available and shall not be limited to higher voltages when lower voltages are requested and available. Voltages "available" means existing on the Company's system at the desired point of interconnection. Company may include in its rate schedules provisions for conversion of interconnection voltages and relocation of interconnection points to accommodate load growth and design changes consistent with continuing development of Company's transmission system.

(R-107)

(c) Interconnection agreements shall provide for the necessary operating procedures and control equipment as required for the safe and prudent operation of the interconnected systems.

(d) Interconnection agreements shall not embody provisions which impose limitations upon the use or resale of capacity and energy except as may be necessary to protect the reliability of the Company's system.

(e) Interconnection agreements shall not prohibit the parties from entering into other interconnection agreements, but may include appropriate provisions to protect the reliability of the Company's system and to ensure that the Company is compensated for additional costs resulting from such other interconnections.

III. RESERVE COORDINATION AND EMERGENCY POWER

(a) The Company shall sell emergency power to any neighboring entity with which it is interconnected, provided that the neighboring entity has applied good utility practices to plan, operate and maintain a reasonable installed reserve margin for the load that it is meeting with its own resources. Such installed reserve margin, which may include the purchase of reserves from other systems, shall consist of capacity which is as reliable as reserve capacity generally maintained in the electric utility industry, and which is

maintained and operated in a manner consistent with good utility practice. The Company shall engage in such emergency sales when requested if and when capacity and energy are available from its own generating resources or from those of interconnected electric systems, but only to the extent that it can do so without jeopardizing service to its customers. Emergency power shall be furnished to the fullest extent available from the supplying party and required by the other party's emergency.

(b) The parties to reserve coordination transactions pursuant to this section shall maintain such amounts of operating reserves as may be adequate to avoid the imposition of unreasonable demands on any other party(ies) in meeting the normal contingencies of operating their systems. However, Company shall not impose upon any party an operating reserve requirement which is unreasonable in light of such party's minimum reserve obligations under paragraph (a) above.

(c) The Company, if it has generating capacity in excess of the amount called for by its own reserve criteria, shall offer such excess to a neighboring entity to meet such entity's own minimum reserve margin. In lieu of selling such capacity, Company may waive (to the extent of the capacity which would otherwise be offered in accordance with this paragraph) the minimum reserve obligation under paragraph (a) above as to

a party requesting to purchase capacity which Company would be required by this paragraph to sell.

(d) Company's obligations under this section apply only as to neighboring entities which agree to assume reciprocal obligations to Company..

IV. MAINTENANCE POWER AND ENERGY

Company, when it can reasonably do so, shall exchange maintenance schedules and shall engage in purchases and sales of maintenance power and energy with any neighboring entity which so requests. Power shall be supplied to the fullest extent practicable for the time scheduled and in accordance with generally accepted industry practice for maintenance power and energy sales. Company shall be required to sell maintenance power and energy only to the extent that it can do so without jeopardizing service to its customers. Company's obligations under this section apply only as to neighboring entities which agree to assume reciprocal obligations to Company.

V. ECONOMY ENERGY

Company shall exchange data on costs of energy from generating resources available to it and, consistent with system security, sell or purchase economy energy (when appropriate to do so under principles of economic dispatch and good system operating practices) to or from a requesting neighboring entity on a basis that will apportion the savings from such transactions equally between Company and such entity. This provision shall not be construed to preclude

arrangements for economy energy transactions on a regional basis or to require Company or neighboring entity to forego a more attractive opportunity to sell or purchase economy energy. Company's obligations under this section apply only as to neighboring entities which agree to assume reciprocal obligations to Company.

VI. SHARING OF INTERRUPTIONS AND CURTAILMENTS

Company may include reasonable provisions in any inter-connection agreement or contract or schedule for sale of wholesale power requiring a neighboring entity or neighboring distribution system to implement an emergency program for the reduction of customer load, with the objective that Company and the other party shall equitably share the interruption or curtailment of customer load, provided that such provisions are consistent with Company's general emergency criteria filed with any appropriate regulatory authorities. This emergency program would provide for automatic underfrequency load shedding or for load reduction by manual switching or other means, when and to the extent Company reasonably determines such to be necessary to maintain the adequacy of bulk electric power supply.

VII. ACCESS TO ST. LUCIE UNIT NO. 2

(a) Company will afford to the neighboring entities and neighboring distribution systems listed below the opportunity to participate in the ownership of St. Lucie Unit No. 2 in the percentage shares listed below:

Clewiston	.19387
Ft. Pierce	1.02793
Fernandina Beach Division of Florida Public Utilities Company	.45410
Gainesville	2.09359
Green Cove Springs	.13011
Homestead	.44499
Jacksonville Beach	.64538
Key West	.74946
Lake Helen	.03121
Lake Worth	.89520
Moore Haven	.03382
New Smyrna Beach	.40336
Orlando	6.08951
Starke	.11970
Vero Beach	1.03963
Florida Keys Cooperative	.79371

(R 112)



(b) As promptly as practicable, but not later than 30 days after these conditions take effect, Company shall transmit to the entities described above copies of (i) the construction permit for St. Lucie Unit No. 2, (ii) the orders of the NRC and its subsidiary tribunals authorizing issuance of the construction permit, (iii) the final environmental impact statement prepared by the NRC Staff, (iv) the final safety evaluation report prepared by the NRC Staff, (v) a statement of the costs incurred for St. Lucie Unit No. 2 through the most recent date for which an accounting is then available, (vi) Company's most current estimates of the total cost of St. Lucie Unit No. 2 (including estimates of cash requirements by calendar quarter through the date of commercial operation) and the schedule for completion of construction thereof, (vii) the participation agreement Company has executed with Seminole Electric Cooperative, Inc. (or if no such agreement has been executed, the most recent draft of such agreement), (viii) Company's estimate of annual capacity factors for St. Lucie Unit No. 2 and (ix) Company's

(R 713)

estimate of operating and maintenance expenses to be associated with St. Lucie Unit No. 2. No such estimates shall bind Company, and Company shall provide such information in good faith. In addition, Company shall make available to such entities at Company's offices copies of the preliminary safety analysis report and environmental report submitted by Company to the NRC. Company shall respond fully within 30 days to reasonable requests for additional information received from said entity within 35 days of said entity's receiving the documents enumerated in (i) through (ix) of this paragraph. If the NRC finds that the Company has failed to respond fully within 30 days to any such reasonable requests, the entity shall be allowed to participate in accordance with such time schedule as the NRC deems appropriate.

(c) Within 120 days after transmittal of the information enumerated in paragraph (b), each such entity which desires to participate in St. Lucie No. 2 by ownership shall provide Company with a written commitment (i) that it intends to participate in St. Lucie No. 2 and to negotiate in good faith with the Company as to the terms of a participation agreement, (ii) that, in the event agreement is reached as



to the terms of a participation agreement, it will assist the Company as requested in obtaining the required approval of the NRC, and (iii) that it will in good faith seek to obtain the necessary financing for its participation. Such commitment shall be accompanied by a payment equal to ten percent (10%) of the amount stated pursuant to paragraph (b)(v) multiplied by the participation share to which the commitment applies (expressed as a decimal fraction). Upon receiving such payment, the Company shall agree in writing to negotiate in good faith as to the terms of a participation agreement with the entities which provide the written commitments and payments described above. Such written agreement shall also provide that in the event that the Company fails to execute the participation agreement reached between the Company and such entity as provided in paragraph (d) below, each such entity shall have the right to initiate an enforcement action before the NRC, and to initiate an action against the Company in an appropriate court and/or agency for any relief that may otherwise be available to such entity under law. The Company shall have no obligation under this section to any entity which fails to provide within the time specified herein the written commitment and

(R 115)



payment described above, except as may otherwise be provided for in these conditions or be agreed upon in writing by the Company and each such entity.

(d) (1) If, within 120 days after providing the written commitments and payments described in paragraph (c), any entities providing such written commitments and payments and the Company agree as to the terms of a participation agreement, the Company and such entities shall execute the participation agreement, and Company shall seek the required approval of the NRC for transfer of an ownership interest to such entity. The participation agreement shall provide for closing 60 days after NRC approval of participation, contingent upon such entity's having obtained the necessary financing for its participation, at which time an ownership interest would be conveyed to the participant, and the participant would pay its (percentage) share of all costs incurred in connection with St. Lucie Unit No. 2 to the date of closing, less any payment made by such entity pursuant to paragraph (c) hereof.

(d) (2) If NRC approval is not obtained or if, by a date 60 days after NRC approval is obtained, such entity has not been able to obtain the necessary financing, the payment made by such entity pursuant to paragraph (c) shall be refunded by Company to such entity, and Company

(R 116)

shall have no further obligation under this section to such entity. Notwithstanding the foregoing, if an entity is unable to close at the time specified solely by reason of its inability, despite a good faith effort, to obtain necessary financing, such entity shall be allowed a 100-day extension of time for closing. If, for whatever reason, it fails to close within the 100-day extension period, Company shall refund to the entity the payment made by it pursuant to paragraph (c) and Company shall have no further obligation under this section to such entity; provided, however, that if a proceeding with respect to the validity of obligations to be issued by the entity to obtain the necessary financing is pending before the Florida Supreme Court at the conclusion of the 100-day extension period, then such period shall be extended until 60 days after entry of a final judgment in such proceeding.

(d) (3) If a neighboring entity or neighboring distribution system eligible for participation under these conditions is prevented from making the 10% commitment payment required by Section VII(c) due to operation of a state or federal statute or constitutional provision or because it is impossible

(R 117)

for it to obtain funds within the required time period through any of the commercial channels ordinarily available to municipalities to finance payments required in advance of obtaining long-term financing (but excluding in all instances any impediment which can be removed by action of the municipality within the required time period), such neighboring entity will not be obligated to make such commitment payment; provided, however, that the neighboring entity or neighboring distribution system failing to make the commitment payment in reliance on this provision shall have the burden of establishing in any enforcement proceeding the existence of one of the conditions specified herein as a basis for being relieved of the obligation to make such payment and if it fails to do so shall have no right to participation in St. Lucie Unit No. 2 under this section.

(d) (4) If any entity described in paragraph (d) (1) or (d) (2) does not close by the time specified herein, for any reason other than failure to obtain NRC approval or failure to obtain the necessary financing (having made a good faith effort to do so), Company shall refund to the entity the payment made by it pursuant to paragraph (c), and Company shall have no further obligation under this section to such entity.

(R 118)



(e) (1) If, within 120 days after providing the written commitments and payments described in paragraph (c), any entities providing such written commitments and payments and Company are unable to agree as to the terms of a participation agreement, any such entity may make a written request to Company that their dispute with respect to the terms of the participation agreement be submitted to arbitration. Upon the making of such a request by any such entity, Company and each such entity shall enter into an agreement that the arbitration shall be final and binding as between the Company and such entity. If no written request for arbitration is made within the 120-day period specified in this paragraph by an entity that provided the written commitment and payment described in paragraph (c), the payment made by such entity pursuant to paragraph (c) shall be refunded by Company to such entity, and Company shall have no further obligation under this section to such entity. Within ten days after the making of any such request, Company and all entities making such requests shall confer and attempt to agree upon the appointment of a single arbitrator. If such agreement is not reached, either Company or any such entity may request the American Arbitration Association to appoint an arbitrator, who shall be an attorney with knowledge of the electric utility industry. The arbitrator shall conduct a hearing to determine reasonable



terms for the disputed provisions of the participation agreement, giving due regard to the context of participation agreements negotiated among comparable parties in the electric utility industry and the particular business situation confronting Company and the entities requesting arbitration, and shall resolve all disputes in accordance with this section and the terms of the agreement to arbitrate; provided, however, that the provisions proposed by the Company as to its liability to the other participants, and as to sharing the cost of discharging uninsured third party liability, ^{*}/ in connection with the design, construction, operation, maintenance and decommissioning of St. Lucie Unit No. 2 shall be approved by the arbitrator unless he determines that the provision proposed by the Company constitutes an unreasonable proposal which renders meaningless the Company's offer of participation in St. Lucie Unit No. 2. The decision of the arbitrator shall be

^{*}/ Any such liability provision shall not be intended to relieve Company or any other owner of the plant from any liability which it may have to any third party under any federal, state or other law, nor shall such provision provide the basis for any defense by Company, or any other owner of the plant, or any impediment to or delay in any payment, cost, expense or obligation arising from a claim of liability to a third party made against the Company or any other owner of the plant. To the extent that such provision concerns liability to third parties, such provision shall relate solely to subrogation rights as between Company and participants.

rendered within 30 days of the conclusion of the hearing, unless such time is extended by all of the parties, and shall be final and binding as between the Company and each such entity. Nothing herein shall be construed to deprive the NRC of its jurisdiction to enforce the terms of this license under the Atomic Energy Act.

(e) (2) Promptly after the arbitrator renders his decision, the Company and any such entity shall execute the participation agreement, containing the provisions for subsequent closing described in paragraph (d) (1), and Company shall seek the required approval of the NRC for transfer of an ownership interest to such entity. If any such entity does not execute the participation agreement, Company shall refund to the entity the payment made by it pursuant to paragraph (c) and, Company shall have no further obligation under this section to such entity. If Company does not execute the participation agreement, each such entity shall have the right to request the NRC to initiate an enforcement action and to institute an action against the Company in an appropriate court and/or agency for any relief that may otherwise be available to such entity under law. Upon execution of the participation agreement, the provisions of paragraph (d) (2) shall apply.



(f) In the event that any entity described in paragraph (a) hereof does not participate in the ownership of St. Lucia Unit No. 2 or participates in the ownership of St. Lucia Unit No. 2 in an amount less than the amount provided for in paragraph (a) hereof, it shall be permitted by Company to transfer all or a portion of its participation rights under this section to Florida Municipal Power Agency or any successor thereof (together hereinafter referred to as "FMPA") or to any other entity entitled to participate under these license conditions, provided that FMPA or such other entity agrees to assume all of the transferring entity's obligations to Company in connection with the participation rights transferred. Unless otherwise agreed to by Company and FMPA or such other entity, in no event shall FMPA or such other entity be entitled to any greater periods of time for the performance of its obligations under this section than its transferor would have been entitled to prior to the transfer.

(g) (1) Company may, in its unilateral discretion, extend the time for any of the actions required by this section to be taken by an entity desiring to participate in St. Lucia Unit No. 2. Any such extension shall be in writing. No extension permitted by Company to any entity shall require Company to permit further extensions of time to such entity or similar extensions to other entities.

(g) (2) Any entity which is named in the construction permit for Florida Power & Light St. Lucie Unit No. 2 (dated May 2, 1977) and which elects to participate in St. Lucie Unit No. 2 pursuant to this section does so in lieu of any participation rights provided in the license conditions contained in the construction permit as issued.

(h) In no event shall the Company be obligated to provide participation in St. Lucie Unit No. 2 under this section to any entity unless and until the Company and such entity execute a participation agreement and such entity pays the Company its percentage share of all costs incurred to the date of execution of the participation agreement in connection with St. Lucie Unit No. 2.

(i) Company may retain complete control and act for the other participants with respect to the design, engineering, construction, operation and maintenance of St. Lucie Unit No. 2, and make all decisions relevant thereto insofar as they deal with the relationship between the Company and the other participants, including (but not limited to) decisions regarding adherence to NRC health, safety and environmental regulations, changes in construction schedule, modification or cancellation of the unit and operation at such time and such capacity levels as it deems proper, all without the consent of any participant. Consistent with the foregoing, the participation agreement shall provide for an advisory committee as a vehicle for communication and consultation among all of the owners, and except where the public interest

(R 123)

requires immediate unilateral action, Company shall promptly inform participants of actions which may materially affect them.

(j) Nothing contained herein shall preclude the Company from instituting an action against any entity, with respect to its participation or commitment to participate in St. Lucie Unit No. 2, in an appropriate court for any relief that may be available to it under law.

(k) Any refund made by Company to any entity pursuant to this section shall be of the full amount paid by such entity. Company shall not be required by this section to pay interest on any such refund.

(l) Any entity shall have the right, subject to NRC approval, to sell or otherwise alienate its ownership share in St. Lucie Unit No. 2 after it has taken title to said ownership share to an electric utility which agrees to and is financially qualified to assume the obligations of the seller with respect to St. Lucie Unit No. 2. Any right to contest the prospective buyer's financial qualifications will be waived by Company unless Company informs the prospective seller, prospective buyer, and the NRC of Company's objections within thirty (30) days of Company's receipt of notice of the prospective sale.

VIII. ACCESS TO FUTURE NUCLEAR PLANTS

Company will afford to: (a) those neighboring entities and neighboring distribution systems entitled under any St. Lucie Unit 2 license conditions to any opportunity to participate in the ownership of St. Lucie Unit No. 2, and (b) to any other neighboring entity or neighboring distribution

system not in existence on January 1, 1980, but which operates generation, transmission, or distribution facilities in the applicable area as of the date that a construction permit is submitted to the NRC by Company, the opportunity to participate in the ownership of all nuclear units for which the Company files a construction permit application with the NRC prior to January 1, 1990, provided, however, that no opportunity to participate need be afforded to any neighboring entity or neighboring distribution system in an amount, if any, which would, in the aggregate, result in its owning nuclear generating capacity, or enjoying direct access thereto by unit power purchase or participation through a joint agency, as a percentage of its peak load in excess of what Company's percent of same would be after the addition of the proposed plant. If a joint power agency qualifies for participation hereunder as a neighboring entity, its nuclear generating capacity and peak load shall be deemed to be the aggregate of the nuclear generating capacities and peak loads of its members within the applicable area, excluding any such members which elect to exercise direct participation rights hereunder. In no event shall this license condition be construed to require Company to provide ownership interest in any such nuclear unit in a total amount exceeding 20 percent of the Company's interest in such unit. Where ownership in a nuclear unit is shared between the Company and one or more other utilities, the Company's obligation hereunder with respect to that nuclear unit shall be reduced to the extent that any utility to which participation would be afforded under this condition has been afforded an opportunity to obtain access to the nuclear unit, either directly



or through a joint agency.

IX. WHOLESALE FIRM POWER SALES

(a) Subject to the limitations contained in paragraphs (c) and (d), Company, upon timely request, shall sell firm wholesale power on a full or partial requirements basis to (1) any neighboring entity up to the amount required to supply electric service to its retail customers, to those wholesale customers which are supplied by the neighboring entity and which were so supplied on January 2, 1979, and to those wholesale customers which were previously supplied by Company and which are now supplied by such neighboring entity, and (2) any neighboring distribution system up to the amount required to supply electric service to its retail customers. Any sales made under subsection (a) (1) or (a) (2) above may be decreased by the sum at any one time of (i) power made available to such neighboring entity or neighboring distribution system as a result of participation in (or purchase of unit power from) one of Company's generating units and (ii) other power transmitted to such neighboring entity or neighboring distribution system by Company.

(b) For neighboring entities which supply power to one or more neighboring entities or neighboring distribution systems eligible to directly request service under this condition, Company will alternatively make sales to such supplying entities to the extent that such service would be available under the previous paragraph (a) to such neighboring entities or neighboring distribution system(s),



-23-

provided that such sales can be made on terms and conditions which do not expand Company's obligations to supply wholesale power beyond the quantities otherwise referred to in this section.

(c) Company may require such advance-notice of the intention to take service and of the service contract demands as is reasonable for Company's power supply planning, and may impose reasonable limitations upon the increases in such service contract demands, provided that no such limitation shall be imposed to prevent a neighboring entity or neighboring distribution system from assuming a load which has been served directly by Company or a load which Company has sought to serve. Company shall not establish rates, terms or conditions (other than the advance notice provision described above) for the sale of firm wholesale power which differentiate among customers on the basis of whether or not an entity has historically been a wholesale firm power customer of the Company.

(d) Company shall not have any obligation to provide wholesale power to: (1) any electric utility which existed on January 1, 1979, and which was not a neighboring entity or neighboring distribution system as of that date; (2) any rural electric cooperative (or membership corporation) in a quantity greater than that required to serve such cooperative (or any distribution cooperative served by such cooperative) for loads in the area which has historically been supplied at wholesale or at retail by the Company; or (3) a neighboring entity which on January 1, 1979, owns or controls electric facilities with nominal capacity in

excess of 200Mwe, provided that this item (d) (3) shall not relieve the Company from the alternative obligation, provided in paragraph (b), to make sales to a neighboring entity which supplies power to an eligible neighboring entity or neighboring distribution system in lieu of making such sales directly to the eligible neighboring entity or neighboring distribution system.

(e) Wholesale power sales agreements shall not restrict use or resale of power sold pursuant to such agreements except as may be necessary to protect the reliability of Company's system. Delivery point voltages shall be established consistent with the provisions of section II(b).

X. TRANSMISSION SERVICES

(a) The Company shall transmit power (1) between Company power sources and neighboring entities or neighboring distribution systems with which Company is connected, (2) between two or among more than two neighboring entities, or sections of a neighboring entity's system which are geographically separated, with which, now or in the future, Company is interconnected, (3) between any neighboring entity with whom, now or in the future, Company is interconnected and one or more neighboring distribution system(s) with whom, now or in the future, it is connected, (4) between any neighboring entity or neighboring distribution system(s) and any other electric utility outside the applicable area, and (5) from any qualifying cogeneration facility or small power production facility (as defined by the Federal Energy Regulatory Commission in 18 CFR Part 292, Subpart B) with which Company is interconnected to a neighboring entity or

neighboring distribution system, where both the owner of the qualifying cogeneration facility and the neighboring entity or neighboring distribution system to which such transmission service is provided agree that such neighboring entity or neighboring distribution system will make, during the time and to the extent of its purchases from the cogeneration facility, any sales of "Backup power" and "Maintenance power" (as these terms are defined in applicable Federal Energy Regulatory Commission regulations) to the qualifying cogeneration facility or small power production facility; provided however that nothing in this item (5) shall diminish Company's obligations under Section IX hereof. Company shall provide transmission service under this paragraph only if (1) Company's and other connected transmission lines form a continuous electric path between the supplying and the recipient systems; (2) permission to utilize other systems' transmission lines can be obtained by the proponent of the arrangement; (3) the services can reasonably be accommodated from a technical standpoint without significantly jeopardizing Company's reliability or its use of transmission facilities; (4) reasonable advance request is received from the neighboring entity or neighboring distribution system seeking such services to the extent that such notice is required for operating or planning purposes, provided that Company distributes a written timetable setting forth reasonable periods of time within which such advance notice must be received for transmission services over existing company facilities; and (5) a reasonable magnitude, time and duration for the transactions is specified prior to the commencement of the transmission.



(b) Company's provision of transmission service under this section shall be on the basis which compensates it for its costs of transmission reasonably allocable to the service in accordance with a transmission agreement, transmission tariff or on another mutually agreeable basis. Company shall file such transmission agreements or transmission tariffs with the Federal Energy Regulatory Commission or its successor agency. In the event that the Company and a requesting entity are unable to agree regarding transmission services required to be provided under this section X, Company shall, upon the request of such entity, immediately file a service agreement at the Federal Energy Regulatory Commission or its successor agency providing for such service. Nothing in this license shall be construed to require Company to wheel power and energy to or from a retail customer.

(c) Company shall keep requesting neighboring entities and neighboring distribution systems informed of its transmission planning and construction programs and shall include therein sufficient transmission capacity as required by such entities, provided that such entities provide the Company sufficient advance notice of their requirements and contract in a timely manner to reimburse the Company for costs, as allowed by the regulatory agency having jurisdiction, appropriately attributable to compliance with the request. However, Company shall not be required to construct any transmission facility (1) which will be of no demonstrable present or future electrical benefit to Company, unless the



facility cannot reasonably be constructed by the requesting entity solely by reason of the Company's unreasonable refusal to grant an easement or license, or refusal to cooperate in removing impediments to the siting of any such transmission facility, (2) which would jeopardize Company's ability to finance or construct, on reasonable terms, facilities to meet its own anticipated system requirements or to satisfy existing contractual obligations to other electric systems, or (3) which could reasonably be constructed by the requesting entity without duplicating any portion of Company's transmission system. In such cases where Company elects not to construct transmission facilities, the requesting system shall have the option of constructing and owning such facilities and interconnecting them with Company's facilities. For the purposes of section X, upgrading present transmission facilities shall be considered always to have some demonstrable present or future electrical benefit to Company.

(d) Notwithstanding the foregoing, Company shall not decline to cooperate in transmitting power produced from any neighboring entity's (including FMPA's) or neighboring distribution system's ownership share, or the ownership share of any other Florida electric utility for which Company's transmission system is necessary to deliver such power, of the Alvin W. Vogtle Nuclear Units from a point or points of interconnection between Company and Georgia Power Company to points of connection described in (a) hereof between

Company and other utilities. This condition shall not be construed to require Company to construct transmission facilities within the State of Georgia. Company shall not be precluded from requiring such neighboring entities, neighboring distribution systems and other utilities to make reasonable financial arrangements to pay for the construction of those portions of facilities to be utilized by them and which are constructed for this purpose.

XI. ACCESS TO POOLING ARRANGEMENTS

Company shall sponsor the membership of any neighboring entity in any pooling arrangement to which Company is presently a party or to which, during the term of this license, Company becomes a party; provided, however, that the neighboring entity satisfies membership qualifications which are reasonable and not unduly discriminatory. To the extent that Company enters into pooling arrangements during the term of the license, it shall use its best efforts to include provisions therein which permit requesting neighboring entities the opportunity to participate in the arrangement on a basis that is reasonable and not unduly discriminatory.

XII. JURISDICTION OF OTHER REGULATORY AGENCIES

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



thereof. The Company agrees to include a provision in new rate schedule submissions associated with these license conditions to the effect that, if the rates become effective prior to the resolution of contested issues associated with the new rate schedules and are thereafter reduced in accordance with the regulatory proceedings and findings, appropriate refunds (including interest) would be made to retroactively reflect the decrease.

XIII. IMPLEMENTATION

(a) These license conditions do not preclude Company from seeking such changes in these conditions, including but not limited to section VIII, as may be appropriate in accordance with the then existing law or factual situation.

(b) These conditions do not preclude Company from offering additional wholesale power, access to generating units or coordination services to other electric entities.

(c) Nothing herein shall be construed to affect the jurisdiction of FERC or any other regulatory agency."

FOR THE NUCLEAR REGULATORY COMMISSION



Darrell G. Eisenhut, Director
Division of Licensing

Date of Issuance: May 26, 1981

(R 133)

FLORIDA POWER & LIGHT CO
SERVICE AREA
AUGUST 1979

LEGEND

□ AREAS WHERE FPL ENGAGED IN GENERATION TRANSMISSION OR DISTRIBUTION OF ELECTRIC POWER

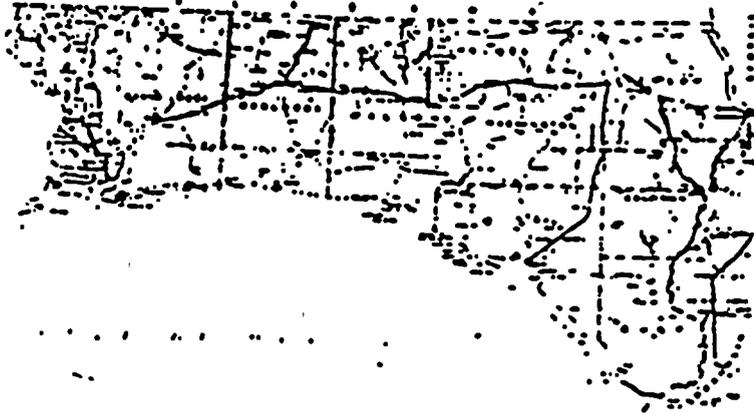
□ PORTIONS OF ELECTRIC COOPERATIVES SERVICE AREAS WHICH USE POWER GENERATED BY FPL

- 1 CLAY
- 2 FLORIDA RIVER
- 3 GLADES
- 4 LEE COUNTY
- 5 HOFFMAN
- 6 PEACE RIVER
- 7 SUWANNEE VALLEY

□ OTHER WHICH ARE NEIGHBORING ENTITIES OR NEIGHBORING DISTRIBUTION SYSTEMS AS DESCRIBED IN PARAGRAPHS 1(a) AND 1(b)

- 8 DUNN PERCE
- 9 HOMESTEAD
- 10 LAKE WORTH
- 11 NEW BAYVIEW BEACH
- 12 STANLEY
- 13 VERO BEACH

STATE OF FLORIDA



UNITED STATES NUCLEAR REGULATORY COMMISSION

FLORIDA POWER AND LIGHT COMPANY

AND

ORLANDO UTILITIES COMMISSION

OF THE CITY OF ORLANDO, FLORIDA

DOCKET NO.: 50-389

NOTICE OF ISSUANCE OF AMENDMENT TO CONSTRUCTION PERMIT

Notice is hereby given that pursuant to a Memorandum and Order dated April 24, 1981 by the Atomic Safety and Licensing Board, the U. S. Nuclear Regulatory Commission has issued Amendment No. 3 to Construction Permit No. CPPR-144, which was issued to Florida Power and Light Company for construction of the St. Lucie Plant Unit 2, located in St. Lucie County, Florida. Effective with the issuance of Amendment No. 2 on November 14, 1980, the current permit holders are Florida Power and Light Company and Orlando Utilities Commission of the City of Orlando, Florida. The Board's Order authorizes the addition of antitrust conditions to the construction permit.

The Commission has found that the provisions of the amendment complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations published in 10 CFR Chapter I. Since the amendment only involves the addition of antitrust conditions, this action involves no safety questions or environmental impacts; i.e., this action does not involve a significant hazards consideration, does not constitute an unreasonable risk to the

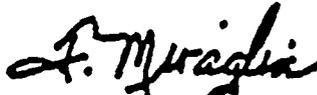
(12135)

health and safety of the public, and is not inimical to the common defense and security. In addition, the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

A copy of the Memorandum and Order, dated April 24, 1981, the construction permit, the amendment and other related documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C. and at the Indian River Community College Library, 3900 Virginia Avenue, Ft. Pierce, Florida. Single copies of the amendment may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D. C., 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this ~~26th~~ day of May, 1981.

FOR THE NUCLEAR REGULATORY COMMISSION



F. Miraglia, Acting Chief
Licensing Branch No. 3
Division of Licensing

(R 136)

APPENDIX A-14

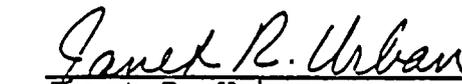
2. The joint movants request that the conditions be made effective immediately, without prejudice to this Board's authority to impose different or additional conditions after a hearing. Granting of this motion will assure that, effective immediately, FPL will be committed to deal with other electric utilities in conformance with the conditions. Moreover, granting of the motion will also assure that utilities, including several who have not intervened in this proceeding, which desire to participate in the ownership of St. Lucie Unit No. 2 will be able to exercise that option promptly, and that those utilities which choose to participate will begin to share in the costs and risks of construction without unnecessary delay. An order making the conditions effective immediately will not prejudice any party to this proceeding, as the Board retains the authority to impose different or additional conditions after a hearing. A Licensing Board ordered that settlement conditions take effect immediately under similar circumstances in Duke Power Company (Catawba Nuclear Station, Units 1 and 2), LBP 74-47, 7 AEC 1158 (1974).

3. In addition, the joint movants request that the Board direct the Intervenor Cities to set forth in writing with specificity any objections they may have to any of the conditions attached to the Stipulation and the legal and factual basis for each such objection. Such a statement is a necessary first step in order to permit the Board and other parties to focus only on those matters which remain in

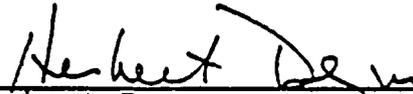
controversy and thus to simplify and expedite any further proceedings in this matter.

Wherefore, the joint movants respectfully request that this Board enter an order (1) attaching the above referenced license conditions in their entirety to the construction permit for St. Lucie Unit No. 2, thus making them effective immediately, without prejudice to this Board's authority to impose different or additional conditions after a hearing, and (2) directing the Intervenor Cities to set forth in writing with specificity any objections that they may have to any of the conditions and the legal and factual basis for each such objection.

Respectfully submitted,



Janet R. Urban
Attorney for the
United States Department
of Justice



Herbert Dym
Attorney for Florida Power
& Light Company



Lee Scott Dewey
Attorney for the Nuclear
Regulatory Commission Staff



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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
FLORIDA POWER & LIGHT COMPANY) Docket No. 50-389A
(St. Lucie Plant, Unit No. 2))

STIPULATION

It is hereby stipulated and agreed by and among the United States Department of Justice ("Department"), the Staff of the Nuclear Regulatory Commission ("NRC Staff"), and Florida Power & Light Company ("FPL") as follows:

1. Subject to paragraph 4 hereof, FPL hereby consents to incorporating into the license for St. Lucie Plant, Unit No. 2 the conditions set out in the attached document, entitled "St. Lucie Plant, Unit No. 2 -- Proposed License Conditions" (hereinafter "these conditions").

2. Subject to paragraph 4 hereof, the Department and the NRC Staff are of the opinion, which they will communicate to the Board, that the licensing of St. Lucie Plant, Unit No. 2 under these conditions will not create or maintain a situation inconsistent with the antitrust laws. The Department will withdraw its request that the NRC conduct a proceeding against FPL under Section 105a of the Atomic Energy Act by reason of Gainesville Utilities Department v. Florida Power & Light Company, 573 F.2d 292 (5th Cir.), cert. denied,



439 U.S. 966 (1978). The Staff will communicate to the Commission its opinion that the licensing of St. Lucie Plant, Unit No. 2 under these conditions will eliminate any need for any proceeding against FPL under Section 105a of the Atomic Energy Act of 1954, as amended, by reason of Gainesville, supra.

3. Subject to paragraph 4 hereof, no party to this Stipulation will seek or support any modification of these conditions in this proceeding, although each party does reserve any right thereafter to seek such changes as may be appropriate in accordance with the then existing law or factual situation. To the extent that any party to this Stipulation participates further in the proceeding, it will defend these conditions should they be challenged.

4. The parties to this Stipulation will jointly request the Board to make these conditions in their entirety effective immediately, without prejudice to the Board's authority to impose different or additional conditions after a hearing. If the motion to make the license conditions in their entirety effective immediately is not granted, FPL may withdraw its agreement to accept these conditions, in which event the Department and the NRC Staff will not be bound by anything stated herein; if such motion is granted, however, FPL will abide by these conditions and any modifications properly imposed pursuant to Section 105c of the Atomic Energy Act.

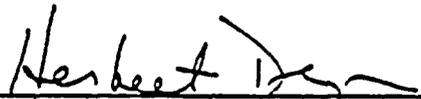
5. The parties to this Stipulation will jointly request the Board to direct the other parties to this proceeding to

set forth in writing with specificity any objections they may have to any of these conditions and the legal and factual basis for each such objection.

6. Nothing in this Stipulation or in these conditions constitutes any evidence against FPL or any admission by FPL as to any issue in this or any other proceeding.



Janet R. Urban
Attorney for the United
States Department of
Justice



Herbert Dym
Attorney for Florida Power &
Light Company



Lee Scott Dewey
Attorney for the Nuclear
Regulatory Commission
Staff



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

Dated: September 12, 1980

St. Lucie Plant, Unit No. 2
Proposed License Conditions

I. DEFINITIONS

(a) "Applicable area" means the area shown on the map which is Attachment A and any other area in the state of Florida in which, in the future, the Company will engage in generation, transmission or distribution of electric power; provided, however, that an area shall not be deemed to be included within the "applicable area" solely because the Company acquires an ownership interest of less than 50% in a generating facility located in such area.

(b) "The Company" means Florida Power & Light Company or any successor corporation, or any assignee of the Company.

(c) "Neighboring entity" means a private or public corporation, governmental agency or authority, municipality, rural electric cooperative, or lawful association of any of the foregoing, which owns, contractually controls, or operates, or in good faith proposes to own, contractually control, or operate facilities for the generation or transmission of electricity, which meets each of the following criteria:

(1) its existing or proposed facilities are actually interconnected or technically feasible of interconnection with those of the Company; (2) its existing or proposed facilities are fully

or partially within the applicable area; (3) it is, or upon commencement of operations, will be subject to regulation as a public utility with respect to rates or service under applicable state law, or under the Federal Power Act, or it is legally exempted from such regulation by law.

(d) "Neighboring distribution system" means a private or public corporation, governmental agency or authority, municipality, rural electric cooperative, or lawful association of any of the foregoing, which engages or in good faith proposes to engage in the distribution of electric energy at retail, whose existing or proposed facilities are connected or technically feasible of connection with those of the Company, and which meets each of the criteria numbered (2) and (3) in paragraph (c) above.

(e) "Costs" means all appropriate costs, including a reasonable return on investment, which are reasonably allocable to an arrangement between two or more electric systems under coordination principles or generally accepted industry practices. In determining costs, no value shall be included for loss of revenues from a sale of power by one party to a consumer which another party might otherwise serve.

(f) The cities of Gainesville, Key West, Jacksonville Beach, Green Cove Springs, Clewiston, Lake Helen, Orlando and Moore Haven and the Fernandina Beach Division of the Florida Public Utilities Company are considered to be



neighboring entities or neighboring distribution systems for the purpose of these license conditions, without regard for whether their facilities are technically feasible of interconnection with the Company. This provision creates specific exceptions to the definition of applicable area and shall not be construed to bring within the applicable area any system not located within the area shown on Attachment A or not listed here.

II. INTERCONNECTIONS

(a) The Company shall interconnect at any technically feasible point on its system and operate in parallel pursuant to a written agreement with any neighboring entity requesting such interconnection.

(b) To the extent it is technically feasible, interconnections shall not be limited to lower voltages when higher voltages are requested and available and shall not be limited to higher voltages when lower voltages are requested and available. Voltages "available" means existing on the Company's system at the desired point of interconnection. Company may include in its rate schedules provisions for conversion of interconnection voltages and relocation of interconnection points to accommodate load growth and design changes consistent with continuing development of Company's transmission system.

(c) Interconnection agreements shall provide for the necessary operating procedures and control equipment as required for the safe and prudent operation of the interconnected systems.

(d) Interconnection agreements shall not embody provisions which impose limitations upon the use or resale of capacity and energy except as may be necessary to protect the reliability of the Company's system.

(e) Interconnection agreements shall not prohibit the parties from entering into other interconnection agreements, but may include appropriate provisions to protect the reliability of the Company's system and to ensure that the Company is compensated for additional costs resulting from such other interconnections.

III. RESERVE COORDINATION AND EMERGENCY POWER

(a) The Company shall sell emergency power to any neighboring entity with which it is interconnected, provided that the neighboring entity has applied good utility practices to plan, operate and maintain a reasonable installed reserve margin for the load that it is meeting with its own resources. Such installed reserve margin, which may include the purchase of reserves from other systems, shall consist of capacity which is as reliable as reserve capacity generally maintained in the electric utility industry, and which is

maintained and operated in a manner consistent with good utility practice. The Company shall engage in such emergency sales when requested if and when capacity and energy are available from its own generating resources or from those of interconnected electric systems, but only to the extent that it can do so without jeopardizing service to its customers. Emergency power shall be furnished to the fullest extent available from the supplying party and required by the other party's emergency.

(b) The parties to reserve coordination transactions pursuant to this section shall maintain such amounts of operating reserves as may be adequate to avoid the imposition of unreasonable demands on any other party(ies) in meeting the normal contingencies of operating their systems. However, Company shall not impose upon any party an operating reserve requirement which is unreasonable in light of such party's minimum reserve obligations under paragraph (a) above.

(c) The Company, if it has generating capacity in excess of the amount called for by its own reserve criteria, shall offer such excess to a neighboring entity to meet such entity's own minimum reserve margin. In lieu of selling such capacity, Company may waive (to the extent of the capacity which would otherwise be offered in accordance with this paragraph) the minimum reserve obligation under paragraph (a) above as to

a party requesting to purchase capacity which Company would be required by this paragraph to sell.

(d) Company's obligations under this section apply only as to neighboring entities which agree to assume reciprocal obligations to Company.

IV. MAINTENANCE POWER AND ENERGY

Company, when it can reasonably do so, shall exchange maintenance schedules and shall engage in purchases and sales of maintenance power and energy with any neighboring entity which so requests. Power shall be supplied to the fullest extent practicable for the time scheduled and in accordance with generally accepted industry practice for maintenance power and energy sales. Company shall be required to sell maintenance power and energy only to the extent that it can do so without jeopardizing service to its customers. Company's obligations under this section apply only as to neighboring entities which agree to assume reciprocal obligations to Company.

V. ECONOMY ENERGY

Company shall exchange data on costs of energy from generating resources available to it and, consistent with system security, sell or purchase economy energy (when appropriate to do so under principles of economic dispatch and good system operating practices) to or from a requesting neighboring entity on a basis that will apportion the savings from such transactions equally between Company and such entity. This provision shall not be construed to preclude

arrangements for economy energy transactions on a regional basis or to require Company or neighboring entity to forego a more attractive opportunity to sell or purchase economy energy. Company's obligations under this section apply only as to neighboring entities which agree to assume reciprocal obligations to Company.

VI. SHARING OF INTERRUPTIONS AND CURTAILMENTS

Company may include reasonable provisions in any inter-connection agreement or contract or schedule for sale of wholesale power requiring a neighboring entity or neighboring distribution system to implement an emergency program for the reduction of customer load, with the objective that Company and the other party shall equitably share the interruption or curtailment of customer load, provided that such provisions are consistent with Company's general emergency criteria filed with any appropriate regulatory authorities. This emergency program would provide for automatic underfrequency load shedding or for load reduction by manual switching or other means, when and to the extent Company reasonably determines such to be necessary to maintain the adequacy of bulk electric power supply.

VII. ACCESS TO ST. LUCIE UNIT NO. 2

(a) Company will afford to the neighboring entities and neighboring distribution systems listed below the opportunity to participate in the ownership of St. Lucie Unit No. 2 in the percentage shares listed below:

Clewiston	.19387
Ft. Pierce	1.02793
Fernandina Beach Division of Florida Public Utilities Company	.45410
Gainesville	2.09359
Green Cove Springs	.13011
Homestead	.44499
Jacksonville Beach	.64538
Key West	.74946
Lake Helen	.03121
Lake Worth	.89520
Moore Haven	.03382
New Smyrna Beach	.40336
Orlando	6.08951
Starke	.11970
Vero Beach	1.03963
Florida Keys Cooperative	.79371



(b). As promptly as practicable, but not later than 30 days after these conditions take effect, Company shall transmit to the entities described above copies of (i) the construction permit for St. Lucie Unit No. 2, (ii) the orders of the NRC and its subsidiary tribunals authorizing issuance of the construction permit, (iii) the final environmental impact statement prepared by the NRC Staff, (iv) the final safety evaluation report prepared by the NRC Staff, (v) a statement of the costs incurred for St. Lucie Unit No. 2 through the most recent date for which an accounting is then available, (vi) Company's most current estimates of the total cost of St. Lucie Unit No. 2 (including estimates of cash requirements by calendar quarter through the date of commercial operation) and the schedule for completion of construction thereof, (vii) the participation agreement Company has executed with Seminole Electric Cooperative, Inc. (or if no such agreement has been executed, the most recent draft of such agreement), (viii) Company's estimate of annual capacity factors for St. Lucie Unit No. 2 and (ix) Company's

estimate of operating and maintenance expenses to be associated with St. Lucie Unit No. 2. No such estimates shall bind Company, and Company shall provide such information in good faith. In addition, Company shall make available to such entities at Company's offices copies of the preliminary safety analysis report and environmental report submitted by Company to the NRC. Company shall respond fully within 30 days to reasonable requests for additional information received from said entity within 35 days of said entity's receiving the documents enumerated in (i) through (ix) of this paragraph. If the NRC finds that the Company has failed to respond fully within 30 days to any such reasonable requests, the entity shall be allowed to participate in accordance with such time schedule as the NRC deems appropriate.

(c) Within 120 days after transmittal of the information enumerated in paragraph (b), each such entity which desires to participate in St. Lucie No. 2 by ownership shall provide Company with a written commitment (i) that it intends to participate in St. Lucie No. 2 and to negotiate in good faith with the Company as to the terms of a participation agreement, (ii) that, in the event agreement is reached as



to the terms of a participation agreement, it will assist the Company as requested in obtaining the required approval of the NRC, and (iii) that it will in good faith seek to obtain the necessary financing for its participation. Such commitment shall be accompanied by a payment equal to ten percent (10%) of the amount stated pursuant to paragraph (b) (v) multiplied by the participation share to which the commitment applies (expressed as a decimal fraction). Upon receiving such payment, the Company shall agree in writing to negotiate in good faith as to the terms of a participation agreement with the entities which provide the written commitments and payments described above. Such written agreement shall also provide that in the event that the Company fails to execute the participation agreement reached between the Company and such entity as provided in paragraph (d) below, each such entity shall have the right to initiate an enforcement action before the NRC, and to initiate an action against the Company in an appropriate court and/or agency for any relief that may otherwise be available to such entity under law. The Company shall have no obligation under this section to any entity which fails to provide within the time specified herein the written commitment and

payment described above, except as may otherwise be provided for in these conditions or be agreed upon in writing by the Company and each such entity.

(d) (1) If, within 120 days after providing the written commitments and payments described in paragraph (c), any entities providing such written commitments and payments and the Company agree as to the terms of a participation agreement, the Company and such entities shall execute the participation agreement, and Company shall seek the required approval of the NRC for transfer of an ownership interest to such entity. The participation agreement shall provide for closing 60 days after NRC approval of participation, contingent upon such entity's having obtained the necessary financing for its participation, at which time an ownership interest would be conveyed to the participant, and the participant would pay its (percentage) share of all costs incurred in connection with St. Lucie Unit No. 2 to the date of closing, less any payment made by such entity pursuant to paragraph (c) hereof.

(d) (2) If NRC approval is not obtained or if, by a date 60 days after NRC approval is obtained, such entity has not been able to obtain the necessary financing, the payment made by such entity pursuant to paragraph (c) shall be refunded by Company to such entity, and Company

shall have no further obligation under this section to such entity. Notwithstanding the foregoing, if an entity is unable to close at the time specified solely by reason of its inability, despite a good faith effort, to obtain necessary financing, such entity shall be allowed a 100-day extension of time for closing. If, for whatever reason, it fails to close within the 100-day extension period, Company shall refund to the entity the payment made by it pursuant to paragraph (c) and Company shall have no further obligation under this section to such entity; provided, however, that if a proceeding with respect to the validity of obligations to be issued by the entity to obtain the necessary financing is pending before the Florida Supreme Court at the conclusion of the 100-day extension period, then such period shall be extended until 60 days after entry of a final judgment in such proceeding.

(d) (3) If a neighboring entity or neighboring distribution system eligible for participation under these conditions is prevented from making the 10% commitment payment required by Section VII(c) due to operation of a state or federal statute or constitutional provision or because it is impossible

for it to obtain funds within the required time period through any of the commercial channels ordinarily available to municipalities to finance payments required in advance of obtaining long-term financing (but excluding in all instances any impediment which can be removed by action of the municipality within the required time period), such neighboring entity will not be obligated to make such commitment payment; provided, however, that the neighboring entity or neighboring distribution system failing to make the commitment payment in reliance on this provision shall have the burden of establishing in any enforcement proceeding the existence of one of the conditions specified herein as a basis for being relieved of the obligation to make such payment and if it fails to do so shall have no right to participation in St. Lucie Unit No. 2 under this section.

(d) (4) If any entity described in paragraph (d) (1) or (d) (2) does not close by the time specified herein, for any reason other than failure to obtain NRC approval or failure to obtain the necessary financing (having made a good faith effort to do so), Company shall refund to the entity the payment made by it pursuant to paragraph (c), and Company shall have no further obligation under this section to such entity.



(e) (1) If, within 120 days after providing the written commitments and payments described in paragraph (c), any entities providing such written commitments and payments and Company are unable to agree as to the terms of a participation agreement, any such entity may make a written request to Company that their dispute with respect to the terms of the participation agreement be submitted to arbitration. Upon the making of such a request by any such entity, Company and each such entity shall enter into an agreement that the arbitration shall be final and binding as between the Company and such entity. If no written request for arbitration is made within the 120-day period specified in this paragraph by an entity that provided the written commitment and payment described in paragraph (c), the payment made by such entity pursuant to paragraph (c) shall be refunded by Company to such entity, and Company shall have no further obligation under this section to such entity. Within ten days after the making of any such request, Company and all entities making such requests shall confer and attempt to agree upon the appointment of a single arbitrator. If such agreement is not reached, either Company or any such entity may request the American Arbitration Association to appoint an arbitrator, who shall be an attorney with knowledge of the electric utility industry. The arbitrator shall conduct a hearing to determine reasonable



11

terms for the disputed provisions of the participation agreement, giving due regard to the context of participation agreements negotiated among comparable parties in the electric utility industry and the particular business situation confronting Company and the entities requesting arbitration, and shall resolve all disputes in accordance with this section and the terms of the agreement to arbitrate; provided, however, that the provisions proposed by the Company as to its liability to the other participants, and as to sharing the cost of discharging uninsured third party liability, ^{*/} in connection with the design, construction, operation, maintenance and decommissioning of St. Lucie Unit No. 2 shall be approved by the arbitrator unless he determines that the provision proposed by the Company constitutes an unreasonable proposal which renders meaningless the Company's offer of participation in St. Lucie Unit No. 2. The decision of the arbitrator shall be

^{*/} Any such liability provision shall not be intended to relieve Company or any other owner of the plant from any liability which it may have to any third party under any federal, state or other law, nor shall such provision provide the basis for any defense by Company, or any other owner of the plant, or any impediment to or delay in any payment, cost, expense or obligation arising from a claim of liability to a third party made against the Company or any other owner of the plant. To the extent that such provision concerns liability to third parties, such provision shall relate solely to subrogation rights as between Company and participants.



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rendered within 30 days of the conclusion of the hearing, unless such time is extended by all of the parties, and shall be final and binding as between the Company and each such entity. Nothing herein shall be construed to deprive the NRC of its jurisdiction to enforce the terms of this license under the Atomic Energy Act.

(e) (2) Promptly after the arbitrator renders his decision, the Company and any such entity shall execute the participation agreement, containing the provisions for subsequent closing described in paragraph (d) (1), and Company shall seek the required approval of the NRC for transfer of an ownership interest to such entity. If any such entity does not execute the participation agreement, Company shall refund to the entity the payment made by it pursuant to paragraph (c) and, Company shall have no further obligation under this section to such entity. If Company does not execute the participation agreement, each such entity shall have the right to request the NRC to initiate an enforcement action and to institute an action against the Company in an appropriate court and/or agency for any relief that may otherwise be available to such entity under law. Upon execution of the participation agreement, the provisions of paragraph (d) (2) shall apply.

(f) In the event that any entity described in paragraph (a) hereof does not participate in the ownership of St. Lucie Unit No. 2 or participates in the ownership of St. Lucie Unit No. 2 in an amount less than the amount provided for in paragraph (a) hereof, it shall be permitted by Company to transfer all or a portion of its participation rights under this section to Florida Municipal Power Agency or any successor thereof (together hereinafter referred to as "FMPA") or to any other entity entitled to participate under these license conditions, provided that FMPA or such other entity agrees to assume all of the transferring entity's obligations to Company in connection with the participation rights transferred. Unless otherwise agreed to by Company and FMPA or such other entity, in no event shall FMPA or such other entity be entitled to any greater periods of time for the performance of its obligations under this section than its transferor would have been entitled to prior to the transfer.

(g) (1) Company may, in its unilateral discretion, extend the time for any of the actions required by this section to be taken by an entity desiring to participate in St. Lucie Unit No. 2. Any such extension shall be in writing. No extension permitted by Company to any entity shall require Company to permit further extensions of time to such entity or similar extensions to other entities.

(g) (2) Any entity which is named in the construction permit for Florida Power & Light St. Lucie Unit No. 2 (dated May 2, 1977) and which elects to participate in St. Lucie Unit No. 2 pursuant to this section does so in lieu of any participation rights provided in the license conditions contained in the construction permit as issued.

(h) In no event shall the Company be obligated to provide participation in St. Lucie Unit No. 2 under this section to any entity unless and until the Company and such entity execute a participation agreement and such entity pays the Company its percentage share of all costs incurred to the date of execution of the participation agreement in connection with St. Lucie Unit No. 2.

(i) Company may retain complete control and act for the other participants with respect to the design, engineering, construction, operation and maintenance of St. Lucie Unit No. 2, and make all decisions relevant thereto insofar as they deal with the relationship between the Company and the other participants, including (but not limited to) decisions regarding adherence to NRC health, safety and environmental regulations, changes in construction schedule, modification or cancellation of the unit and operation at such time and such capacity levels as it deems proper, all without the consent of any participant. Consistent with the foregoing, the participation agreement shall provide for an advisory committee as a vehicle for communication and consultation among all of the owners, and except where the public interest

requires immediate unilateral action, Company shall promptly inform participants of actions which may materially affect them.

(j) Nothing contained herein shall preclude the Company from instituting an action against any entity, with respect to its participation or commitment to participate in St. Lucie Unit No. 2, in an appropriate court for any relief that may be available to it under law.

(k) Any refund made by Company to any entity pursuant to this section shall be of the full amount paid by such entity. Company shall not be required by this section to pay interest on any such refund.

(l) Any entity shall have the right, subject to NRC approval, to sell or otherwise alienate its ownership share in St. Lucie Unit No. 2 after it has taken title to said ownership share to an electric utility which agrees to and is financially qualified to assume the obligations of the seller with respect to St. Lucie Unit No. 2. Any right to contest the prospective buyer's financial qualifications will be waived by Company unless Company informs the prospective seller, prospective buyer, and the NRC of Company's objections within thirty (30) days of Company's receipt of notice of the prospective sale.

VIII. ACCESS TO FUTURE NUCLEAR PLANTS

Company will afford to: (a) those neighboring entities and neighboring distribution systems entitled under any St. Lucie Unit 2 license conditions to any opportunity to participate in the ownership of St. Lucie Unit No. 2, and (b) to any other neighboring entity or neighboring distribution



system not in existence on January 1, 1980, but which operates generation, transmission, or distribution facilities in the applicable area as of the date that a construction permit is submitted to the NRC by Company, the opportunity to participate in the ownership of all nuclear units for which the Company files a construction permit application with the NRC prior to January 1, 1990, provided, however, that no opportunity to participate need be afforded to any neighboring entity or neighboring distribution system in an amount, if any, which would, in the aggregate, result in its owning nuclear generating capacity, or enjoying direct access thereto by unit power purchase or participation through a joint agency, as a percentage of its peak load in excess of what Company's percent of same would be after the addition of the proposed plant. If a joint power agency qualifies for participation hereunder as a neighboring entity, its nuclear generating capacity and peak load shall be deemed to be the aggregate of the nuclear generating capacities and peak loads of its members within the applicable area, excluding any such members which elect to exercise direct participation rights hereunder. In no event shall this license condition be construed to require Company to provide ownership interest in any such nuclear unit in a total amount exceeding 20 percent of the Company's interest in such unit. Where ownership in a nuclear unit is shared between the Company and one or more other utilities, the Company's obligation hereunder with respect to that nuclear unit shall be reduced to the extent that any utility to which participation would be afforded under this condition has been afforded an opportunity to obtain access to the nuclear unit, either directly

or through a joint agency.

IX. WHOLESALE FIRM POWER SALES

(a) Subject to the limitations contained in paragraphs (c) and (d), Company, upon timely request, shall sell firm wholesale power on a full or partial requirements basis to (1) any neighboring entity up to the amount required to supply electric service to its retail customers, to those wholesale customers which are supplied by the neighboring entity and which were so supplied on January 2, 1979, and to those wholesale customers which were previously supplied by Company and which are now supplied by such neighboring entity, and (2) any neighboring distribution system up to the amount required to supply electric service to its retail customers. Any sales made under subsection (a)(1) or (a)(2) above may be decreased by the sum at any one time of (i) power made available to such neighboring entity or neighboring distribution system as a result of participation in (or purchase of unit power from) one of Company's generating units and (ii) other power transmitted to such neighboring entity or neighboring distribution system by Company.

(b) For neighboring entities which supply power to one or more neighboring entities or neighboring distribution systems eligible to directly request service under this condition, Company will alternatively make sales to such supplying entities to the extent that such service would be available under the previous paragraph (a) to such neighboring entities or neighboring distribution system(s),

provided that such sales can be made on terms and conditions which do not expand Company's obligations to supply wholesale power beyond the quantities otherwise referred to in this section.

(c) Company may require such advance notice of the intention to take service and of the service contract demands as is reasonable for Company's power supply planning, and may impose reasonable limitations upon the increases in such service contract demands, provided that no such limitation shall be imposed to prevent a neighboring entity or neighboring distribution system from assuming a load which has been served directly by Company or a load which Company has sought to serve. Company shall not establish rates, terms or conditions (other than the advance notice provision described above) for the sale of firm wholesale power which differentiate among customers on the basis of whether or not an entity has historically been a wholesale firm power customer of the Company.

(d) Company shall not have any obligation to provide wholesale power to: (1) any electric utility which existed on January 1, 1979, and which was not a neighboring entity or neighboring distribution system as of that date; (2) any rural electric cooperative (or membership corporation) in a quantity greater than that required to serve such cooperative (or any distribution cooperative served by such cooperative) for loads in the area which has historically been supplied at wholesale or at retail by the Company; or (3) a neighboring entity which on January 1, 1979, owns or controls electric facilities with nominal capacity in

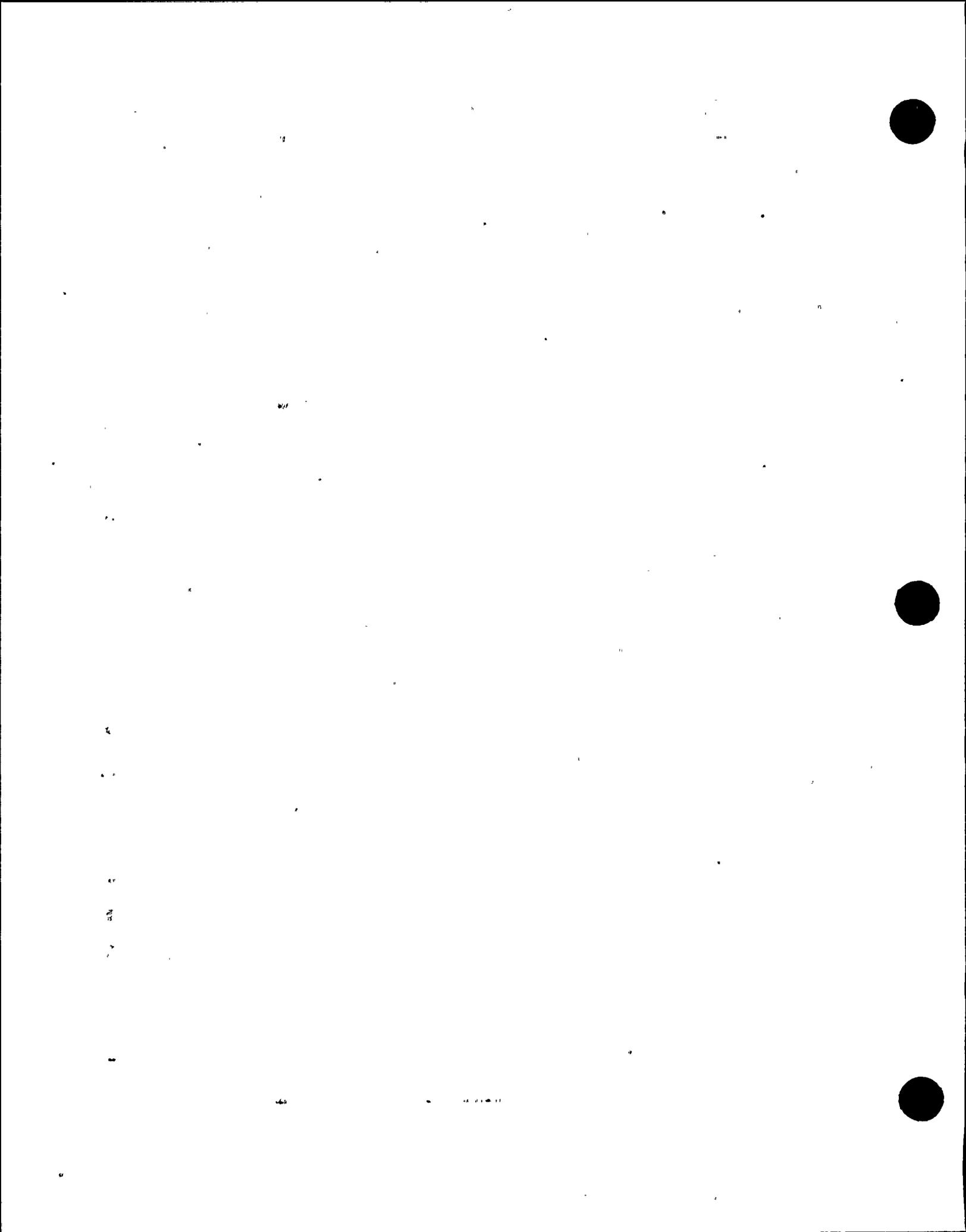


excess of 200Mwe, provided that this item (d) (3) shall not relieve the Company from the alternative obligation, provided in paragraph (b), to make sales to a neighboring entity which supplies power to an eligible neighboring entity or neighboring distribution system in lieu of making such sales directly to the eligible neighboring entity or neighboring distribution system.

(e) Wholesale power sales agreements shall not restrict use or resale of power sold pursuant to such agreements except as may be necessary to protect the reliability of Company's system. Delivery point voltages shall be established consistent with the provisions of section II(b).

X. TRANSMISSION SERVICES

(a) The Company shall transmit power (1) between Company power sources and neighboring entities or neighboring distribution systems with which Company is connected, (2) between two or among more than two neighboring entities, or sections of a neighboring entity's system which are geographically separated, with which, now or in the future, Company is interconnected, (3) between any neighboring entity with whom, now or in the future, Company is interconnected and one or more neighboring distribution system(s) with whom, now or in the future, it is connected, (4) between any neighboring entity or neighboring distribution system(s) and any other electric utility outside the applicable area, and (5) from any qualifying cogeneration facility or small power production facility (as defined by the Federal Energy Regulatory Commission in 18 CFR Part 292, Subpart B) with which Company is interconnected to a neighboring entity or



neighboring distribution system, where both the owner of the qualifying cogeneration facility and the neighboring entity or neighboring distribution system to which such transmission service is provided agree that such neighboring entity or neighboring distribution system will make, during the time and to the extent of its purchases from the cogeneration facility, any sales of "Backup power" and "Maintenance power" (as these terms are defined in applicable Federal Energy Regulatory Commission regulations) to the qualifying cogeneration facility or small power production facility; provided however that nothing in this item (5) shall diminish Company's obligations under Section IX hereof. Company shall provide transmission service under this paragraph only if (1) Company's and other connected transmission lines form a continuous electric path between the supplying and the recipient systems; (2) permission to utilize other systems' transmission lines can be obtained by the proponent of the arrangement; (3) the services can reasonably be accommodated from a technical standpoint without significantly jeopardizing Company's reliability or its use of transmission facilities; (4) reasonable advance request is received from the neighboring entity or neighboring distribution system seeking such services to the extent that such notice is required for operating or planning purposes, provided that Company distributes a written timetable setting forth reasonable periods of time within which such advance notice must be received for transmission services over existing company facilities; and (5) a reasonable magnitude, time and duration for the transactions is specified prior to the commencement of the transmission.

(b) Company's provision of transmission service under this section shall be on the basis which compensates it for its costs of transmission reasonably allocable to the service in accordance with a transmission agreement, transmission tariff or on another mutually agreeable basis. Company shall file such transmission agreements or transmission tariffs with the Federal Energy Regulatory Commission or its successor agency. In the event that the Company and a requesting entity are unable to agree regarding transmission services required to be provided under this section X, Company shall, upon the request of such entity, immediately file a service agreement at the Federal Energy Regulatory Commission or its successor agency providing for such service. Nothing in this license shall be construed to require Company to wheel power and energy to or from a retail customer.

(c) Company shall keep requesting neighboring entities and neighboring distribution systems informed of its transmission planning and construction programs and shall include therein sufficient transmission capacity as required by such entities, provided that such entities provide the Company sufficient advance notice of their requirements and contract in a timely manner to reimburse the Company for costs, as allowed by the regulatory agency having jurisdiction, appropriately attributable to compliance with the request. However, Company shall not be required to construct any transmission facility (1) which will be of no demonstrable present or future electrical benefit to Company, unless the



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facility cannot reasonably be constructed by the requesting entity solely by reason of the Company's unreasonable refusal to grant an easement or license, or refusal to cooperate in removing impediments to the siting of any such transmission facility, (2) which would jeopardize Company's ability to finance or construct, on reasonable terms, facilities to meet its own anticipated system requirements or to satisfy existing contractual obligations to other electric systems, or (3) which could reasonably be constructed by the requesting entity without duplicating any portion of Company's transmission system. In such cases where Company elects not to construct transmission facilities, the requesting system shall have the option of constructing and owning such facilities and interconnecting them with Company's facilities. For the purposes of section X, upgrading present transmission facilities shall be considered always to have some demonstrable present or future electrical benefit to Company.

(d) Notwithstanding the foregoing, Company shall not decline to cooperate in transmitting power produced from any neighboring entity's (including FMPA's) or neighboring distribution system's ownership share, or the ownership share of any other Florida electric utility for which Company's transmission system is necessary to deliver such power, of the Alvin W. Vogtle Nuclear Units from a point or points of interconnection between Company and Georgia Power Company to points of connection described in (a) hereof between



Company and other utilities. This condition shall not be construed to require Company to construct transmission facilities within the State of Georgia. Company shall not be precluded from requiring such neighboring entities, neighboring distribution systems and other utilities to make reasonable financial arrangements to pay for the construction of those portions of facilities to be utilized by them and which are constructed for this purpose.

XI. ACCESS TO POOLING ARRANGEMENTS

Company shall sponsor the membership of any neighboring entity in any pooling arrangement to which Company is presently a party or to which, during the term of this license, Company becomes a party; provided, however, that the neighboring entity satisfies membership qualifications which are reasonable and not unduly discriminatory. To the extent that Company enters into pooling arrangements during the term of the license, it shall use its best efforts to include provisions therein which permit requesting neighboring entities the opportunity to participate in the arrangement on a basis that is reasonable and not unduly discriminatory.

XII. JURISDICTION OF OTHER REGULATORY AGENCIES

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



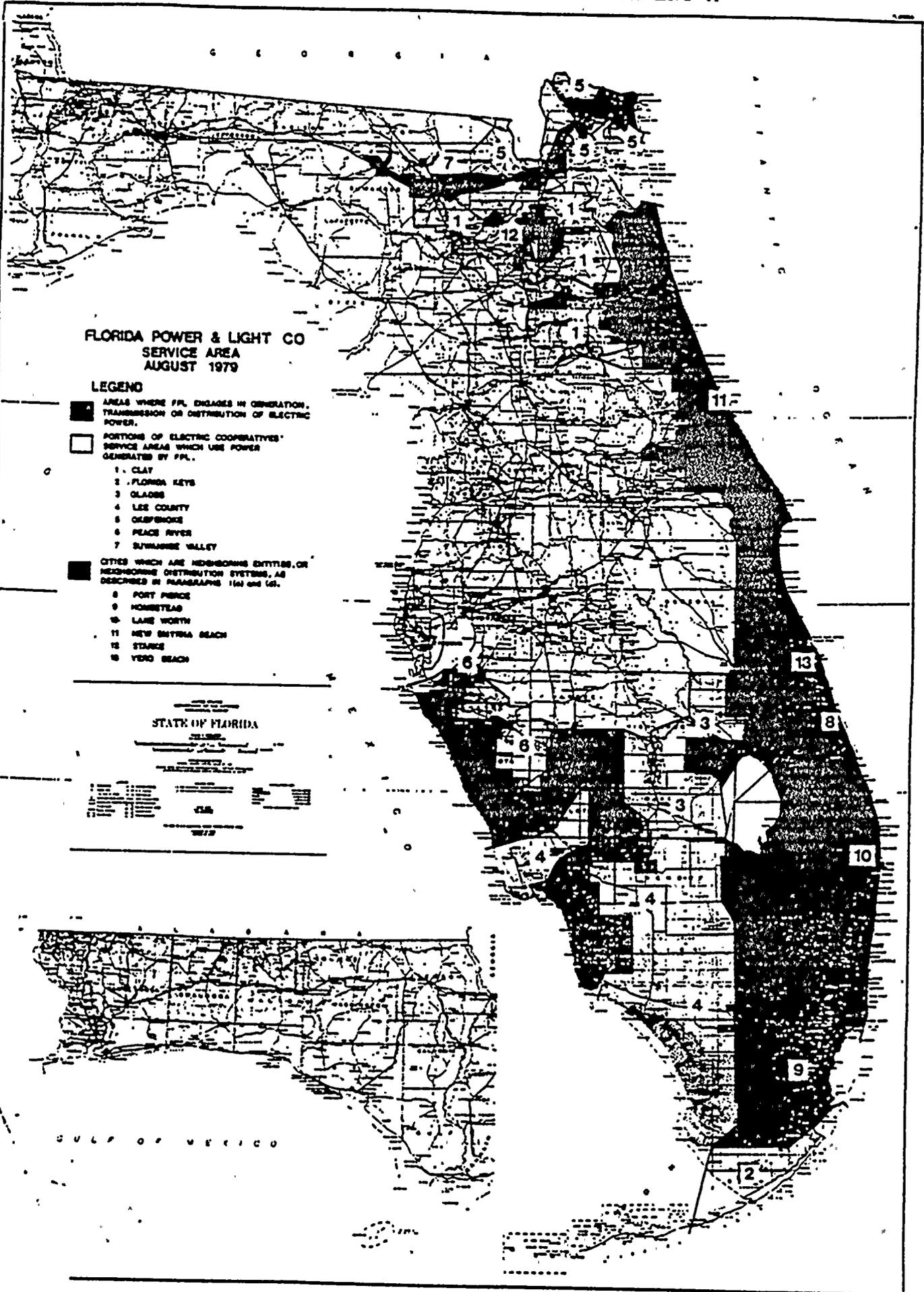
thereof. The Company agrees to include a provision in new rate schedule submissions associated with these license conditions to the effect that, if the rates become effective prior to the resolution of contested issues associated with the new rate schedules and are thereafter reduced in accordance with the regulatory proceedings and findings, appropriate refunds (including interest) would be made to retroactively reflect the decrease.

XIII. IMPLEMENTATION

(a) These license conditions do not preclude Company from seeking such changes in these conditions, including but not limited to section VIII, as may be appropriate in accordance with the then existing law or factual situation.

(b) These conditions do not preclude Company from offering additional wholesale power, access to generating units or coordination services to other electric entities.

(c) Nothing herein shall be construed to affect the jurisdiction of FERC or any other regulatory agency.



**FLORIDA POWER & LIGHT CO
SERVICE AREA
AUGUST 1979**

LEGEND

- AREAS WHERE FPL ENGAGES IN GENERATION, TRANSMISSION OR DISTRIBUTION OF ELECTRIC POWER.
- PORTIONS OF ELECTRIC COOPERATIVES' SERVICE AREAS WHICH USE POWER GENERATED BY FPL.
- 1. CLAY
- 2. FLORIDA KEYS
- 3. GLADES
- 4. LEE COUNTY
- 5. OLFENBROCK
- 6. PEACE RIVER
- 7. SUWANNEE VALLEY
- CITIES WHICH ARE NEIGHBORING ENTITIES OR NEIGHBORING DISTRIBUTION SYSTEMS, AS DESCRIBED IN PARAGRAPHS 1(a) AND (c).
- 8. FORT PIERCE
- 9. HOMESTEAD
- 10. LAKE WORTH
- 11. NEW BETHLEHEM BEACH
- 12. STARS
- 13. VERO BEACH

STATE OF FLORIDA

NO.	NAME	ADDRESS	PHONE
1	CLAY		
2	FLORIDA KEYS		
3	GLADES		
4	LEE COUNTY		
5	OLFENBROCK		
6	PEACE RIVER		
7	SUWANNEE VALLEY		
8	FORT PIERCE		
9	HOMESTEAD		
10	LAKE WORTH		
11	NEW BETHLEHEM BEACH		
12	STARS		
13	VERO BEACH		

GULF OF MEXICO



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
FLORIDA POWER & LIGHT COMPANY)
(St. Lucie Plant, Unit No. 2))

NRC Docket No. 50-389A

CERTIFICATE OF SERVICE

I hereby certify that copies of JOINT MOTION OF DEPARTMENT OF JUSTICE, NRC STAFF, AND APPLICANT TO APPROVE AND AUTHORIZE IMPLEMENTATION OF SETTLEMENT AGREEMENT and STIPULATION were served by hand or be deposit in the U.S. Mail, first class postage prepaid this 12th day of September, 1980.

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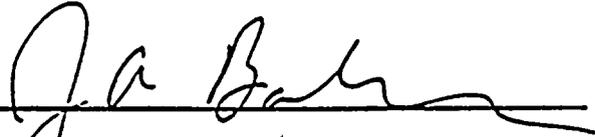
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DATED:

APPENDIX A-15

RECEIVED

FPL: 8/7/81

AUG 10 1981

SPIEGEL & MADDAMID

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In The Matter of)	
)	
Florida Power & Light Company)	Docket No. 50-389A
)	
(St. Lucie Plant, Unit No. 2))	August 7, 1981

RESPONSE OF FLORIDA POWER & LIGHT COMPANY TO
CITIES' MOTION TO ESTABLISH PROCEDURES, FOR A
DECLARATION THAT A SITUATION INCONSISTENT WITH THE
ANTITRUST LAWS PRESENTLY EXISTS AND FOR RELATED RELIEF

J. A. Bouknight, Jr.
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LOWENSTEIN, NEWMAN, REIS & AXELRAD

Herbert Dym
COVINGTON & BURLING
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorneys for Florida Power & Light Company

Dated: August 7, 1981



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argument is transparent at best,¹ and, in any event, is clearly obviated by the settlement license conditions. Those conditions assure the Cities that FPL will provide transmission service in accordance with the license conditions during the operating life of St. Lucie Unit No. 2.² Accordingly, there is no merit whatsoever to Cities' claim that FPL's unwillingness to substitute a tariff filing for transmission service contracts is an act of monopolization.

The Cities' "joint rate" argument can be dealt with briefly. Cities' proposal would result in FPL's receiving approximately one-half the compensation that it now receives, under rates approved by two FERC ALJs, for transactions that also involve use of the transmission facilities of Florida Power Corporation. As the ALJ in ER78-19 said in rejecting Cities' proposal:

"Cities would prefer a transmission rate which is derived by treating FPC and FPL as a single, merged transmission grid, a rate less than half the sum of the two current costs of service. The shortfall in revenue, of course, will come from customers who transmit on only one system and are charged on the basis of costs on one of the two unmerged systems. Such a subsidy is rather obviously discriminatory.

¹ As is shown elsewhere (Appendix A, p. 23), FPL has provided transmission service in every case where a bona fide request for such service has been received and, indeed, has actively offered transmission service agreements since the "energy broker" operation began in 1978.

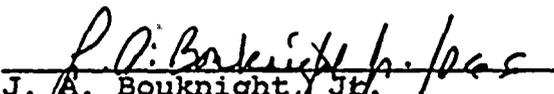
² The license conditions set basic rules that FPL must follow in providing transmission service. However, they do not prescribe specific rates or terms and conditions for service. These would be embodied in the contracts between the parties and would be subject to plenary review by FERC.

proceeding so that the issues which are truly material to the determination before it can be resolved in a manner which best protects the public interest. FPL believes that the Cities' allegations are without merit as a matter of law. If the Board nonetheless determines that an evidentiary hearing is necessary to dispose of any of those allegations, it should adopt the trial schedule and the procedural guidelines proposed above.

CONCLUSION

For all of the reasons set forth in this pleading, Cities' motion should be denied.

Respectfully submitted,


J. A. Bouknight, Jr.
Douglas G. Green
Lowenstein, Newman, Reis, & Axelrad
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Herbert Dym
Covington & Burling
888 16th Street, N.W.
Washington, D.C. 20006

Attorneys for Florida Power &
Light Company

Dated: August 7, 1981

APPENDIX A-16

AGREEMENT

This Agreement is made as of February 11, 1982, by and between Florida Power & Light Company ("FPL") and each of the other signatories to it ("Florida Cities").

WITNESSETH

Whereas, Florida Municipal Power Agency ("FMPA") and FPL are today entering into a Participation Agreement relating to St. Lucie Unit No. 2 in the form attached hereto as Appendix 1; and

Whereas, FPL will today approve the Settlement Agreement attached hereto as Appendix 2, subject to the Florida Cities also timely approving the Settlement Agreement; and

Whereas, each of the persons executing this Agreement represents that he has the authority to enter into it for the party on whose behalf he has executed this Agreement.

NOW THEREFORE, it is mutually agreed that, upon execution of this Agreement,

(a) Florida Cities shall provide to FPL an executed Stipulation, in the form attached hereto as Appendix 3, waiving any objections that Florida Cities may have to the issuance at any time by the Nuclear Regulatory Commission of an operating license for St. Lucie Unit No. 2, notwithstanding the pendency or status of any antitrust review.

(b) FPL agrees that, during the current session of the legislature of the State of Florida, FPL will support the

enactment of a bill the substance of which is attached hereto as Appendix 4, not seek or support its amendment on other than technical or non-substantive grounds, and not support any other bill on the ^{in the opinion} subject matter of the attached bill.

NTS
SJR.

(c) City representatives executing this Agreement shall recommend to Florida Cities that they approve and enter into the Settlement Agreement attached hereto as Appendix 2.

Richard P. Haly
City of Alachua

2-11-82
Date

J. M. [Signature]
City of Bartow

2-11-82
Date

William L. [Signature]
City of Fort Meade

2-11-82
Date

City of Homestead

Date

Robert R. [Signature]
Utility Board of the City of Key West

2-11-82
Date

Max Alderman
City of Kissimmee

2/11/82
Date

John C. [Signature]
Lake Worth Utilities Authority

2-11-82
Date

Joseph M. Sandegard Jr.
City of Leesburg.

2/11/82
Date

Bill Farmer
City of Mount Dora

2/11/82
Date

J.W. Cadwell
City of Newberry

2-11-82
Date

Bill Wait
New Smyrna Beach Utilities Commission City
of New Smyrna Beach

2/11/82
Date

James A. Phillip
Spring Utilities Commission

2/11/82
Date

Robert A. Jahnke
City of Starke

2/11/82
Date

Ernie Jones
City of St. Cloud

2/11/82
Date

C.H. Corn
City of Tallahassee

2/11/82
Date

P.V. Little
City of Vero Beach

2/11/82
Date

F.C. Shreve Jr. Ex-Officio
Florida Municipal Utilities Association

2/11/82
Date

APPENDIX 2

THE SETTLEMENT AGREEMENT

This agreement is dated as of March 3, 1982 by and between Florida Power & Light Company ("FPL") and the following Florida cities, commissions or authorities: The City of Alachua, The City of Bartow, The City of Fort Meade, The City of Homestead, The Utility Board of the City of Key West, The City of Kissimmee, The Lake Worth Utilities Authority, The City of Leesburg, The City of Mount Dora, The City of Newberry, The New Smyrna Beach Utilities Commission City of New Smyrna Beach, The Sebring Utilities Commission, The City of Starke, The City of St. Cloud, The City of Tallahassee, The City of Vero Beach, and the Florida Municipal Utilities Association ("Cities" or "Nuclear Intervenors Group").

WITNESSETH

Whereas, FPL and Florida Municipal Power Agency ("FMPA") are entering into a Financing Contingency Agreement in the form attached hereto as Appendix A;

Whereas, the parties to this Agreement are settling differences between them and establishing additional arrangements for their mutual benefit,

NOW THEREFORE, the parties mutually agree as follows:

1. (a) This Agreement shall take effect only if it is executed by all of the parties by March 3, 1982, or by such later

execution deadline as FPL (which is promptly executing this Agreement subject to the Cities also timely executing it) may in its sole discretion specify.

(b) This Settlement Agreement may be executed in separate identical copy by each party with the same effect as if all parties executed one copy of the Agreement, each of which identical copies shall be deemed to be an original and all such copies shall together constitute this Settlement Agreement.

2. FPL shall afford those Cities named above which are not named in the St. Lucie Unit No. 2 License Conditions an opportunity to participate in the ownership of St. Lucie Unit No. 2 in the collective amount of 8 Mw of the estimated net output, by amending the St. Lucie Unit No. 2 Participation Agreement between FPL and Florida Municipal Power Agency ("FMPA"), dated February 11, 1982, to increase FMPA's Ownership Percentage to 8.806 percent.

3. FPL shall, prior to St. Lucie Unit No. 2 first achieving Firm Operation, as defined in the St. Lucie Unit No. 2 Participation Agreement, and at the request of a participant, offer to FMPA or to Cities individually participating in St. Lucie Unit No. 2 a reliability exchange involving output from St. Lucie Unit No. 2 and St. Lucie Unit No. 1, such exchange to become effective upon St. Lucie Unit No. 2 first achieving commercial operation. Such agreement shall be substantially in the form of Appendix B.

Any share or interest subject to the exchange shall not be transferred except subject to the exchange.

4.1 During the period beginning with the effective date of this Agreement and ending 10 years plus 120 days thereafter, FPL will make available to FMPA 75 Mw of firm power, on and subject to the following terms and conditions:

(a) Upon request made by FMPA at any time or times during such period, FPL shall enter into one or more firm power sales contracts with FMPA under which FPL shall sell and FMPA shall purchase an amount or amounts of firm power designated by FMPA for a term or terms designated by FMPA; provided that: (i) the total amount that FPL shall be required to sell to FMPA shall not at any time exceed 75 Mw (except as provided in Section 4.2 below), and (ii) the term provided in each such contract shall end on or before a date 10 years and 120 days after the effective date of this Agreement.

(b) In each instance, FMPA shall provide FPL with notice of its intent to enter into a firm power sales contract, together with notice of the amount of power desired and the requested contract term, no later than 120 days before the date on which FMPA requests that the sale commence.



(c) Unless the parties mutually agree to a different rate, each such firm power sales contract shall provide for FMPA to pay FPL for power sold under such contract the same rate as is effective from time to time for service provided under one of the following rate schedules designated by FMPA at the time of the notice provided in paragraph (b): (i) Sale for Resale Partial Requirements Rate Schedule - PR-1, or any rate schedule that succeeds or is substituted for the same; (ii) Sale for Resale Full Requirements Rate Schedule - FR, or any rate schedule that succeeds or is substituted for the same or (iii) Sale for Resale Time - Differentiated Partial Requirements Rate Schedule - PRT-1 or any rate schedule that succeeds or is substituted for the same. It is understood that the rate applicable to sales under any such contract shall change from time to time to correspond with changes in the designated Sale for Resale Rate Schedule, and FPL may effect such changes by unilateral filings with the Federal Energy Regulatory Commission ("FERC") (or its successor) or otherwise.

(d) FPL shall deliver firm power contracted by FMPA to a delivery point or points on FPL's system or to one or more points of interconnection between FPL's system and the system or systems of one or more other utilities, as designated by FMPA; provided that FMPA's discretion to designate such deliveries is subject to the availability of adequate



transmission, delivery point and interconnection capacity.

4.2 FPL shall make available to FMPA 75 Mw of firm power in addition to the 75 Mw provided in Section 4.1, during the period and subject to the terms and conditions provided in Section 4.1, if and to the extent that FPL anticipates, at the time that any request for such additional firm power is received, that it will have sufficient capacity resources available to provide such firm power for the term requested by FMPA. For purposes of this section, FPL's capacity resources shall be deemed to be sufficient if, and only if, after taking into account the requested additional amount of firm power, the capacity resources reported in the Ten Year Power Plant Site Plan most recently submitted by FPL to the State of Florida as available to meet estimated peak demand at the time of the peak for each summer and winter season during the time period for which such additional amounts of firm power are requested equal, in each instance, at least 118 percent of the demand forecasted at the time of such peak (as reported in such Ten Year Power Plant Site Plan).

4.3 During the period beginning with the effective date of this Agreement and ending 10 years plus 120 days thereafter, Cities will not contend, claim or assert, or lend their support to any contention, claim or assertion, before any court or agency or department of any government that FPL has any obligation to supply firm power to any electric utility or other person except for those obligations specified in Section IX of the License

Conditions made effective in NRC Docket No. 50-389A by order dated April 24, 1981, or in its Sale for Resale tariff on file at the Federal Energy Regulatory Commission ("FERC") and the obligations undertaken in this section; provided that if FPL voluntarily provides firm power to other utilities other than as is required pursuant to the obligations referenced here, this provision shall not operate to prevent Cities from claiming that denial of such additional or different service to them constitutes unlawful discrimination. The Cities will not contest the discontinuance of any of the obligations provided in this Section 4 and the termination of contracts entered into pursuant to this Section 4, at time or times provided in this Section and in such contracts.

5. Within a reasonable time after the execution of this Agreement, FPL will tender to the FERC for filing Sale for Resale Time - Differentiated Partial Requirements Rate Schedule - PRT-1 (Appendix C). Cities shall not oppose the filing of such rate schedule or at that time seek, or lend their support to any effort to seek, any modification thereof.

6. Cities will consider in good faith, and will negotiate without commitment but in good faith with FPL with respect to, any proposal made by FPL for arrangements relevant to the exchange of economy energy which it believes are consistent with the objective of maximizing the efficiency of overall power production in Florida.

7. FPL agrees to cooperate, by providing transmission data available to FPL, in any study proposed to the Florida Electric



Power Coordinating Group ("FCG") within one year after the date of this Settlement Agreement of lawful alternative arrangements for transmission service in Florida. At the time any such study is instituted, FPL shall determine whether it will pay any of the expected cost of the study and shall promptly advise FCG of its determination. At the conclusion of the study, FPL and each other utility will determine independently whether to accept any recommendation made on the basis of matters studied by FCG. If FPL determines not to accept any such recommendation, FPL agrees not to oppose consideration by the Florida Public Service Commission ("FPSC") of the recommendation, if any, made on the basis of matters studied by FCG, but FPL reserves the right to take any position it deems appropriate before the FPSC on the merits of such recommendation, and to exercise its legal rights with respect to any determination made by the FPSC.

8. (a) FPL agrees that it will provide transmission service to EMPA for 77 Mw of power from a point or points of interconnection between FPL and Georgia Power Company (or Southern Companies) to EMPA members whose systems are directly interconnected or connected with FPL's system, provided that FPL shall be required to deliver such power only to those points of interconnection or delivery as to which sufficient capacity is available to accommodate the transaction. Except as provided below, this service shall be available only for

transmission of the output of an interest that FMPA acquires in the Vogtle plants. FMPA may accept such service by entering, before June 1, 1983, into a contract with FPL that provides the rate and terms and conditions for such service and commits FMPA to pay for such service, whether or not it is used, for the term of the contract, which term may be designated by FMPA. Such contract shall not provide for service to commence earlier than one year after the effective date of the contract. If FMPA has not, by June 1, 1983, contracted for an interest in the Vogtle plant, it may receive such transmission service for power from another source designated by it if it enters into such a contract before June 1, 1984.

(b) FPL agrees that, beginning with the date of completion of its two 500 Kv lines from the Duval substation to the Martin Plant (currently estimated to be January 1, 1986), it will make available to FMPA transmission service for up to 300 Mw of power (in addition to the 77 Mw provided in Section 8(a)), with such amount to be determined by FMPA, from the Duval substation to points of interconnection or delivery on FPL's system south of the Duval substation designated by FMPA, provided that FPL shall be required to deliver such power only to those points of interconnection or delivery as to which sufficient capacity is available to accomodate the transaction. FMPA may accept such service by entering, before January 1, 1986, into a

contract with FPL that provides the rate and terms and conditions for such service and commits FMPA to pay for such service, whether or not it is used, for the term of the contract, which term may be designated by FMPA. Such contract shall not provide for service to commence earlier than one year after the effective date of the contract. If construction by FPL is necessary for transmission service requested by FMPA, FPL may require reasonable financial arrangements in the manner provided by License Condition X(d). FMPA shall be responsible for arrangements to deliver any such power to FPL at the Duval substation.

(c) The contracts for transmission service described in Sections 8(a) and 8(b) shall contain terms that are consistent with the terms of this Section 8(c). FPL and FMPA will negotiate and attempt to agree on the rates and other terms and conditions to be included in the contracts. In the event of a disagreement, the rates and such terms and conditions proposed by FPL will be included in any such contract, and the contract will provide that (i) FMPA may contest such rates and terms and conditions, and (ii) to the extent that the rates provided in the contract are ultimately found, by an order of the FERC no longer subject to appeal, to be excessive, FPL will refund the excess together with interest at the rate specified for refunds by the FERC's regulations. FPL shall have the right unilaterally to make

application to the FERC, or other regulatory authority having jurisdiction, for a change in the rates and terms and conditions provided in the contracts except for the terms and conditions specified in this Section 8(c). All rights provided to FMPA by this Section 8(c) shall terminate if, and to the extent that, FMPA fails to enter into the contracts described above by the dates specified above. This Section 8(c) shall not be construed to restrict the ability of FMPA otherwise to seek transmission service from FPL, or to commit FPL to provide such service other than as specified herein.

9. FPL agrees to offer, to each City with which it is party to a transmission service agreement that applies to transactions, such as emergency interchange, short-term firm interchange, economy interchange, and firm interchange, under one or more interchange agreements (and to FMPA, at such time as FMPA and FPL enter into any such transmission service agreement), the opportunity to pay for such service on a dollars per megawatt-hour basis, as contrasted with a rate expressed in dollars per megawatt-day, dollars per megawatt-month or dollars per megawatt-year. It is contemplated that the rate per megawatt-hour would be determined by dividing the applicable rate, expressed in terms of dollars per megawatt-year, by 8,760. Customers under such agreements may reserve transmission capacity for interchange transactions by committing to pay the per megawatt-hour transmission rate for each hour of the period so reserved, provided FPL commits, in accordance with the effective

transmission service agreement, to the availability of such services for such period. Where a City has notified FPL that it has a need for transmission service during a designated period by reason of entering into a power transaction agreement with another utility for such period, which agreement shall have been delivered to FPL prior to the commencement of such period, but such City does not wish to reserve transmission capacity during such period, but contracts with FPL for service on a per megawatt-hour basis, then if FPL receives a request from another customer for firm transmission service, which service cannot be reliably provided without risk of interruption of service to such City, FPL shall notify such City and offer it the right of first refusal to reserve the transmission capacity necessary for the interchange transaction for which it has contracted on a per megawatt-hour basis. The per megawatt-hour rate shall not apply to any transaction the term of which is longer than three years. Nothing contained in this Section 9 shall be construed as affecting in any way the right of FPL to unilaterally make application to the FERC, or other regulatory authority having jurisdiction, for a change in any rate schedule for transmission service under Section 205 of the Federal Power Act and pursuant to the FERC's Rules and Regulations promulgated thereunder; provided that FPL will not, prior to January 1, 1987, put into effect any change that eliminates the per megawatt-hour pricing



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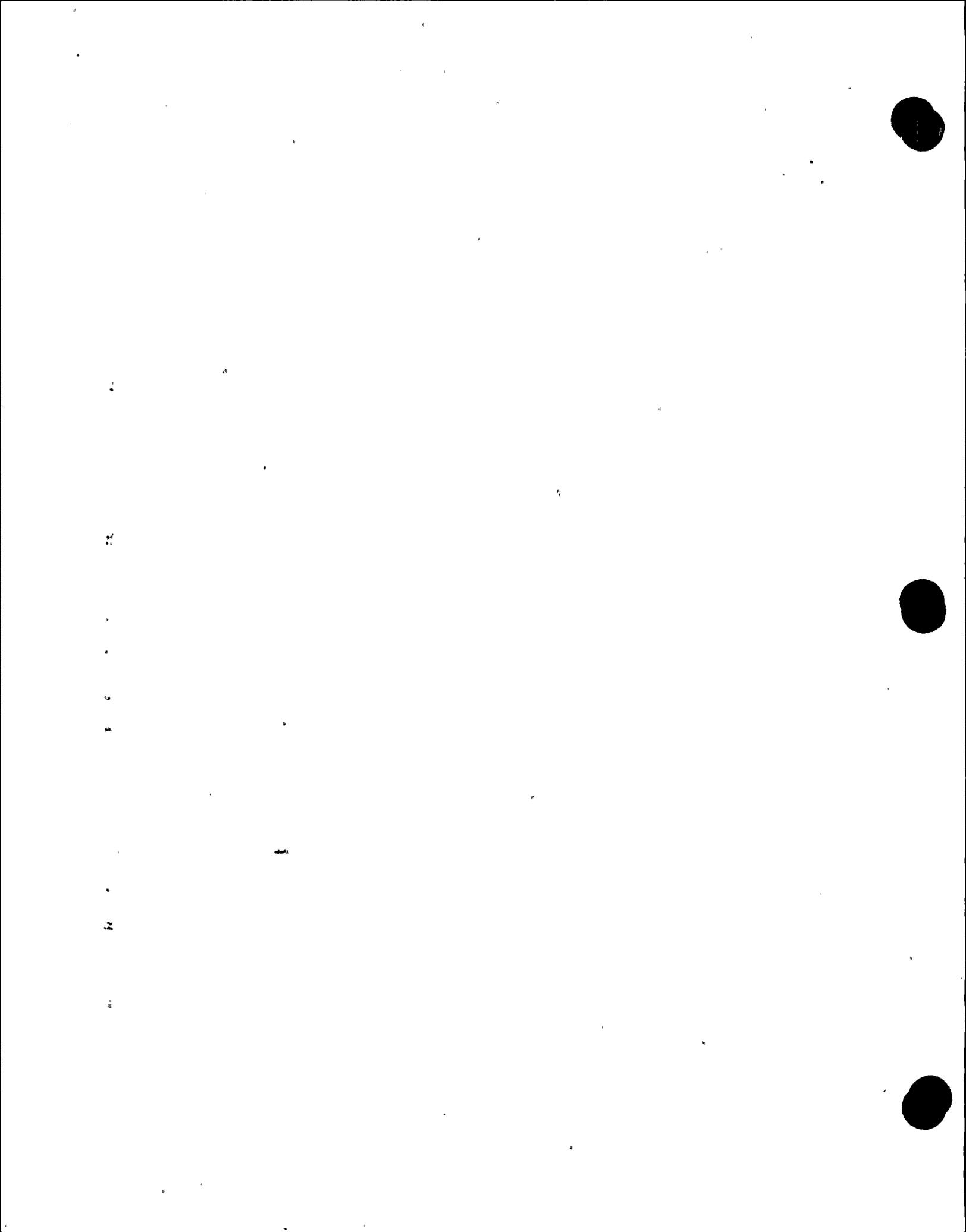


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concept described herein, until the FERC has first issued an effective order approving FPL's application to eliminate this pricing concept.

10. FPL shall afford FMPA an opportunity to participate in the next two major coal-fired units which FPL undertakes to construct and which are certified as to need by the Florida Public Service Commission by July 1, 1992. FPL shall offer a participation opportunity to FMPA in an amount aggregating about 7 percent of the capacity of each unit. If and when FPL puts each of these units on a normal project schedule, notice (including cost and technical information) will be given to FMPA. Within 120 days, FMPA shall, if it desires to participate, advance a deposit equal to 10 percent of FPL's costs to that date attributable to the share available to FMPA. The parties will then, within 180 days, negotiate and execute a Participation Agreement, which shall be substantially in accord with the St. Lucie Unit No. 2 Participation Agreement, except that the Agreement shall provide for FPL to receive a reasonable management fee and shall be modified to reflect the fact that the units will be coal-fired, not nuclear powered. If the two units are certified as to need at the same time and are of similar size and design, FMPA may elect to participate (or increase their participation) in one of the units to the extent of 14 percent of its capacity, but then FMPA may not participate in the other



unit. FPL may offer, but is not obligated to offer, a reliability exchange between the two units.

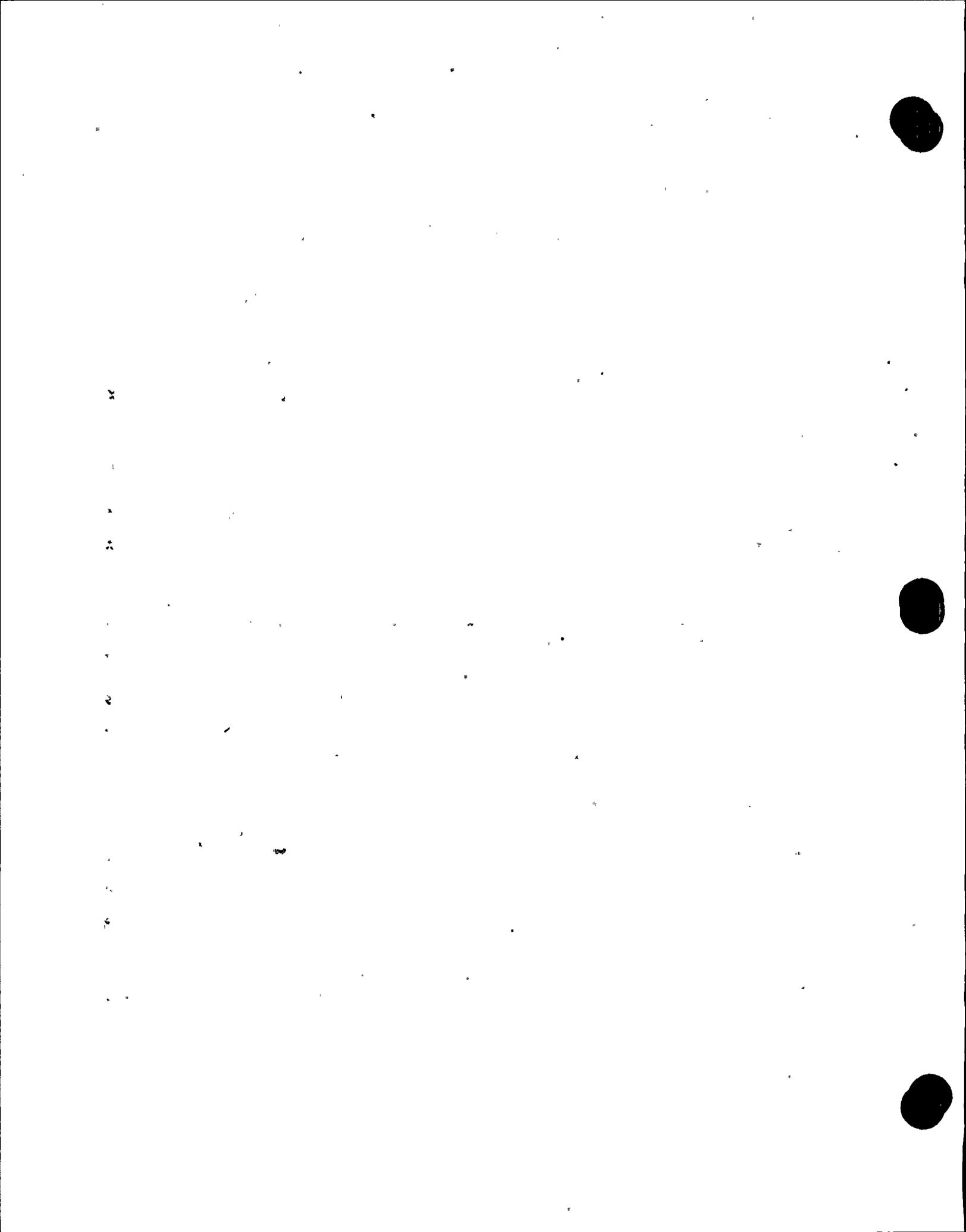
11. (a) FPL agrees to pay to the Lake Worth Utilities Authority ("Lake Worth"), as a contribution in aid of construction, 41 percent (that is, \$766,669 subject to correction) of the cost of the FPL-Lake Worth interconnection. The payment to Lake Worth shall be made in five equal annual installments, with the first installment to be paid at the time FPL makes the payment called for under Section 12 of this Settlement Agreement. When each of the next four installments is paid, FPL shall also pay interest on the unpaid balance due Lake Worth at the annual rate for 13-week Treasury Bills established and quoted in financial publications nearest in time to the date when each of the installment payments is due. At any time, FPL shall have the option to pay in full the unpaid balance due Lake Worth plus accrued interest.

(b) FPL agrees to pay to the City of Homestead, as a contribution in aid of construction, 13 percent (that is, \$434,000 subject to correction) of the cost of the FPL-Homestead interconnection. The payment to the City of Homestead shall be made at the time FPL makes the payment called for under Section 12 of this Settlement Agreement.



(c) FPL's and New Smyrna Beach's agreement to this Settlement Agreement is contingent upon both approving a separate settlement of the territorial dispute. FPL agrees that, with respect to New Smyrna Beach, FPL will waive the limitation on increases in contract demand under Sale for Resale Rate Schedule - PR-1 to the extent necessary to permit New Smyrna Beach to assume the obligation of serving customer loads that it will acquire if FPL and New Smyrna Beach are successful in reaching a settlement of their pending territorial dispute.

12. Florida Cities shall provide to FPL a reasonable accounting and documentation setting forth the litigation expenses, including legal fees and fees of consultants, incurred by them through January 31, 1982 in connection with the litigation and proceedings identified in Section 13(a) of this Settlement Agreement. On March 4, 1982 or within 10 business days after the receipt of such accounting and documentation, whichever is later, FPL will pay to Florida Cities an amount equal to 27.5 percent of such expenses, but such payment shall not be more than \$700,000. Such payment shall be by check payable to the order of Clem Corn, treasurer of the Nuclear Intervenors Group.



13. (a) Concurrently with the payment provided for in Section 12, (1) FPL and those Cities which are parties to Lake Worth Utilities Authority et al. v. FPL, S.D. Fla., No. 79-5101-Civ-JLK, shall enter into a stipulation, in the form attached hereto as Exhibit A, dismissing such litigation with prejudice and requesting that the Court vacate as moot its "Order Denying Motions for Summary Judgment on Plaintiff's Gas Claim and Granting Defendant's Summary Judgment Motion on Plaintiff's Nuclear Access Claim," dated October 9, 1981, (2) each of the Florida Cities shall provide to FPL an executed covenant not to sue, in the form attached hereto as Exhibit B, (3) FPL shall provide to the Florida Cities an executed covenant not to sue, in the form attached hereto as Exhibit C, and (4) Florida Cities shall withdraw their request for a Section 105a hearing before the NRC in Docket Nos. 50-250A, 50-251A, 50-335A, and 50-389A, and dismiss their appeal in the Section 105a matter before the United States Court of Appeals for the District of Columbia Circuit (No. 80-1099) in the form of the documents attached hereto as Exhibit D, and (5) a motion shall be filed, in the form attached hereto as Exhibit E, in which (i) Florida Cities advise the Nuclear Regulatory Commission that they accept the settlement License Conditions which became effective April 27, 1981, in NRC Docket Nos. 50-389 and 50-389A, and request that they be permitted to withdraw from those proceedings, and (ii) Florida Cities and FPL request that those proceedings be terminated

without further litigation or other action and that the "Memorandum and Order Concerning Florida Cities Motion for Summary Disposition on the Merits," issued by the Atomic Safety and Licensing Board in NRC Docket No. 50-389A on December 11, 1981, be vacated as moot.

(b) Each of the Florida Cities agrees (1) not to seek directly or indirectly or take advantage of any relief (other than enforcement of the License Conditions) from the NRC and (2) not to assert or continue to maintain before any forum any matters alleged by any of the Florida Cities in any of the litigation and proceedings identified in subsection (a) above.

14. Florida Cities and FPL shall cooperate in attempting to secure the consent of the FERC and any other party in order to vacate the judgment in Florida Power & Light Company v. FERC, 660 F.2d 668 (5th Cir. 1981), and the FERC order that was the subject of that judgment on the grounds that the controversy among the parties to those proceedings with respect to the filing of a transmission tariff has been mooted. Subject to Florida Cities' obligations under Section 13 of this Settlement Agreement and the covenants not to sue referred to in such section, Florida Cities reserve the right to litigate matters relating to FPL's rates for transmission service, except that Florida Cities may not seek any order in any pending FERC proceeding requiring FPL to file a tariff for transmission service.

15. Each of the signatories which is an authority, board or commission separate from the city in Florida in which it operates an electric utility system (e.g., the Lake Worth Utilities

Authority, the Utilities Commission of New Smyrna Beach, the Sebring Utilities Commission, and the Utilities Board of the City of Key West) represents and covenants that its approval of the Settlement Agreement will bar that City from asserting against FPL any claim or matter that (a) said authority, board or commission may not assert by reason of the Settlement Agreement and the Appendices and Exhibits thereto and/or (b) the City could not, after the Settlement Agreement, assert against FPL were it a party to the Settlement Agreement and the Appendices and Exhibits thereto.

ATTEST:

FLORIDA POWER & LIGHT COMPANY

JAL

T. Blount
ASSISTANT SECRETARY

[Signature]
Title: *S.V.R.*

2-16-82
Date

There follow 17 signature pages, one for each of the City parties to this Settlement Agreement.

ATTEST:

CITY OF ALACHUA

Richard Schley

RH Coats

Title:

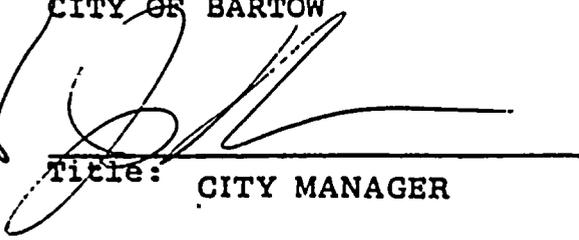
2-24-82

Date

ATTEST:

CITY OF BARTOW


CITY CLERK


Title: CITY MANAGER

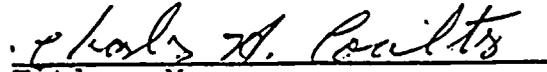
Feb. 18, 1982
Date

ATTEST:

CITY OF FORT MEADE



City Clerk



Title: Mayor

February 25, 1982
Date

ATTEST:

CITY OF HOMESTEAD

Edna B. Pinder
Edna B. Pinder
City Clerk

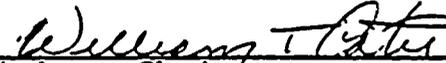
Irving Peskoe
Irving Peskoe
Mayor

7. 17. 1933
Date

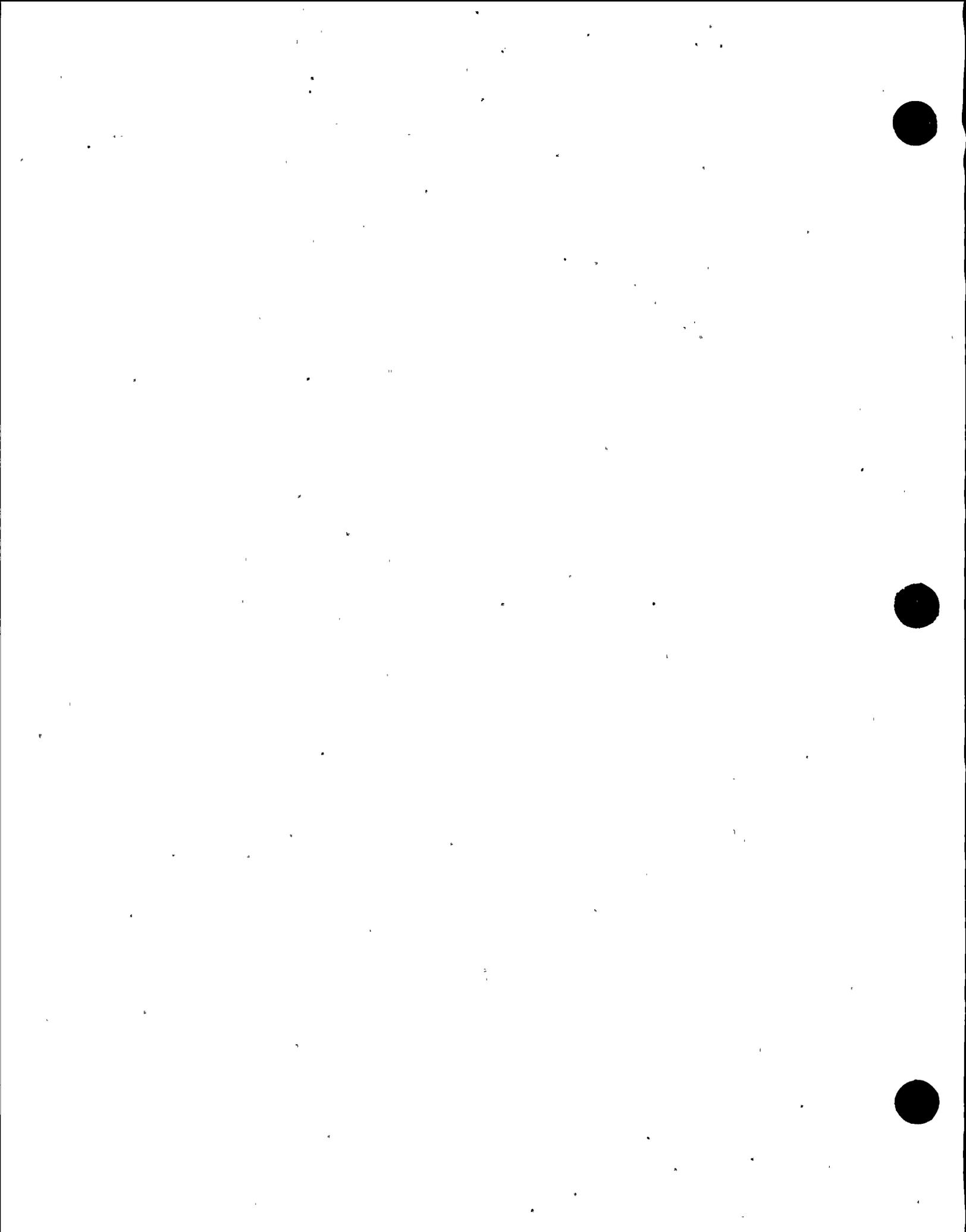
ATTEST:

UTILITY BOARD OF THE CITY OF KEY WEST


Secretary

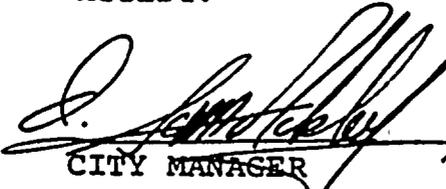

Title: Chairman

2-24-32
Date



ATTEST:

CITY OF KISSIMMEE


CITY MANAGER


Title: MAYOR-COMMISSIONER

3/2/82
Date

ATTEST:

LAKE WORTH UTILITIES AUTHORITY

Lucile M. Anderson
Secretary

Samuel J. Reynolds Jr.
Title: Vice Chairman

2/22/82
Date

ATTEST:

CITY OF LEESBURG

Charles E. Starnes

Mayor-Commissioner

February 22, 1982

J. B. [Signature]

City Clerk/Finance Director

February 22, 1982

ATTEST:

CITY OF MOUNT DORA

Martha Danesky

Martha Danesky

Bill Farmer

Title: City Administrator

2-22-82
Date

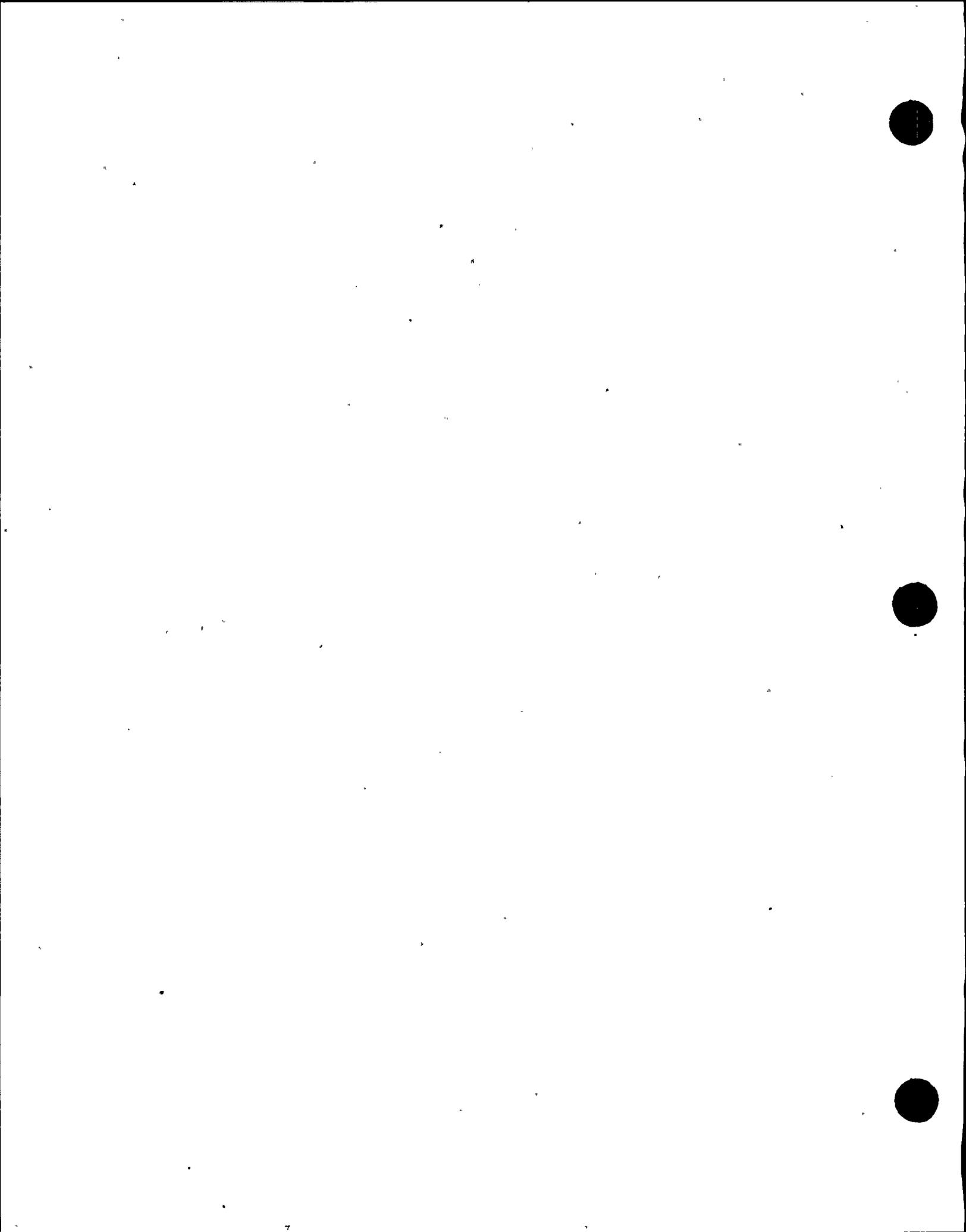
ATTEST:

CITY OF NEWBERRY

Jean C. Ellis

Mentholle M. Norfleet
Title: Mayor

2-24-62
Date



POST:

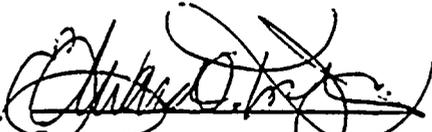
NEW SMYRNA BEACH UTILITIES COMMISSION
CITY OF NEW SMYRNA BEACH

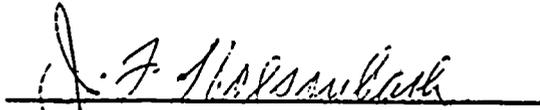
Frank H. Koch
[Signature]
Title: CHAIRMAN

FEB 19 1932
3

ATTEST:

SEBRING UTILITIES COMMISSION


Secretary


Title: Chairman

February 24, 1982
Date

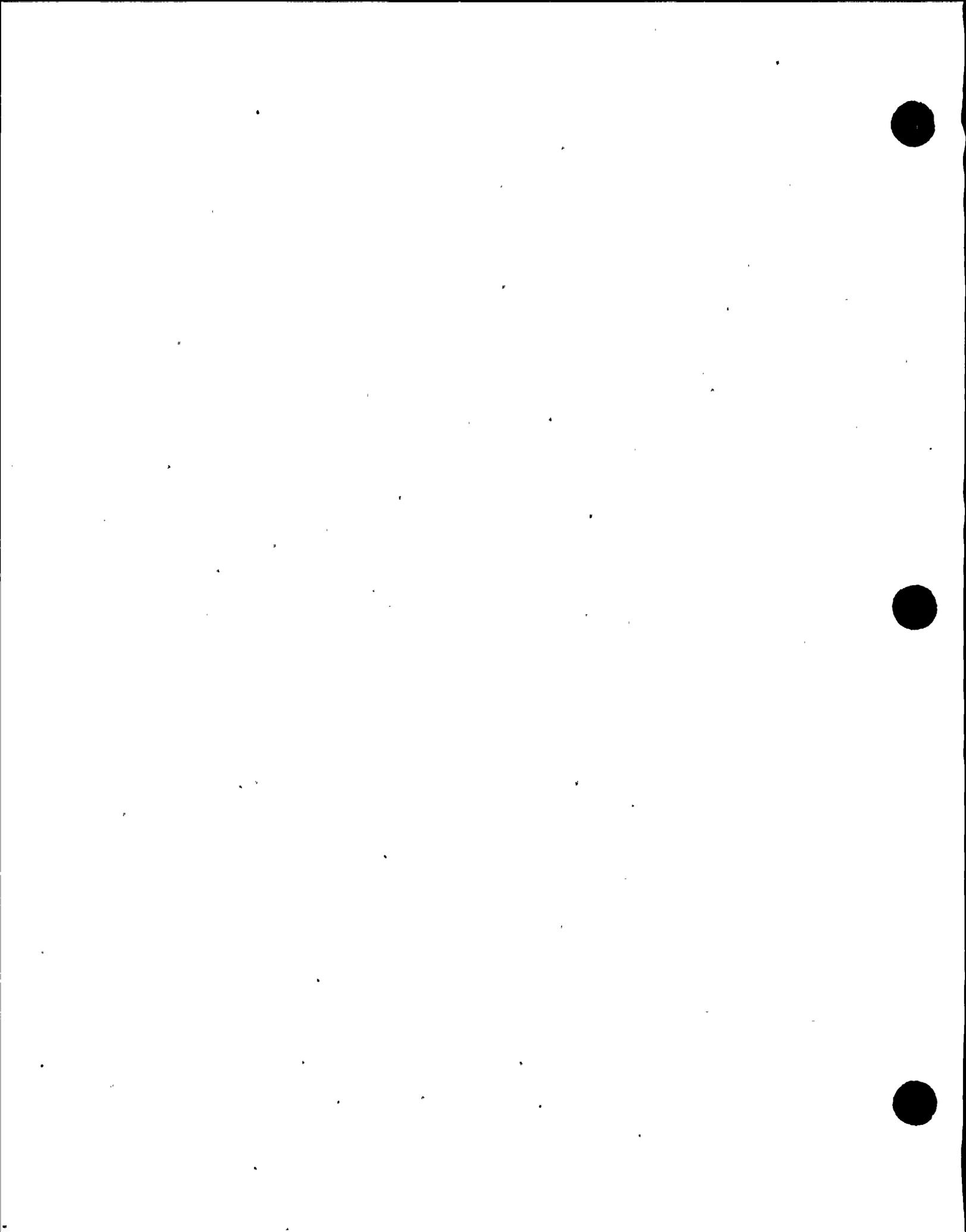
ATTEST:

CITY OF STARKE

Clair L. Tucker
City Clerk

Wm. R. King
Title: Mayor Commissioner

Feb 18, 1982
Date



ATTEST:

CITY OF ST. CLOUD

Dei S. Kelly

City Manager

Title:

February 25, 1982

Date

ATTEST:

CITY OF TALLAHASSEE

Robert B. King

Carol Bellamy
Title:
Mayor Pro Tem-Commissioner

March 2
Date

ATTEST:

CITY OF VERO BEACH

Phillip A. Duberger
City Clerk

Jerry Hoff
Mayor

2/19/22
Date

ATTEST:

FLORIDA MUNICIPAL UTILITIES ASSOCIATION

E. J. Howe

Executive Vice President

Title:

2-19-82

Date

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

LAKE WORTH UTILITIES AUTHORITY,)
et al.,)
Plaintiffs,)
v.)
FLORIDA POWER & LIGHT COMPANY,)
Defendant.)

Civil Action No.
79-5101-Civ-JLK

FILED BY _____

'82 MAR 12 PM 2

JOSEPH I BOGAR
CLERK US DIST. C
SD OF FLA. MIAMI

STIPULATION

Plaintiffs and defendant hereby stipulate, consent, and agree, without admission by any party as to any issue of law or fact herein, as follows:

1. Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, this action shall be dismissed with prejudice, with each party to bear its own costs.

2. The Court is requested to vacate as moot, in light of the settlement of this matter, its "Order Denying Motions for Summary Judgment on Plaintiff's Gas Claim and Granting Defendant's Summary Judgment Motion on Plaintiff's Nuclear Access Claim," dated October 9, 1981. See United States v. Munsingwear, 340 U.S. 36, 39 (1950).

For Plaintiffs:

Alan J. Roth
ALAN J. ROTH

For Defendant:

Alvin B. Davis *AB*
ALVIN B. DAVIS

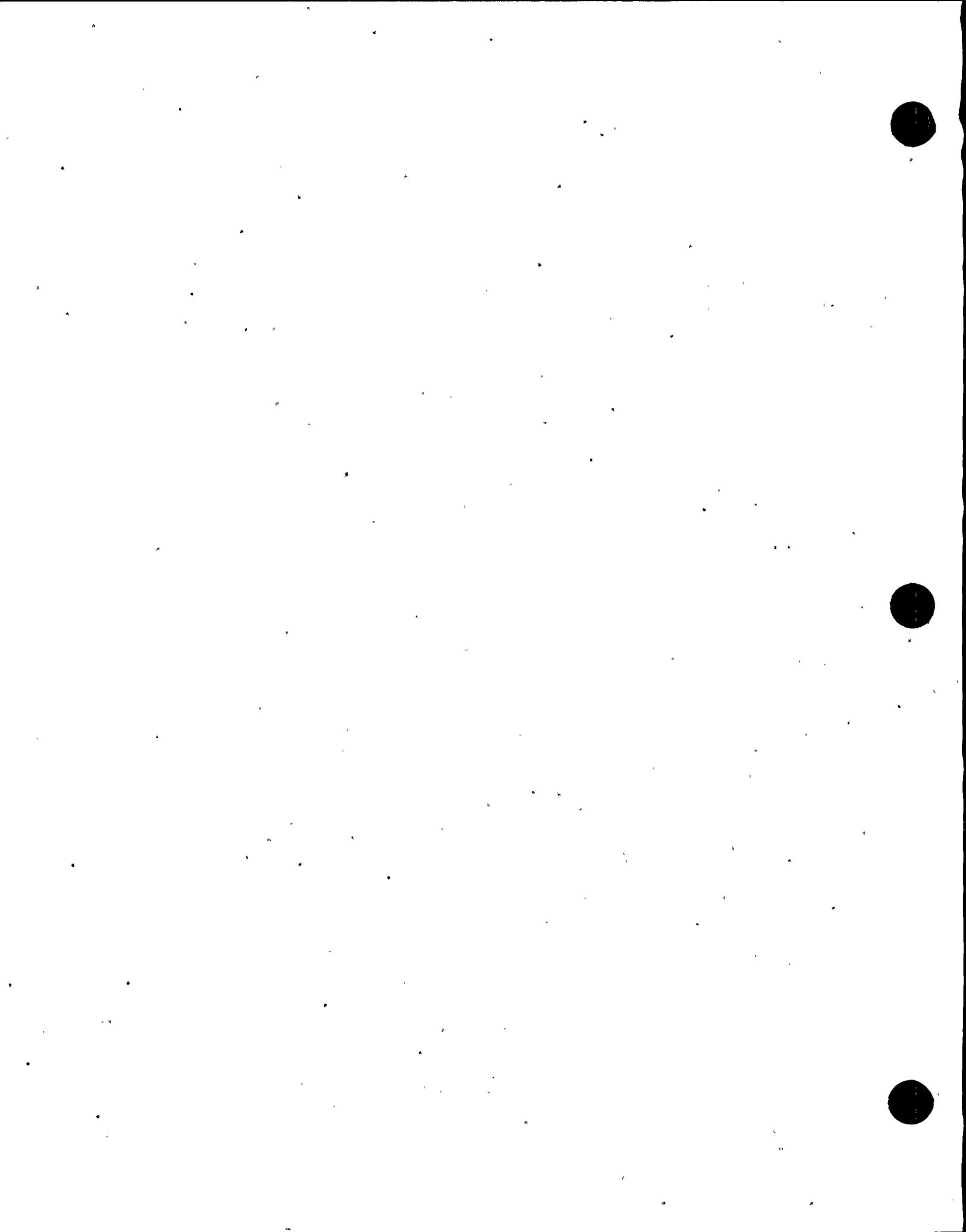


EXHIBIT B

COVENANT NOT TO SUE

KNOW ALL MEN BY THESE PRESENTS THAT City of Alachua on behalf of itself and all persons claiming under it and its predecessors, successors, and assigns, and all of their past, present, and future officers, agents and employees, and their respective heirs and legal representatives, for good and valuable consideration from Florida Power & Light Company ("FPL"), a corporation incorporated under the laws of the State of Florida, the receipt of which is hereby acknowledged, does hereby covenant and agree to forever refrain from instituting, maintaining, procuring, or in any way voluntarily aiding any suit, cause of action, claim or proceeding of any kind against FPL, FPL's past, present and future parents, subsidiaries, and successors, and the officers, directors, partners, agents, and employees of FPL and such parents, subsidiaries, and successors, and the heirs and legal representatives of such officers, directors, employees, partners, and agents, arising out of all, and all manner of, actions and causes of actions, suits, claims, contentions, judgments or defenses (1) under or based or grounded upon (a) the antitrust laws of the United States, as defined in 15 U.S.C. § 12(a) as amended, together with the Federal Trade Commission Act, 15 U.S.C. § 45, as amended,

(b) the antitrust laws of the State of Florida, Fla. Stat. §§ 501.204, 501.211, 542.05, 542.10 and 542.12, (c) the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq., (d) Sections 4, 5, and 7 of the Natural Gas Act, 15 U.S.C. §§ 717c, 717(d) and 717f, or (e) Sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d and 824e, to include without limitation those causes of actions, suits, claims, contentions, judgments and defenses which could be asserted under those Acts in any court or administrative forum, proceedings, or hearing of the United States or any state, and/or (2) under or based or grounded upon the matters alleged in Civil Action No. 79-5101-Civ-JLK in the United States District Court for the Southern District of Florida, whether they be presently known or unknown or suspected or unsuspected, and whether they be related or unrelated to the litigation referred to above as to law or facts or both, which against FPL Alachua City ever had, now has or which its heirs, executors, administrators, successors, or assigns, or any of them, hereafter can, shall or may have, for, or by reason of any cause, matter or thing whatsoever, from the beginning of the world to the date of this Covenant Not To Sue, except for enforcement of the Settlement Agreement entered into between Alachua City and FPL as of March 3, 1982, and the NRC License Conditions for St. Lucie Unit No. 2 and except for payments that may be due Alachua City from FPL for sales or purchases of power or transmission services.

The City of Alachua expressly reserves all rights to institute, maintain, procure, or aid in any suit, cause of action, claim or proceeding of any kind arising out of any matter or thing against any person, party or entity other than FPL.

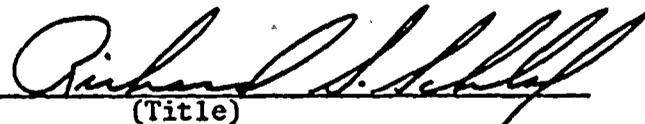
IN WITNESS WHEREOF, pursuant to a vote of the Alachua City Commission duly taken on 17th day of February, 1982 I hereunto subscribe on behalf of the City of Alachua and affix the seal of the City of Alachua this 17th day of February 1982.

City of Alachua



(Title)

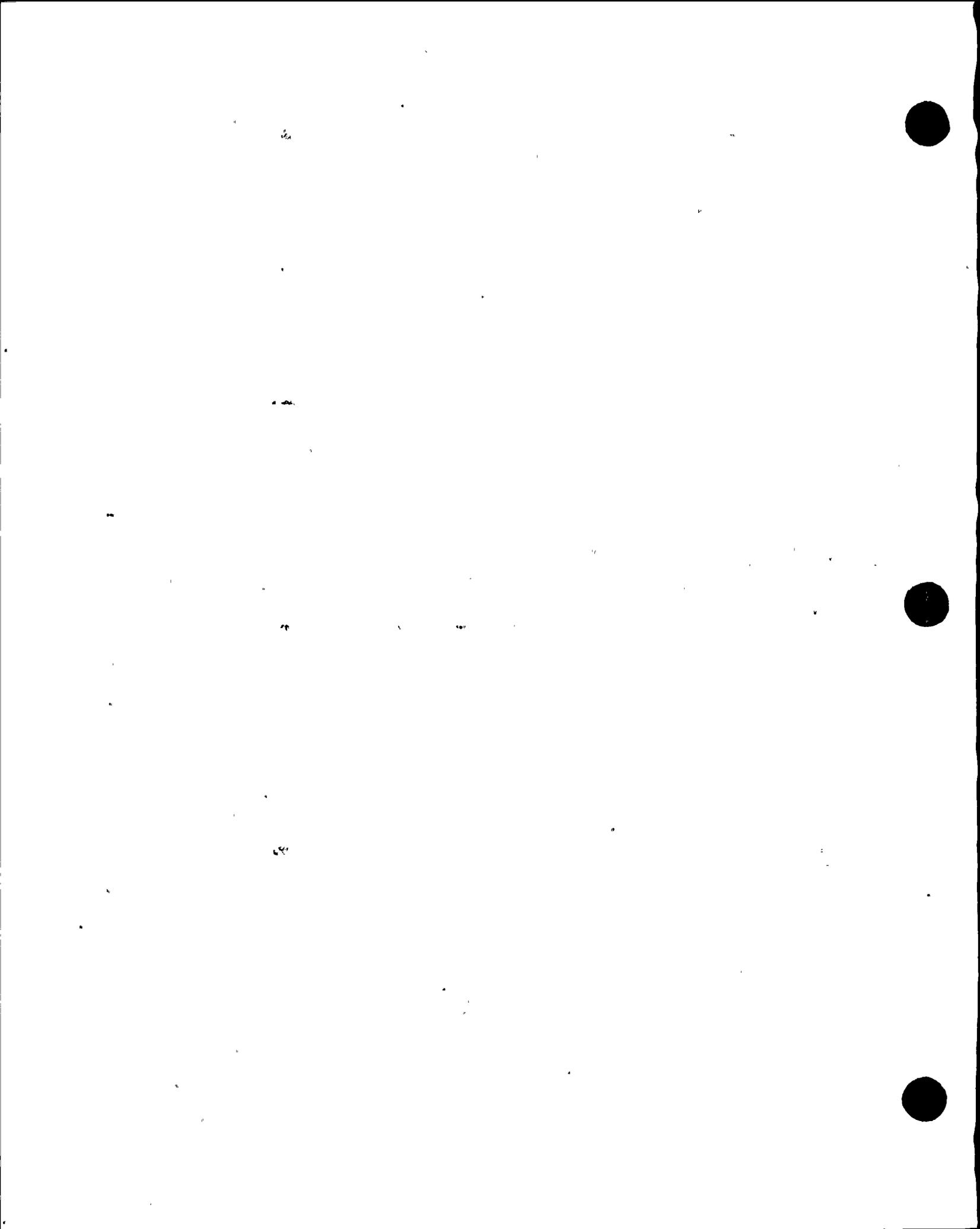
ATTEST:



(Title)

COVENANT NOT TO SUE

KNOW ALL MEN BY THESE PRESENTS THAT Florida Power & Light Company ("FPL"), a corporation incorporated under the laws of the State of Florida, on behalf of itself and all persons claiming under it and its predecessors, successors, and assigns, and all of their past, present and future officers, agents and employees, and their respective heirs and legal representatives, for good and valuable consideration from City of Alachua, City of Bartow, City of Fort Meade, City of Homestead, Utility Board of the City of Key West, City of Kissimmee, Lake Worth Utilities Authority, City of Leesburg, City of Mount Dora, City of Newberry, New Smyrna Beach Utilities Commission City of New Smyrna Beach, Sebring Utilities Commission, City of Starke, City of St. Cloud, City of Tallahassee, City of Vero Beach, and Florida Municipal Utilities Association ("Florida Cities") the receipt of which is hereby acknowledged, does hereby covenant and agree to forever refrain from instituting, maintaining, procuring or in any way voluntarily aiding any suit, cause of action, claim or proceeding of any kind against any of the Florida Cities, any of their past, present and future parents, subsidiaries, and successors, and the officers, directors, partners, agents, and employees of each of the Florida Cities and such parents, subsidiaries, and successors, and the heirs and legal representatives of such officers, directors,



employees, partners, and agents, arising out of all, and all manner of, actions and causes of actions, suits, claims, contentions, judgments or defenses (1) under or based or grounded upon (a) the antitrust laws of the United States as defined in 15 U.S.C. § 12(a) as amended, together with the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, (b) the antitrust laws of the State of Florida, Fla. Stat. §§ 501.204, 501.211, 542.05, 542.10 and 542.12, (c) the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq., (d) Sections 4, 5 and 7 of the Natural Gas Act, 15 U.S.C. §§ 717c, 717(d) and 717f, or (e) Sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d and 824e, to include without limitation those causes of actions, suits, claims, contentions, judgments and defenses which could be asserted under those acts in any court or administrative forum, proceedings, or hearing of the United States or any state, and/or (2) under or based or grounded upon the matters alleged by FPL in its counterclaim in Civil Action No. 79-5101-Civ-JLK in the United States District Court for the Southern District of Florida, whether they be presently known or unknown or suspected or unsuspected, and whether they be related or unrelated to the litigation referred to above as to law or facts or both, which against any of the Florida Cities FPL ever had, now has, or which its heirs, executors, administrators, successors, or assigns, or any of them, hereafter can, shall or may have, for, or by reason of any cause, matter or thing

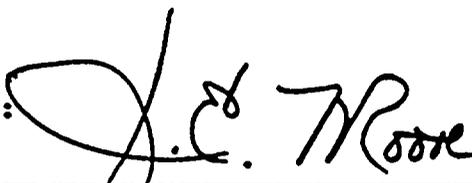


whatsoever, from the beginning of the world to the date of this Covenant Not To Sue, except for enforcement of the Settlement Agreement entered into between Florida Cities and FPL as of March 3, 1982, and except for payments that may be due FPL from any of the Florida Cities for sales or purchases of power or transmission services.

FPL expressly reserves all rights to institute, maintain, procure, or aid in any suit, cause of action, claim or proceeding of any kind arising out of any matter or thing against any person, party or entity other than Florida Cities.

IN WITNESS WHEREOF, on behalf of Florida Power & Light Company I have hereunto set my hand and affix the seal of the Company this 2 day of March, 1982.

ATTEST:



Assistant Secretary



Senior Vice President



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 6 1983

RECEIVED

APR 12 1983

Inter Utility
Affairs

Docket No.: 50-389

Dr. Robert E. Uhrig, Vice President
Advanced Systems and Technology
Florida Power & Light Company
Post Office Box 14000
Juno Beach, Florida 33408

Dear Dr. Uhrig:

Subject: St. Lucie Plant, Unit 2 - Issuance of Facility Operating License

The U. S. Nuclear Regulatory Commission has issued the enclosed Facility Operating License No. NPF-16 to Florida Power & Light Company, Orlando Utilities Commission of the City of Orlando and Florida Municipal Power Agency for the St. Lucie Plant, Unit 2 located in St. Lucie County, Florida. License No. NPF-16 authorizes operation of the St. Lucie Plant, Unit 2 at five percent power (128 megawatts thermal). Authorization to operate beyond five percent power (128 megawatts thermal) is still under consideration and will require Commission approval.

A copy of a related Federal Register notice, the original of which has been forwarded to the Office of the Federal Register for publication, is enclosed. An assessment of the effect of 40 years license duration from license issuance date with respect to environmental matters is also enclosed.

Four signed copies of Amendment No. 10 to Indemnity Agreement No. B-76 which covers the activities authorized under License No. NPF-16 are also enclosed. Also enclosed are copies of Amendment No. 8 and 9 which reflect the additions of Orlando Utilities Commission of the City of Orlando and Florida Municipal Power Agency as licensees. Please have each licensee sign all copies and return one copy of each amendment to this office.

Sincerely,

Darrell G. Eisenhut, Director
Division of Licensing
Office of Nuclear Reactor Regulation

Enclosures:

1. Facility Operating License No. NPF-16
2. Federal Register Notice
3. Amendments No. 8, 9 and 10 to Indemnity Agreement B-76
4. Assessment of License Duration

cc w/encls.: See next page

3. Pursuant to the Act and 10 CFR Parts 30, 40, and 70, FP&L to receive possess, and use at any time any byproduct, source and special nuclear material as sealed sources for reactor startup, as sealed sources for reactor instrumentation and radiation monitoring equipment calibration, as fission detectors in amounts as required;
4. Pursuant to the Act and 10 CFR Parts 30, 40, and 70, FP&L to receive, possess, and use in amounts as required any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and
5. Pursuant to the Act and 10 CFR Parts 30, 40, and 70, FP&L to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

1. Maximum Power Level

Florida Power and Light Company is authorized to operate the facility at reactor core power levels not in excess of 2560 megawatts thermal (100% power) in accordance with the conditions specified herein and in Attachment 1 to this license. The preoperational tests, startup tests and other items identified in Attachment 1 to this license shall be completed as specified. Attachment 1 is hereby incorporated into this license. Pending Commission approval, this license is restricted to power levels not to exceed 5 percent of full power (128 megawatts thermal).

2. Technical Specifications and Environmental Protection Plan

The Technical Specifications contained in the attached Appendix A and the Environmental Protection Plan contained in the attached Appendix B, are hereby incorporated in this license. The licensee shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

3. Antitrust Conditions

Florida Power and Light Company shall comply with the antitrust conditions in Appendices C and D to this license.

APPENDIX A-17

List of Documents Memorializing the FPL-Florida Cities Settlement
But Not Included in Full Due to Their Volume

1. Antitrust Conditions, dated May 26, 1981, attached to St. Lucie Unit No. 2 Construction Permit (Attached to pleading as Appendix 23).
2. St. Lucie Unit No. 2 Participation Agreement Between Florida Power & Light Company and Florida Municipal Power Agency, dated February 11, 1982.
3. Draft legislation to allow Florida Municipal Power Agency to issue revenue bonds.
4. Financing Contingency Agreement Between Florida Municipal Power Agency and Florida Power & Light Company, dated February 11, 1982.
5. Agreement of City Representatives to Recommend that Cities Approve the Attached Sharing Agreement, dated February 11, 1982.
6. St. Lucie Nuclear Reliability Exchange Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency.
7. Sale for Resale Time - Differentiated Partial Requirements Rate Schedule - PRT-1.
8. Withdrawal of Request for Hearing by Florida Cities in NRC Docket Nos. 50-389A, et al., dated March 10, 1982.
9. Joint Motion to Withdraw Interventions, Dismiss and Terminate Proceedings, and Vacate Memorandum and Order in NRC Docket No. 50-389A, dated March 10, 1982.
10. Joint Stipulation to Dismiss with Prejudice in the U.S. Court of Appeals for the District of Columbia Circuit, dated March 12, 1982.
11. Covenants Not to Sue Signed by each Florida City.

APPENDIX A-18

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA MUNICIPAL POWER AGENCY

Plaintiff,

v.

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

FLORIDA POWER AND LIGHT COMPANY

Defendant.

SECOND AFFIDAVIT OF
NICHOLAS P. GUARRIELLO

ORLANDO, FLORIDA) SS:

BEFORE ME, the undersigned authority, personally appeared Nicholas P. Guarriello, who after being by me first duly sworn, deposes and says that the facts stated herein are true based on my personal knowledge:

1. My name is Nicholas P. Guarriello. I am the same Nicholas P. Guarriello that submitted an affidavit on April 30, 1992. I have reviewed that affidavit and all the statements made therein are based on my personal knowledge.

2. I have read the May 14, 1992 Affidavit of William C. Locke, Jr. There are some things in his affidavit with which I agree and many things with which I do not agree. In this affidavit, I am (a) addressing a few mischaracterizations which, while not pertinent to FMPA's motion for partial summary judgment as I understand it, are so in error that to leave them unrebutted

at this point would be misleading (see ¶¶ 3 and 6);

(b) explaining how Mr. Locke's statements support FMPA's motion (¶¶ 4 and 5); and (c) supplying additional support for FMPA's motion, without contradicting Mr. Locke's factual assertions (¶¶ 7 and 8). My silence as to other matters in Mr. Locke's affidavit should not be taken as agreement to what he says.

Background Information
Regarding FMPA's Proposals

3. In his affidavit, Mr. Locke states that FMPA's proposals would allow FMPA to "utilize FPL's transmission system as if it contributes a virtually unlimited source of transmission capability; i.e., FMPA would have the option of having power delivered from any source to any destination from minute-to-minute" (Locke ¶ 19). In addition, Mr. Locke states that such unlimited use would be "without scheduling deliveries with FPL's dispatchers or even informing FPL as to transactions that were occurring within FPL's own system" (Locke ¶ 14, emphasis in original). These statements by Mr. Locke are both misleading and incorrect.

During the negotiations with FPL, FMPA made several written and verbal proposals to FPL in an attempt to compromise. Each of FMPA's proposals contained requirements that FMPA:

- * Specify an initial list of the generation resources that could be delivered to FPL's transmission network, including the MW capability of such resources.

- * Specify an initial list of the delivery points for deliveries from the transmission network to FMPA's All-Requirements members.
- * Subject the addition of new generation resources to FPL's agreement (which would have to be provided unless the reliability of FPL's transmission system would be jeopardized, in which case transmission would be provided under a special compensatory agreement) and obtain FPL's agreement for new All-Requirements delivery points.
- * Provide short-term and long-term (5-year) planning information to FPL for its use in planning for FMPA's requirements.
- * Schedule all deliveries of power from generation resources not located within the FMPA control area on an hour-by-hour basis, as is the custom among Florida utilities.
- * Advise FPL's dispatchers, at FPL's request, of all power to be delivered from FMPA's generating resources located within FMPA's control area (as is currently done for the Cities of Clewiston, Green Cove Springs and Jacksonville Beach under the existing arrangements between FPL and FMPA).

In addition, as negotiations progressed, FMPA made further concessions that included, among other things:

- * Establishing annual transmission contract demands with limited ability of FMPA to change the contract demand from year to year.
- * Limiting the initial (first year) transmission contract demand to a small amount, which would allow for a transition to the network arrangement.

- * Imposing penalties if FMPA exceeded its annual contract demands.
- * Allowing FPL to audit FMPA's dispatch logs to ensure transmission transactions were being reported to FPL correctly.

Thus, the conclusions Mr. Locke draws regarding the adverse impacts of FMPA's offers are wrong because they are based on an incorrect description of FMPA's offers. In any event, as I understand it, the details regarding scheduling are not the subject of FMPA's motion for partial summary judgment.

FPL's Offers:
Variations on Point-to-Point Service

4. Unlike Mr. Locke (who participated in seven out of the fourteen negotiation sessions that took place between December 1989 and July 1991), I attended all of the negotiations. To the best of my recollection, never in the negotiations did FPL ever claim that it was offering "network transmission." Rather, throughout the negotiations FPL maintained it was offering some kind of modified point-to-point service, consistent with the terminology used in its only written offer (Exhibit B to my first affidavit). In any event, Mr. Locke admits (§ 25) that the transmission service FPL was offering in fact provided for multiple charges for deliveries of power to different cities. While Mr. Locke attempts to defend this difference as (a) fair, leaving aside the Antitrust Conditions, and (b) not present where there are deliveries from multiple power sources to one delivery

joint, Mr. Locke admits it would impose multiple charges for

deliveries to multiple de-... points.

Mr. Locke's description of FPL's offer omits a number of its more onerous and limiting provisions. In any event, even Mr. Locke's description of FPL's offer reveals that it is still a variation on point-to-point transmission. As Mr. Locke explains

at the bottom of the first full paragraph of § 25, under the

FPL's proposal, FPL would still have to pay for 500 MW of transmission capacity (100 MW for each of three cities) in order to transmit a maximum of 100 MW at any one time among the three cities rather than pay for 100 MW. Conversely, if I may say so

attendant, Mr. Locke admits that FPL is not offering

network transmission as a single charge.

I am not included in this affidavit my witness to the

adequacy of the compensation FPL would receive under a true

network rate. It is my understanding that the specific level of the network transmission rate is a matter for FPL's decision for partial... judgment.

Under contract, FPL has the right to... as an available... and... would only pay... provided... to mention as available...

point, Mr. Locke admits FPL would impose multiple charges for deliveries to multiple delivery points.

5. Mr. Locke's description of FPL's offer omits a number of its more onerous and limiting provisions. In any event, even Mr. Locke's description of FPL's offer reveals that it is still a variation on point-to-point transmission. As Mr. Locke explains at the bottom of the first full paragraph of ¶ 25, under the FPL's hub proposal, FMPA would still have to pay for 300 MW of transmission capacity (100 MW for each of three cities) in order to transmit a maximum of 100 MW at any one time among the three cities rather than pay for 100 MW. Compare ¶ 14 of my first affidavit. Thus, Mr. Locke admits that FPL is not offering network transmission at a single charge.

I am not including in this affidavit my views on the adequacy of the compensation FPL would receive under a true network rate. It is my understanding that the specific level of the network transmission rate is not the subject of FMPA's motion for partial summary judgment.

6. Mr. Locke also states (¶ 25) that under existing FERC-filed contracts, "FMPA has the right to have power transmitted on an as-available basis between and among every single FMPA member city and third-party utilities. And, under those contracts FMPA would only pay FPL during the hours in which FPL actually provided transmission service." Mr. Locke questions why I failed to mention as-available service. I omitted to mention as-

available service in my first affidavit because FPL made clear in

the negotiations that if FPLA were to accept its bid proposal,

FPL would not permit FPLA to take transmission on an as-available

basis as well. Also, it is my understanding that the terms for

as-available service are not the subject of FPLA's motion for

partial summary judgment.

As-available service is very important to a utility's

ability to take advantage of opportunities to obtain lower-cost

electricity as they become available. However, such service is

no substitute for network transmission. Each and every as-

available transmission is a point-to-point transaction. Moreover,

as-available service is available only on a short-term basis.

Thus, as-available service alone would not permit very limited

coordination by FPLA (or any utility). By definition, a utility

cannot rely on as-available transmission to provide the

electricity it needs to serve its customers. As-available

transmission is subject to FPL's initial determination that it

wants the transmission for itself, as Mr. Locke explains

(Ex. 10). As-available service also does not involve any planning

application to include the requested transmission in its planning.

Moreover, multiple as-available transactions involving

more than one FPLA delivery point, for example under Schedule 7B

(Locke Affidavit, Tab E), can result in multiple charges if the

transactions overlapped in time. (Ex. 10). If FPLA contracted for

as-available transmission over two FPLA delivery points for a

available service in my first affidavit because FPL made clear in the negotiations that if FMPA were to accept its hub proposal, FPL would not permit FMPA to take transmission on an as-available basis as well. Also, it is my understanding that the terms for as-available service are not the subject of FMPA's motion for partial summary judgment.

As-available service is very important to a utility's ability to take advantage of opportunities to obtain lower-cost electricity as they become available. However, such service is no substitute for network transmission. Each and every as-available transaction is a point-to-point transaction. Moreover, as-available service is available only on a short-term basis. Thus, as-available service alone would only permit very limited coordination by FMPA (or any utility). By definition, a utility cannot rely on as-available transmission to provide the electricity it needs to serve its customers. As-available transmission is subject to FPL's initial determination that it wants the transmission for itself, as Mr. Locke explains (§ 9(b)). As-available service also does not impose upon FPL any obligation to include the requested transmission in its planning.

Moreover, multiple as-available transactions involving more than one FMPA delivery point, for example under Schedule TB (Locke Affidavit, Tab E), can result in multiple charges if the transactions overlapped in time. (E.g., if FMPA contracted for as-available transmission between two FMPA delivery points for a

day and FMPA sought to connect for another as available
transaction between two other FMPA delivery points during the
are time period, but only one of these transactions was actually
occurring over the transmission network at any one time, FMPA
could still have to pay full charges. This further limits
the usefulness of as-available transmission for coordination by

FPA.

The FMPA-FPI
Transmission Service Agreements

7. It is my understanding that the integration and
coordination of its resources has been and is an important long
term goal of FMPA. To the best of my recollection from the
negotiations in which I participated regarding the various
Transmission Service Agreements between FPI and FMPA, at no time
did FMPA express an intention to waive rights to the network
transmission available under the Antitrust Conditions.
8. A true copy of Sections 21.1, 22.2 and 22.13 of the
original Antitrust Conditions T2A, as dated March 30, 1982, is
appended hereto as Exhibit 1.

day and FMPA sought to contract for another as-available transaction between two other FMPA delivery points during the same time period, but only one of these transactions was actually occurring over the transmission network at any one time, FMPA would still have to pay multiple charges.) This further limits the usefulness of as-available transmission for coordination by FMPA.

The FMPA-FPL
Transmission Service Agreements

7. It is my understanding that the integration and coordination of its resources has been and is an important long-term goal of FMPA. To the best of my recollection from the negotiations in which I participated regarding the various Transmission Service Agreements between FPL and FMPA, at no time did FMPA express an intention to waive rights to the network transmission available under the Antitrust Conditions.

8. A true copy of Sections 21.1, 22.2 and 22.13 of the original All-Requirements TSA, as dated March 30, 1985, is appended hereto as Exhibit 1.

FURTHER APPOINTMENT SAUGHT

Nicholas P. Guarise
Affiant

and subscribed to before
this 3rd day of June, 1992

Commission Expires
Notary Public
STATE OF FLORIDA
EXPIRES 12/31/92

FURTHER AFFIANT SAYETH NAUGHT.

Nicholas P. Guarriello

Nicholas P. Guarriello
Affiant

SWORN and subscribed to before
me this 3rd day of June, 1992

William R. Bismar

Notary Public

NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXPIRES: July 31, 1995.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

My Commission Expires: _____

THE UNIVERSITY OF CHICAGO

[Faint, illegible handwritten text]

CHICAGO, ILL. 60637

[Faint, illegible handwritten text]