BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Florida Cities	)	
	)	
v.	)	Docket No. EL78-4
	)	
Florida Power & Light Company	)	

STAFF INVESTIGATION REPORT

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April 7, 1978
Washington, D. C.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Florida Cities	)	
	)	
v.	)	Docket No. EL78-4
	)	
Florida Power & Light Company	)	
	)	

ERRATA NOTICE

(May 23, 1978)

STAFF INVESTIGATION REPORT

(Dated April 7, 1978)

The following amendment is made to the Staff Investigation Report dated April 7, 1978, in the above-captioned docket.

Page 6, second line from bottom of page, change "93 MW" to "78 MW".

Page 6, last line on page, change "20%" to "35%".

Page 11, Paragraph 1, line 3, strike "20".

Page 25, footnote 8, change "Billie J. Biggerstaff" to Billie E. Biggerstaff".

Bernard A. Cromes

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PROCEDURAL BACKGROUND

On November 7, 1977, the City of Homestead, the Fort Pierce Utilities Authority, the City of Starke and the Utilities Commission of New Smyrna Beach [hereinafter collectively referred to as Florida Cities], all situated within the State of Florida, filed a petition to intervene, inter alia. Exhibit 44. In their petition, Florida Cities alleged, inter alia, that Florida Power & Light Company [hereinafter referred to as FPL] has violated its existing SR-1 tariff, which the utility additionally proposes to supersede by the filing of the PR and SR-2 Tariff, in Docket No. ER78-19. Florida Cities averred that FPL continually refused to sell wholesale power service to the Fort Pierce Utilities Authority [hereinafter referred to as FPUA or Fort Pierce] under the SR-1 tariff, despite repeated requests for such power and notwithstanding the clear commands of FPL's existing SR-1 tariff. Therefore, the Florida Cities requested an investigation of this issue by the Commission.

On December 1, 1977, FPL answered Florida Cities' petition. Exhibit 52. FPL's answer denied that it has excluded municipalities which can qualify from wholesale power purchases under the tariff. In addition, FPL asserted that the language of the Federal Power Act and the history of the legislative proceeding surrounding it indicate that the Act imposes no public utility service obligation similar to that at common law on

companies under its jurisdiction. Rather, FPL states that, the Act recognizes that a contract between a utility and its wholesale customers provides the basis for service to the customer [citation omitted].

On December 16, 1977, Florida Cities responded to FPL's answer of December 1, 1977, asserting, inter alia, that the purpose of a filed tariff is to give notice of the services that a public utility is willing to provide. Thus, Florida Cities argue that FPL is legally obligated to provide service in accordance with its tariff. Exhibit 53.

FPL proposes in Docket No. ER78-19 to modify the availability clause of the rate schedules in its tariff in two ways. First, the SR-2 availability clause will expressly state that service under this rate is available only to those named utilities presently purchasing their full requirements from FPL. Second, FPL proposes to delineate the availability of its schedule PR in order to expressly state that service under this rate schedule is available only to those named utilities purchasing partial requirements from FPL at the time of the filing.

By order issued December 30, 1977, in Docket No. ER78-19, et al., the Commission accepted the proposed rate schedules SR-2 and PR for filing and suspended the use of the rates until March 1, 1978, when they would become effective subject to refund. Further, the Commission established hearing procedures and suspended and deferred the availability clauses in SR-2 and PR for five months until June 1, 1978. In the December 30,

order, the Commission also accepted FPL's proposed notice of cancellation of service to Homestead in Docket No. ER78-81, filed on December 1, 1977, suspended the proposed notice of cancellation for five months, consolidated the proceedings in Docket No. ER78-19 with those in Docket No. ER78-81, and ordered expedited hearing procedures concerning the reasonableness of the PR and SR-2 availability clauses.

Thereafter, on January 24, 1978, the Commission pursuant to applicable provisions of the Federal Power Act, instituted an investigation in Docket No. EL78-4, into the allegations raised by Florida Cities and FPL in their pleadings. The order in Docket No. EL78-4 instituting the investigation further delegated authority to the investigative Staff to subpoena witnesses and records, necessary and relevant to the progress of the investigation.

Pursuant to its delegation of authority, the Staff issued subpoenas to certain officers and employees of the Florida Power & Light Company requiring their appearance to testify and to produce certain requested documents during the week of February 27, 1978. Exhibit Nos. 1 (Tr. at 6), 12 (Tr. at 89), 19 (Tr. at 189), 29 (Tr. at 256), 32 (Tr. at 285), and 51 (Tr. at 542). Witnesses for complainant in this proceeding, the Fort Pierce Utility Authority, appeared to testify and to provide documents without being under subpoena, Tr. at 328, 458, 466, 477-78, 505.

II. ISSUES PRESENTED AND BRIEF CONCLUSIONS

The Commission's order of January 24, 1978, in Docket No. EL78-4, delineated certain issues for investigation, with the Staff's investigative report to be filed with the Commission on or before April 7, 1978. The Staff's findings concerning those issues are set forth below:

1. Has FPL Refused to Serve The FPUA?

The testimony and related evidence clearly demonstrates that a specific request to purchase SR-1 service was communicated to FPL on April 29, 1977, Exhibit 26, and reiterated to Mr. R. J. Gardner, Vice-President, FPL, at a meeting held at Fort Pierce on August 9, 1977. FPL did not deliver service pursuant to the request on the premise that "at the time" FPL was experiencing actual and potential restrictions on its generation capabilities, Tr. at 585, Exhibit 27. We conclude that after August 9, 1977, the FPL engaged in a refusal to provide service to FPUA pursuant to the filed SR-1 Tariff.

2. Whether FPL's Refusal to Serve FPUA Constituted a Violation of the SR-1 Tariff and the Federal Power Act.

Staff's analysis indicates that the refusal to serve violates the filed SR-1 Tariff and Section 205 of the Federal Power Act. Furthermore, the defenses raised by FPL in support

of the violation are not viable in view of the predominating Commission interest in upholding the filed rate doctrine.

3. If FPL Has Unlawfully Refused to Serve the FPUA, What Sanction, If Any, Is Justified Under the Federal Power Act.

The result of the Staff's investigation clearly indicates that FPL has refused to provide service to FPUA in accordance with the availability provisions of the filed SR-1 Tariff and the Federal Power Act. However, FPL on March 24, 1978, pursuant to the SR-1 availability provisions, made available to FPUA, 33 MW of firm power and the energy associated therewith, under its currently effective rate schedule PR, Docket No. ER78-282. Therefore, were it not for the commencement of service to FPUA pursuant to the availability provisions of the SR-1 Tariff, the Staff would have recommended that the Commission order FPL to immediately commence service to FPUA under the filed SR-1 Tariff and that the Commission seek other civil remedies such as an injunction or a writ of mandamus. If FPL should discontinue SR-1 service to FPUA, the Commission should then consider forwarding the matter to the Department of Justice as a knowing and willful violation of the Federal Power Act.

DISCUSSION

I. Has FPL Refused To Serve FPUA ?

FPL is incorporated under the laws of the State of Florida, with its principal business office at Miami, Florida. FPL is engaged in the generation, transmission, distribution and sale of electrical energy to approximately 574 communities in 35 counties, with a permanent population of over 3.5 million which increases by seasonal residents. The Company serves most of the heavily populated areas along the east and lower west coasts of Florida, as well as the agricultural areas around the southern and eastern shores of Lake Okeechobee and portions of central and north central Florida. FPL has a 1977-78 winter peak load of approximately 7,600 MW, with net generating capabilities for that same period to be 11,182 MW. Appendix C.

FPUA is a municipal electric utility, located at Fort Pierce, Florida. FPUA is engaged in the generation, distribution and sale of electrical energy within the confines of Fort Pierce. FPUA has an interchange agreement with FPL and is interconnected with the Company. The FPUA owns and operates four base load oil/gas fired units, the largest of which is a 56 MW unit, and two diesel peaking units of combined capacity of 5-1/2 MW, Tr. at 47 FPUA has installed capacity of approximately 113 MW with an estimated load of 93 MW, resulting in reserves in the range of 20%. Tr. at 356-57, 493.

The evidence adduced during the course of this investigation indicates that the FPL and the FPUA first initiated discussions concerning the proposed purchase of approximately 30 to 33 MW of firm power and energy by Fort Pierce at a meeting between the two entities held at Fort Pierce on March 1, 1976. Tr. at 243-45, 332, 479, 507; Exhibit No. 28 at 9 and 10. However, at this meeting no specific request for SR-1 power was proffered. Tr. at 506. According to the representatives of Fort Pierce, the Company did not adequately address their request for firm power. Tr. at 479, 497, 507; Exhibit 28.

FPUA's next request to purchase firm power from FPL occurred on April 6, 1976, when Mr. Walter Baldwin, Director of Utilities, wrote a letter to Mr. R. G. Mulholland, Senior Vice President, Florida Power & Light Company, Exhibit 33. Again, Mr. Baldwin's letter of April 6, 1976, did not specifically request service pursuant to the SR-1 tariff. The response to this letter was assertedly made orally at a meeting held between the parties on April 8, 1976, at Fort Pierce, Florida, Tr. at 508-12; Exhibit 50, at which time firm power purchases, inter alia, were discussed.

The FPUA, thereafter, on December 28, 1976, sent a letter to the Florida Power & Light Company which requested partial requirements service in amounts ranging from 25 MW to 30 MW,

inter alia. Tr. at 261, 513; Exhibit 31. This communication, Exhibit 31, addressed to Mr. W. E. Coe, Director of Power Supply, Florida Power & Light Company, also did not request with particularity service pursuant to the filed SR-1 sale for resale service. On January 11, 1977, Mr. Coe responded to Fort Pierce's inquiry indicating that the letter has been forwarded to Senior Vice-President, R. G. Mulholland for response. Tr. 263, 289; Exhibit 37. In response to the FPUA's inquiry of December 28, 1976, Exhibit 31, Mr. Mulholland, on February 4, 1977, disclosed that the FPL had "on file with the Federal Power Commission a firm sale-for-resale rate schedule applicable to Municipal electric systems (Schedule SR-1)". Exhibit 7. Mr. Mulholland's communication of February 4, 1977, Exhibit 7, represents the first instance in which Schedule SR-1 is mentioned specifically in communications by either party. Tr. at 514.

During the investigation it was disclosed that soon after Mr. Mulholland's apparent offer of SR-1 power to FPUA, Exhibit 7, he called for a collateral organization committee meeting on February 9, 1977, to discuss, inter alia, FPUA's request for firm service of December 28, 1976, Exhibit 31, and to discuss a memorandum to files entitled "The SR-1 Rate Schedule versus Cost of New Generation (Manatee Number 1)", which was prepared by Mr. E. L. Bivans, Vice President for System Planning, FPL. Tr. at

49, 130, 215-16; Exhibit 3, 8.. Mr. Bivan's memorandum dated February 7, 1977, raised the question -- "is FPL required to sell under the SR-1 rate, power in any amount to any municipal or cooperative electric utility that wants it, even though it means higher cost for power to our existing retail customers?" Exhibit 8; Tr.at 129-130. The clear implication of the memorandum was that SR-1 service was not properly recovering FPL's costs and was thus uneconomic. Mr. Bivans indicates that the question raised by his memorandum was not resolved at the collateral organization meeting, nor has it ever been resolved. Tr. at 129-135. Mr. Robert Gardner, Vice President for Strategic Planning of FPL, concludes that the question raised by Mr. Bivans in Exhibit 8 has not been resolved as a matter of policy, but that it was one of the factors that led FPL to take the action in Docket No. ER78-19, et al., of limiting the SR-2 Tariff to those customers whom it already served. Tr.at 644.Mr. Bathen, FPUA's consultant, indicates that he is of the opinion that Exhibit 8 shows that the Company's decision to question once again its obligation to serve municipal customers under the wholesale rate was not based on uncertainty regarding its ability to serve increased demands, but rather the decision was based on the Company's recognition that the SR-1 power would be a highly economic alternative for systems like Fort Pierce. Tr. at

347-350. Conversely, another possible inference is that pursuant to Exhibit 8, FPL chose not to serve FPUA because it was uneconomic.

On April 29, 1977, FPUA, in response to Mr. Mulholland's letter of February 4, 1977, Exhibit 7, formally requested SR-1 sale for resale service. Tr. at 515; Exhibit 26. According to the record evidence, this was the first formal request by FPUA for service under the SR-1 tariff.

On June 2, 1977, Mr. Mulholland answered the FPUA's letter of April 29, 1977, Exhibit 26, without responding to the request for SR-1 power. Exhibit 35. In the June 2nd letter, Mr. Mulholland indicated that his duties were being assumed by Mr. R. J. Gardner because of his impending retirement and that Mr. Gardner would be getting in touch with the FPUA concerning the matters raised in the April 29, 1977 letter. Exhibits 26, 35.

On July 6, 1977, Mr. Gardner and representatives of FPL and FPUA held a get acquainted meeting at the Company's West Palm Beach, Florida, office but nothing of substance was accomplished. Tr. at 518-19. Nothing of significance appears to have occurred with respect to the negotiations for SR-1 power until August 9, 1977, when a meeting was held between the representatives of FPL and the utilities authority at Fort Pierce. The purchase of SR-1 power by the FPUA was one of several issues

discussed at the meeting. Tr. at 518-19, 549-50, 658, Exhibit 11.

At the meeting of August 9, 1977, Fort Pierce reiterated its request to be served pursuant to the SR-1 rate at the earliest possible date. Exhibit 11 at 6, 20; Tr. at 218, 480, 519, 643. The utilities authority sought to purchase up to 33 MW of annual peak demand under the SR-1 rate. According to Mr. R. J. Gardner, who represented FPL at the August 9, 1977, meeting, he was of the opinion that Fort Pierce was not seeking SR power as that rate was filed with the Commission; but rather, that FPUA was seeking a special rate, a special arrangement for their individual situation. Tr. at 658. He stated that during this meeting, FPUA expressed the desire to receive Schedule D power, or SR-1 power coupled with a request to sell power simultaneously to FPL. Tr. at 544, 545. Mr. Gardner added that it was this request to buy SR-1 power combined with the sell-back of power to FPL which was objectionable to FPL. Appendix B. These assertions by Mr. Gardner are controverted by the minutes of the meeting of August 9, 1977, Exhibit 11, drafted by Mr. Bathen and adopted by Mr. Gardner as being a reasonable record of the meeting. Tr. at 547. The minutes clearly show that service requested under SR-1 was not coupled to selling back the same power to FPL since marketing of FPUA's excess capacity was discussed in the context of selling not only to FP

but possibly to any other interconnected system or any system to which FPL grants wheeling. Exhibit 11 at 3; 25. In addition, Exhibit 20, indicates that FPUA was interested in SR-1 service only, Tr. 218, 234-36.

On August 17, 1977, Mr. Menge, Director of the FPUA, forwarded a communication to Mr. R.J. Gardner of FPL, confirming the utilities authority's understanding of the August 9, 1977 meeting. That letter concluded, that "it was the consensus of the Authority's staff and our consultants, R. W. Beck and Associates, that your response to this request amounted to a refusal to sell the Fort Pierce Utilities Authority power and energy under the SR-1 rate. If that is not the case, please advise us as to when the Authority can begin making such purchases." Exhibit 44. On September 12, 1977, Mr. Gardner answered the Utility Authority's communication of August 17, 1977, stating, ". . ., I would prefer to stand on the statement that I actually made during the meeting and that is in view of the actual and potential restrictions on our generating capability we are reluctant at this time to extend the obligations for utility type service over and beyond those which we have hitherto undertaken." Exhibit 27. The actual and potential restrictions on FPL's generating capabilities which Mr. Gardner alluded to in his communication of September 12, 1977, while perhaps relevant as a defense to

not having served although legally obligated is not germane to a resolution of the legal issue of whether there has been a refusal to serve. The FPL witnesses indicate that one of the Putnam units, a gas turbine unit, has been out of service for three or four months for rather extensive repairs for blade damage. Tr. at 269, 575-76. In addition, the witnesses indicate that the biggest potential problem posed thus far is the Turkey Point Nuclear Units. The problem with those units is that a failure of the tubes within the steam generators may cause the units to be taken out of service for the next two years for extensive repair. Tr. at 95, 269, 576-80. The Turkey Point Units have s summer capability rating of six hundred and sixty-six megawatts each. Tr. at 95, 576. Further, FPL never indicated to FPUA that it took the position that the SR-1 tariff was inapplicable to self-sufficient utilities. Exhibits 20, 25, 27; Tr. at 384, 489, 548, 628.

On October 5, 1977, Mr. Menge, Director of the FPUA, forwarded a letter to FPL requesting that it reconsider its position on the sale of SR-1 power to the utilities authority. Exhibit 42. On December 6, 1977, the FPL responded to the FPUA's inquiry of October 5, 1977, indicating that the Company was reassessing its capacity position and would contact the utilities authority the first of the year. Tr. at 522; Exhibit 44. Fort Pierce responded by letter on December 8, 1977,

indicating that they would be looking forward to a response after the first of the year. Exhibit 9. On February 10, 1978, FPL remitted by letter to the FPUA an offer to make available to the Authority for sale during the calendar years 1978, 1979 and 1980, up to 240 MW of capacity under the terms and conditions of Schedule D of the interchange contract between the parties. Exhibit 41. According to FPL, Schedule D was offered because Florida Cities indicated in their response to the answer of FPL to the Cities' petition to intervene, filed in Docket No. ER78-19, that "Fort Pierce Requests Schedule D Power". Tr. at 551; Exhibit 53. Fort Pierce maintains that the FPL is offering them neither firm power nor economy power by proposing to price the Schedule D power on Schedule [illegible]tes which is the highest and most expensive power FPL has, since Schedule B uses incremental energy costing as opposed to the SR-1 average system costing method. Thus, Fort Pierce maintains that nothing is being offered by the letter of February 10, 1978. Exhibit 41; Tr. at 345, 528-29.

Pursuant to the evidence and testimony of the transactions between FPL and FPUA described above, a specific request to purchase SR-1 service was communicated to FPL by letter dated April 29, 1977, Exhibit 26, and reiterated to Mr. R. J. Gardner, Vice President, FPL at a meeting held at Fort Pierce

on August 9, 1977. FPL did not honor this request on the premise that at the time the FPL was experiencing actual and potential restrictions on its generation capabilities. Tr. at 585; Exhibit 27. We thus conclude that after August 9, 1977, FPL engaged in a refusal to provide service to Fort Pierce pursuant to the filed SR-1 tariff.

II. Whether FPL's Refusal to Serve Fort Pierce Constituted A Violation of the Filed SR-1 Tariff and The Federal Power Act

The analysis of whether FPL's refusal to serve Fort Pierce is a violation of the SR-1 Tariff and the Federal Power Act has been constructed within a framework of defenses raised by FPL in support of the refusal. In considering the framework, it is suggested that a two level process of analysis be used. First, each defense should be considered within the context of whether there is a legal obligation to serve. Second, if there is a legal obligation to serve, it should be considered whether the defense should mitigate the legal obligation.

FPL has raised several defenses for not serving Fort Pierce under Tariff SR-1. FPL argues that 1) there is no public utility obligation to provide service to Fort Pierce under the filed tariff, 1/ 2) the tariff never contemplated

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1/ Tariffs and rate schedules are the two rate filing formats used by the Commission to reflect the supply of electric service. A rate schedule is a contractual arrangement between a utility and a specific party containing the rates, terms and conditions for the provision of electric service to that particular party. An electric tariff provides general terms and conditions under which the utility holds itself out to serve members of a specified class of customers. The customer class to be served under the tariff is defined through an availability clause or clauses. Once a potential customer requests service under the filed tariff, a service agreement must be executed and filed with the Commission. (Direct Testimony of Wilbur C. Earley, Jr., in, Otter Tail Power Co., FERC Docket Nos. ER77-5, E-8152, Tr. at 2482 ; see, 18 C.F.R. §§35.1(a), 35.2(b).

service in parallel to self-sufficient generating wholesale customers, 3) it would be inequitable to require FPL to serve Fort Pierce under the tariff because of the additional burden that would be imposed on FPL's system and because it would be uneconomic, and 4) it cannot take on long term load commitments because of an uncertain capacity situation.

In support of the contention that it is under no duty to serve Fort Pierce under the filed tariff, FPL posits that the language of the Federal Power Act and its legislative history indicate that Congress did not impose on jurisdictional companies a public utility service obligation similar to that required at common law. Exhibit 52 at 3-5; see, Otter Tail Power Company v. United States, 410 U.S. 366 (1973). The common law public utility concept imposes a duty upon a business affected with a public interest to serve all customers requesting service. Munn v. Illinois, 94 U.S. 113 (1877).

Although FPL's statement of the law may be correct, it does not follow that a utility has no duty under the Power Act to provide service to an interconnected party which requests service under the terms of an applicable rate tariff. In an analogous situation the Supreme Court in Otter Tail Power Company v. United States, held that although the Federal Power Commission had no authority to force utilities to wheel power under Part II of the Federal Power Act, once such service is extended, the Commission has the responsibility of determining

the justness and reasonableness of such service. 340 U.S. at 375-7, 381-2 (1973). As a result, although there is no general requirement that a utility file a tariff of general applicability with the Commission, if a utility files such a tariff, it is bound to serve under the terms and conditions of that tariff, in a non-discriminatory manner. Id.; Mid Continent Area Power Pool, Docket No. E-7734, FPC Opinion No. 806, issued June 15, 1977, at 16.

In addition, it is well established Commission precedent that once a rate is filed with the Commission and accepted, the utility can claim no rate as a legal right which is inconsistent with the filed rate. Montana-Dakota Utilities Company v. Northwestern Public Service Company 341 U.S. 246 251 (1951). Under the Commission's well recognized filed rate doctrine, Id., the admonition that a utility can claim no rate other than the filed rate has been consistently interpreted as requiring that every public utility file with the Commission, and give notice of, its complete rate schedules (including tariffs) which should clearly and specifically set. . .

> . . .forth all rates and charges for any transmission or sale of electric energy subject to the jurisdiction of this Commission, the classifications, practices, rules and regulations affecting such rates and charges and all contracts which in any manner affect or relate to such rates, charges, classifications, services, rules, regulations or practices, as required by

> Section 205(c) of the Federal Power Act. [citation omitted] 18 CFR § 35.1(a); see also, 18 CFR § 35.2(b) [general definition of components of an electric rate tariff].

Consequently, eventhough FPL had no general legal duty to file a tariff with the Commission under the Power Act, once it did, and the filing was accepted by the Commission, the utility became bound to the terms and conditions of its filing under the operation of the filed rate doctrine and related precedent.

Second, FPL asserts that the SR-1 Tariff was never meant to apply for service in parallel to self-generating wholesale customers, Tr. at 11, 24, 47, 291, 545, 547, 650. FPL states that the tariff was designed to be applicable to non-generating municipals and cooperatives; the partial-generating municipalities being served only to electrically isolated portions of their systems. Tr. at 13, 24, 47, 59-60, 291, 545, 547, 556, 646-48; Tr. in Docket No. ER78-19, et al., at 544, 612, 1717. These asserted limitations on conditions of service are not apparent from the express terms of the tariff. Conversely, the only express limitations on SR service are in the tariff's availability clause, which offers service in all territories served by the Company. 2/ and in the tariff's applicability clause,

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2/ The issue of whether Fort Pierce lies within FPL's service area is uncontroverted. According to Mr. Lloyd Williams, FPL's Director of Rates and Research, who participated in the drafting of both SR-1 and SR-2, Tr. at 20-1, Fort Pierce is considered to be in FPL's service area, adjacent to it or contiguous with it, Tr. at 26, 642; Docket No. ER78-19, et al., Tr. at 1716.

which limits service to a municipal electric utility or to a cooperative non-profit membership corporation organized under the provisions of the Rural Electric Cooperative Law, for their own use or for resale. FERC,FPL Electric Tariff SR-1, Original Sheet No. 5.

Although the terms of the tariff seem to be clear, FPL submits that the intent was far more limited. Namely, although the terms of the tariff apparently envision service to any type of municipality within FPL's service territory, including a municipality like Fort Pierce which is self-sufficient, FPL emphatically states that such was not the intent. Tr. at 11, 47, 290, 291, 554, 557. It is evident that neither the Commission, nor apparently Fort Pierce, were ever made aware of FPL's intent to limit the availability of the SR-1 Tariff until such time as FPL raised the limitation as a defense in the current investigation and in Docket No. ER78-19. Tr. at 11, 377, 384, 489, 490, 525, 628; see FPC Docket No. ER76-211 (rate SR-1 accepted). FPL now comes forward with information that it really intended to limit the tariff regardless of the plain meaning of the express tariff language, Tr. at 11, 554-557; e.g., Exhibit 55.

Apart from the fact that this defense is inconsistent with logic, since if such limitation were true it would have

been communicated to Fort Pierce when the City first sought SR-1 power, Exhibits 11, 20, 25, 27, such limitation would also be in contravention of the Federal Power Act and the Commission's Rules and Regulations. As noted earlier, the Federal Power Act and the Commission's Regulations require that every public utility file with the Commission all rates as well as the practices affecting those rates. 16 U.S.C.§824d(c); 18 CFR. §35.1(a). It is self evident that limitation of a tariff to serve only certain customers is a practice affecting a rate and can only be implemented after Commission review. 16 U.S.C.§§824d(a)-e(b). Thus, since FPL failed to notify the Commission of the asserted limitation of service under the tariff, at the time the tariff was initially filed, such a limitation is plainly in violation of the Statute and the Commission's Regulations. 3/

The policy underlying the Power Act's filing requirement of all terms and conditions affecting electric service is clear. The filing of such terms and conditions prevents, inter alia, the possibility of misrepresentation against customers or

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3/ There is no apparent expression of limitation of the tariff to potential municipal customers who are not self-sufficient, either in the proceeding approving the SR-1 tariff, ER76-211, or in the proceeding approving the predecessor SR tariff, E-8008. The express availability provisions of both tariffs are identical. Docket No. ER78-19, et al., Tr. at 204, ll. 15-30. Appendix A.

potential customers, by preventing post hoc self-serving interpretations of service arrangements by the utility. Re Boston Edison Company, 24 PUR 3rd 164 (Mass. D.P.U., May 16, 1958).

Consequently, since FPL's defense of intent is an illegality and because FPL did not notify the requesting party that service under SR-1 was inapplicable, the utility cannot raise the implied intent of the tariff as a defense to the failure to serve under the filed tariff. 4/

FPL's third defense is based on the alleged economics of the situation. FPL maintains that the request by Fort Pierce for SR-1 power, coupled with a request for sale of power from Fort Pierce to FPL would have an adverse economic effect on the Company, 5/ its customers and stockholders. Tr. at 555-557. Ostensibly, the adverse economic effect would be a result of FPL having to build and maintain capacity for a customer who

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4/ In subsequent testimony before this Commission in Docket No. ER78-19, et al., FPL seems to concede the issue that FPUA is eligible to receive power pursuant to the SR-1 availability clause. Tr. at 204, 205, 252, 1717. This fact is evident from FPL's rationale in seeking to limit the availability of proposed rates SR-2 and PR in Docket No. ER78-19, et al., Id. Furthermore the argument that SR-1 was intended to serve only electrically isolated portions of a partial generating municipality's system is also contrary to the evidence since New Smyrna Beach has been served in parallel under SR-1 since April 1, 1977. Tr. 650-1.

5/ Answer of FPL to Cities' petition to intervene in FERC Docket No. ER78-19, filed December 1, 1977, pp. 7-8.

can stop taking power at any time. 6/ This statement is inaccurate since the terms of SR-1 require a two year notice of termination period and a five year initial service period. Nevertheless, it is well settled that if a utility is otherwise obligated to serve under a filed rate, the mere fact that service would be uneconomical does not excuse performance. Federal Power Commission v. Sierra Pacific Power Company, 350 U.S. 348, 354 (1956). In F.P.C. v. Sierra Pacific Power Co., the Supreme Court held that consistent with the requirement that rates be justified before the Commission, as being just and reasonable, the public utility may agree by contract to a rate affording less than a fair return. Id. at 355. In concurrence with the Sierra case, once a utility files with the Commission a rate and its corresponding terms and conditions of service, whether by rate schedule or by tariff format, the utility is legally constrained from extending or limiting service in a manner inconsistent with the filed rate. Montana-Dakota Utilities Co. v. Northwestern Public Service Company, 341 U.S. at 251. Once a utility files a tariff or a rate schedule with the Commission and it is accepted for filing, the utility is by force of law bound by the terms of such filing. If FPL is thus obligated to serve Fort Pierce under the SR-1 Tariff terms, the economic inadvertence of a bargain cannot serve as a defense to failure to serve. Rather, the proper remedy for a rate which is not

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6/ Id.

recovering costs, if the contract so allows 7/, is for the utility to file for a rate increase which would ensure that the utility is receiving a fair return on its investment. Thus, the remedy to under recovery of a rate is not, and could never be, to refuse service under the filed rate.

As a subsidiary part of the FPL's economic defense, FPL represents that it was Fort Pierce's request for SR-1 power, coupled with the resale of power by Fort Pierce to FPL which rendered the service under SR-1 uneconomic. Tr. at 556-557. However, the record evidence reflects that Fort Pierce did not couple its request to be served under SR-1 to an offer to sell power to FPL. The best evidence of the transaction, the documents evidencing the request for SR-1 service, indicates that Fort Pierce's request for SR-1 service was independent of any sale of power back to FPL. Exhibits 11, 20, 26 and 42. Contrary to FPL's contention, it is apparent that Fort Pierce contemplated marketing of excess power to either FPL or to other utilities. Exhibit 11, 25. Thus, FPL's economic defense that FPUA's coupling of the buying of SR-1 power to a sale of equal power to FPL renders service under SR-1 to FPUA uneconomic to FPL, is plainly inconsistent with the evidence adduced in this investigation.

Nor is the Company being candid when it filed on March 20, 1978, as part of a notice of extension of service, a letter from Mr. Gardner to Mr. Menge acknowledging the request of

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7/ There is no question that the SR-1 tariff allows the utility to unilaterally file for rate increases.

Fort Pierce for SR-1 power on the Record in FERC Docket Nos. ER78-19 and ER78-81. Appendix B at 8 . In that letter, Mr. Gardner states that:

> FPL's representatives have not previously had the impression that purchase of power under Rate Schedule SR-1, independent of reciprocal sales by the authority was desired by the authority [Fort Pierce] Appendix B at 8; ER78-282.

This allegation of a change in position by Fort Pierce which caused FPL to reconsider its decision not to serve under SR-1 is not supportable by the record and exhibits in the investigation. Tr. at 556, 557; Exhibits 11, 20, 26 and 42.

FPL's fourth general defense for not serving Fort Pierce under SR-1 can be characterized as a defense of impossibility of performance under the tariff due to generation problems. Exhibit 11, 25, 27; Tr. at 575-595. The documents adduced by subpoena duces tecum, Exhibit 54, and the testimony secured in the current investigation indicate that FPL may have had a proper basis to be concerned about actual or potential generation and reliability problems in August and September of 1977. 8/ Tr. at 94, 95, 269, 576-80, 585. Allegedly, for this reason, FPL was unwilling during August of 1977 to extend service to Fort Pierce under SR-1. Exhibit 11, 25, 27; Tr. at 575-595.

8/ Staff expert, Mr. Billie J. Biggerstaff discusses FPL's reliability problems in an affidavit attached to this report as Appendix C.

However, after a more optimistic load forecast became available in January, 1978, Exhibit 54(3), FPL expressed a desire to serve Fort Pierce and other potential customers with up to 240 MW of short term firm power under Schedule D of the FPL interchange agreement. Exhibit 41; Tr. at 126-7, 558-60. The offer encompassed service for calendar years 1978, 1979, and 1980. The present offer of Schedule D power differs from SR-1 power, generally, in that Schedule D power to Fort Pierce would be priced on the incremental price of energy while SR-1 uses average system cost pricing method. Also, Schedule D power would be for a short term, 3 years, as opposed to the 5 years minimum service period under SR-1. Exhibit 41; Tr. at 363-5, 564-5, 567-569. After the first year of service under Schedule D, FPL stated that it would reconsider its capacity situation to see if it could continue serving under that Schedule Exhibit 41.

The Commission Staff has determined from the testimony and documents produced by the Company in the present investigation that during calendar years 1978, 1979 and 1980, the power supply (reliability) situation of FPL will be tight. 9/ Appendix C, at 13. However, this situation is expected to significantly improve during 1981 and 1982 Appendix C at 12-13. Coupling

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9/ Staff's study which is embodied as Appendix C is predicated upon data supplied by FPL.

these facts with FPL's offer to sell 240 MW of firm Schedule D power, Exhibit 41, during the same time period that FPL is projected to be, according to Staff's study, Appendix C, in a tight generation situation, precludes as a matter of logic the contention of the impossibility defense. If FPL can serve Fort Pierce during the three years that Staff's study has determined FPL's reliability to be inadequate, it certainly can serve Fort Pierce for the two succeeding years of 1980 and 1981, during which Staff has determined supply to have improved. It should also be taken into consideration that Fort Pierce is seeking only 33 MW of firm power pursuant to the filed SR-1 tariff. Exhibit 11, 26, 28, 31. As the initial term for service under SR-1 is five years, it follows that from the evidence adduced there is sufficient generation to serve Fort Pierce under the SR-1 Tariff. 10/ FERC FPL Electric Tariff SR-1, Original Sheet No. 18.

Based on the foregoing discussion, Staff is of the opinion that the refusal to serve Fort Pierce was a clear violation of the filed SR-1 Tariff and of the Federal Power Act.

10/ FPL on March 29, 1978, in Docket No. ER78-282, tendered for filing with the Commission a service agreement which makes available to Fort Pierce 33 MW of firm power and the energy under its Rate Schedule PR effective March 24, 1978. The rate schedules associated with PR became effective March 1, 1978, subject to refund. But, the availability provision of PR and SR-2 do not become effective until June 1, 1978. Thus, Fort Pierce is being served under the availability provisions of the SR-1 tariff. Appendix A.

III. If FPL Has Unlawfully Refused to Serve the FPUA, What Sanction, If Any, Is Justified Under the Federal Power Act?

The result of the Staff's investigation clearly indicates that FPL has refused to provide service to FPUA in accordance with the availability provisions of the filed SR-1 tariff, and the Federal Power Act. However, FPL on March 24, 1978, pursuant to the SR-1 availability provisions, made available to FPUA, 33 MW of firm power and the energy associated therewith, under its Rate Schedule PR. Docket No. ER78-282. Therefore, were it not for the commencement of 33 MW of firm power service pursuant to the availability provisions of the SR-1 tariff on March 24, 1978, the Staff would have recommended:

1) That FPL be directed to immediately commence service to Fort Pierce pursuant to the filed SR-1 tariff;

2) That the Commission, pursuant to § 314(a) of the Federal Power Act, seek a permanent injunction, enjoining FPL from such acts or practices and to enforce compliance with the filed tariff and the Act; or

3) That the Commission, pursuant to § 314(b) of the Federal Power Act, seek a writ of mandamus commanding FPL to comply with the provisions of the filed SR-1 tariff and the Act.

Criminal sanctions are also available as a remedy for violations of the Act and the Commission's Rules and Regulations. 16 U.S.C. §§ 825o(a-b). The procedure contemplated by the Act is for the Commission to refer the evidence of criminal conduct to the Department of Justice for Criminal prosecution. The Attorney General then has the discretion to institute criminal proceedings. 16 U.S.C. § 825m (a).

Section 316 of the Federal Power Act, 16 U.S.C. § 825o requires that the act or omission to act in contravention of the Statute be done willfully and knowingly. Id. Willful and knowing is a phrase of art in criminal statutes which requires that the act or omission be done not merely voluntarily but with an evil intent without justifiable purpose. Felton v. United States, 96 U.S. 699, 702 (1877). Thus, in a Department of Justice legal memorandum drafted to guide the Federal Power Commission in submitting criminal referrals, the Department stated: "Obviously, the requirement in both Sections 21 and 316 [of the Federal Power Act] that for a conviction to stand

the act must be both willful and knowing requires a high degree of culpability". Appendix D at 5.

Staff believes that at this time such a high degree of culpability cannot be deduced from the evidence gathered in this investigation. However, should FPL attempt to discontinue service or refuse to provide service under SR-1 contrary to the express terms of the tariff after the Commission releases this report, it is recommended that a referral be made since at that point, FPL would have been on clear notice that failure to serve under SR-1 is an illegality.

Respectfully submitted,

Bernard A. Cromes
Commission Staff Counsel

Luis S. Konski
Commission Staff Counsel

Attachment 7

Florida Power & Light Company, FERC Docket No. ER78-19 (Phase II), Excerpts of testimony of Robert J. Gardner as to FPL"s willingness to file wholesale power rate for power at the bus bar, November 15, 1979

(FERC - FLORIDA POWER & LIGHT COMPANY, DOCKET NO. ER78-19 (Phase II), Thursday, November 15, 1979 at Washington, D. C., Volume No. 4)

C O N T E N T S

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of:	
FLORIDA POWER & LIGHT COMPANY	Docket No. ER78-19 Phase II

Hearing Room F
Federal Energy Regulatory Commission
825 North Capitol Street
Washington, D. C.

Thursday, November 15, 1979

The above-entitled Matter convened for hearing, pursuant to adjournment, at 10:00 a.m.

BEFORE:

CURTIS L. WAGNER, JR., Presiding Administrative Law Judge

APPEARANCES:

(As heretofore noted)

ADDITIONAL APPEARANCES:

JAMES E. HICKEY, JR. and
GEORGE F. BRUDER, Bruder & Gentile, 1201 Connecticut Avenue, N. W., Suite 708, Washington, D. C. 20036, appearing on behalf of Florida Power Corporation.

- - -

way or the other.

Q Have you undertaken a study?

A A study is being undertaken by the technical advisory group of the Florida Electric Power Coordination Group about a proposal that was made by FMPA to invest in all transmission systems and I don't think we want to d-aw or make any conclusions one way or the other until we see the outomce of that study.

Q Has FP&L itself ever conducted a study?

A I don't think so, no. As far as I know, we have not.

Q Has FP&L ever conducted a study of a joint transmission rate?

A Other than the testimony which we have filed in the two cases, I am not aware of any.

Q Is FP&L willing to file a wholesale power rate for power at the bus bar?

A Yes.

Q Now, looking at that excerpt from the front of the exhibit, your Exhibit 3, the FMPA study, the front of that study, take a look at Exhibit 3.

A Yes.

Q Looking at arabic number 1 on page 2, did you --

MR. HALL: Page 2 of what?

MR. GUTTMAN: Page 2 of Exhibit 3.

Attachment 8

Florida Power & Light Company, FERC Docket Nos. ER78-19 (Phase I) and ER78-81, Excerpt from "Application for Rehearing of Florida Power & Light Company", September 4, 1979

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Florida Power & Light Company	)	Docket Nos. ER78-19 (Phase I) and ER78-81

APPLICATION FOR REHEARING OF FLORIDA POWER & LIGHT COMPANY

Harry A. Poth, Jr.
Robert T. Hall, III
Reid & Priest
40 Wall Street
New York, New York 10005

Richard M. Merriman
Floyd L. Norton, IV
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1701 K Street, N.W.
Washington, D.C. 20006

Attorneys for
Florida Power & Light Company

September 4, 1979

by other parties were prepared over the course of 17 days. Such briefs, including items by reference, totaled some 310 pages. Even assuming the Commission has the authority to embark on a Sherman Act analysis such as contained in Opinion No. 57, it is a denial of due process to undertake such an analysis on the basis of a four-month proceeding, especially where so little time has been offered for rebuttal and reply.

FPL was not aware until the Commission issued its decision on August 3, 1979 (which took fifteen months to prepare as compared to the time allotted for completion of proceedings under the expedited procedure) that the Commission considered that it was involved in "a monopolization case under Section 2 of the Sherman Act" (Mimeo, p. 2).*/ The December 30, 1977 Order of the Commission, while stating that it was instituting price squeeze proceedings, did not provide notice of a monopolization case. Further, the Presiding Judge did not treat it as such in his Initial Decision, which was clearly not based on a Sherman Act analysis. In fact, the case became what the Commission considers to be a monopolization case only after the record was closed and the Commission itself, in preparing its Opinion No. 57, made that transformation, without notice at any time during the 15 months of the decisional process.

The Company's willingness to serve the small systems as discussed supra, should not be construed as indicating that FPL agrees in any way with the Commission's Sherman Act analysis. On the contrary, it is FPL's position that not only is the Commission's analysis unnecessary and inappropriate in this proceeding, but that it is totally erroneous.

Several examples may be used to illustrate the fact that the Commission is in error in its statements. First of all, contrary to the Commission's statement (Mimeo, p.16), FPL

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*/ The Commission supports its application of a Sherman Act analysis to the proposals in this proceeding with a finding that "[t]he allegations and evidence of Staff and the Intervenors together with the associated responses of the Company have coalesced into issues typically examined in the context of a monopolization case under Section 2 of the Sherman Act" (Mimeo, p.2). Yet, in applying its analysis, the Commission disregards FPL's position on the grounds that FPL did not undertake to define relevant markets (Mimeo, p.16) and that the Company's response to the evidence of the Staff and Cities was essentially a demurrer (Mimeo, p.18). Thus, the Commission's suggestion that its Sherman Act analysis was recognized as appropriate by all parties is unfounded.

Attachment 9 — Letter from Calvin R. Henze to William Lesnett dated July 3, 1979, transmitting "Proposal for a Joint Transmission System in the State of Florida by the Florida Municipal Power Agency to the Technical Advisory Group of the Florida Electric Power Coordinating Group"

FLORIDA MUNICIPAL POWER AGENCY

CALVIN R. HENZE
General Manager

July 3, 1979

Technical Advisory Group
Florida Electric Power Coordinating Group
402 Reo Street, Suite 214
Tampa, Florida 33609

Attn: Mr. William R. Lesnett, Chairman

Gentlemen:

We have outlined and attached hereto FMPA's proposal for an integrated "Joint Transmission System" in peninsular Florida as directed by the Executive Committee of the Florida Electric Power Coordinating Group (FCG) at their semi-annual meeting in Tampa on May 15, 1979. We are convinced that establishment of such a Joint Transmission System is in the best interests of all Florida electric utilities and their customers. It is essential to optimum development of joint generation and transmission projects and to optimum utilization of existing and future generating resources.

The Agency proposes that the necessary studies and discussions leading to mutually satisfactory agreements begin immediately and proceed in a timely manner to conclusion.

Concurrently, FMPA would conduct legal, engineering and financing studies of a program whereby, pursuant to the Joint Transmission System arrangement, the Agency would finance the construction of major jointly planned transmission facilities representing investment well in excess of the Agency's immediate load ratio share. The Agency would "sell-back" such excess investment in each year to other members of the Joint Transmission System at a rate representing a sharing of the difference between the Agency's cost of money and that of such other members purchasing such excess investment responsibility from the Agency. It is the Agency's belief that such a program offers the prospect of financing key transmission facilities in the state and major interconnections with utilities outside the state that might otherwise not be built or might otherwise be delayed beyond the time when needed to provide optimum economy and reliability to meet peninsular Florida's bulk power supply requirements.

Principal Office: Barnett Bank Building, Suite 804/315 South Calhoun Street/P. O. Box 10114/Tallahassee, FL 32302/(904) 224-1214
Operations Office: [illegible]

FLORIDA MUNICIPAL POWER AGENCY

CALVIN R. HENZE
General Manager

We request that you agenda this proposal for the July 18, 1979 meeting. A representative from the Agency will be available for a brief presentation.

If you have any questions, please contact me.

Very truly yours,

Florida Municipal Power Agency

Calvin R. Henze, General Manager

CRH/ww

CC: FCG Executive Committee Members
Chairman and Members Public Service Commission
Mike Gent, General Manager, FCG
FMPA Board of Directors

Principal Office: Barnett Bank Building, Suite 804/315 South Calhoun Street/P.O. Box 10114/Tallahassee, FL 32302/(904) 224-1314
Operations Office: Corporate Center Two, Suite 110/7000 Lake Ellenor Drive/Orlando, FL 32809/(305) 859-1310

FLORIDA MUNICIPAL POWER AGENCY

CALVIN R. HENZE
General Manager

PROPOSAL FOR A JOINT TRANSMISSION SYSTEM IN THE STATE OF FLORIDA
BY THE FLORIDA MUNICIPAL POWER AGENCY TO THE
TECHNICAL ADVISORY GROUP OF THE
FLORIDA ELECTRIC POWER COORDINATING GROUP

The Agency is a joint action power agency comprising 26 Florida municipal electric utilities formed to act as the agent for the member cities to plan, finance, acquire, construct, purchase, operate, maintain, use, share cost of, own, lease, sell, or dispose of any electric power supply project within or without the State for the joint generation or transmission of electrical energy or both, including fuel supply. The proposal that follows is an attempt by the Agency to initiate the development of what it feels is a long overdue concept concerning the ownership, financing, and use of bulk power transmission facilities in the State of Florida.

In general, what is envisioned is establishment of a Joint Transmission System in Florida similar to the Integrated Transmission System presently operating in Georgia with some very real distinctions to recognize the differences in Florida. Primary among these differences is the existence of substantial municipally owned generation located at or near the cities for which no integrated bulk power transmission facilities are required to deliver power to ultimate customers. Also, there is good likelihood that there exists some amount of investor-owned generation within close proximity to retail load centers, that does not require use of integrated bulk transmission facilities for delivery. Another distinction is that only the integrated bulk power transmission facilities (generally 230 kV and above and those 115 kV and 138 kV facilities performing an integrated bulk power supply function--that is not including subtransmission lines of any voltage between the integrated bulk power transmission system and wholesale or retail delivery points) would be included

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Operations Office: Orlando Central Park, Suite 145/7200 Lake Ellenor Drive/Orlando, FL 32809/(305) 859-7310

In the Joint Transmission System for which parity in transmission investment would be maintained by the respective joint owners. Some other types of arrangement including payment of transmission service charges might be applicable to subtransmission facilities.

The Joint Transmission System would consist of all bulk power transmission facilities, including land, owned by the participating parties, identified and agreed upon to be included initially and to be added from time to time. Advantages arise from the coordinated development of the bulk power transmission facilities of the parties making it unnecessary for any party to construct duplicating facilities. A parity formula for each party to the arrangement would be developed based upon the loads actually imposed on the Joint Transmission System, and the investments required of each party would be reviewed annually and adjustments of investment or payments made to maintain parity under the Joint Transmission System arrangement.

The Agency proposes to enter into a Joint Transmission System Agreement with other participating electric utilities in peninsular Florida (investor-owned, rural electric cooperatives, and those municipal systems that are not members of the Agency) under which all participating utilities would be responsible for owning, operating, and maintaining a proportionate share of the integrated bulk power transmission facilities within peninsular Florida included in the Joint Transmission System. Such participation by any party and the corresponding cost responsibility would be in lieu of purchasing bulk power transmission service from any other participating system. Such arrangements would be set forth in a Joint Transmission System Ownership Agreement and a Joint Transmission System Operation and Maintenance Agreement to be executed by the parties. The Agency anticipates utilizing such Joint Transmission System to deliver to its members the output of generating units the Agency might build itself or jointly participate in, to make all types of interchange transactions with other utilities, and to deliver power purchased from others for delivery to its members.

Facilities Included

The transmission facilities that would comprise the Joint Transmission System, and which would receive investment recognition, would have to be designated and agreed upon among the parties. Prior to signing the agreements, the parties would have to sit down and, on a state-wide basis, mutually agree upon which specific lines would be included in the Joint Transmission System. Basically, these facilities would consist of all those facilities used or useable to transmit power, the operating voltage of which is 115 kV or higher and to transform power,

the high-voltage side of which is 115 kV or higher, performing an integrated bulk power supply function, but excluding such 115 kV, or higher voltage facilities not performing a bulk power supply function, and all lower voltage facilities performing a subtransmission function, and excluding all transformation and switching facilities located at generation step-up substations. Certain 69 kV facilities which serve as the sole interconnection between systems might also be included in the Joint Transmission System.

Investment Responsibility

What is being proposed here is for example purposes only and should not be interpreted as the only methodology that might be used in calculating parity investment under this concept.

Under the Joint Transmission Ownership Agreement, each party would maintain, annually, parity investment in the Joint Transmission System facilities as previously defined. The parity formula for determining each party's investment responsibility would be the ratio that a parties average of the twelve-month coincident peak kW use of the Joint Transmission System bears to the sum of the average of the twelve-month coincident peak kW use of the Transmission System of all the parties to the agreement multiplied by the total net plant investment in the Joint Transmission System facilities owned by the combined parties. For the Agency, the proposed use made of the Joint Transmission System, initially, and thus the peak kW used in the above parity formula, would include its member cities share of Florida Power Corporation's Crystal River No. 3 Nuclear Unit (CR-3), and partial-requirements and full-requirements wholesale power purchased by its members if priced at the bus bar. Similarly, loads of other municipal systems and rural cooperative systems for use in the parity formula would be limited to deliveries from generation not located on such utilities own sub-transmission system, including deliveries from CR-3 and from Seminole Electric Cooperatives planned units at Palatka, plus firm power purchased from others for delivery to such systems. For investor-owned utilities, the loads to be used in the parity formula would be the monthly peak coincident kW loads of each system reduced by power delivered during such hour from generation located on sub-transmission facilities where use of the bulk transmission system is not required to make deliveries to retail load centers.

We do not believe transmission service charges should be made for short-term interchange service such as emergency, scheduled, or economy energy service, except for nominal amounts, or that such interchange service should be included in the loads used in the parity formula. However, at present, several utilities are engaged in purchases under Schedule D, Firm Interchange Service, which we believe should be treated as a load imposed on the Joint Trarsmission System and included

in the parity formula for the months in any annual period that such Schedule D purchases and sales are made.

To the extent that any party to the Joint Transmission Ownership Agreement is under or over parity during a given calendar year, such party would make payments to or receive revenues from, respectively, the other parties, based upon a formula reflecting the greatest fixed cost rate of any of the parties, and the degree by which such party's investment is under or over parity. The fixed cost rate would include, as applicable, provision for depreciation, ad valorem taxes insurance, operation and maintenance expenses (including administrative and general expenses properly and reasonably allocable thereto), and the cost of funds, including income taxes.

The Agency proposes that it would initially meet its investment responsibility under such arrangement through a purchase and acquisition of a portion of the existing transmission facilities presently owned or under construction by other parties. The Agency would meet its future investment responsibility through future acquisition, construction, and ownership of jointly planned transmission facilities. In addition, the Agency would be responsible for its proportionate share of the operation and maintenance and administrative and general expenses properly and reasonably allocable to the facilities which it would own.

Other Provisions

The Joint Transmission System Ownership Agreement, and the Joint Transmission System Operation and Maintenance Agreements should contain the following other provisions based upon the outcome of the negotiations among the parties:

(a) Joint planning of the parties for transmission facilities;

(b) Determination of transmission losses;

(c) Agreements between the Agency and the other parties as to construction and operation of the facilities to be owned by the Agency;

(d) Responsibility of the parties with respect to inventories of spare parts and equipment;

(e) Establishment of a review committee and provision for resolution of disputes; and

(f) Other provisions as required to effectuate the purposes of the Agreement.

Subtransmission Facilities

Up to this point, we have discussed the transmission of power supply resources over the Joint Transmission System only, and have not addressed deliveries over the subtransmission and distribution systems. Some other type of arrangement,

including payment of transmission service charges, might be applicable to these facilities.

It is recognized that some municipals and cooperatives take delivery of power at voltages lower than those defined as part of the Joint Transmission System. In such instances, that entity should have the ability to receive this power and compensate the delivering party either through an investment parity agreement in subtransmission and distribution facilities or by paying a transmission service charge. Under the latter concept, if an entity uses lower voltage facilities for any firm transmission service, it might rake a monthly payment for this use directly to the owners of the lower voltage facilities. The details of handling lower voltage transactions will have to be developed and agreed upon by the parties prior to finalizing the Joint Transmission System concept.

Attachment 10 — Excerpts from 1970 National Power Survey (Part II), Federal Power Commission.

THE 1970 NATIONAL POWER SURVEY

FEDERAL POWER COMMISSION

PART II

THE ELECTRIC POWER INDUSTRY • STRUCTURE OF ELECTRIC POWER INDUSTRY • THE PROJECTED

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STRUCTURE OF ELECTRIC POWER INDUSTRY • THE PROJECTED GROWTH IN THE USE OF ELECTRIC POWER • F

HYDROELECTRIC AND PUMPED STORAGE POWER • GAS TURBINES, DIESELS, AND TOTAL ENERGY SYSTEMS • OT

ESTHETICS AND ENVIRONMENTAL EFFECTS • TRANSMISSION AND INTERCONNECTION • DISTRIBUTION SYSTEMS

COORDINATION • POSSIBLE PATTERNS OF GENERATION AND TRANSMISSION FOR 1990 • ECONOMIC PROJECTION

RESEARCH AND INVESTIGATION REQUIREMENTS • THE ELECTRIC POWER INDUSTRY • STRUCTURE OF ELECTRI

FUELS AND FUEL TRANSPORT • FOSSIL-FIRED STEAM-ELECTRIC GENERATION • NUCLEAR POWER • HYDROEL

OTHER FORMS OF GENERATION • COOLING WATER NEEDS AND SUPPLIES • AIR POLLUTION • ESTHETICS AND

UTILITY PRACTICES AFFECTING RELIABILITY OF SUPPLY • PROBLEMS

ECONOMIC PROJECTIONS • FINANCING THE GROWTH OF THE ELECTRIC

THE ELECTRIC POWER INDUSTRY • STRUCTURE OF ELECTRIC POWER IN

GUIDELINES FOR GROWTH OF THE ELECTRIC POWER INDUSTRY

CHAPTER IV

STATEMENT OF COORDINATION

General

Coordination of operating procedures and planning for reliability of power supply are in effect between the various systems in the Southeast. This is being implemented by Reliability Coordination Agreements between neighboring systems and pools, as well as by joint study programs conducted by systems on a less formal basis. Discussions are now being held to put into effect other similar formal agreements.

In most cases, the work involved in coordination is carried out by committees or special working groups. These committees meet periodically for the purpose of discussing problems and implementing studies leading to increased reliability. These discussions and studies deal with matters such as generation and transmission planning, construction schedules, operation, maintenance schedules, spinning reserve requirements, and mutual assistance during emergencies.

Statements on coordination prepared by the various systems are listed below.

CARVA Pool

The CARVA Pool, comprised of Carolina Power & Light Company, Duke Power Company, South Carolina Electric & Gas Company, and Virginia Electric and Power Company, was formed after several years' planning and negotiation directed toward increasing coordination over the wide geographical area served by the companies. The agreement, which went into full effect on May 1, 1967, was the culmination of efforts based on a mutual desire to attain maximum economy and bulk power supply reliability for the benefit of over 2.6 million customers in the States of North Carolina, South Carolina, Virginia, and a small part of West Virginia. Under the CARVA agreement, the companies are specifically committed to undertake joint planning and operation of transmission and generation. This now is being accomplished through various committees and special working groups on which each company has representation. Implementation of the agreement has permitted members to install larger size units with attendant economies in first cost and operation, and has resulted in the shared development of plans for an extensive EHV bulk power transmission system among the Pool companies. Some 450 miles of 500-kilovolt transmission will be in service by 1975, with a major portion completed by 1972.

Further, other such committees and special working groups plan and coordinate operational matters, generation schedules, construction and maintenance schedules, reserve requirements and power interchange.

The CARVA Pool companies, individually and collectively, continue to be active in working with area and regional groups interested in coordination of electric facilities for maximum reliability and economy of service to all customers in their service area.

In April 1967, the CARVA Pool members signed a reliability agreement with members of The Southern Company Power Pool intended to further augment reliability of each company's bulk power supply through coordination of the companies' planning for and operation of their generation and bulk power transmission facilities.

An inter-area reliability coordination agreement was executed between CARVA, East Central Area Reliability Coordination Committee, and Middle Atlantic Area Reliability Coordination Committee on November 15, 1968. A possible coordination agreement with TVA is also being studied.

Joint studies of bulk power transmission facilities are in progress between the CARVA companies and the American Electric Power System; CARVA and the Southern companies; and CARVA and the PJM interconnection.

All the CARVA companies have been part of the Interconnected Systems Group for many years.

Each individual member has interconnection

agreements with its neighbors which to a greater or lesser degree, involve purchase and sale of power, exchange of information, mutual assistance during emergencies, establishment of operating procedures and joint studies of plans for transmission affecting more than one company, all of which contribute to improved coordination. These interconnection agreements, for the most part, were in existence before formation of the CARVA Pool and before the inter-area agreements referred to above were concluded. They continue as effective complements to the more embracing inter-area agreements.

The CARVA Pool companies are represented on the National Electric Reliability Council.

The Florida Group

For purposes of this report, the five major utilities in Peninsular Florida, who coordinate their operations through informal committee action, are identified as the Florida Group; furthermore, for simplicity, this group is sometimes referred to as a "Pool" with the understanding the term is applied in the broadest sense, and does not connote a formal pool.

Peninsular Florida is served by five principal suppliers, Florida Power Corporation, Florida Power & Light Company, Tampa Electric Company, and the municipal systems of Jacksonville and Orlando. These suppliers, surrounded on three sides by water, subjected to hurricanes and the highest incidence of lightning in the nation, undertake to stand on their own feet and provide their own reserves. They are strongly interconnected and comprise what has come to be known as the Florida Group. In emergencies each supplier aids the Florida system in trouble to the maximum extent of its resources. Notwithstanding the fact that each Florida supplier operates his own system in the most economical manner consistent with its individual requirements and policies, there is a strong recognition of the need to coordinate operating matters.

An informal committee was established in January 1959 by the three investor-owned utilities listed above for considering and coordinating mutual problems relating to interconnected operation. The committee consisted of engineering and operating personnel, and informal meetings were held on a randomly scheduled basis. As the activities of the informal committee proved to be beneficial, representatives of the Jacksonville and Orlando municipal systems were asked to participate. They began participating several years ago, so that their operations would be better coordinated with those of the three investor-owned systems. The committee members have no authority to enter into contractual agreements, to commit their organization to construction of facilities, nor to establish practices which are not in accord with individual organization policy. The committee does serve as an excellent medium through which mutual operating problems are reviewed and resolved in such a manner that technical operations are very well coordinated. This committee, known as the Florida Operating Committee, now meets on a bi-monthly basis. In its meetings, it focuses attention on such matters as spinning reserve, underfrequency relay protection, relaying and adequate communications between dispatching centers. It also coordinates maintenance schedules and recommends and organizes long-range planning studies and stability examinations for use by the five individual utilities. There are no "pooling" contracts or commitments among these systems.

Spinning reserve is voluntarily shared and maintained to protect the instantaneous loss of the largest generating unit in service. The reserve is distributed to enough operating units with proper governor characteristics so that a frequency drop of less than five-tenths of a cycle will provide the full benefits of each member's share of assistance. The full share of each member's reserve must be available to all other members and not restricted by limitation of transformers, lines or other equipment. In abnormal situations where the spinning reserve of a member is either unavailable or only partially available, the member notifies the others so that their spinning reserves may be increased or reallocated as required. Every system disturbance is thoroughly analyzed by the operating committee to check the response of the generating units of each member in meeting the emergency. The amount of spinning reserve required is constantly under review.

To avoid an excessive number of generating units being out of service simultaneously for maintenance and to insure the maximum availability of installed reserves, the five individual systems coordinate their maintenance schedules through the Florida Operating Committee.

Load shedding has been used as an emergency procedure by members of the Florida Group since 1957. For some time two of the systems have had capability of shedding more than 1,000 megawatts of load by underfrequency relays, and since the five systems are strongly tied together, this protection

has been available to all five members as a second- or third-contingency back-up. Now, all members of the group have provided for such installations and a completely coordinated plan was fully implemented in late 1968. Each member has or will have a load shedding capability of at least 30 percent of its peak load, and each member's portion of load shedding will be available to other members during any emergency operation. Stability examinations are used to assist in determining the amounts and locations of load to be shed, and the frequencies for which the relays should be set.

Each of the five systems uses an on-line computer for dispatching, and the dispatching offices of the individual group members are new and modern. These offices are linked by excellent communication facilities consisting of microwave, leased circuits, teletype, and radio. They are also linked to the power plants and substations by excellent communication facilities. Information is exchanged constantly concerning loads, reserves, and unusual operating conditions. In time of emergencies, the dispatchers can communicate very quickly and take proper corrective steps on the basis of factual and up-to-the-minute information.

On December 1, 1967, Florida Power Corporation and the Southern System companies entered into a reliability coordination agreement for the purpose of augmenting coordination for reliability of bulk power supply. The agreement calls for the appointment of an Executive Committee which shall review principles and procedures on matters affecting bulk power supply, such as (1) coordination of generation and transmission planning, construction, operation, and protection; (2) coordination of interconnections for assistance in emergencies; (3) initiation of joint studies and investigations pertaining to emergency performance of bulk power supply facilities; (4) coordination of maintenance schedules of generating units and lines; (5) coordination of communication facilities; (6) coordination of load relief measures and restoration procedures; and (7) coordination of spinning reserve requirements.

Florida Power Corporation is represented on the National Electric Reliability Council.

Savannah Electric and Power Company

Savannah Electric and Power Company has an interchange contract with the Georgia Power Company and considers that the two companies are fully coordinated in the planning and operation of transmission systems and in generation requirements. Savannah has two 110-kilovolt transmission ties with Georgia Power. The primary purpose of these ties is for assistance of either company when the other company is in trouble. In fact, there is a provision in the interchange contract between Georgia and Savannah for establishing coordination for achieving maximum reliability in the operation of the two systems.

In order to assist both companies in planning future generation and transmission, joint network analyzer studies are made. These studies are the basis for determining the best operation for the two companies' systems and what additional transmission is required to best serve both companies.

The type of protection installed in existing ties was determined after joint conferences between the two companies. The type of relays and actual relay settings were determined by the relay sections of both companies working together. Savannah and Georgia consider that they have taken advantage of opportunities available for improving reliability and increasing efficiency which could not exist were they acting independently.

Through the foreging arrangements, Savannah is represented on the National Electric Reliability Council.

South Carolina Public Service Authority

The South Carolina Public Service Authority has an operating agreement with the South Carolina Electric & Gas Company and for many years has worked with its neighbors through interconnection agreements involving emergency support, economy power interchange, coordinated maintenance scheduling and direct sales and purchases. In addition, the Authority has a 1-year purchase power contract with South Carolina Electric and Gas Company for the year May 1, 1969, to April 30, 1970. The Authority's transmission system is connected with the CARVA Pool (through interchange points with the South Carolina Electric & Gas Company) at four locations, and future planning is expected to recognize additions of generation and transmission facilities in the area.

The Authority has been attempting to reach an agreement with the CARVA Pool whereby its customers may receive the full benefits of pooling opportunities such as installation of larger units with attendant economies, coordinated planning,

Attachment 11 — Gulf States Utilities Company, FERC Docket No. ER76-816, "Order Approving Settlement Subject to Condition", October 20, 1978