SPIEGEL & McDIARMID
1350 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-4798
TELEPHONE (202) 879-4000
TELECOPIER (202) 393-2866

GEORGE SPIEGEL, PC
ROBERT C. McDIARMID
SANDRA J. STREBEL
ROBERT A. JABLON
JAMES N. HORWOOD
ALAN J. ROTH
FRANCES E. FRANCIS
DANIEL I. DAVIDSON
DANIEL J. GUTTMAN
PEYER K. MATT
DAVID R. STRAUS
BONNIE S. BLAIR
THOMAS C. TRAUGER
JOHN J. CORBETT
CYNTHIA S. BOGORAD
GARY J. NEWELL
RENA I. STEINZOR
P. DANIEL BRUNER
SCOTT H. STRAUSS
BEN FINKELSTEIN
STEPHEN M. FELDMAN
MARGARET A. McGOLDRICK

PHILIP E. CLAPP
GOVERNMENT AFFAIRS DIRECTOR
(NOT A MEMBER OF THE BAR)

DAVID KOLKER
LISA G. DOWDEN
RISE J. PETERS
PETER J. HOPKINS
RUSSELL F. SMITH, III
KODWO GHARTEY-TAGOE
DAVID E. POMPER
TERESA A. FERRANTE
MATTHEW F. LINTNER
MARK S. HEGEDUS

OF COUNSEL
ROBERT A. SALTZSTEIN
BRADLEY S. WEISS
GUY MARTIN

July 2, 1993

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

By Hand Delivery to:
NRC Public Documents Room
2120 L Street, N.W.
Washington, D.C.

Dear Executive Director,

Enclosed please find the Petition of Florida Municipal Power Agency for Declaration and Enforcement of Antitrust Licensing Conditions and to Impose Requirements by Order, which is a request for action pursuant to 10 C.F.R. § 2.206.

The NRC Public Documents Room staff is hereby requested to forward this letter and the enclosed petition, with its two attached appendix volumes, to your attention. The staff is also requested to time-stamp two copies of this letter and its enclosures and return them to my messenger.

Sincerely,

David E. Pomper
Attorney for FMPA

Enclosures

cc (by Federal Express): Joseph Rutberg, Esq., Deputy Assistant General Counsel for Materials, Antitrust, and Proceedings

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

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.

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

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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

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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,

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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

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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

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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

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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):

[FOOTNOTE CONTINUED ON NEXT PAGE]

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 x 1 = 2 transmission charges. For three entities -- the expression is P 3/2 -- 3 x 2 or six transmission charges. For four entities -- P 4/2 -- 4 x 3 or 12 transmission charges. For five entities -- P 5/2 -- 5 x 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

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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

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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

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[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

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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

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[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

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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

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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

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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

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.

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,

Robert A. Jablon
Alan J. Roth
SPIEGEL & McDIARMID
Suite 1100
1350 New York Avenue N.W.
Washington, D.C. 20005-4798

Frederick Bryant
MOORE, WILLIAMS, BRYANT, PEEBLES & GAUTIER, P.A.
306 East College Avenue
Tallahassee, FL 32302
(904) 222-5510

By: Robert A. Jablon

Attorneys for Florida Municipal Power Agency

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.

David E. Pomper

Law offices of:
Spiegel & McDiarmid
Suite 1100
1350 New York Avenue N.W.
Washington, D.C. 20005-4798
(202) 879-4000