UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE
ATOMIC SAFETY AND LICENSING BOARD

4/7/81

In the Matter of)
Florida Power & Light Co.) NRC Docket No. 50-389A
(St. Lucie Plant Unit No. 2)

PETITION TO INTERVENE AND REQUEST FOR CONSOLIDATION

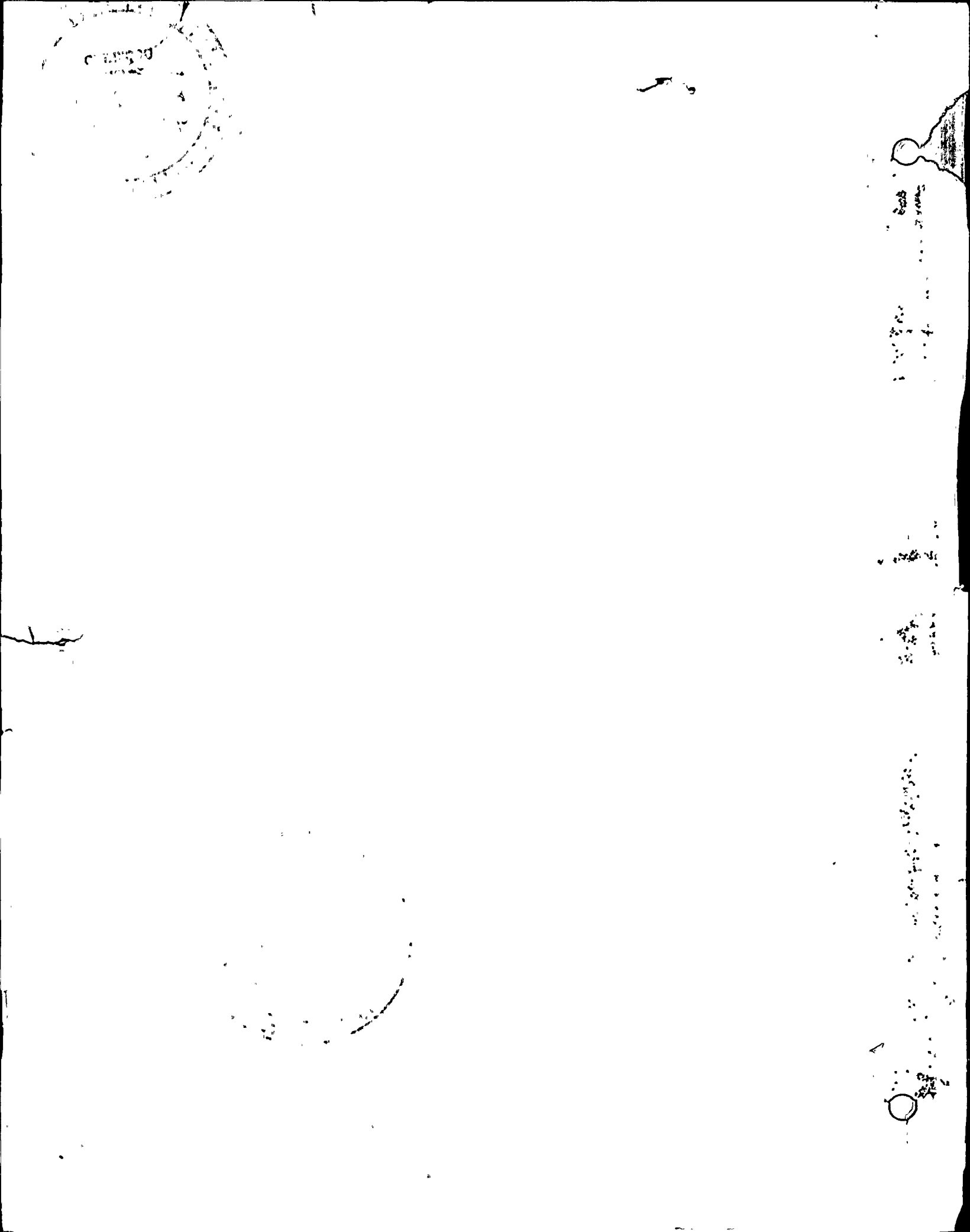
By Federal Register notice of March 9, 1981, 1/ the Nuclear Regulatory Commission ("NRC") noticed the application of Florida Power & Light Company ("FPL") for a license to operate the St. Lucie nuclear plant, Unit No. 2 ("St. Lucie 2").

The Gainesville Regional Utilities, the Lake Worth Utilities Authority, the Utilities Commission of New Smyrna Beach, the Sebring Utilities Commission, and the Cities of Alachua, Bartow, Fort Meade, Homestead, Kissimmee, Mount Dora, Newberry, St. Cloud, Starke, and Tallahassee, Florida ("Cities") are parties to the St. Lucie docket, 2/ and are participating actively in the antitrust proceedings in relation to FPL's application for a construction permit for St. Lucie 2. Cities wish to continue such active participation as may be required in order to protect their rights and interests. Insofar as the conditions applied to the construction permit should at least encompass the life of the

---

1/ 48 FR 15831.

2/ Cities respectfully incorporate by reference herein their August 6, 1976 petition to intervene in Florida Power & Light Company (St. Lucie Unit No. 2), Docket No. 50-389A et al. Each of the Cities is a named party, except that Homestead, Kissimmee, and Starke are represented through their membership in the Florida Municipal Utilities Association ("FMUA").



unit, the relief obtained in the construction permit proceedings may obviate the need for similar proceedings in connection with the operating license. In any case, insofar as Cities are parties to this docket, they presume that they are parties to further proceedings relating to the operating license applications.

In sum, Florida Cities intervene solely as a protective matter. They have been granted intervention in the St. Lucie Unit 2 construction permit proceeding: Florida Power & Light Company (St. Lucie Plant, Unit No. 2), LBP-77-23, 5 NRC 789 [1977], affirmed, ALAB-420, 6 NRC 8 and 6 NRC 221, affirmed, CLI-78-12, 7 NRC 939. Assuming that they prove their case, Florida Cities are entitled to relief under §105 of the Atomic Energy Act, 42 U.S.C. §2135. Since their allegation and the relief sought under the construction permit and operating license are parallel, a separate proceeding should be unnecessary. 1/ See Houston Lighting & Power Company (South Texas Project, Unit Nos. 1 & 2), ALAB-381, 5 NRC 582 (1977); Duquesne Light Company (Beaver Valley power Station, Unit No. 2), ALAB-208, 7 AEC 959 (1974). However, in the event that a contention could be made that they waive rights by failng to intervene separately in the

---

1/ In any event, the proceedings should be expedited so that an operating license may be obtained on a timely basis.

operating license proceeding, they file this Petition and request appropriate relief. 1/

On behalf of these requests Cities state as follows.

I.

Cities own and operate their own municipal electric systems in the State of Florida. Gainesville, Lake Worth, New Smyrna Beach, Sebring, Homestead, Kissimmee, St. Cloud, Starke and Tallahassee, own and operate their own generating facilities. The remaining Cities purchase their full requirements under wholesale for resale contracts with Florida Power Corporation ("Florida Power"), except that Alachua owns a fractional interest in Florida Power's Crystal River No. 3 nuclear unit. 2/

1/ The integrity and credibility of the officials of a nuclear license must be beyond question in view of the vast danger to the public from improper operation of a nuclear generator, as illustrated by the Three Mile Island incident. As discussed on pages 13-21 below, it appears that FPL has continually made claims before governmental agencies that have been knowingly without basis and these FPL mispresentations have been recognized in formal judicial and agency decisions (see footnote , p. 15 below). The Commission needs to review the question of integrity and credibility in processing the instant application, and the license should be issued only with adequate specific conditions to assure that all of FPL communications relating to its nuclear generators will be complete, forthright and true. This issue goes beyond the antitrust issues raised by Cities, affects the general public, and the Commission may so want to consider it.

2/ Gainesville served 40,868 customers in 1979. Its peak was 186 Mw and its sales totalled 818,712 Mwh.

Lake Worth served 20,663 customers in 1978. Its peak was 70 Mw.

New Smyrna Beach served 10,500 customers in 1979. Its peak was 36 Mw and its sales totalled 125,861 Mwh.

Sebring served 7,800 customers in 1979. Its peak was 35 Mw and its sales totalled 108,549 Mwh.

FOOTNOTE CONTINUED ON NEXT PAGE

Florida Power & Light Company was incorporated in 1925 and has, since that time, been engaged in the electric utility business of generating, transmitting, distributing and selling electric energy. It operates in 35 counties in the State of Florida, serving an area of about 27,650 square miles.

Florida Power & Light Company's dominant position in Florida is set forth in the Department of Justice's "advice letter" of 14 November 1973 (pages 2-3) concerning FPL's application for a construction permit for its St. Lucie Plant, Unit No. 2, NRC Docket No. 50-389A:

> "Applicant is by far the largest electric utility in the State of Florida; it serves approximately half of the statewide electric load. Headquartered in Miami, its area of operation includes most of southern Florida and extends up the east coast to the Georgia border. As of the end of 1972, it provided retail electric power to 574 communities with over 1,500,000 customers. Its total energy sales for 1972 were 28,927,808 megawatt hours. Applicant's summer 1972 peak load was 6,011 megawatts; its dependable generating capacity at that time was 6,585 megawatts -- over 70 percent of the generation in the area. Its

---

FOOTNOTE CONTINUED FROM PREVIOUS PAGE

Homestead served 11,717 customers in 1979. Its peak was 34 Mw and its sales totalled 186,229 Mwh.

Kissimmee served 12,200 customers in 1979. Its peak was 52 Mw and its sales totalled 209,962 Mwh.

Starke served 2,200 customers in 1978. Its sales totalled 34,000 Mwh.

St. Cloud served 7,000 customers in 1979. Its peak was 27 Mw and its sales totalled 81,942 Mwh.

Tallahassee served 53,200 customers in 1979. Its peak was 252 Mw and its sales totalled 490,442 Mwh.

> system of generating stations is integrated by over 3,400 miles of high-voltage transmission lines, approximately 90 percent of the high-voltage transmission in the area -- including the 230-kilowatt main transmission grid for southern Florida and the east coast.
>
> "Applicant calls itself 'the nation's fastest growing electric utility.' Florida's rapid growth has been concentrated in the area in which it serves; and for the past several years, the Applicant has added more new customers than any other electric utility in the United States. Applicant's projected peak load for 1980 is 14,475 megawatts -- over twice its 1972 load -- and generating capacity is planned to increase more than 10,000 megawatts to meet that load.
>
> "Applicant's system is directly interconnected and coordinated to some degree with most of the other electric generating systems in Florida: Florida Power Corporation, Tampa Electric Company, and the municipal systems of Jacksonville, Orlando, Fort Pierce, Vero Beach and Lake Worth. Applicant coordinates operations with still other systems through the activities of the Florida Operating Committee. Some of these coordinating arrangements have been entered into only recently ...."

Because of its dominant position in Florida, FPL can severely limit power supply alternatives available to petitioners, thereby affecting the economies of their operations. Apart from Florida Power Corporation's Crystal River Plant, Unit No. 3, in which Cities have been allowed a very limited participation, 1/ FPL has

---

1/ Alachua, Bushnell, Gainesville, Kissimmee, Leesburg, New Smyrna Beach, Ocala, Orlando, Sebring and Tallahassee share, with the Seminole Electric Cooperative, Inc., a ten percent undivided interest in Florida Power Corporation's Crystal River Plant, Unit No. 3 nuclear unit.

a total monopoly 1/ on all existing or planned nuclear capacity in Florida. The Company is able to prevent and has prevented an integrated Florida power pool, thereby blocking the smaller systems from the most efficient use of generation, it can prevent, and has prevented, the establishment of a joint transmission rate involving more than one system and can limit, and has limited, access to transmission over its system.

II.

Cities seek to intervene in order to protect their rights under the Atomic Energy Act and the antitrust laws, as provided for by 42 U.S.C. §§2011 and 2135, and further statutes referred to therein.

The facts demonstrating Cities' interest are more than abundant, and include not only numerous FPL internal documents and on-the-record admissions, but strong court and agency findings. These facts and findings attest to a myriad of episodes and patterns of anticompetitive behavior, whose essence is only summarized here. (Documentation supporting the summary that follows was identified in Cities' response to FPL interrogatories in Gainesville Regional Utilities et al. v. Florida Power & Light Company, S.D.Fla., No. 79-5101 CIV-JLK. A copy of relevant interrogatory responses is attached as Appendix I.)

1/ Except, of course, insofar as access to FPL's units may be provided in connection with proceedings before this agency or courts. As noted above, a settlement proposal currently pending in Docket No. 50-389A would offer fractional shares of St. Lucie 2 to some Cities.

Cities are, and have been, in competition with FPL (see interrogatory no. 1, Appendix I). FPL, as the dominant utility in the State of Florida, has historically acted to limit the ability of smaller systems, including Cities, to gain the economies of scale which FPL itself attains by virtue of its (franchise-based) retail monopoly. FPL refused or sought to unlawfully condition the sale of firm power to Cities (see interrogatory no. 9, Appendix I), while at the same time refusing or seeking to unlawfully condition interconnections 1/ (see interrogatory no. 14, Appendix I) with Cities. While denying these systems access to economies of scale, FPL has actively sought to acquire them 2/ (see interrogatory no. 21, Appendix I). Meanwhile, it conspired unlawfully with Florida Power Corporation to divide the wholesale market in the State of Florida (see interrogatory no. 22, Appendix I). Thus, small systems in FPL's territory were not only precluded from sharing in economies obtained by FPL, but, at the same time, were blocked by FPL from

---

1/ A policy which by consequence, necessarily denied any potential for wheeling (see interrogatory no. 14; Appendix I) or participation in coordination arrangements or pooling (see interrogatory no. 15, Appendix I).

2/ In the past quarter century, FPL has (unsuccessfully) sought to acquire the municipal systems of Starke, Vero Beach, Homestead, Ft. Pierce, Lake Worth, Key West, New Smyrna Beach, and Clewiston, i.e., all the municipal systems in or adjacent to its retail service territory. In some cases, including New Smryna Beach, Homestead, Vero Beach and Ft. Pierce, it has made multiple efforts at acquisition. In addition, FPL has, pursuant to its unlawful division of territory with Florida Power Corporation, sought to aid Florida Power Corporation in the maintenance of existing franchises and addition of new ones within Florida Power Corporation's retail territory.

seeking those economies through engagement with others. (Systems within Florida Power Corporation's territory were precluded from obtaining economies by the same token.)

While blocking the access of smaller systems to economies of scale and coordination, FPL was simultaneously promoting a peninsular-wide pool (that, by definition, excluded Cities who lacked interconnections) to meet its own needs for coordination (see interrogatory no. 15, Appendix I). This pool, formally created by FPL, Florida Power Corporation and Tampa Electric Company in 1959 as the Florida Operating Committee, permitted FPL -- but not Cities -- to plan and build in reliance on coordination.

The coordination potential in the Florida pool plus the large loads provided by FPL's assured retail monopolies permitted FPL to build large nuclear units. Today, FPL owns three of the four operating nuclear units in Florida, and St. Lucie Unit No. 2 is the only unit under construction.

Because of the marked cost differences between nuclear generated power and the alternatives that are available to Cities, FPL is able to use the economic advantages of its nuclear monopoly in competition with Cities. Cities have been, are, and, in the absence of adequate remedy, will be continuously damaged because FPL has denied Cities' access to its units while simultaneously precluding them from developing alternatives. Moreover, FPL has affirmatively wielded its monopoly on cheap nuclear power as a club in its attempts to maintain and extend its monopoly power -- relying on the economic benefits of its nuclear units,

for example, in recent campaigns to acquire the Vero Beach system and maintain the franchises that are the heart of its retail monopoly.

III.

As stated previously, the argument in Cities' 1976 petition to intervene has been found to support intervention in this docket, and suffices to support intervention now. In addition, however, Cities note that in the interim since that petition was filed (and intervention was granted), there have been further developments, including official decisions, FPL's actions, and newly discovered evidence, that further attest to FPL's historic and continued patterns of anticompetitive behavior towards Cities. These include the following:

A. The Gainesville 1/ Case

In 1978 the United States Court of Appeals for the Fifth Circuit found that FPL violated the Sherman Act by conspiring to divide wholesale sales territories with Florida Power Corporation, thereby foreclosing potential wholesale customers from alternative sources of power. As the Court concluded (at 294):

> "... We hold that the evidence compels a finding that FPL was part of a conspiracy 4/

4/ Section 1 of the Sherman Act makes every conspiracy in restraint of trade or commerce illegal (15 U.S.C.A. §1)."

1/ Gainesville Utilities Department v. Florida Power & Light Company, 573 F.2d 292 (5th Cir. 1978) cert. denied, 439 U.S. 966.

with Florida Power Corporation (Florida Power) to divide the wholesale power market in Florida."

B. FERC Opinion Nos. 57 and 57-A 1/

In 1977 FPL filed with the Federal Power Commission a proposal to modify its wholesale tariff so that service would be limited to those systems currently being served, except that FPL also proposed to abandon ongoing wholesale service to Homestead. The proposal came in the aftermath of FPL's repeated refusals to serve the Utilities Authority of Ft. Pierce, as provided for by the existing tariff.

In proposing to limit wholesale service FPL contended that it lacked the ability to serve new load. At the same time, however, FPL was also before the Commission contending that it was well-equipped to acquire (as new load) the Vero Beach municipal system -- Ft. Pierce's neighboring system, and one quite similar to Ft. Pierce in load.

The hearing on FPL's proposal included voluminous testimony and evidence documenting FPL's monopoly power and anticompetitive practices. Following the hearing, the Commission in Opinion Nos. 57, 57-A, rejected FPL's proposed limitations on service because of their anticompetitive effects. In doing so, the Opinions, which are attached hereto (as Appendix II) richly

---

1/ Florida Power & Light Company, Docket Nos. ER78-19 et al. (Phase I), Federal Energy Regulatory Commission Opinion Nos. 57 and 57-A (denying rehearing), August 3, 1979 and October 4, 1979.

detailed FPL's monopoly power and anticompetitive practices vis-a-vis municipal systems.

C. The Proposed Settlement In This Docket

FPL, Staff of the NRC, and the Justice Department, currently have before the licensing board in Docket No. 50-389A a settlement proposal. As Cities have detailed in comments to the Board, 1/ the proposal would effectively perpetuate the unlawful territorial division found by the Court in the Gainesville case, supra.

In essence, the proposal would provide relief to Cities deemed by the parties to be in or near FPL's retail service territory, but not to other Cities. On the one hand, the proposal is incredible by is own logic. If the claim is that relief is to be related to geography, the proponents of the agreement cannot explain why Cities situated similarly geographically are treated differently. For example, the Orlando system would be provided relief while Kissimmee -- which is adjacent to Orlando -- would not. 2/ More importantly, the evidence, as stated above, shows that FPL has historically wielded and abused its

---

1/ See, e.g., February 4, 1981 letter of Robert A. Jablon to Ivan Smith, Esq., FPL, Docket No. 50-389A; January 8, 1981 "Reply of Florida Cities to Florida Power & Light Company's Response to Joint Motion," Florida Power & Light Company, Docket No. 50-389A.

2/ Cities note that, with the exception of Tallahassee, the discrimination in the settlement is effectively directed against the smaller systems.

power throughout peninsular Florida at large -- i.e., there is no basis for limiting relief to a lesser area. 1/

In addition to limiting nuclear access on an unlawfully discriminatory basis, the settlement also perpetuates FPL's ability to control the transmission network that is the lifeblood of the Florida electric system. Historically, FPL had simply refused to wheel for Cities, thereby blocking access to economic alternatives. In the recent past, FPL has provided limited transmission access, 2/ but has refused to file a transmission tariff, or to provide reasonable terms and conditions for transmission service. As the evidence shows, 3/ FPL's insistence on limited bilateral agreements (as opposed to tariffs and other commitments to coordination) is a conscious attempt to create the facade of good behavior FPL believes necessary to fend off arrangements that would, by permitting greater efficiencies,

---

1/ See, e.g., Associated Press v. United States, 326 U.S. 1 (1945); Gamco Inc. v. Providence Fruit & Produce Building, Inc., et al., 194 F.2d 484 (1st Cir. 1952); cert. denied, 344 U.S. 817.

2/ FPL's transmission rate proposals are in litigation before the FERC.

3/ The intent of FPL's current policy was stated, for example, in a February 20, 1976 memorandum from W.E. Coe (Director of Power Supply) to H.L. Allen (Senior Vice President) recounting the instructions of FPL Board Chairman Marshall McDonald to FPL's top management. As the memorandum, attached hereto as Appendix III, stated in part:

> "My understanding of Mr. McDonald's directions following the Senior Management Planning Council meeting on Regulatory Problems was that Power Supply was to secure uniform bilateral interchange contracts as a deterrent towards formal pooling."

benefit the public at large and FPL -- as well as Cities. 1/

D. FPL's Intent To Monopolize Energy Alternatives

At the center of this proceeding is FPL's unlawful monopolization of nuclear power in Florida. There is now evidence that FPL's unlawful methods extend to other alternatives to fossil fuels, as well as nuclear.

For example, FPL has undertaken to obtain the benefits of electricity generated from waste, and is currently engaged in a venture in Dade County, Florida. In a 1973 document, FPL Vice President for Strategic Planning Robert Gardner outlined the considerations involved in FPL's determination to involve itself in generation from waste. As the Gardner memorandum (attached hereto as Appendix IV) explained in its "Guidelines for Power Generation from Municipal Solid Waste Operations:" (emphasis added)

> "The amount of direct benefit is small because solid waste can generate only a small fraction of our power needs. The principal value in FPL's participation is:
>
> 1. Augment community and customer resources by display ing corporate responsibilty in assisting the solution of a pressing local problem.

1/ The proposed settlement is also unlawful in further important respects -- including the imposition of resale restrictions on wholesale power, the potential for restriction on wholesale power sales and the proposed liability clause. See Cities' comments, as noted supra.

2. Gain experience and insight into the potential for profitable future increased involvement in waste processing.

3. Deter the competitive threat of municipal generation." 1/

E. FPL Has Continually Used The Legal And Administrative Process In An Unlawful And Anticompetitive Manner

The evidence available to Cities indicates that FPL has continually made claims before governmental agencies that have been knowingly without basis; and that it has done so to further its monopoly power and/or to preclude the development of competition. 2/ In the interim since Cities' August 1976 peti-

---

1/ Significantly, as a further FPL internal document shows (Appendix IVA) FPL's interest in controlling solid waste generation was not limited to its retail service territory, but extended "throughout Florida." See also Appendix IVB, a March 25, 1974 memorandum from W.M. Klein, currently an FPL Vice President to Executive Vice President F.E. Autrey. The memorandum explained that FPL had to control Dade County's solid waste in a manner that would prevent Dade County from using it to generate electricity. As the memorandum stated, in part:

> "We also feel that we cannot afford not to participate [in the Dade County project] since the County representatives seem determined that the 'fuel' portion of the solid waste be used. They have on several occasions made reference to the fact that 'if FPL doesn't use this fuel or steam from the fuel, then they would build and operate their own power plant.'"
>
> "In view of this attitude on the part of Dade County, FPL must work out a way to participate in the Dade County procedure for disposal of solid waste. Therefore, while insuring that Dade County or the successful bidder doesn't generate electric we must at the same time avoid setting a precedence that would be completely unacceptable elsewhere on the system."

2/ See, e.g., Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp., 382 U.S. 172 (1965); California Motor Transport Co. et al. v. Trucking Unlimited et al., 404 U.S. 508 (1972); Otter Tail Power Company v. United States, 410 U.S. 366 (1973).

tion it has come to appear that this behavior is not limited, but may be said to constitute a pattern. (Cities attach as Appendix V a narrative describing some of these instances, with accompanying documentation.) Above and beyond particular instances of mispresentation, the credibility of FPL's top officials (as witnesses) has been recently questioned in decisions by a United States Court of Appeals, the Federal Energy Regulatory Commission, and an administrative law judge. 1/

This pattern is generally important to this proceeding because the public cannot except anything less than complete integrity in those licensed to operate nuclear plants. 2/ Indeed, the Atomic Energy Act 3/ provides for license revocation or can-

---

1/ Thus, the following statements:

1. As the Fifth Circuit stated at footnote 14 of the Gainesville decision, supra "The officials of the power companies deny the existence of a territorial agreement," but "(w)here such testimony is in conflict with contemporaneous documents we can give it little weight..."

2. As the FERC stated in its August 3, 1979 decision in Opinion No. 57 (Appendix II), (at 18 and citing footnote 14 of Gainesville) "the documentary evidence of Staff and Cities, largely obtained from Company files, is frequently incongruous with the testimony of Company witnesses."

3. As FERC Administrative Law Judge McGowan found in a February 6, 1978 order in Florida Power & Light Company, Docket No. E-9574 (FPL's proposed acquisition of the Vero Beach municipal system) at 3, FPL's testimony was "presented at times with reluctance and marked by less than candid testimony ..."

2/ See Virginia Electric Power Company (North Anna Power Station, Units 1 and 2), 2 NRC at 505.

3/ See 42 U.S.C. §2236, which provides "(A)ny license may be revoked for any material false statement in the application ..."

cellation upon the making of material false statements in an application.

More particularly, FPL's behavior has delayed Cities' vindication of their rights and, by that token, damaged Cities.

Cities specifically call to the Commission's attention filings made by FPL in this proceeding and in the context of the Company's 1975 application 1/ to build the South Dade nuclear units. 2/

FPL's responses to "Information Requested by the Attorney General for Antitrust Review" in both St. Lucie Unit No. 2 and South Dade are, to the best of Cities' knowledge, substantially incomplete and misleading. The inadequacies of the response are of the essence. Had FPL provided accurate and adequate disclo-

---

1/ Since withdrawn.

2/ Cities also note that the NRC has evidently found FPL's certification of the competence of the St. Lucie I plant operators to be "invalid". As stated in Appendix VII, a June 1979 letter from the NRC Division of Project Management to FPL:

> "Under 10 C.F.R. an application for a license must include evidence that the applicant has learned to operate the controls in a competent and safe manner. The Commission may accept as proof of this, a certification of the facility licensee; this has been our practice for the Unit 1, St. Lucie Plant applicants.
>
> As the above data indicates, the most recent certifications have been, in large part, invalid. The performance of Unit 1, St. Lucie Plant has been highly unsatisfactory, both in providing the requisite training for applicants and in determining whether an acceptable level of competence has been achieved. This has resulted in signficant expenditure of non-productive effort by our staff, as well as yours."

sure information in 1973 and 1975, the need for the protracted antitrust proceedings that are still ongoing might likely have been obviated. Insofar as these filings painted an inaccurately benign picture of FPL's dealings with its competitors, they furthered FPL's design to exclude them from access (and/or delay the grant of access) to FPL's nuclear plants and from other antitrust relief.

In summary, the inadequacies of FPL's responses are as follows (documents demonstrating these inadequacies are attached).

1. FPL's South Dade Filing

By the July 14, 1975 letter from Tracy Danese to Mr. Bernard C. Rusche, FPL transmitted to the NRC copies of a document entitled "Information Requested by the Attorney General for Antitrust Review" in the South Dade nuclear plant matter. The information provided in that document would appear to be substantially incomplete and misleading. For example:

a. Question No. 18 states "List applicant's offers or proposals to purchase, merge, or consolidate with electric utilities, subsequent to January 1, 1960." The answer refers to proposals in New Smyrna Beach in 1965, 1970, and 1974; to Edgewater in 1966; and to Vero Beach in 1974. The answer fails to refer to FPL's offers or proposals to purchase or lease Homestead in 1967, Ft. Pierce in 1965, Clewiston in 1965 and Vero Beach in 1967-68. See document attached as Appendix VIA.

b. Question No. 13 states: "List and describe all requests for, or indications of interest in, interconnection and/or coordination and for purchases or sales of coordinating

power and energy from adjacent utilities listed in Item 9 since 1960 and state applicant's response thereto. List and describe all requests for, or indications of interest in, supply of full or partial requirements of bulk power for the same period and state applicant's response thereto." FPL's response to Question No. 13 is substantially incomplete and misleading in at least the following respects:

a. FPL's provision of information on "requests for, or indications of interest in" bulk power fails to refer to numerous "indications of interest or requests," and provides no reference to FPL's refusal or unlawful resistance to such requests -- much less FPL's oft-asserted and longstanding policy of restricting or refusing wholesale service to municipal systems.

FPL's response identifies Ft. Pierce, New Smyrna Beach and Homestead as entities who requested "that FP&L provide power and energy at distribution voltage on a short term basis."

In addition, FPL provides a "list of utilities that have received, are receiving or have requested to receive full or partial requirements of bulk power and energy." FPL lists only Gainesville, Bartow, and New Smyrna Beach. In fact,

(i) Clewiston, Ft. Pierce, Homestead, Starke, and Vero Beach all indicated an interest in firm power;

(ii) Express requests for firm power were made;

(iii) FPL frequently stated that it would not sell firm power to municipals or sought to deter or unlawfully condition the sale of firm power.

See documents attached as Appendix VIB.

In addition, while FP&L's response does state that New Smyrna Beach may obtain firm power under FPL's wholesale tariff, it does not allude to evidence that, prior to the 1973 tariff filing, FPL knew New Smyrna Beach was interested in firm power, but continually told New Smyrna Beach that firm power was not available. See documents included in Appendix VIB.

b. FPL's provision of information on interconnections does not, as provided in Question #13, "(L)ist and describe all requests for, or indication of interest in interconnection" and "applicant's response thereto." In the cases of Ft. Pierce, Homestead, Lake Worth and Vero Beach, FPL simply references the dates of final negotiation of interchange contracts. As shown in the attached documents, initial "requests for or indications of interest in" interconnections preceded such dates by a considerable period. See documents attached as Appendix VIC.

c. FPL's response does not provide any reference to earlier "requests for, or indications of interest in," transmission service. As shown in Appendix VID, FPL had received and refused requests for wheeling from, at least, Homestead, Jacksonville, Lake Worth and New Smyrna Beach.

d. The information provided on Gainesville states that "The City of Gainesville ... inquired about consideration of an interconnection between the Gainesville Utilities system and

FPL just east of Hawthorne by letter of July 7, 1966. A series of letters ensued ending with a letter from the President of FPL dated October 24, 1966 which letter was never answered by Gainesville. The letters consisted of routine inquiries by each of the parties about various general considerations in connection with an interconnection." This response fails to refer to (a) Gainesville's express request for participation in the "Florida Pool" (a request that was related to, but potentially independent of, direct interconnection with FPL); (b) FPL's express awareness of Gainesville's desire to be part of the "interconnected system in Florida"; and (c) FPL's response to this request -- i.e., effective refusal. See Appendix VIE.

e. FPL's response fails to refer to municipal interest in access to FPL's nuclear units. For example, it fails to refer to the October 1970 meeting with Ft. Pierce recorded in the FPL memorandum attached as Appendix VIF.

f. FPL fails to refer to Jacksonville's and Orlando's 1972-1973 indication of interest in joint generation project(s) with FPL. See April, 1976 affidavit of Harry C. Luff in the Florida Power & Light Company, South Dade Unit, NRC Docket No. P-636A, and attached documents.

g. FPL failed to refer to municipal indication of interest in pooling. See the Gainesville request, referred to above, the April 1976 Luff affidavit, and documents attached as Appendix VIG.

2. FPL's St. Lucie II Filing

FPL's response to "Information Requested by the Attorney General for Antitrust Review" in the St. Lucie 2 nuclear plant matter is similarly substantially incomplete and misleading.

a. FPL's response to Question #18 lists "no formal proposals to adjacent utility systems to purchase, merge" etc. FPL later admitted in the South Dade matter that it made a proposal to New Smyrna Beach in 1965 and 1970 (as well as 1974) and to Edgewater in 1966, which it purchased in 1966. See also the above documents in relation to FPL's answer to Question #18 in the South Dade matter, which shows further misleading omissions from its response in both South Dade and St. Lucie 2, to Question #18.

b. FPL's response to Question #13C in St. Lucie 2 is slightly different from the corresponding response in South Dade, but the response is at least equally incomplete and misleading as shown in the above documents. While the South Dade response does not indicate whether FPL complied with the requests, FPL's St. Lucie 2 response asserts that it "has complied with all such requests." The referenced documents refute that.

CONCLUSION

WHEREFORE, in view of the foregoing, Cities respectfully request that they be granted intervention in the proceedings related to FPL's operating license, that, as appropriate, these proceedings be consolidated with those relating to the construction permit, and that they be provided such further relief as may be appropriate.

Respectfully submitted,

George Spiegel

Robert A. Jablon

Daniel Guttman

Attorneys for the Gainesville Regional Utilities, the Lake Worth Utilities Authority, the Utilities Commission of New Smyrna Beach, the Sebring Utilities Commission, and the Cities of Alachua, Bartow, Fort Meade, Homestead, Kissimmee, Mount Dora, Newberry, St. Cloud, Starke, and Tallahassee, Florida

April 7, 1981

Law offices of:
Spiegel & McDiarmid
2600 Virginia Avenue N.W.
Washington, D.C. 20037

1. (a) State whether the City contends that it is in competition with FPL in any of the ways recited in ¶ 11 of the Complaint herein or in any other way, and, if so, specify each method of competition between the City and FPL and, as to each method of competition, state the basis for your contention, specifying: whether that method of competition is now occurring; whether it occurred in the past, and if so, when; whether it is expected to occur in the future; whether it is actual or potential; what actions, decisions, policies or deliberations by the City within the designated period reflect or indicate its existence or extent; the type(s) and/or classification(s) of customers or sales involved, including number of sales or customers within each such type or classification; the rate schedules or tariffs of FPL and the City applicable to each such type or classification of customer; and in what geographical areas (if less than all of the area served by each) it exists.

(b) As to each instance of each such method of competition in the past identified in your answer to subpart (a), state the number of sales or customers, broken down by classification or type (i.e., industrial user, commercial user, residence, etc.) (1) who were within the scope of such competition and are now served by FPL, and (2) who were within the scope of such competition and are now served by the City.

Answer to Interrogatory 1

A. Introduction

As FP&L has admitted to and instructed its employees, it is in competition with publicly-owned electrical systems in Florida:

> [Government] does in fact compete against the enterprise of many citizens by owning electric power facilities and by carrying out the functions of investor-owned utilities either directly or through subsidized non-profit systems. This presents unfair competition to business-managed electric companies which pay full taxes and the going interest rates on all borrowed money.

FP&L employee manual at 14 (002828).

Cities also note that FP&L continually informs its top management of the nature and course of competition with municipal systems, including Cities. See, e.g., FP&L Senior Management Planning Council (SMPC) documents, including those referred to below. FP&L's top officials have, in turn, apparently made competition with municipal systems a top FP&L priority. For example, on Dec. 2, 1976 the Company's top officials convened in a "Public Affairs Roundtable."

A summary of the priorities set by the group reveals among the areas of "emphasis":

> "2. Competitive Equalization ~~Measures~~ Measures
>
> -- municipal disclosure
> -- preferential taxation
> -- uniform rate structure
> -- limit non-city limits operations
> -- Grid Bill"

See Dec. 27, 1976 memorandum from J. Sam Bell re: Public Affairs Roundtable to

> "Senior Management Council --
>
> Marshall McDonald, R.C. Fullerton, E.A. Adomat, F.E. Autrey, J.J. Hudiburg, R.G. Mulholland, J.G. Spencer, R.W. Wall, [and] H.L. Allen, E.L. Bivans, Tracy Danese, D.D. Dunlop, J.H. Francis, Joe Howard, L.C. Hunter, Richard W. Jones, Toby Muir, O.P. Pearson, J. Richard Sewell, R.E. Tallon, R.J. Gardner, H.D. Sarkis, R.E. Uhrig"

Cities contend that FP&L is in competition with cities for bulk power supplies and sales, and in retail competition in the form of yardstick competition; competition for franchises; and competition for new, established, and "border area" customers. All such competition has ~~occured~~ occurred in the past, is ~~occuring~~, and occurring, will continue to occur.

The following section (Section B) of this Response describes the various types of competition, mainly as evidenced by documents of the Florida Power & Light Company itself (and documents of Florida Power Corporation).

Thereafter is a description of yardstick and customer competition for the cities in general and with regard to each individual city (Section C). Franchise competition with regard to each City is demonstrated in response to interrogatory 21, and bulk power competition with regard to each city is demonstrated in responses to interrogatories 9, 11, 14, 15 and 17.

B. Types of Competition between Florida Power & Light and Cities

1. Competition for franchises to provide retail electric service within the respective cities' boundaries.

Each City is in actual or potential competition for franchises to provide retail electric service within their respective boundaries. By its nature, such competition is continuing. As stated in the Complaint, should there be disparity in Cities' retail rates and those of FP&L, the disparity causes dissatisfaction with plaintiff's ownership of their electric systems and leads to efforts by FP&L to buy or residents of the city to sell. However, the intensity of FP&L's interest or efforts to acquire systems or expand territory may vary from time to time, depending upon various factors including the likelihood of success in obtaining a franchise from an independent system, desires not to impinge upon territorial agreements or distance of a given city from FP&L's lines. Thus, for example, after having submitted a "formal proposal by Florida Power & Light Company for the acquisition of the City of Vero Beach Electric System" to the City on May 27, 1976, and subsequently having filed an application with the Federal Power Commission on November 26, 1976 for authority to acquire the system, on March 31, 1978, FP&L filed a "Notice of Withdrawal" stating:

> "The position of the Commission Staff and Citizen Intervenors is that the Company's application should be denied. Recently, the United States Department of Justice has intervened in support of the Commission Staff and opposing the application." Notice of Withdrawal, paragraph 2.

However, Commissioner Gregg of Vero Beach stated:

> "Should in the future the climate for regulatory approval change, it shall be the intent of both parties to re-initiate discussions."

Letter of Commissioner Gregg (March 31, 1978).

Bob Skinner of Ft. Pierce attended a pubic meeting in Vero Beach in January, 1980 where he heard Robert J. Gardner say that FP&L would consider leasing the Vero Beach electric system once issues were settled with the Department of Justice.

The above illustrates that whether acquisition attempts by FP&L are actively pursued may vary with its assessment of a number of factors, including legal ones. See, for example, minutes of a special joint meeting of the Ft. Pierce Utilities Authority, Friday, March 26, 1976 and April 9, 1976; Memo to Ft. Pierce Utilities Authority members and attorney from Director of Utilities, dated April 8, 1978.

Plaintiffs cannot distinguish between "actual" or "potential" competition in the context of competition for franchises. Such competition is ever-present. However, the intensity of activity to acquire existing municipal systems varies from time to time. Most of the time, specific requests by a city for FP&L consideration of acquisition of a franchise or request by FP&L of the city to consider such sale will not be pending. However, other activity, such as and including efforts by FP&L to deny plaintiffs access to economic power supply, is evidence of a continuing competitive effort. If, as a result of such actions, a city's power supply becomes uneconomic, specific actions to acquire the system are likely to result and have resulted.

Actions to acquire franchises by FP&L distant from its existing lines would tend to be less intense. Thus, for example, competition to acquire the electric franchises in plaintiff cities Sebring, Alachua, Bartow, Fort Meade, Kissimmee, Mount Dora, Newberry, St. Cloud and Tallahassee by FP&L may be said to be "potential". However, evidence in Florida Power Corporation, FPC Docket No. E-7679, evidence and deposition testimony in Gainesville Utilities Department v. Florida Power Corporation and Florida Power & Light Company, No. 68-305-Civ-J, including evidence cited in the Fifth Circuit decision (573 F.2d 292) shows joint or supportive action between Florida Power Corporation and

FP&L with regard to the acquisition of municipal electric systems in each utility's "territory". Such actions show at least potential competition between FP&L and the above listed systems as well as systems located within its retail service area. Because of the concerted action of FP&L and other systems, FPC's actions are ~~chargeable~~ chargeable against FP&L. FP&L has the record in the Gainesville case on which plaintiffs rely. The evidence relied upon in Docket No. E-7679 is found principally in Exhibits 95-98. See response to interrogatory 22, concerning territorial agreements.

An FP&L document [280967] demonstrates consideration by FP&L of a merger with Tampa Electric Company and Florida Power Corporation, which would place FP&L in direct competition for municipal franchises covering all of plaintiff's franchises.

Examples of mutual assistance among the investor-owned utilities in the acquisition of electric systems are as follows, but such examples as these are more fully set forth in response to interrogatories 21 and 22.

In 1962 R. C. Fullerton, Executive Vice President of FP&L received a letter from a citizen of Sebring regarding the potential acquisition of the Sebring Municipal System by FP&L. Mr. Fullerton responded to the citizen that:

> "Thanks for your note about electric service in Sebring. The utility company serving in that vicinity is the Florida Power Corporation of St. Petersburg. We have taken the liberty of forwarding your letter to them for consideration.
>
> I appreciate your fine attitude and thank you for writing."

In forwarding the citizen's inquiry to a Senior Vice President of Florida Power Corporation, Mr. Fullerton's cover letter stated: "Attached correspondence is self-explanatory. Why don't you go in there and buy this property?"

The Sebring exchange, in turn, appears to be a repetition of an earlier exchange regarding Lake Helen. In a June 23, 1958 "Dear Bill" letter from "Bob," (an exchange between FP&L's President and General Manager Robert Fite and Florida Power Corporation's President William Clapp) "Bob" wrote:

"Dear Bill:

> When we discussed the territorial question in Boston the other day, you mentioned that you were interested in buying the electric facilities in Lake Helen. Perhaps you have forgotten but back in 1956 we received an inquiry from Lake Helen and wrote them that they were not in our territory and we had no proposal to make. Alan B. Wright signed the letter and sent you a blind copy. I am enclosing reproductions of these letters for your information.
>
> Here's hoping you get Lake Helen.
>
> Bob"

As W. J. Clapp testified in the Gainesville case at 45-46 of his deposition:

> "Yes, in our business, there is competition, and, naturally, when certain customers are figuring on buying power, why, they want to see if there's an opportunity to buy from another utility and so there have been instances [of] ... requests for service by . . . either retail, wholesale, or interconnection service, by customers or utility systems located outside the area being served by Florida Power at the time."

As a result of acquisitions which FPC had attempted, such competition would be eliminated. Id. at 150-154.

Further various power supply restrictions or restrictions on dealing with municipalities had the purpose and effect of aiding Florida Power Corporation in competition with municipals and others. See generally, Deposition of Mr. Clapp, supra, and exhibits. FP&L is chargeable for such acts. However, FPC would reduce rates where necessary for competitive reasons. E.g., Deposition, pp. 69-75. Thus, restrictions placed on the cities, such as against their installing their own generation and buying at wholesale, or buying from third parties, directly aided FPC in competition. At the same time the company was actively seeking franchises, Id., 83-91, FPC had been advised that such restrictions were of questionable legality. Id., 169. Clapp Exhibit 2.

FP&L has sought to assist Florida Power Corporation's acquisition of municipal systems within its service territory. By the mid-1950's, FP&L itself had acquired at least 16 municipal systems. "Municipal Plants Discontinued Since 1900, State of Florida (Incomplete)," Edison Electric Institute, April, 1956 [PL-1337]. See also Florida Power & Light: Fifty Years of People Serving People, wherein FP&L highlights its aggressive acquisition policies at 40-43. In the past 25 years, FP&L has sought to lease or purchase plaintiff systems in Homestead, New Smyrna

Beach, Lake Worth, Fort Pierce and Starke, as well as non-plaintiff systems Key West, Clewiston and Vero Beach. It successfully obtained the franchise to serve the City of Edgewater, formally served by New Smyrna Beach. Documents relating to these proposed acquisitions or franchise competition are referred to in response to Interrogatory 21. It has vigorously opposed the jurisdiction of the FERC (or FPC) over its activities, which opposition shows a purpose and intent of impeding the economics of municipal operation. Plaintiffs rely upon FP&L's support of the Holland-Smathers Bill and related legislation, 88th Cong., 2d Sess, S.3038, 89th Cong., 1st Sess., S.218, 90th Cong., 1st Sess. S.1365.

It should be noted that for a small system the ability to compete successfully for customers, or even to remain in business, may depend upon retaining franchised areas. Therefore, New Smyrna Beach's loss of Edgewater is significant. In its "Preliminary Proposal of Electric Utility Service for New Smyrna Beach by Florida Power & Light Company" (July 5, 1974), FP&L states:

> "The operating efficiencies of New Smyrna Beach are limited by the system's size which is limited by the approximate area of the City."

The fact of competition for service area and customers is evidenced by FP&L's efforts to obtain territorial agreements and support of "stay-put" legislation. For example, FP&L preconditioned a parallel interconnection with Lake Worth on a retail territorial agreement. Negotiators for FP&L (Breedlove, Hill) contended that Lake Worth might seek to serve Lake Osborne.

The method of competition referred to is now occurring, has occurred in the past and is expected to occur in the future. It is actual competition.

Many FP&L documents admit the existence of franchise competition. See, for example, "An Open Letter to Every Vero Beach Resident from Florida Power & Light Company's Ralph Mulholland" discussed below under "Yardstick Rate Competition."

On April 21, 1956, FP&L sent out a mailing to customers of the Lake City system as they considered taking over the franchise from FP&L. The mailing persuaded:

> "The question you are being asked to decide is simply this -- should our company be required to sell its properties in Lake City and have the City build a municipal light plant and run the business here?"

According to the letter, prior service by the City

> "was miserable. Outages occurred frequently. Meals were interrupted, people were trapped in the hotel elevator and lights were off for hours at a time. . . Connected with our transmission system, Lake City is no longer dependent upon a single local plant like it once was - or like is being proposed under municipal ownership. There will always be plenty of power for any industry that wants to come to Lake City, and at rates that will meet the requirements of large industries just as they do for the Humphries Gold Mining Company for their huge operations at Camp Blanding; the Fairchild Corp. for the new airplane factory at St. Augustine, and for the Lehigh Portland Cement Co. for its big plant - which is practically being doubled in capacity due to its profitable operation - at Flagler Beach."

(PL-1362)

Flip charts used by R. J. Gardner and J. T. Petillo in a Customer Relations presentation in the fall of 1975, as a follow-up to a Senior Management Planning Council ("SMPC") presentation of September 30, 1975 are titled "Strategic Issues in Customer Service."

One chart, "The Situation Outside the Company" lists as pertinent "Many Franchises Coming up for Renewal" and "More Talk of Takeover."

Even more explicit was an SMPC handout for the meeting of March 10, 1975, entitled "Introduction to Strategic Planning." Listed under the heading "Competition" were "disenchantment with government: a countervailing force to takeover" and "agitation for takeover increasing." Also among the written material for the March 10 meeting was a compilation of "perceived risks" which included "Takeover, loss of territory." Hand-written notations also show "cheaper rates, municipals and REA's; State Power Authority." A chart was also provided showing, as of June 30, 1975, the ~~companies~~ company's past and anticipated franchise renewals.

Another SMPC writing, prepared on February 27, 1975 by "LLW" discusses FP&L problems associated with the company's wholesale tariff: "Small municipal electric utilities may decide to purchase partial service requirements in lieu of high replacement costs of generating units or additions to their system generation (Request FPL to supply base load)" and "An existing municipality may not renew franchise; purchase distribution system from FPL

and then buy wholesale from FPL." Recommendations include "Concentrate on obtaining renewal of franchises and better definition of territorial agreements."

A Customer Relations Planning Presentation to LCH and FEA on January 8, 1976, a follow-up to SMPC #62 includes charts on the topic "Planning for Good Customer Relations" which are noted to be "A Critical Success Factor" and "A Major Contingency". The Service Delivery System's function is described: "To provide a business interface with the customer which will insure the Company's continuing right to serve each customer in its service territory." Suggested measures of effectiveness include "franchises renewed" and "takeover avoided."

The September 24, 1976 SMPC considered a document entitled "Research and Development Priorities at Florida Power and Light, September 16, 1976", approved by D. D. Dunlop, Vice President, Fuel Resources, R&D. One evaluation criterion included in the priorities assessment asks "Will project have an overall positive effect on the Company's business?" One consideration is "Assurance of Company strength against political takeover by outside groups?"

Florida Power & Light communicates the outcome of certain of its competitive endeavors for franchises to its employees, in a newsletter "FYI," published weekly by Employee Information FPL Corporate Communications. For example, the October 18, 1976/IV No. 42, issue headlined "Boca Officials Endorse Franchise Ratification Vote Dec. 7" and described the October 12 decision by Boca Raton's city council to extend a new 30-year franchise (subject to ratification by the city electorate) to FP&L. "Franchise agreement negotiations between the Company and Boca Raton officials have been conducted during the past 1-1/2 years . . . [T]he endorsement vote by that city's representatives reflects the appreciation of Boca Raton's 23,000 customers for the fine service performed by FPL employees in that community."

In a similar story, "Cooper City Franchise Offer is Second In One Month" FYI noted that Cooper City's commissioners voted on September 28 to offer a 30-year franchise to FP&L. This was a new franchise, as was that offered on September 23 by Palatka.

Cooper City has about 2,300 FPL customers, and is one of 14 Broward County communities served by the Fort Lauderdale District." FYI, October 4, 1976/IV No. 40. See also (re: Palatka) FYI No. 39.

Consideration of potential sale of electric systems reflects and indicates ~~the~~ competition's existence and extent. These are outlined by the materials cited above and referred to in response to interrogatory 21.

The types of customers and sales involved would include retail distribution covering all or major part of municipal service areas. Since the competition relates to the entirety of a service area or a large portion thereof, part (b) of interrogatory 1 is not relevant except as discussed above.

Further evidence of franchise competition, and of FP&L's recognition of the existence of such competition, is set forth under "Yardstick Competition" below and in response to other interrogatories, especially interrogatory 21.

2. Yardstick Rate Competition.

In addition to the information set forth in (a), yardstick competition is demonstrated by the publication of the "Jacksonville Survey" and rate comparisons made and published by electric systems, including FP&L, and references to their rates. Plaintiffs call particular attention to FP&L's statements of rate comparisons between it and other electric systems throughout Florida, such as those used in its takeover efforts and in its successful efforts to convince the residents of Daytona Beach to renew its municipal franchise. A summary of FP&L's efforts to obtain renewal of the Daytona Beach franchise is contained in an article by Anthony P. X. Bothwell in Electric World (September 15 and October 1, 1977), which article is available to the defendant. FP&L advertised rate and service comparisons with other systems as a reason for renewal of its franchise (E.g., "Can Daytonans Afford a $50 million Gamble? Since 1947 you've had one of the lowest electric rates in Florida.") Plaintiffs also rely on the rate and service comparisons communicated to Daytona Beach. A presentation made to FP&L in January, 1976 by Market Facts, Inc. stressed that "A major area of concern . . . is a

comparison of Florida Power and Light's rates with other power companies' rates. In spite of the fact that FP&L's rates are lower than most other power companies, less than five per cent of the respondents think this is true . . . These data suggest the need for some PR work . . ." FP&L also made reference to the importance of rate competition in an SMPC document circulated for the April 1, 1977 meeting, "Electric Utility Business Characteristics, Corporate Requirements and Information Systems." In pursuit of the goal of obtaining "adequate revenues" the company document concludes that FP&L "[m]ust compare our present and projected rates vs. other utilities (investor, municipal, U. S. government)" and observes that the Jacksonville Electric Authority makes monthly comparisons, as does the Edison Electric Institute, for past and present.

Plaintiff's also call attention to the "Open Letter to Every Vero Beach resident from Florida Power & Light Company's Ralph Mulholland" in the Vero Beach, Florida Press Journal, Sunday, September 5, 1975, in which FP&L cited FP&L's rate comparisons with other systems, in recommending an affirmative vote to the Vero Beach voters to sell the system.

Plaintiffs note that comparisons among utilities are often publicized as references. In the July 5, 1974 Preliminary Proposal of Electric Utility Service for New Smyrna Beach by Florida Power & Light Company, under the heading "Possible Objectives of New Smyrna Beach" is listed: "Lower Electric bills for citizens and businesses of New Smyrna Beach." FP&L cited and detailed savings to ratepayers, which it contended would have accrued if New Smyrna Beach residents had been served by FP&L. See response to interrogatory 21 and other portions of this interrogatory for further detail. Yardstick competition will occur in the context of financing statements or power supply planning, including competition for wholesale sales. Plaintiffs refer, for example, to p. 5 of a letter dated June 23, 1978 from Reynolds, Smith and Hills re: Fort Pierce Utilties Authority Refunding Bonds Series, Engineers Project No. 78170 and to p. 5 of a similar letter, February 4, 1977 and July 19, 1977, Electric Utilities Expansion Program, Engineers Project No. 71145.

In rate studies for the Cities' electric systems and in financing documents, rate comparisons with major utilities in the state are often included for comparative purposes.

Such yardstick competition is continuing. It is now occurring, has occurred in the past and is expected to occur in the future. It is actual. It is evidenced by actions, decisions, policies and deliberations by the Cities to seek to maintain competitive electric power rates with FP&L and other utilities and further by every consideration of sale or possible sale of a City's electric system. Evidence of FP&L's perceptions of such competition and that these perceptions impact on its actions are found in documents attached to the testimony of J. W. Wilson in Docket No. ER78-19, including "Strategic Issues In Customer Service", Exhibit 41 (JW-12); "Introduction to Strategic Planning", Exhibit 41 (JW-13); "Recent Significant Developments in Competitive Relations", Exhibit 41 (JW-14); see also "Government Takeover", Exhibit 37 (REB-X). See also inter-office memo from L. B. Clanton to J. L. Breedlove, regarding territorial agreement between FP&L and Vero Beach and enclosing rate comparisons for August 1971 and February 1972.

3. Customer Competition.

Service to customers located in areas bordering both FP&L's system and a city system.

In cities where there are or have been retail territorial agreements in force, such competition is evidenced by efforts by FP&L or the city to implement, change or eliminate such territorial division. Where there is no territorial division or agreement, such competition is on a customer-by-customer basis or for limited areas. Otherwise, it is intermittent for territory. Documents responsive to this question are in the Cities and have been cited in response to interrogatories 9, 14 and 21. As an example of such competition, Cities call special attention to the complaint by Florida Power & Light Company against New Smyrna Beach before the Florida Public Service Commission, including depositions, concerning service to retail customers and Florida Power & Light's request for an injunction in the Circuit Court for Volusia County, Fla. Case No. 79-1563-CA-01. Such legal

action by Florida Power & Light Company is known to FP&L, was initiated last year and, insofar as the PSC action is concerned, is continuing. PSC Docket No. 79-380. This competition for such customers between FP&L and plaintiffs is presently limited to plaintiffs Lake Worth, New Smyrna Beach, Homestead, Starke and Fort Pierce. It is continuing.

See also instances of FP&L efforts to provide behind the scenes assistance to ratepayers ostensibly located in the territory of another who are interested in service from FP&L. See for example (a) Oct. 11, 1961 letter from John W. Hesselton to MacGregor Smith (PL 614); Hesselton, a Vero Beach ratepayer, states concern with municipal service; (b) Oct. 24, 1961 letter from Smith to Hesselton (PL 611); FP&L will send R.D. Hill to "discuss the situation. Perhaps Mr. Hill will have some suggestions as to what might be done;" (c) Nov. 21, 1961 Hesselton letter to Smith. Hesselton thanks Smith for Hill's visit. "I think I know how to go about attacking the problem as I would prefer, peacefully and without identifying your company specifically ... I shall plan to accept Mr. Hill's kind offer of getting into his hand the draft of the petition I plan to draw up..."

FP&L's recognition of border customer competition is shown by the memorandum of February 27, 1975 of Lloyd L. Williams, with regard to his concern over territorial boundaries and of numerous documents of FP&L demonstrating the same concern. For example, July 28, 1967 Memo to File, R. H. Fite, PL-598, Ex. B, C - Fullerton Deposition, Case No. 68-305-CIV-J; Letter from R. D. Hill to Vero Beach City Commission.

In testimony on the Holland-Smathers bill and related legislation, FP&L's President and attorney testified that there is customer competition with REA's. "Hearings Before the Committee on Commerce" on S.218, Testimony of R. H. Fite, Serial 89-38, 89th Cong., 1st Sess, p. 218. "Hearings on S.2028 and S.3038", Testimony of H. Poth, Esq., 88th Cong. 2nd Sess., p. 186-187 (Committee on Commerce).

It should be noted that customer decisions not to take service from plaintiffs would not normally be communicated to them. However, Ft. Pierce lost two major potential industrial custo-

mers, Tree-Sweet Products and Tropicana, who chose to be served by FP&L and located in its area of service. Further, they subsequently resisted possible annexation. Information concerning these potential customers is available from the Ft. Pierce Utilities Authority.

In the context of interconnection negotiations, FP&L was concerned about securing a territorial agreement and about its territory. See, for example, Memorandum to File, RHF, 7/28/67 (ER78-19, Exhibit _____(GT-18). FP&L also wanted territorial agreements with Vero Beach (Letter from R.D. Hill to Vero Beach City Commission, November 28, 1967) and other utilities. See response to interrogatories 11 and 9.

Evidence of such competition may be indirect as well as direct, such as complaints as to rates or service or other criticisms by customers or potential customers. One example in the complaint of Mr. Anthony Hickling to the Utilities Commission of New Smyrna Beach, June 1978, seeking residential rather than commercial rate treatment, consistent with FP&L rate classifications.

Other Customer Competition:

It is not possible to specify each potential customer which a plaintiff City may have lost due to competition with FP&L. When a company chooses not to locate in a city, it generally does not inform the city of its considerations. Indeed, because of anti-competitive activity against a City, it may not even be under consideration by possible customers. However, examples are set forth below in the separate city descriptions.

Plaintiff Cities are aware that FP&L promotes industrial development and load (see for example, its recent Annual Reports to its Shareholders, prospectus and documentation in FERC Docket No. ER78-19). It has used its ability to compete for and attract large customers as reasons why franchisees should renew franchises or municipal systems should sell their systems to FP&L. For example, on April 21, 1956 (PL-1362). FP&L mailed to its customers in Lake City the following letter:

> "You have been hearing a great deal about the election in which you are being asked by your city com-

> mission to turn over to them the business of running Lake City's electric light plant and system . . . . We are proud . . . of having had an important part in contributing to Lake City's record growth and prosperty.
>
> Connected with our transmission system, Lake City is no longer dependent upon a single local plant . . . there will always be plenty of power for any industry that wants to come to Lake City, and at rates that will meet the requirements of large industries just as they do for the Humphries Gold Mining Company for their huge operations at Camp Blanding; the Fairchild Corp. for their new airplane factory at St. Augustine and for the Lehigh-Portland Cement Co. for its big plant - which is practically being doubled in capacity due to its profitable operation - at Flagler Beach . . . ."

Cities also note that FP&L is aware that its nuclear units have been an asset in competition for new customers. Evidence of this includes FP&L's sales pitch, as cited herein, to Cities which it seeks to take over. See also June 11, 1975 memorandum from Bob R. Smith to Bill Ellis re: NL Industries Bradford-Steelbald 240 Kv line (271010) (Potential customer "wanted verification of our nuclear generation capability.. He has more confidence in that than oil or gas. Apparently this had some bearing on his choice of taking service from us instead of Clay Coop or possibly JEA.")

As available, additional documents are in the cities.

4. Competition for bulk power transactions and bulk power supply.

Each of the plaintiffs are in obvious direct competition with FP&L for bulk power supply. Such competition is evidenced by their request to FP&L and legal efforts to obtain access to nuclear and base load power supply, transmission and coordination. FP&L has cited its advantages in competition for bulk power supply as justifying acquisition of municipal systems. See for example, Preliminary Proposal of Electric Utility Service for New Smyrna Beach by FP&L Company, supra, "An Open Letter to Every Vero Beach Resident from Florida Power & Light Company's Ralph Mulholland" Vero Beach Press Journal, (September 5, 1976).

For example, to the extent that plaintiffs are able to obtain participation in FP&L's existing and planned nuclear units, this affects the nuclear capacity available to FP&L. The same would be true for participation in Georgia Power Company's Vogtle units, should these become available.

With regard to short term sales of power, both firm and non-

firm through the brokerage, plaintiffs are competing with FP&L for buying or selling arrangements. They have sought to expand the short term power supply availability.

Further, to the extent that FP&L has foreclosed or limited Cities availability of natural gas or other fuel, this has limited Cities economic power supply. Through discovery against FP&L, Florida Cities seek to discover the extent and involvement of FP&L in arrangements whereby FP&L obtained preferred deliveries of natural gas through Florida Gas Transmission Company ("FGT") at the expense of plaintiff Cities.

Furthermore, FP&L, which has the benefit of substantial volumes of inexpensive gas, has refused Cities the benefit by refusing to sell base load power or wholesale power, as explained in response to interrogatory 9.

Plaintiff Cities rely upon the record and decision in Docket Nos. ER78-19 and E-9574 at the Federal Energy Regulatory Commission, as providing evidence of the existence of such competition. See also responses to interrogatories 1a, 7 and 13 and the response to interrogatory 9 concerning restrictions placed on Cities' attempts to obtain wholesale sales and purchases, bulk power transactions and base load power supply. Competition in bulk power transactions and bulk power supply has been restrained by FP&L's actions in not making available base load generation, including nuclear. It has been further restrained by FP&L's actions in not making available transmission, or in limiting the availability of transmission, including refusing to agree to a joint transmission rate;refusing to coordinate or limiting coordination; refusing to sell wholesale power and other power supply on a state-wide basis; refusing to sell economy exchange until recently; and by its other exclusionary actions. FP&L controls and limits the availability of such resources to plaintiffs. Thus, the markets available to plaintiffs and the extent of competition has been restrained by FP&L's transmission and generation planning, including its actions to limit power flows to Georgia to avoid FPC jurisdiction. Evidence of these acts are found in FPC Docket Nos. E-9210, E-7679 and FERC Docket No. ER78-19.

Plaintiff cities Bartow, Fort Meade, Mount Dora and Newberry do not have generation facilities. Alachua's generation is limited to its Crystal River ownership share. Therefore, their competition for interchange sales and purchases is potential. But for FP&L's actions to block coordination and interchange sales and purchases, these Cities would have faced lower entry barriers to the generation phase of utility system operation.

Bulk power competition of course affects retail competition. An unusually direct effect occurred in connection with the negotiations for a Tallahassee interconnection. In order to obtain a needed parallel tie and interchange agreement, Tallahassee was required by Florida Power Corp. to give up customers in the St. Marks area and agree to a retail territorial agreement.

Moreover, FP&L documents recognize a peninsular Florida-wide market for bulk power supply and admit competition in that market. The Strategic Planning Department's "Policy Planning - Background Paper," delivered to SMPC on February 28, 1975, presents for consideration "Interconnection (Interchange) and Competition" and notes "Small systems (generating and nongenerating) view interconnections as a primary means to . . . Enhance their competitive position" and "Achieve benefits of economies of scale otherwise not available to them." Also included is a list of problems for the company relative to joint projects. Among them: "Potential for providing others a competitive advantage - access to nuclear units, economies of scale."

The SMPC meeting of August 6, 1976 included a handout which stated: "An X-ray of our business reveals the existence of two principal businesses: a bulk power business and an electric service business. The two businesses actually exist within the framework of a third activity, viz. an investment business."

In 1976, a market assessment for Peninsular Florida was compiled by FP&L ("Market Assessment, Firm Interchange, Peninsular Florida Systems 1977-1985") [280470-81] which explicitly discussed certain of plaintiff Cities both as customers and as competitors in the bulk power market. "Under present construction schedules and load forecasts, five systems appear to be capable of offering significant competition to us during the

1980-85 period." Besides the non-party systems of TECO, Orlando Utilities Commission, and Lakeland, the paper also named Gainesville and Tallahassee. Among the list of potential buyers, for whose business FP&L would be competing, were Fort Pierce, Gainesville/Alachua County (which includes plaintiffs Newberry, Alachua, and Starke), Lake Worth, and Tallahassee. (Other, non-plaintiff systems were identified as well.)

SMPC considered system expansion strategy on April 7, 1976, including a table entitled "Strategic Alternatives and Associated Programs" which refers to a "statewide franchise." A "Planning Outputs" paper lists interchanges and joint ventures (as well as franchises) as aspects of competition.

Other evidence of bulk power supply competition:

On at least two occasions over the last four years, the City of Tallahassee has been approached by two other municipalities in Florida regarding the possibility of a sale of bulk power by Tallahassee to such municipalities. In July of 1976, Mr. Norman Morc, a consultant to the City of Daytona Beach, met with Mr. Peter Koikos, Superintendent of Transmission and Distribution for the City of Tallahassee Electric Department. This meeting is described in a memorandum from Mr. Koikos to Mr. Joe B. Dykes, Jr., then Director of the Tallahassee Electric Department, dated July 26, 1976. The purpose of the meeting was to discuss the City's generating reserves and the amounts of capacity which might be made available for sale to Daytona Beach. Daytona Beach's interest in the availability of such capacity arose from the fact that at that time, Daytona Beach was "considering buying out the electric system from FP&L instead of renewing the 30-year franchise", according to Mr. Koikos' memorandum. Mr. Koikos "informed Mr. Morc that 80-100 MW of capacity will be available for sale beginning the summer of 1977 until the spring of 1980 and approximately 50 MW in 1980/81." Ultimately, no sale of capacity or energy from the City of Tallahassee to the City of Daytona Beach was consummated, since Daytona Beach eventually renewed its 30-year franchise with Florida Power & Light Company.

The second instance in which the City of Tallahassee was contacted relative to the potential sale of bulk power to another

municipality occurred in early 1977. This overture is documented in a memorandum dated March 8, 1977 from City Manager Daniel Kleman to Joe Dykes, then Director of the City Electric Department. This memorandum states as follows: "I have recently been contacted by the City Manager of the City of Jacksonville Beach regarding the possibility of the City of Tallahassee selling power to Jacksonville Beach." The memorandum goes on to request that Mr. Dykes "determine whether it would be in Tallahassee's interest to sell some of our excess capacity when Hopkins Unit #2 comes on line this spring."

A memorandum dated March 9, 1979 from Electric Department Director Kenneth Morgan to Assistant City Manager Joe Dykes described the problems faced by certain electric systems in Florida in obtaining adequate supplies of low-sulphur fuel oil for the generation of electricity. Mr. Morgan noted that the City of Tallahassee is able to burn oil with a sulphur content as high as 2.5% without exceeding ambient air quality standards. It was Mr. Morgan's suggestion that the City seek to obtain from state authorities permission to burn such higher sulphur-content oil and, as need be, wheel excess power to those cities having difficulty obtaining the low-sulphur oil which they are required to burn by state environmental regulations. Thus, Mr. Morgan stated as follows:

> Temporary suspension of certain rules contained in the Florida Implementation Plan would be consistent with State and Federal Law and could partially or temporarily alleviate the impact of electrical black-outs of residential dwellings or industry and any resulting unemployment in the State of Florida. <u>These rules would allow our plants to burn the higher sulphur oil and sell the excess power, through wheeling arrangements, to those utilities that have stricter standards to comply with in their densely populated urban areas</u>, and indeed these areas have exceeded the air quality standards and are required to burn less than 1% sulphur content oil. Further, if allowed to burn the higher sulphur content oil, we could divert our lower sulphur content oil to the same areas as mentioned above.

It is apparent from this memorandum that the City of Tallahassee views itself to be a participant in the peninsular Florida bulk power market, and a competitor with other electric utility systems for the supply of wholesale and other bulk power services.

On March 10, 19 , Reynolds, Smith and Hills wrote to Kissimmee comparing ne costs to that city of purchasing power from Florida Power C rporation or from the Orlando Utilities Commission.

On June 12, 196 Florida Power Corporation wrote to the City of Bartow:

> Reference made to the recent efforts of the City of Bartow to tain its electric energy and service requirement from a source other than Florida Power Corporatio in the interest of effecting greater economies in the operation of its electrical distribution system.
>
> In accorda e with this 'competition' principle, Florida Power Corp ation hereby offers the City of Bartow a new rate contr t for its electric energy and service requirement . . .
>
> Concurrent with this offer and submittal to you, we are making comparable offer to each of our municipal wholesale stomers. . . "

See also FP&L inter- ffice memo to Mr. W. C. Johnson from R. L Sirmons, June 17, 19 3 [PC-1903].

Competition bet an Florida Power Corporation and Gainesville for bulk power supp as to Alachua and Newberry is evinced by: FP&L inter-office me , from R. C. Roberts, May 4, 1967 [PC-2161]; memo from Mau ice H. Phillips, September 11, 1967 [PC-929]; Memo from "AHE " to "RCR", September 26, 1967; Memo of R. C. Roberts, Septembe 29, 1967.

See also "Guidel nes for Power Generation From Municipal Solid Waste Operatic s" (212164) (While direct benefits are small, FP&L's partic pation will be of value to "(D)eter the competitive threat of m nicipal generation.")

Competition for ulk power supply is and has been continuing.

C. Evidence of Competition Applicable to each City.

FMUA

All plaintiff Ci .es are members of the Florida Municipal Utilities Associatic ("FMUA"). Joint efforts at obtaining bulk power supply for FMU members are described in response to interrogatories 9, 1 . 14, 15 and 17. In addition, FMUA publishers and distr utes to each member a monthly rate comparison of utilities statewide, including FP&L. Moreover, FMUA engages in industria development, and assists its members in that regard. FMUA M utes, May 20, 1966.

On April 1-3, 1964, FMUA held its annual conference at which was presented a study by Robert E. Bathen, R. W. Beck and Associates, "Benefits of Power Pooling and Its Significance to Members of The Florida Municipal Utilities Association," which discussed the importance of yardstick competition historically, throughout Florida. The report emphasized the importance of pooling, and the need for interchange and pooling agreements between municipal or rural cooperative systems and commercial utilities without unfairly restrictive terms, in order for cities to "continue to fulfill their historical role as the 'yardstick' against which to measure power costs from other suppliers."

On March 17, 1965, FMUA informed its members that Florida Power Corporation was charging more for wholesale power sold to Cities than it was for wholesale power charged to the REA Cooperatives. See discussion of competition for bulk power supply, above.

HOMESTEAD.

1. Yardstick.

On May 28, 1958, Mr. Ivey, Superintendent of Utilities wrote to Carl S. Anderson, Homestead Councilman, noting that FP&L's residential rates place Homestead "in a distinct disadvantage . . . from a competitive standpoint . . .", and recommending that the City's rates be brought in line with the company's, and that a study be done on commercial accounts.

At City Council meetings of November 2 and 16, 1964, the matter of FP&L's lower rates was discussed. A rate study was recommended and a committee was appointed. On May 15, 1967, citizens complained at the City Council meeting of the size of their electric bills. See City Council minutes for these dates.

On October 2, 1967, Mr. Marks, councilman, noted that the city's rates were 15-20% higher than FP&L's, and recommended that the city's rates be lowered commensurately. A report was presented to the City Council on November 6, 1967, on the effect upon city revenues of reducing the residential electric rates to 106% of FP&L rates. The council moved to reduce rates to that level, and it was carried. See minutes for these dates, and also for January 8, 1968. Consequently, on January 16, 1968, City

Manager O. R. Pearson submitted "Evaluation, Electric Rate Reduction, to the Council, in which he concluded that the city could indeed afford to lower its residential rates, but not its commercial rates.

2. Competition for Border Customers.

Internal FP&L documents from 1956 reveal FP&L's perception that it was in competition for customers with Homestead. Ben H. Fuqua transmitted a memo to R. C. Fullerton on May 8, 1956, discussing the matter of Homestead's expansion of water and light facilities. The memo was concerned with the city service to developments about six miles from the city limits, and asserted:

> The point that the Mayor and possibly other officials in Homestead should be contacted soon is well taken and I think we should work to this end.
>
> Meanwhile, of course, we should make every effort to serve all electric customers in what can reasonably be considered our service area around Homestead.

On May 1, 1956, Roy S. Chandler corresponded to Dave L. Bosworth about the same topic. FP&L apparently considered the competitive threat significant, as Mr. Chandler wrote "The more I dig into this situation, the more I realize that this thing is bigger than any of us thought."

A November 28, 1961 FP&L document shows competition for the distribution system lying outside the city limits. The inter-office memo from R. C. Fullerton to Mr. R. H. Fite on the subject of "Homestead" records a phone call between Fullerton and Mr. Gordon Ivey of the Homestead system. According to the memo, Mr. Ivey was calling at the behest of a political candidate who wanted to know what the city could get from FP&L for the city's extra-city limit distribution. Fullerton "indicated to Gordon that we would be interested in cleaning up the outside city limits situation with him", but could not offer a precise dollar figure at that time. A handwritten notation (illegible in part) indicates that a follow-up phone call to Mr. Ivey was made, offering to negotiate further.

On August 7, 1967, FP&L and Homestead executed a territorial service agreement. The agreement was entered into in consideration of the fact that

> if there is not now an agreement as to service areas, there will in the future continue to be uneconomical duplication of plant and facilities and expansion into areas served by the competing parties, which in turn result in avoidable economic waste and expense . . . (emphasis not in original)

This was affirmed in FP&L's application to the Florida Public Service Commission for approval of the agreement, which referred at paragraph 8 to the threat of unrestrained competition. September 18, 1967.

3. Other Customer Competition.

FP&L notes, made by "KRB", October 18, 1967 [270210-19], express succinctly that "The Homestead area would be more attracted [sic] to new business and industry with FP&LCo. power capabilities."

On September 16, 1963, the owner of a local motel complained to the city council that his rates were higher than they would be if he were served by FP&L. On June 5, 1967, Mr. Pearson reported to City Council that he and Mr. Henry C. Peters had met with the local school board to discuss a letter from the school indicating it was going to change its service from the city to FP&L. The Council, in response, authorized a lower rate to be offered to the school in order to be competitive with FP&L. The matter was referred to the "Rate Committee" which was studying the matter of bringing the city's rates into line with FP&L's. Another citizen complaint and threat to change to FP&L was presented to the City Council on January 17, 1968. See minutes for these dates.

See also, "Public Utilities: Florida's Dual System of Regulation - A Denial of Adequate Protection to Some Consumers," 23 U. Fla. L. Rev. 159, which refers specifically to competition between Florida Power & Light and Homestead.

STARKE

1. Yardstick

On April 21, 1959, C. B. McCartney and Associates were authorized to perform a rate and system study. The McCartney study proposal before the Commission made reference to the fact that "one of the strongest arguments the Power Co. [FP&L] has had in Lake Worth and New Smyrna has been the fact that their residential rate is lower than Lake Worth and New Smyrna Beach residential rate."

On October 15, 1959, newly-appointed city clerk Merrill Edwards advised the city commissioners that rates should be reduced in order to be competitive, with other systems. Such rate comparison is regularly reflected in City Commission minutes during the designated period. See for example, Board of Trustee Meeting Minutes, July 18, 1978; City Commission Meeting Minutes, March 16, 1971; July 17, 1973; July 15, 1975.

2. Customer Competition.

The City competes with FP&L for customers both within and outside the City along the fringe of the city limits. Around 1978, a subdivision called "Pine Forest" elected to annex into the city so that it could receive all city services rather than choosing to remain with Florida Power & Light. The owner of the 301 Lounge originally had FP&L service; he wanted city services, so he switched to Starke's system. George Flynn Jr. and George Flynn Sr. on S. R. 230 East receive all services from the city although they could receive electricity from other sources. Most recently, FP&L hooked temporary lines to homes located in the old Knight subdivision at North Clark Street, and was preparing to hook those customers up to permanent service. Around December 1979, Merill Edwards, Starke city clerk called Sam Audieckiwiecz of FP&L's Daytona Office and argued that since the subdivision was located within the city, it should be served by city power. Audieckewicz informed Edwards that he had been instructed to hook the homes up, but that he would refer Edward's protest to FP&L officials for consideration. At time of discovery, no word had been heard on this subject from FP&L.

Another example of competition: Tommy Reams lived at the city limits in an area where there were no Starke distribution lines. Reams, who was then receiving power from FP&L, asked what it would cost to obtain city power. The city provided this information and Reams decided to shift to city power.

FP&L serves about 125 customers within the city limits of Starke.

In 1977, Superintendent Dees advised the City Council that a house was being built at the West end of Faxon Lane which could be served by FP&L; city councilmen ordered the utilities superin-

tendent to extend city lines out to the area to enable the city to serve the area as it developed.

LAKE WORTH

1. Yardstick

Lake Worth keeps files of the Jacksonville Electric Authority's monthly rate comparisons, as well as those done by FMUA. Mr. J. C. L'Engle, Chief of Engineering & Operations, makes monthly reports to Mr. C. C. Blaisdell, Utilities Director, regarding the computation of the fuel adjustment charge, and every report contains a comparison with the current FP&L rate, as well as that of the previous month and year.

On March 23, 1977 a citizen of Lake Worth, Ms. J. A. Acuff, wrote to Mr. Blaisdell setting out a comparison of rates between the city system and FP&L, asking "can we poor people afford the difference?"

On January 28, 1975 the city received a letter from Bob Steinmetz, enclosing a copy of a column he had written for The Observer newspaper in Deerfield Beach, asking Lake Worth how it managed to manufacture and sell electricity cheaper than "a huge company such as FP&L." The article complained of FP&L's most recent rate increase. It read in part:

> A person can't help but wonder what the price of electricity would be if FP&L had any competition in this area. If you don't like their electricity or their rates, where do you go? Fail to pay your bill by the stipulated date and they'll tell you where to go.
>
> There is a comparison nearby of what can be done. The City of Lake Worth is one of the rare cities to be exempt from the stranglehold monopoly FP&L has on southeast Florida. The city operates its own electric plant along with its other utilities. Residents report bills approximately half what FP&L customers are . . .

There follows a comparison of rates between FP&L and Lake Worth. (Deerfield Beach is about 25 miles south of Lake Worth, on the coast.)

2. Competition for Border Customers.

In 1961 Lake Worth ceased providing electric service to the neighboring City of Atlantis. Letter of January 17, 1961 [date corrected from August 17, 1961] from Ruth Fales, City Clerk, to James P. Kints, Mayor of Atlantis. On January 23, R. D. Hill and Ben Fuqua of Power & Light discussed Lake Worth's relinquishment

of the account. FP&L inter-office memo from R. D. Hill to Ben H. Fuqua, January 23, 1961.

FP&L's cognizance of fringe area competition with Lake Worth and the possible consequences of such competition is pointed up by the company's insistence on a retail territorial agreement with the city as a precondition to interconnection. See response of Lake Worth to interrogatory 11. Such an agreement was signed in 1972, and is on file with the Florida Public Service Commission.

3. Other Customer Competition.

An FP&L inter-office memo to Mr. Ben H. Fuqua from R. C. Fullerton, July 11, 1957, reports that a Lake Worth customer, the Trailer Park Chamber of Commerce, was expected to get in touch with the Public Service Commission in an effort to be served by FP&L instead of the city.

FORT PIERCE

1. Yardstick.

Fort Pierce maintains files on rate comparisons between municipals and FP&L. This file includes comparisons specifically between the Fort Pierce Utilities Authority ("FPUA") and FP&L.

The rate differential between FP&L and Fort Pierce was discussed November 14, 1960 and again, at some length, on May 23, 1961. At the May 23 meeting Dr. Henry Blalock noted that "Sales promotion work is necessary because of other competition other than direct competition. People compare their rates with other companies, and if you are not in line you have bad public relations. If you do not fight for the dollar you will not get it."

On January 23, 1961 one Commissioner reported that he had been called by Mr. Hill of FP&L seeking to confirm a rate the City had offered to a prospective customer. "We discussed rates and he wanted to know what we were going to do with rates in the future. Any place that they have competition their rates are lower and create harrassments [in] those areas where they do not have any competition."

There was debate about the City's rates, and the term of its franchise, at the City Commission Conference Session held January 15, 1962. Comments included, "If we analyze rates quoted in the

newspaper and compare it with rates paid by a large section of our county, North Beach, South Indian River Drive, it is apparent that we are still in need of a new schedule . . . Mr. Glisson stated that our rates were comparable in many cases lower, taking into consideration all the charges made by Florida Power & Light." The Mayor stated "Florida Power & Light rate is the only rate structure that we could compare with. Your rates are higher. Even reduced rates will be considerably higher than Florida Power & Light." Based on this debate, the Conference decided to reduce the 10% utility surcharge to 8% over a 30 year period. Minutes, January 15, 1962. A similar action had been taken in 1956, and the action was commended by the local Chamber of Commerce, because "the availability of water and electric power at competitive rates is of paramount importance to most manufacturers, and . . . competitive water and electric power rates are essential to the industrial development." Port Pierce Chamber of Commerce Resolution July 13, 1956. The City Commission, at a meeting on August 13, 1969, discussed the need for the city to keep rates competitive with FP&L. In furtherance of that goal, the Commission decided to hire engineering consultants to conduct a study.

In a report from the Ft. Pierce Utility Board Committee to the chairman of the Planning Board, Mr. E. C. Peterson, the need for competitive rates was recognized, and current rates were compared with that of Orlando and FP&L. (411577).

A rate study done for the city specifically discussed competition between Ft. Pierce and FP&L, and stated that "electric consumers served by the City, both inside and outside the City, compare the rates they pay with those charged by the Company [FP&L]. Outside the city limits, consumers of the City may change and take service from the Company when dissatisfied, and the Company has facilities and will render service to them."

The Special Committee appointed by the mayor to study electrical rates met (411288). The minutes of that meeting reflect that the committee made a factual finding that "It is the desire on the part of the City of Fort Pierce to match the rate structure of the Florida Power and Light Co., with the passage of

Ordinance E-377." After studying the rate structures of other cities and of FP&L, the Committee concluded:

> For the purpose of promoting and expanding the economic growth of Fort Pierce and St. Lucie County, and directing this expansion to the potential Commercial and Industrial Companies who might locate in this area, and to business establishments who might plan expansion of their present facilities, it was felt that such users of the demand system of electricity would require an inducement in electrical rating that would be more favorable than competitive areas.

A long list comparing components of FP&L's rates and services, and the Committee offers in summary: "The adherance to Florida Power and Light Schedule should be made in its entirety or a favorable balance considered for the heavy users under the present structure."

A 1956 study of the city's rate structure included comparisons with various other city systems as well as with FP&L's rates (411221).

Mr. Claude L'Engle of Reynolds, Smith & Hills presented the annual report for the fiscal year to the Commission meeting October 31, 1966. Discussion followed and a Commissioner commented that "In the future he hopes rates will be equitable with Florida Power & Light and that perhaps the hassle on rates will cease." See minutes of City Commission on pertinent dates. For similar discussions and rate comparisons, see also minutes for September 19, 1966 (". . . the Commission is trying to put rates right in line with nearest competition . . .") and letter from Evert A. Young, Reynolds Smith and Hills, September 16, 1966 (attached thereto); minutes of Conference of the City Commission, March 23 1962.

A memo to John Little from "RNS" on August 27, 1975 reads:

> Recently I had an inquiry from a large developer who was wondering about comparison of FP&L rates with FPUA rates. This developer was concerned about having lost some tenants who were in our service area moving to FP&L service area because they would receive lower rates. He was inquiring as to whether or not we would be willing to run something in the newspaper showing our comparison of rates with FP&L inasmuch as he knew there was not that much difference in our rates.
>
> I am wondering if we shouldn't publish one of those FMUA comparison charts?

2. Customer competition.

The minutes of the City Commission for June 10, 1961 show that Stone Buick was considering changing from City electric to

FP&L, and had discussed rate comparisons with the City Commission.

On January 21, 1964, the Acting City Manager notified the mayor and members of the City Commission by memo that he had received a signed petition from 28 residents asking that they be released from City utility service and be allowed to use FP&L service.

On July 28, 1967 the local TV station wrote to Mayor Milton Tucker complaining of interuptions in their power and charged: "If we continue to get power failures we will have no choice but to take whatever action is necessary to protect ourselves from these losses." Letter of W. B. Minshall.

NEW SMYRNA BEACH

1. Yardstick.

On April 16, 1956, a local Winn-Dixie Store wrote to the city manager expressing dismay at New Smyrna Beach's rate levels as compared with other municipal systems and with Florida Power and Light. At a City Commission meeting on September 28 of that year, the rate differential between New Smyrna Beach and FP&L was discussed. See minutes. The city currently maintains files of monthly rate comparisons for all Florida utilities, prepared and published by the Jacksonville Electric Authority.

A letter of June 24, 1964 from a city customer, Glen Greene of the Southeastern Public Service Company, Royal Palm Division, complains about the unavailability of an industrial rate for the company, noting that the lack of such a rate compares unfavorably with other utility systems available.

2. Competition for Border Customers.

The City minutes for March 8 and 10, 1958, indicate that developers of sites lying west of the city limits, but within the New Smyrna Beach franchise area, wanted permission to receive service from FP&L rather than from the city. Such permission was granted "since this subdivision is outside the city limits of New Smyrna Beach and due to the fact that there is not enough power available at this time . . . "

Similarly, FP&L engaged in competition for customers with New Smyrna Beach in the Mission City area.

In April, 1958, the city received a petition signed by people living outside the city, similarly requesting permission to be served by FP&L. The customers complained of poorer service with more interruptions and higher rates than FP&L. The City Attorney advised that before any utility facilities could be sold it would have to be ratified by a sufficient part of the electorate. City minutes, 4/28/58.

For another example of complaints from customers and a petition for the city to sell its outlying distribution facilities to FP&L, see City Commission minutes, Book #9, for June 27, 1966 and July 9, 1966. See also minutes of December 11, 1958 (Mr. R. D. Berille seeks and gets permission to be served by FP&L).

In 1964, some residents of Edgewater and Samsula, city customers, had requested service from Florida Power & Light. The city retained the customers. City Commission minutes, September 28, 1964. Two years later, one resident, Edward A. Kersey, attended a City Commission meeting and wrote a detailed letter seeking to change from New Smyrna Beach service to FP&L. City Commission minutes, May 23, 1966 and June 27, 1966 (recording Kersey's letter of June 24, 1966). However, subsequently Edgewater franchised FP&L service.

Between the period 1971 to the present, there has been active competition between New Smyrna Beach and FP&L to serve a group of poultry farmers in the Samsula area. Documentation of the competition for these customers includes: Memo from J. T. Bensley, Director of Utilities to the Utilities Commissioners and Counsel for New Smyrna Beach, July 12, 1971; handwritten notes ~~(PENNARS BY RICHARD REID?)~~ of July 7, 1971; newspaper article appearing in the New Smyrna Beach News, July 22, 1971; memo from Bensley to Utilities Commissioners and Counsel of New Smyrna Beach, August 9, 1971; letter from Thomas J. Lawrence, president, Volusia County Farm Bureau to the city Utilities Commission, August 4, 1971; letter from Bensley to Mr. Berrien H. Becks, Sr., Esq., September 9, 1971; letter from Berrien Becks, Sr., Esq., to the city attorney, ~~Augu~~ August 23, 1971, and forwarded E. W. Gautier, attorney for the Utilities Commission by memo of August 26, 1971;

letter from Berrien Becks, Sr., Esq., to Bensley, September 13, 1971; memo from Bensley to Utilities Commissioners and Counsel, September 15, 1971; letter from W. M. Chanfrau, Esq., to John E. Chisholm, Attorney for the Utilities Commission, March 31, 1978; letter from Jack Pous of R. W. Beck and Associates to Mr. B. W. Wait III, P. E., April 13, 1978; letter from Chanfrau to Manning A. Stair, FPSC, April 7, 1978 (asking that the farmers be allowed to receive service from FP&L and noting that at least 8 other farmers in the area would also prefer to receive service from FP&L); letter from Stair to Chanfrau, April 18, 1978, noting that the FPSC will investigate; letter from Stair to B. W. Wait, III of New Smyrna Beach Utilities, April 18, 1978; letter from Wait to Chanfrau, Esq., May 5, 1978; letter from Pous to Wait, May 11, 1978; letter from Chanfrau to Wait, May 31, 1978; Report prepared by B. W. Wait, III on June 6, 1978. New Smyrna Beach has reduced rates applicable to certain customers to be competitive with FP&L. See Resolution 36-78, Sept. 27, 1978, affirming intention of the Utilities Commission to be competitive.

FP&L filed suit in 1979 against New Smyrna Beach to enjoin it from serving certain customers within the City's corporate limits and has complained to the Florida Public Service Commission. FP&L's injunction request was denied. The Public Service Commission action is pending. PSC Docket No. 79-0380 Circuit Court 79-1563.

The City Minutes for September 28, 1956, indicate that competition for customers in the Samsula area dates back at least that far. At the meeting the city manager read a letter from Mr. R. B. Berg of Samsula stating that he had discussed the possibility of having FP&L supply electricity to Samsula with a representative of the company. That representative, Mr. Cole, had assured Mr. Berg that the company had the capacity and willingness to serve them, although it wanted the city to make the request. Mr. Berg said the situation was of emergency proportions and requested that FP&L be allowed to cut in right away "after which sale or lease of these lines can be taken up." Berg presented a petition from Samsula residents in support of his request. Decision was tabled. At the same meeting, however, it was reported that Mr. Jess Thomas of Reynolds, Smith & Hills had

recommended that the city discontinue electric service in the outlying areas. The City Attorney advised of the necessity of having an election before such action could be taken.

A. B. Wright wrote to New Smyrna Beach's mayor on August 24, 1964 to advise him that FP&L had received requests for service from various City customers. Mr. Wright offered to negotiate the sale of New Smyrna Beach customers to the company.

FP&L again wrote to the city, on February 19, 1965, asking the city to consider selling or leasing its system, and noting that if FP&L were providing electricity to the city it would "lend its full support toward attracting industry to the area."

On March 8, 1965, one city customer came to the City Commission meeting to request service by FP&L. Minutes.

3. Other Customer Competition.

A representative of the Industrial Committee requested the City Commission, on September 21, 1961, to provide him with a letter stating that the City would allow any new industry whose power needs exceeded those that the City could meet to purchase power from FP&L. The Commission agreed to guarantee an adequate power supply for new industry. Minutes.

GAINESVILLE

1. Yardstick

June 4, 1966, a study was presented to the Utilities Committee, prepared by Milton Kafoglis and Norman Keig, Department of Economics, University of Florida (E-9574 Document #543867-92). The study, "Electricity Rates for Residential Service In Gainesville", discusses rate structure for the city and sets out comparisons of rates statewide, including comparison with rates of FP&L. The report assumes throughout that competition exists, both "yardstick" and direct competition for industry or other potential, incoming customers.

Gainesville has other reports and studies in a similar vein, including "Engineering Report, Electric Utility Rates, City of Gainesville, Florida", performed by Ebaugh and Goethe, Inc., dated May 1967 (E-9574 Doc. 540083-540131). This report recom-

mends that the city's "large power rate" be revised, in order to be more competitive in attracting industry which is considering locating in the area. The study notes (pp. 2-4) that "The large utilities usually write many special rate schedules which are designed to meet competition with other wyas of serving special loads." The study's recommendation that the "large power rate" be reduced is based on a comparison that shows that "Gainesville's large power rate results in costs to the customer which are substantially above the average of those systems studied." The systems studied included FP&L.

An internal city document of July 15, 1978, a memo to Commissioner Howard from Cranmore W. Cline regarding evaluation of operations, indicates not only the existence of yardstick competition with Power & Light, but also the fact that competition for economic fuel supply and access to joint power or pooling arrangements can determine whether ultimate rates will be competitive. The memo suggests that a rate evaluation and comparison follow the format of the "Financial and Statistical Report" supplement to a FP&L annual report (presumably the most recent annual report). The memo also notes:

> Since the cost of fuel is a major cost of producing power, the price of coal delivered to Deerhaven II will determine whether we will be able to produce power economically for the customers as well as sell surplus power competitively. If power cannot be produced at competitive prices, then the burden on the system's customers will obviously be much greater. It would be my recommendation that Florida Power Corp's fuel subsidiary [sic] Electric Fuels Corp. be contacted to explore joint venture possibilities in ownership of coal energy and transportation.

Another example: February 27, 1963, John Kelly wrote to a Gainesville resident, Mrs. Wilbur Hoskins and in response to her inquiry he referred to competition with Power Corp. and Clay Electric Cooperative, and compared rates.

2. Competition for Border Customers.

A February 4, 1957 squib in the Gainesville Sun notes that in 1927 Power Corp. attempted to extend its service into the city limits of Gainesville.

Mr. Howard Reilly currently Operations Manager for the Gainesville system and a former employee of Florida Power

Corporation, has described intense door-to-door competition between the two systems in the 60's. As a Florida Power Corporation employee, he was sent in 1962 to win customers to the Corporation. It was explained to him that Gainesville was infringing on Power Corp.'s territory. In 1963 or 64, Power Corp. placed in business the Alachua County Utilities, Inc. to set up a water and wastewater plant and develop a Power Corp. package policy whereby water and sewer would be provided only to customers who also agreed to use Power Corp. electricity. Alachua County Utilities was subsequently sold to a private land developer, and later sold again, this time to the Gainesville-Alachua Regional Utilities Board.

3. Other Customer Competition

The Chamber of Commerce for Gainesville provides a "typical billing" to any industry which requests it, comparing their probable monthly electricity costs, given their usage data, under Gainesville's rates and those of Florida Power Corporation. Such information was provided to Sperry Rand Company, Laurens Glass Company, Atlas Worthington, and IBM. The possibility of Atlas Worthington, Laurens Glass and IBM becoming Gainesville customers was explained by Mr. Chuck McKuen of the local Chamber of Commerce. See also handwritten notes of a meeting of December 28, 1965, between John R. Kelly and Robert Roundtree of Gainesville and three representatives of Sperry Rand Corporation. These notes indicate that electric power rates to Sperry were discussed. Under the heading "To Maintain Competitive Rates to Sperry" it is noted that a Sperry representative referred to Florida Power Corporation customers within the city limits such as the University of Florida. Shortly after this Sperry moved out of Gainesville.

The University of Florida, which has its main campus within the city limits of Gainesville, is nonetheless served by Florida Power Corporation. There has been active and intense competition for this account between Power Corp. and Gainesville. Thus, throughout 1962 there was correspondence exchanged between repre-

sentatives of the city utility department and the University. One such letter, written February 9, 1966, is from W. M. Corley, Jr., Assistant Business Manager, Board of Regents for the University System of Florida to Ed Turlington, City Commissioner, and it indicates that Gainesville's proposal to serve the main campus of the University had been rejected in favor of continued service from Power Corp. It suggests, however, that the city might be the appropriate supplier to the P. K. Yonge - Coastal Engineering department. On August 15, 1962, however, W. Ellis Jones, Business Manager for the University of Florida wrote to John R. Kelly rejecting city service for the Engineering school as well. Similarly, on September 18, 1968, William E. Elmore, Vice President for Business Affairs wrote to Robert E. Roundtree of Gainesville rejecting city service. The reason given by the University for choosing Power Corp. was the Company's lower rates.

Equally vigorous competition existed between the city and Florida Power Corp. for the Veterans Administration Hospital, which was built on the Gainesville city line. Active efforts to acquire the VA account produced a series of correspondence. The Hospital decided to buy electric power from the city, and a contract was entered into on October 7, 1963. In order to win the account the city agreed to a contract clause providing that in no event would the city's rates exceed those of a competing supplier by more than 7%. See inter-office memo from John R. Kelly to the City Commission, October 20, 1969 regarding Electric Billings to VA Hospital.

The VA Hospital competition provides an example of the way in which the statewide territorial agreement between FP&L and other utilities affected actual customer competition. In an internal Florida Power Corporation "Memo to File", regarding Proposed VA Hospital - Gainesville, Mr. William B. Shenk wrote, on September 4, 1962:

> Mr. R. W. Bostwick, Division Manager of Florida Power & Light, Miami, called WBS and said that one of his men there would like to talk with me about a project in which he though we were very much interested. The man he introduced was Mr. H. M. Stainton, Manager of Power

> (nickname "Scooby"). Mr. Stainton then came on the line and told me that he had been in Washington last week and while there visited the offices of the Veterans Administration. He spent some time with Mr. J. B. Douglas, head of the Electrical Section.
>
> Mr. Douglas asked Mr. Stainton if his company would serve a VA Hospital if it were within the city limits of a city having a municipal electric power system. I commented to Mr. Stainton that this undoubtedly had reference to the proposed VA Hospital at Gainesville and he agreed.
>
> Mr. Stainton said that Mr. Douglas is a strong supporter of the tax-paying power companies. He suggested that I call Mr. Douglas and tell him that it was at his, Mr. Stainton's, suggestion. He expressed the opinion that we would gain by a conversation with Mr. Douglas. He gave me his telephone number . . .
>
> He said another man that we should know there is Mr. Rinne who is in charge of air conditioning in the VA. I expressed my appreciation to Mr. Stainton and Mr. Bostwick and told them we would like to have a chance to return the favor.

This example makes clear that FP&L, through its statewide territorial agreement, was an actively participating colleague of Power Corp. in the latter's direct competitive efforts with the City of Gainesville.

By letter of July 21, 1970, Fred Cantrell, Secretary of the University Village Apartment Project wrote to John Kelly rejecting the city's bid to provide electric service to that project, explaining that it would purchase electricity from Power Corp.

Gainesville supplies electric service for lighting to the ballpark in Newberry although Power Corporation was interested in the account. See interoffice memo, Maurice H. Phillips, September 11 1967; inter-office memo of R. C. Roberts, September 29, 1967.

TALLAHASSEE

1. Yardstick

A comprehensive rate study was done for the City of Tallahassee, by R. W. Beck & Associates, May 1966. The study proposes certain new rate schedules, and at page 2 notes that "the principal effect of adopting the proposed new electric rate schedules would . . . provide an attractive rate for new large industry; and to provide for more competitive rates. . . .[T]he end block in the large power rate is . . . among the lowest end

blocks for large service in the state. This rate should be particularly [attractive] to new large industry." Again, the study makes clear the relationship between access to economical bulk power supply and competitive rates. Among the recommendations in the study is:

> . . . In connection with its long range power supply program every attempt should be made to firm up the existing interconnection with Florida Power Corporation and to extend its use not only for emergency standby but for exchange of surplus capacity, economy energy, and scheduled maintenance energy as well . . . The City should plan an active role in area and regional power pooling studies by municipal electric utilities in the state and other programs that might ultimately bring the benefits of reduced power costs through modern power pooling to the City of Tallahassee.

In discussing cost of service allocations in comparison, the study compares Tallahassee's costs with other municipal systems and the four major privately-owned utilities in Florida, including Power & Light. In discussing the large power rate, comparisons are again made between the city and FP&L.

Tallahassee continues to be aware of the importance of maintaining competitive rates in order to maintain a viable system. Thus, in the city files is a news article from the Deland Sun News of August 2, 1978, titled "Lake Helen Electric Sparks Cassadaga Ire," reporting that Lake Helen service users were dissatisfied with their relatively higher rates and were petitioning to switch over the Florida Power Corporation service.

Electric rate studies and financing documents often include rate comparisons with other utilities in the state, including FP&L.

2. Customer Competition.

In December, 1966 Big Bend Engineering Company, Inc. produced an "Engineering Report to the City of Tallahassee Concerning a Proposed Industrial Plant Electrical Load." Following a discussion of the City's ability to serve the new load, including consideration of new transmission facilities which might have to be added to the City's system to serve the proposed plant, the report states as follows:

> This load is of sufficient size and of such an unusually desirable nature that a special rate is going to be required to meet competition. A proposed rate for this customer would take the form of an individual contract probably along the lines of the attached special rate for the University of Florida with appropriate changes. It would not be a part of the city's Electric Rate Schedules available for other customers.

Although the report does not identify the company considering coming to Tallahassee, it notes that the load would be "of sufficient size and of such an unusually desirable nature that a special rate is going to be required to meet competition."

A letter of September 25, 1967 was sent to Arvah Hopkins, City Manager, from W. Guy McKenzie, Jr., Esq. on behalf of an unnamed client, a chemical plant considering settling on the St. Marks River near Tallahassee and interested in comparing city electric with other available electric service as a factor in its locating decision. According to the correspondence, the company wanted the assurance of the city that it could meet its load requirements and "that the power rate is comparable with that furnished similar industries in other southeastern locations."

On January 23, 1978, Mr. Dan Kleman, City Manager wrote to Mr. G. A. Brosseau, Corporate Industrial Engineer of Miller Brewing Company regarding electric rates. On February 24, 1978, Mr. Kleman sent Brousseau an Electric Rate Study for Tallahassee prepared by R. W. Beck and Associates. A subsequent memo to the file, from Kleman on February 2, 1979, indicates that the Miller Brewery settled in Georgia instead of Tallahassee for several reasons, including available water supply.

MT. DORA..

1. Yardstick.

On August 3, 1976, a motion was made to reduce industrial rates to bring the rate more into line with what other utilities charge.

2. Customer Competition.

On April 21, 1970 Doric Foods moved from Umatilla to Mt. Dora. Doric Foods claims it wanted to buy power from Florida Power Corporation because FPC was cheaper; Doric claims the City agreed to competitive power rates. The matter is in litigation.

Bel-Aire homes wanted City electric but only if it could be provided on the same basis as FPC Policy 7. District 3 will annex into the City if it can maintain FPC power.

On August 23, 1960, the City withdrew an application to serve a new subdivision owned by Jet, Inc. because the FPC contract then in force prohibited such service.

City Council minutes for ~~October~~ September 20, 1966, reveal that a resident of Southernaire Mobile Park complained of electric rates higher than Power Corporation's rates. The Clerk was instructed to write a letter to the resident explaining that service in that area had been requested by the owner of the Park.

It should be noted that the City is now in the process of negotiating a formal territorial agreement with FPC which would involve transfer of some 80 customers to that system. There has been competition with FPC for retail customers particularly along the subdivision expansion areas around old and new Routes 441.

BARTOW

1. Yardstick.

Bartow makes it a frequent practice to publish rate comparisons among its own system, Florida Power Corporation, Tampa Electric Company, and the Lakeland system in documents related to rate changes.

KISSIMMEE.

1. Yardstick.

Kissimmee makes its own listing, comparing electric rates not only of those systems which border the city system, but for all Florida utilities including FP&L.

2. Competition for Border Customers

Kissimmee and Florida Power Corporation have had an active competition for customers situated in the area at the edge of the two systems' distribution lines. Power Corporation recognized this competition, and in order to avoid wasteful duplication of lines and other plant facilities, the two systems entered into a retail territorial agreement, now on file with the Florida Public Services Commission.

NEWBERRY

1. Yardstick

In 1971 Newberry received a message from the head of the school district complaining about the level of rates charged by Newberry for a school located within the City in comparison to the rates charged for a school in Hawthorne, which is served by Florida Power & Light. The school district manager demanded an explanation of the rates and why they were so high. Board of Public Works, Minutes, August 9, 1971.

The City Commission and the City Utility Head have been aware and have been informed of the importance of maintaining rates competitive with those of all utilities within the state of Florida. On May 22, 1973 Robert Bathen of R. W. Beck appeared before the City to discuss the need for, and competitiveness of, rate increases by the City. A special joint meeting of the City Council and the Board of Trustees was held on August 16, 1971, to discuss the City's rates in comparison with FP&L and others, and specifically to address the school's complaint. Two years later Mr. Kivler from the School Board wrote again, asking for data so the school system could compare the city's rates with others.

2. Customer Competition

On December 4, 1968, A. L. Battle, Jr. of Power Corporation spoke with John Caldwell, Davis Parker (Newberry Commissioner), and Clifton Parker, the Commissioner's brother. Clifton Parker commented that "the City of Gainesville had said that if a request for service was received from anyone in Newberry, a line would be run to serve the load." Inter-office memo from A. L. Battle, Jr., to E. E. Dearmin, December 4, 1968.

ALACHUA

1. Yardstick.

Alachua participated in the ~~Toroida~~ Florida Industries Exposition through the FMUA, which prepares a directory of industrial advantages of member cities. Such information for Alachua in 1969, for example, details that "our utility rates are very competitive."

The City serves 95 customers outside the city limits. It serves 148 total customers with water and sewer service -- 48 of these have electric service with Florida Power Corp. (Source: George Stevens)

2. Customer Competition.

Alachua is being considered as a location for a major producer of computer parts. If the company decides to locate in Alachua, area load could increase from 5 to 40 MW. George Stevens of Alachua and Dick Hester of Gainesville indicated that to their knowledge the computer firm has considered at least two other sites in Florida, including one in Alachua County.

In June or July of 1979 an engineer from the computer firm (George Coleson) met with George Stevens to discuss the project. Mr. Stevens discussed a ~~variety~~ variety of subjects with the engineer, including the cost of electrical power in general and specifically the 10% discount Alachua offers to billpayers who pay before mid-month. The engineer informed Stevens that that discount could be of great importance. (In February of 1980, the City Commission, however, eliminated the 10% discount.)

ST. CLOUD.

1. Yardstick.

The City addressed its citizens in a memo of March 22, 1976, in which it recognized that it was essential to have competitive rates in order to remain in business, and noted that "our rates compare favorably with others throughout the State. We will keep them that way as long as we can -- when we can't and there is no ~~alternative~~ alternative then and only then would we consider going out of the generating business."

SEBRING

1. Yardstick

See Mr. Jim Phillip's letter of February 14, 1973 to Robert Bathen of R. W. Beck, discussing ways to keep the city's rates at the level of Florida Power Corporation rates. More recently, Mr. Phillips indicated in a letter to a realtor Glenn Gallagher,

that "the Commission has maintained a very competitive relationship with other power suppliers in the area." Letter of June 29, 1979.

One letter sent to Florida Power and Light Company was from a Sebring resident and electric customer, Adolph Flegenheimer (March 15, 1962). Mr. Flegenheimer expressed his disappointment that the Sebring system had not been sold to FP&L and suggested "next time . . . do some judicious advertising and enlighten the consumers as to the rate you will charge and what they are now paying or should I say being overcharged."

On September 12, 1968, the Sebring Utilities Commission Chairman, L. C. Smith, announced electric rate reductions amounting to 6% of electric revenues for the city. He also announced a high use, low cost residential rate known as the Medallion rate. According to a news release issued by the city, the Medallion rate "is the lowest residential electric rate in Highlands County and Central Florida." News Release for Thursday, September 12, 1968. The news release challenged: "IN FACT, WE WOULD LIKE TO KNOW IF ANYONE KNOWS OF A LOWER RATE TO BE FOUND ANYWHERE IN FLORIDA."

On August 26, 1971, Mr. Phillips, Sebring Utilities General Manager, wrote to Fred Brock of the Fort Pierce Power Plant enclosing copies of an advertisement Sebring had run in the local newspaper describing its Medallion Rate. Mr. Phillips noted that Sebring "had splendid response on this rate."

On June 8, 1971 and February 15, 1972, Mr. Phillips wrote to potential new residential customers in Ohio and Pennsylvania describing services and rates available from the Sebring system. These letters were in response to inquiries, one of which, from Mr. Arthur H. Ross of Kingston, Pennsylvania, had been forwarded to the Sebring Utilities Commission by the Florida Power & Light Company.

On February 2, 1970, the Utilities Commission resolved to offer an electric rate to certain public schools and government agencies at a rate 5% below the applicable published general rate schedule of Florida Power Corporation. (Minutes, Special Meeting of the Sebring Utilities Commission, February 2, 1970.)

See also 1977 "Comparison of Demand Rate Schedules of Sebring Utilities Commission and Florida Power Corporation."

2. Customer Competition.

General Manager Phillips wrote to Mr. W. N. McPherson, Regional Construction Manager for McDonald's Inc. on September 20, 1972, following up on a meeting between the two. Phillips explained in the letter:

> Although electric utility service is available to your site from both Florida Power Corporation and the Sebring Utilities Commission, the Commission very much hopes that it may have the privilege of serving you as, with perhaps two or three exceptions, it serves all of the other business establishments in that area including the Southgate Shopping Center and properties adjacent to your site.
>
> The Commission has sought to maintain fully competitive electric rates and this is best illustrated by reference to the ~~attached~~ attached two pages of rate comparisons prepared by our Consulting Engineer, R. W. Beck and Associates . . .

FORT MEADE.

1. Yardstick.

When, in 1964, Florida Power Corporation offered to purchase the Fort Meade system, representatives of Power Corp. met with the City Commission, and one of them, Mr. Simmons, made these comments:

> "The commercial rates we have to take with individual customers, because your commercial customers in Fort Meade do not use demand motors and we do and load factor becomes quite an issue in our rates. Unless we talk with you personally or to the individual commercial customer we couldn't tell whether the rates would be more or less. I can say this that your commercial rates in Fort Meade are considerably less than most Cities. In some instances considerably less than ours. In some instances, well, one instance for example, this school out here is your largest. We would consider it commercial customer. I think you better change the tape. The school you classify as industrial; we classify as commercial. It is the largest commercial customer that you have and comparing that rate with our commercial rate as best we can without knowing exactly what demand they are setting out there, there is about a $200 — this is $13,000 bill we are talking about for the school in that area. Their bill will run about $200 a year more on our rate than they would on your rate. Now, the Sun Coast Canners out here . . . [y]ou classify as industrial and we would classify it as industrial in our standards, and I believe it's the only industrial customer we would classify as industrial inside the city limits of Fort Meade, and their bill would come down considerably on our roughly $2,000 annually on our rate."

By letter of December 8, 1969 to the City Commission, FPC promised, again as part of a purchase offer to acquire the City system, an immediate reduction in electric rates. On September

18, 1969 a newspaper article had appeared, "Florida Power Offer to be Attractive", which publicized a major reduction in residential electric rates of the City system if the system were sold. A similar article appeared on September 25 1969, "Florida Power Evaluation is Underway." This article also reported that the City could expect increased promotional activities to bring new commerce and industry to Fort Meade. Other articles with similar themes are "City Would Save Under Florida Power Rates", October 2, 1969 (reporting "sharp" rate differential between FPC and Fort Meade); "Offers $2,750,000 for Electrical Distribution System", October 16, 1969 ("Florida Power's low rates would save high-use families as much as $61.68 per year"). See also, Florida Power Corporation Proposal to Purchase the Municipal Electric Distribution System of the City of Fort Meade, October 14, 1969.

In the 1960's, Power Corp.'s rates to Fort Meade for wholesale power were higher than the rates charged for the same type of power to the REA cooperatives. Fort Meade was concerned about the competitive consequences, as evidenced in the following: Minutes of the City Commission of Fort Meade meeting of December 14, 1965; letter of June 10, 1969 from Anthony R. Hancock, Mayor of Fort Meade to General Manager of the Tampa Electric Company; and letters of June 27, 1969 and July 22, 1969 from Fischer S. Black of TECO to Mayor Hancock.

In addition to the above, plaintiffs rely on evidence of competition between FP&L and municipal systems other than plaintiffs. An example is the recent claim by B & B Grocery in the City of Moore Haven, citing as a reason for requested rate relief, FP&L's retail commercial rates for similar stores.

9. If the City contends that FPL is refusing, or has at any time during the designated period refused, to sell wholesale power to the City, state the basis for your contention, identifying specifically each act, failure to act and document which supports your contention, and the following: name and title of the person making the request for wholesale power; form of the request (i.e., written or oral, in person or by telephone) and, if oral, a list of all persons present at the time the request was made; date of the request; person to whom the request was addressed; name of person who responded to the request; form of the response (i.e., written or oral, in person or by telephone) and, if oral, a list of all persons present at the time the response was given; person to whom the response was addressed; and date of the response.

Answer to Interrogatory 9

9. Prior to the Supreme Court's affirmation of FPC jurisdiction over FP&L, FP&L either refused, as a matter of express and repeated policy, to sell firm wholesale power to municipal systems or sought unlawfully to condition the sale of firm wholesale power. Evidence of FP&L's policy in the period up to 1973 includes:

(1) Testimony of top FP&L officals in Gainesville Utilities Department and City of Gainesville, Florida v. Florida Power Corporation and Florida Power and Light Company, CA No. 68-305-Civ-J. See, in particular, depositions of Robert H. Fite at 8-12; 15-16; 69, 81-82 (September 25, 1972); Alan B. Wright at 11-13; 47-52, 55-57 (September 28, 1972); Richard C. Fullerton at 82-84 (September 26, 1972). C.S. Coomes (Oct. 12-13, 1972) at 83-84; R.D.Hill (Oct. 11, 1972) at 89.

2. In addition to documents referenced elsewhere in response to this interrogatory, the following documents show peninsular Florida-wide recognition of FP&L's policy of refusing to sell wholesale power to municipal systems:

(a) March 16, 1967 memorandum from Mac Cunningham to FMUA Officers and Directors and Legislative Committee ("FP&L, as you know refuse (sic) to sell wholesale to any municipalities, and to my knowledge their only wholesale customers are four Rural Electric Cooperatives."

(b) March 27, 1967 handwritten notes on meeting of private and public systems from throughout Florida ("Fite ... policy of FP&L not to sell wholesale")

(c) May 13, 1963 memorandum for file from J.S. Gracy (Florida Power Corporation) re FPC explanation to TECO on why new municipal wholesale loads should not be served (PC-2065) ("... we felt it was not good business for us to take on any additional wholesale for retail communities and I personally felt that we would have been much better off if we had adopted many years ago the policy that FP&L adopted." See also May 7, 1963 memorandum to W.J. Clapp from H.K. McKean (PC-2063).

3. Evidence, relating to the Gainesville case conspiracy,

of FP&L's policy of refusing to sell wholesale power in Florida Power Corporation's service territory. See generally, documents cited in Gainesville decision. See, in particular, January 11, 1963 telegram from Robert H. Pite to Albert C. Valde, Chairman Citizens Committee for Representative Government, Winter Garden, Florida, (Aug. 8 memorandum doc. #24), which states "Florida Power & Light Company has no formal or informal request that I know of to sell power to Winter Garden. We do not supply municipal systems firm wholesale power for distribution through a municipal distribution system. Winter Garden is beyond the limits of our economic service area which, in itself, would preclude a supply from our company even if the other conditions cited above did not prevail."

4. FP&L's refusal to permit resale of power (sold by FP&L to cooperatives) to municipalities. See generally "1" above and FP&L Rate Schedule "RC," "Limitation of Service Provision" and "Suggested Letter From FP&L Company to Florida 35 Glades" (Both documents appear as 28F of Aug. 9 memorandum.)

5. Evidence relating to FP&L's refusal to sell wholesale power to particular cities, including (in addition to the deposition testimony cited above):

a. Clewiston. FP&L's refusal to serve Clewiston is documented in the record and initial decision in Florida 37 FPC 544, 572-73 (1967), whose findings of fact and law the FPC found to be "fully supported" by the record. See also suggested letter from FP&L to Florida Glades (201877).

b. New Smyrna Beach. See

(i) City Commission minutes of October 3, 1958; October 13, 1958; June 19, 1958; July 27, 1959; August 10, 1959; August 5, 1959 letter from Alan B. Wright Vice President FP&L to City of New Smyrna Beach (PL-65) ("In regard to your inquiry concerning the sale of wholesale power on a long term basis, this will confirm our previous statement in regard to this question; namely that we do not have any arrangement to sell wholesale to municipalities on a long term basis and we would not change our policy at this time.")

(ii) October 6, 1970 Memorandum from Oliver J. Smith, Secretary-Treasurer, Utilities Commission to Utilities Commission, Counsel and Director re: "Firm Power" (agenda item Utilities Commission Meeting October 7, 1970). See also "Says Utilities Face Problems," June 18, 1970 Daytona Beach Morning Journal

> Utilities Commissioner John Gassell outlined the immediate problems, some of which he termed "critical" and "needing a solution."
>
> "He said the Utilities Commission must find a way to provide firm power to the community ..
>
> "Gassell suggested, and Swanson agreed, that if both commissions took a firm stand that the electric utility won't be sold, the City's position might be strengthened and it might help with the present negotiations with FP&L for purchase of firm power."

(iii) October 9, 1970 letter to J.J. Bensley from J. Berry re: Negotiations with FP&L; Oct. 10, 1970 letter from James J. Berry to Alan B. Wright (261047) enclosing two draft letters (261024-261029);

(iv) October 12, 1970 letter from J.J. Bensley, Director of Utilities, City of New Smyrna Beach to Mr. Alan B. Wright, Vice President, FP&L;

(v) October 24, 1970 letter from Chadwick B. Hucks, Smith & Gillespie to J.T. Bensley ("In the telephone coversation yesterday, Mr. Wright stated that they could not commit themselves on any basis other than a power supply based on capability "as available" .... the same as is now in effect. It was emphasized that this was clearly understood by us."

(vi) November 2, 1970 Alan Wright letter to J. Berry re: New Smyrna Beach and FP&L (FP&L's provision of power "should not be interpreted in any manner as firm power but rather as stated, on the basis of availability.")

(vii) November 25, 1970 letter of FP&L's Alan B. Wright to J.T. Bensley, Director of Utilities.

(viii) New Smyrna Beach Utilities Commission minutes; March 29, 1967; April 12, 1967; and see also (a) March 27, 1967 handwritten memorandum cited above (recording John Little, New Smyrna Beach Utilities Director, as stating, inter alia, "could not in good faith recommend building another generating station without first asking FP&L if they will furnish

wholesale power" (b) March 29, 1967 Utilities Commission minutes ("Mr. Little stated there are two alternatives: to try to buy firm power from FP&L, although their policy is to sell no firm power to municipalities...." and (c) Coomes' Gainesville deposition, supra, at 106-109.

(ix) July 9, 1970 letter from Alan B. Wright, Vice President FP&L to Hon. Fred Doster ("from time to time the Company has supplied the City with emergency power up to approximately 3,500 Kw. We will continue this arrangement on the same basis -- namely that it is for emergency purposes and not to be considered firm power."

(x) March 22, 1965 letter from J.U. Gillespie to Hon. William Hathaway, Mayor ("If FP&L Co. can afford a proposition of that kind [takeover], then why can't the City work out a feasible plan whereby in the interim power can be bought to supplement the needs for any plant until such time as the City can accumulate a financial reserve sufficiently large to construct supplemental power facilities?"

c. Starke. See

(i) January 28, 1955; February 1, 1955 memorandum from A.B. Wright to Mr. J.T. Moore Division Manager Re: City of Starke -- Request for Purchase of Power

(ii) February 1, 1955 memorandum from A.B. Wright to Mr. R.H. Fite President and General Manager Re: City of Starke --Wholesale Power;

(iii) May 19, 1970 letter from Alan B. Wright Vice President to Mr. James E. Macrae, Chairman City Council (272046). See also December 23, 1954 letter from E.E. Dearmin (Florida Power Corporation) to Jackson (blind copy to Fite) re: Florida Power Corp.'s refusal to sell to Starke (PL 1366).

d. Ft. Pierce. See

(i) April 19, 1964 Fullerton/Hill memorandum (PL-24) (Re: visit from Ft. Pierce citizen --"I explained that we were not interested in selling wholesale but had an open mind about anything else");

(iii) May 12, 1965 Harding/Hill letter (PL-36) City is primarily interested in standby or wholesale;

(iv) October 20, 1970 Ft. Pierce newspaper article (PL-59).

(v) October 13, 1970 R.D. Hill memorandum to file re: meeting with Ft. Pierce. "The matter of firm power was discussed but we told them we were not interested in supplying firm power"

(vi) October 13, 1970 Memorandum from Commissioner Nelson to Mayor re: meeting with FP&L "FP&L has not and will not commit itself to firm power although it may be considered if and when FP&L has facilities for power in excess of its directly connected instantt needs."

e. Homestead. See e.g.,

(i) July 19, 1967 Pearson/Fite letter (PL-1244) requesting wholesale power (in light of FP&L Congressional testimony that it was not FP&L's policy to refuse); see also related July 19 Pearson letter to Senator Magnuson (PL 1245).

(ii) July 31, 1967 Pearson/ Fite letter (PL-92) (summarizes July 27, 1967 meeting; "The request of the City of Homestead to purchase base power in 5,000 and 10,000 Kw blocks was also discussed as was the question of the increase of the amount of power now made available to the City of Homestead by FP&L." FP&L said it would discuss wholesale sales upon a resolution of a territorial area agreement.

(iii) July 28, 1967 "RHF" notes re: meeting with Homestead (PL-93) Homestead sought wholesale most of all. Upon direct request for wholesale, FP&L said it provided none, but would not refuse if territorial agreement were signed -- but would not give City REA rate.

(iv) December 30, 1967 Autrey/Fite memorandum (PL-85) FP&L did not want to sell wholesale power, but did not want to refuse it. FP&L told Commissioner Mayo of PSC that Homestead has emergency power and has agreed to listen to FP&L acquisition proposal;

(v) December 28, 1967 Ivey/Fite letter (PL-84) notes discussion of wholesale power and asks FP&L to "Please let me know if your Company has changed your policy in this respect and if so what we could expect in the way of rates."

(vi) May 8, 1971 memorandum for discussion from James J. Berry re Rental of Temporary Units by City of Homestead, Florida.

f. Lake Worth. See

(i) November 4, 1957 City Commission minutes record that R.D. Hill, General Manager of FP&L, offered to lease the city mobile generating units. The minutes continue: "Mr. Hill said that the mobile unit could be available on three days notice ... He emphasized that they were not wholesaling power, but just trying to be helpful."

(ii) November 6, 1970 letter from Evert A. Young, Project Manager Reynolds, Smith & Hills to Utilities Authority re: City of Lake Worth, Florida Interconnection with FP&L (at October 28, 1970 meeting with FP&L "The Company representatives indicated that they are not at the present in a position to provide firm power and, therefore, could not include the firm power schedule.")

(iii) Sept. 25, 1972 Fite Gainesville deposition, at 16 ("Lake Worth wanted to buy power wholesale ... and our policy was not to sell wholesale, as I testified.")

In addition to the above, further illustration of the awareness of FP&L's policy of refusing to sell wholesale to municipals includes:

1. The July 19, 1967 letter from Pearson of Homestead to Senator Magnuson (PL-1245) rebutting FP&L's testimony that it has no policy against wholesale sales.

2. June 19, 1958 New Smyrna Beach City Minutes (Aug. 8 memorandum #28G) where New Smyrna Beach was told by its engineer that "unless the City was planning to buy more generating equipment and informed FP&L Co. to that effect, then they may not seek power for resale under normal circumstances. He stated that it would be better to create a state of emergency before asking them."

3. March 29, 1967 New Smyrna Beach Utilities Commission Minutes, where Mr. Little states, as an alternative, "to try to buy firm power from FP&L, although their policy is to sell no firm power to municipalities." See also Gainesville deposition

testimony of Charles S. Coomes at 106-109.

4. 1967 "Fact Finding Committee Report for the City Commission of Haines City, Florida." (PL 1200) (It states, at 3, "It would not be feasible at this time for us to contact another source of power in the event we moved to distribute. Due to the interconnecting systems in existence between the various distributors and their reciprocal agreements for supplying each other as required during emergency periods and peak load incapacity, it could not be expected that any supplier would transgress.";

5. FP&L's resistance to sale of wholesale power to Vero Beach as evidenced by

(i) FP&L's statement in 1959, in the context of talks with Vero Beach, that it would not sell wholesale. See Response to Interrogatory 21, Vero Beach.

(ii) FP&L's talks with Vero Beach in 1967-1968, in which Vero Beach repeatedly asked for firm wholesale power and FP&L sought to "divert" Vero Beach's attention by proposing a sale or lease. See Response to Interrogatory 21, Vero Beach.

(iii) November 28, 1967 letter from R.D. Hill to City Commission: "We are reluctant to go further into this at this time as we believe there are other alternatives which should first be fully considered" (e.g., interchange; sale or lease of system) (120984). See also memorandum to file by R.D. Hill, November 24, 1967 (PL 599).

6. FP&L's dealings with Clewiston. See, e.g., the August 26, 1965 J.G. Spencer memorandum to file re: talks with Clewiston (PL-1238). The City Council either wanted to buy wholesale or install diesels -- but councilman McCarthy "had not contacted us since he knew our 'policy' was not to wholesale to cities, but he thinks we should and that if we refuse, the Government should force us to."

7. Documents, referred to in response to interrogatory 21, 22, showing FP&L's refusal to sell wholesale or retail power to potential municipal systems in Florida Power Corporation service territory.

8. In addition to the above, Cities note further potential Cities' requests for wholesale power were deterred by the fear

that such arrangement would lead to, or involve, further FP&L takeover efforts. See, generally, response to interrogatory 21. As FP&L testified to Congress, "Homestead, along with many other cities, has consistently indicated that a permanent wholesale arrangement might lead to purchase of the city system by the company and that a wholesale contract was to be avoided because of the danger of loss of the property." "Statement for the Record by FP&L in response to testimony by or on behalf of Florida Municipalities at Senate Commerce Committee Hearings on S. 1365 on June 27-28, 1967" (PL-94) As FP&L further testified at that time, "(I)t has been pointed out that in many cases it would be to the economic benefit of a municipality's electric customers, the employees of the city electric system, and indeed, of the city itself to sell or lease its electric facilities to the company on fair terms."

9. In seeking legislation to modify the Federal Power Act jurisdiction over FP&L, R.H. Fite testified that FP&L in fact made no municipal wholesale sales. Hearings before the Committee on Commerce, U.S. Senate, 89th Cong., 1st Sess. on S. 218, Serial No. 89-38, page 210 and 89th Cong., 1st Sess., on. S..218. FP&L was viewed as a potential supplier to Gainesville, however: testimony of James H. Richardson, Hearings before the Committee on Commerce, 90th Cong., 1st Sess., on S. 1365 Serial No. 90-23. See also testimony of John R. Kelley id., Don McCarthy (Clewiston) id. Mac H. Cunningham (FMUA).

Through its participation in territorial agreements (see response to interrogatory 22) FP&L participated in the denial of all wholesale service, or competitive wholesale service, to utilities outside of FP&L's territory. As evidence of this, see

1. Documents, cited above, recording FP&L's express refusal to provide wholesale service outside of its territory and widespread awareness of FP&L's policy.

2. Sebring's unsuccessful efforts to obtain a wholesale power supply. From 1960-63 Sebring sought wholesale power from Florida Power Corporation. When Florida Power Corp. refused to sell wholesale power (see response to interrogatory 22 re Florida Power Corp.'s adoption of FP&L policy of refusing to make wholesale

sales to municipalities) Sebring requested service from TECO. Service was denied on grounds that it was precluded by territorial agreement. See

(a) August 3, 1960 letter from F. Elgin Bayless to Richard Simpson (PC 1979);

(b) April 30, 1963 memorandum from H.K. McKean to W.J. Clapp (PC 2061);

(c) May 13, 1963 memorandum from H.K. McKean to W.J. Clapp (PC 2062);

(d) May 7, 1963 memorandum from H.K. McKean to W.J. Clapp (PC 2063);

(e) May 3, 1963 memorandum to file by J.S. Gracy (PC 2065);

(f) May 21, 1963 letter from W.J. Clapp to Hon. E.L. Mason, Chairman Florida Railroad and Public Utilities Commission (PC 2066);

(g) April 25, 1963 letter from W.C. MacInnes, President (TECO) to E.O. Hunt, Chairman Sebring Utilities Commission (PC 2069);

(h) July 16, 1963 letter from Joseph O. Macbeth, attorney for Sebring Utilities Commission to W.J. Clapp (PC 2068);

(i) August 13, 1963 memorandum for file from J.S. Gracy(PC 2064);

(j) September 13, 1963 letter from W.J. Clapp to Joseph O. Macbeth (PC 2070);

(k) September 16, 1963 letter from Joseph O. Macbeth to W.J. Clapp (PC 2071);

(l) October 15, 1963 memorandum to Andrew H. Hines, Jr. from John G. Gravlee re Sebring (PC 2072);

(m) October 22, 1963 letter from W.J. Clapp to W.C. MacInnes (PC 2073) stating, in part:

> "Appreciate the opportunity of visiting with you last Friday, and discussing some of our mutual problems.
>
> Our industry in Florida, and especially our two companies, in the last two years have gone a long ways in carrying out a program of greater cooperation in the interests of the areas which we serve. Our interconnections have proven of benefit on numerous occasions, and our generation pooling has enabled us all to operate on a more economical basis. The joint information program has been effective and resulted in a better understanding by the public of our industry and its problems. The

> territorial agreements that have been worked out between investor-owned companies, together with "policies" on service areas with municipal utilities and REA's, have enabled each organization to do a better job in the interests of the public. I was certainly glad to hear you say that you think these programs have been effective and that, in the best interests of the public, they should be continued.
>
> With particular reference to the matter of selling wholesale power to Sebring, I was pleased to receive your assurances that Tampa Electric Company would honor and abide by the territorial agreement between our companies, as approved by the Florida Public Utilities Commission's Order. Further, I agree with your statement that Tampa Electric's serving Sebring would be a violation of our territorial agreement. We are perfectly willing, in case of emergency only, to help Sebring out within the limits of our ability, but I don't think either one of us should be called on to subsidize the Sebring municipal utility operation at the expense of our other customers."

3. Bartow's unsuccessful efforts to obtain alternative wholesale supply.

Bartow, which was receiving service from Florida Power Corporation, sought service from TECO, but was refused because of the TECO/FPC territorial agreement (see response to interrogatory 22). Evidence of Bartow's desire for an alternative, and its inability to obtain one, include:

(a) In addition to materials cited in response to interrogatory 22, see W.J. Clapp Gainesville deposition, at 379-445 and Exhibits 40-43.

(b) W.J. Clapp draft of presentation to Bartow City Commission July 6, 1959 (Clapp deposition Exhibit 48).

> "For over 30 years to my knowledge, we have had good working relations with the Tampa Electric Company. Our systems are interconnected and we swap power back and forth, helping each other out in emergencies to insure more reliable service to the customers of both companies. We have only recently agreed to go into a nuclear research and development program that we think will result in our ultimately building a joint nuclear plant at a cost of $25 million. We hope that nothing occurs that would break up this good relationship, because it would not be good for any of the area that either company serves. ..."

(c) March 7, 1961 memorandum from H.K. McKean to J.S. Gracy;

(d) December 12, 1967 letter from Florida Public Service Commission to William A. Norris, Jr. (attorney for Bartow) (PC 877);

(e) January 3, 1968 letter from W.A. Norris, Jr. City Attorney and C.R. Odom, City Manager (Bartow) to William C. MacInnes, Chairman Board of Directors, TECO (PC 879);

(f) January 7, 1968 letter from W.C. MacInnes to Norris and Odom (PC 878);

(g) June 17, 1968 memorandum from A.L. Simons to W.C. Johnson (PC 1903);

(h) Feb. 1, 1965 memorandum from W.W. Snow to A.V. Benson re: Rate hearings (PC 5017);

(i) March 11, 1959 letter from C.R. Odom to W.J. Clapp (PC 5016) (requesting permission to talk with TECO);

(j) March 16, 1959 letter from W.J. Clapp to C.R. Odom (PC 5026) (explaining that territorial agreement precludes TECO sale to Bartow).

4. Wholesale customers of Florida Power Corporation. Since the beginning of the designated period, Bartow, Alachua, Mt. Dora, Ft. Meade, and Newberry have been wholesale customers of FPC. The absence of alternative sources of supply, i.e., the absence of competition among sellers, permitted Florida Power Corporation to serve municipal wholesale customers on terms that were more restrictive than otherwise would be possible, and at rates in excess of what otherwise would be possible. As evidence of this, see e.g.,

(a) March 30, 1965 letter from Mac H. Cunningham, Executive Vice President to W.J. Clapp (PC 278) (complaining about FPC rate discrimination);

(b) March 31, 1965 memorandum from W.W. Snow to J.S. Gracy re comparison of municipal wholesale and REA rates (PC 1998) (showing rates to municipals to be ~~higher~~ higher than rates to coops);

(c) April 8, 1965 memorandum from W.W. Snow to L.H. Newman "Comparison of Present Municipal Wholesale Rates with REA Rates for Calendar Year 1963" (PC 978);

(d) September 9, 1965 memorandum from W.W. Snow to L'Mar Kane re "Restrictive" Clauses in Municipal Wholesale and REA Contracts (PC 1992);

(e) June 17, 1968 memorandum from R.L. Simmons to W.C. Johnson (PC 1903).

Following the Supreme Court's (1973) affirmation of FPC jurisdiction over FP&L, FP&L filed a wholesale tariff with the FPC. In the interim since the initial filing FP&L has refused to

sell firm wholesale power to Cities under its tariff, despite requests for such power. Evidence of these refusals, and related requests, includes:

1. In 1973 and again in 1977-1978 FP&L sought to refuse to provide wholesale tariff service to Homestead. FP&L's attempt to refuse wholesale power to Homestead in 1973 is detailed in documents summarized in, and accompanying, Robert E. Bathen's testimony in Florida Power & Light Company, FERC Docket No. ER78-19 et al. (Phase I) at 665-671. See also Cities' Briefs in Florida Power & Light Company, Docket No. ER78-19 et al. (Phase I). See also Opinion No. 57.

In 1977-78 FP&L sought, by filings in Florida Power & Light Company, FERC Docket Nos. ER78-81, ER78-395 and ER78-400, to terminate wholesale tariff service to Homestead on June 1, 1978. See Cities' pleadings in that case and also in Homestead v. Florida Power & Light Company, FERC Docket No. EL78-28. FP&L's proposed termination was rejected by the FERC in Opinion No. 57, on August 3, 1979.

2. In 1976-1978 FP&L sought to refuse wholesale tariff service to Ft. Pierce. This refusal is documented in

(a) testimony and related exhibits of Robert E. Bathen in Florida Power & Light Company, Docket No. ER78-19 et al. (Phase I), at TR. 674-685; and

(b) April 7, 1978 FERC Staff Report, Florida Cities v. Florida Power & Light Company, Docket No. EL78-4. See also Cities and Staff's briefs in Florida Power & Light Company, FERC Docket No. ER78-19 et al. (Phase I).

3. FP&L has refused to provide wholesale tariff service to other members of the Cities group. See also Cities' briefs in Florida Power & Light Company, Docket No. ER78-342.

(a) July 28, 1977 letter to Marshall McDonald from Harry C. Luff Jr. and Robert A. Jablon Re: Settlement of NRC Docket Nos. P-636-A and 50-389A et al., requesting purchase of wholesale power under FP&L's tariff and

(b) February 9, 1977 letter from J.A. Bouknight, Jr. to Robert A. Jablon, effectively refusing to respond affirmatively to Cities' request;

(c) March 21, 1978 letter from Robert A. Jablon to Robert J. Gardner, re Florida Power & Light Company, NRC Docket Nos. 50-389A et al.; Ft. Pierce Utilities Authority et al. v. Nuclear Regulatory Commission, UCADC Case Nos. 77-1925 and 77-2101 (requesting nuclear and wholesale power on behalf of intervenors group).

4. On information and belief, FP&L also sought to refuse wholesale tariff power to Vero Beach in or about 1976 —i.e., during the course of its attempted acquisition of the system. See Testimony of R.J. Gardner in Docket No. ER78-19 et al., (Phase I), Tr. 605.

In addition to its refusals of requests for tariff power, in the interim since the filing of the initial wholesale tariff, FP&L has refused to sell firm wholesale power in the form of (a) unit unclear power or (b) other base load power. Refusals to deal in wholesale power effectively deprive plaintiffs of even limited access to nuclear power. Nuclear power related requests and refusals are discussed at 17. Evidence of requests to sell firm base load wholesale power include:

1. Requests by Ft. Pierce for base load power, which FP&L failed to respond to affirmatively. See

(a) December 29, 1976 letter of Walter Baldwin, Director of Utilities to Mr. W.E. Coe, Director of Power Supply; (Requesting rates for base, peak intermediate);

(b) February 4, 1977 letter from R.G. Mulholland, Senior Vice President FP&L to Mr. Bill Bidle Acting Director, FPUA (suggesting more appropriate alternatives);

(c) April 29, 1977 letter from Ewell E. Menge to R.G. Mulholland (noting failure to respond to request for quote for base load);

(d) notes of meeting in the offices of FPUA 11:00 a.m., August 9, 1977 (recording FPUA requests for base load, peaking, intermediate as stated in December 28, 1976 Baldwin letter);

(e) August 17, 1977 letter to R.J. Gardner from Ewell E. Menge re: meeting of August 9, 1977 regarding the FPUA's Request for Various Power Supply Services From FP&L (summarizes meeting); states that FP&L will not quote prices, but will take

the matter under advisement

(f) September 12, 1977 letter from J.R. Gardner to Ewell E. Menge (agreeing that, with certain exceptions (not related to base load discussion), Menge's summary confirmed to his understanding of the meeting);

(g) October 5, 1977 letter from Menge to Gardner (states Ft. Pierce's belief that it is entitled to base load purchase) (all the above appear in REB AR-AX of the Bathen ER78-19 testimony).

2. In the course of 1973 negotiation with FP&L, Homestead sought base load power. See, e.g.

(a) October 2, 1973 letter from J.J. Berry to Mr. F.E. Autrey re: Negotiations (270822) (at page 3, "the City of Homestead, for its part, will welcome the opportunity of purchasing in addition to this Base Load power Commitment such Intermediate and Peaking Power as may be available from the FP&L Co. at a rate that is mutually advantageous."

(b) August 10, 1973 Memorandum to file from E.L. Bivans re: Proposed Interconnection City of Homestead (270812);

(c) September 27, 1973 Memorandum from Willis Irwin to Mr. Clark Cook re: Interchange Agreement City of Homestead, Florida (270818);

(d) October 13, 1973 FP&L Memorandum (author not clear) re: James J. Berry letter to F.E. Autrey, dated October 2, 1973 General Comment (270830);

(e) August 4, 1973 letter from James J. Berry to E.L. Bivans re: Negotiations: City of Homestead with FP&L Co.

(f) Sept. 27, 1973 memorandum from Willis Irwin to Clark Cook re: Interchange agreement: City of Homestead, Florida (270009) ("of special interest is Schedule 'D,' or firm power. The City would like to purchase their base load or approximately 26% of their total demand beginning in late 1975."

3. Homestead's base load efforts continued in 1974. See, for example,

(a) Letter from James J. Berry to Ralph G. Mulholland, January 12, 1974, Homestead states:

> "As previously reviewed, it is anticipated that at least in the near term, the additions of generation which will be accomplished by the City of Homestead will be limited to peaking and intermediate duty units. To the maximum extent possible and consistent with sound planning by both Utilities, it is contemplated that the City of Homestead will seek to defer additions of generation and then will cooperatively plan such additions so that both the City of Homestead and the Florida Power and Light Company may optimize the benifits that may be made available to both through the Interconnection."

(b) Memorandum for Discussion No. 3 to the Special Committee to Review Interconnection, City of Homestead, Florida, February 22, 1974, p. 6, shows that the City of Homestead viewed the interconnection as a means of purchasing energy to avoid high fuel costs. Pages 7-8 state that the interconnection "will permit the City of Homestead to purchase their power at high load factor, and this way, to take maximum advantage of the economy that is available under current rate schedules."

(c) In Memorandum for Discussion No. 4 to the same committee, dated February 23, 1974, the purchase of power through the interconnection is again considered in conjunction with the operation of Homestead's own generation. It should be noted that two disadvantages listed were "the natural reluctance to enter into agreements which have the appearance of reducing the independent operation of the electric system of the City of Homestead" and "the apprehension that it provides the 'foot in the door' which would make it easier for the Florida Power & Light Co. if they were so inclined to take-over the operation of the Homestead System." However, the report notes that Homestead "is currently dependent to a degree on the Florida Power & Light Company", i.e., that it was then purchasing power in a less economic mode than could be achieved through purchasing at a single point and parallel operations. These considerations are at pages 11-18.

(d) In Memorandum for Discussion No. 6, February 23, 1974, and Memorandum for Discussion No. 9, February 23, 1974 ("What is the 'SR' rate"), it is again made clear that Homestead's desire for an interconnection is motivated by the desire to purchase high load factor power. In the latter memoranda, the SR tariff is enclosed and specific rate comparisons are made. In Memorandum for Discussion No. 10 ("The

Cost Evaluation of Interconnection Developed on the Basis of Actual Experience, February 25, 1974), Homestead's engineers compute the savings which would have been possible to Homestead, if, through use of a parallel tie and integration of purchased power with Homestead's generation, Homestead could have purchased at a very high load factor.

4. After the interconnection was completed, FP&L tried to withdraw the availability of firm wholesale power purchases, even though the interconnection was clearly planned by Homestead as a source of firm wholesale power. In addition to the records in ER78-19 and ER78-81, and the Affidavit of James Berry in those dockets, Homestead notes the following documents:

(a) "A Feasibility Study of the Power Production Facilities-Five Year Plan, City of Homestead, Florida", June 1978, Smith & Gillespie, Engineers, Inc.;

(b) January 13, 1978 letter from Henry C. Peters, Jr. to Robert J. Gardner requesting response to December 20, 1977 letter with regard to firm power rate:

> "As you know, Homestead is most concerned that it achieve the lowest possible power supply costs. At our meeting you indicated that through the purchase of power under our Interchange Agreement, Homestead could achieve lower rate than through the purchase of S.R. Power, if Homestead would not participate in the rate case. . . . However, under economy energy and other Interchange Schedules (except for Schedule D), Homestead must pay for energy based upon your incremental production costs. Therefore, its rate payers are deprived of any benefits from the purchase of base load nuclear or gas generated energy. . . . However, since you have not yet submitted a proposal for Schedule D Power, as an incremental measure, Homestead is entitled to purchase S.R. Power."
>
> Please either send Homestead a proposal for the sale of Schedule D Power or confirm Homestead's right to continue S.R. Purchases."

(c) Memorandum to Henry C. Peters from James J. Berry, February 14, 1978 ("There is a question in my mind here as to whether or not Florida Power & Light Company is actually negotiating in good faith.")

(d) Memorandum for the Record/James J. Berry, March 1, 1978: "Meeting with Florida Power and Light Company, March 1, 1978"; Memorandum for Record, March 2, 1978 (James J. Berry: "Negotiations, City of Homestead, Florida with Florida Power & Light Company" - and related correspondence transmitted to R. J.

Gardner, Vice President, Florida Power & Light Company ("The City of Homestead asserted in the meeting that the City had an absolute right to buy power at average cost . . . "

(e) Letter from James J. Berry to R. J. Gardner, March 24, 1978 recognizing conflict in the wholesale rate case and requesting information;

(f) Letter from James J. Berry to R. J. Gardner, dated April 25, 1978, requesting firm power beginning in May 1978;

(g) The April 9, 1979 letter from J. K. Daniel to H. C. Peters, Jr. containing a Rate Schedule PR, including Exhibit A stating:

> "Service to this delivery point is being voluntarily continued by the Company pending final decision in Federal Energy Regulatory Commission Dockets No. ER78-19 and ER78-81 (Phase I) and will be discontinued at that time unless otherwise ordered by the Commission."

and related correspondence, and filings at the Federal Energy Regulatory Commission. This includes

(i) A June 2, 1978 letter from Daniel Guttman to Mr. Robert J. Gardner confirming "that Florida Power & Light Company has commenced service to the City of Homestead. . . .[I]f FP&L has any questions concerning this matter . . . please contact myself or Robert Jablon, who are authorized to discuss such questions with you."

(ii) Letter from Robert J. Gardner to James J. Berry dated June 2, 1978. ("We left the meeting with the distinct impression that as long as you had tentative figures, you are willing to wait until the legal issues were resolved. Apparently Homestead's legal counsel, without any knowledge of our negotiations, decided to demand SR-1 power as a means of 'establishing your rights'. . .")

(iii) May 19, 1978 letter from James J. Berry to J. K. Daniel, "Homestead responded, establishing that it was the City's intent to maintain as high a load factor as possible, approaching 100%.

(iv) Letter from James J. Berry to Mr. R. J. Gardner, June 29, 1978 ("You are on continual notice of that the City desired a form of base load or 'SR' power. Indeed, had it not been stated, the economics of Homestead's position would have

made this obvious. . . . We know of nothing to be resolved with regard to the 1973 contract commitment apart from a written proposal by FP&L to implement the terms of that commitment which included access to 18 MW at rates and terms no less advantageous than the available SR rate.")

(v) Reply letter from R. J. Gardner to Mr. James J. Berry, July 11, 1978.

14. If you contend that PSE is refusing, or has at any time during the designated period refused, to provide transmission, delivery, displacement or wheeling services to the City or unreasonably delayed entering into any such transaction, state the basis for your contention, identifying specifically each act, failure to act and document which supports your contention, and the following: name and title of the person making the request for the wheeling service; form of the request (i.e., written or oral, in person or by telephone) and, if oral, a list of all persons present at the time the request was made; date of the request; person to whom the request was addressed; name of person who responded to the request; form of the response (i.e., written or oral, in person or by telephone) and, if oral, a list of all persons present at the time the response was given; person to whom the response was addressed; and date of the response.

Answer to Interrogatory 14

14. This answer covers FP&L's refusals to provide transmission, delivery, displacement or wheeling service within the perimeter of its retail service area. See also answers to interrogatories 11, 15, and 22.

As FP&L has admitted, prior to the 1977 provision of transmission for New Smyrna Beach's share of CR-3 power, it did not provide wheeling or transmission services for Cities even though requested to do so.

Examples of this admission of FP&L's policy of not providing transmission services include:

1. October 10, 1972 deposition testimony of FP&L official Henry W. Page in Gainesville Utilities Department v. Florida Power & Light Company. As Mr. Page testified, at 152, FP&L does not "wheel power for any other system." (As testified to by FP&L official Robert J. Gardner, Mr. Page was an FP&L official with substantial responsibilities for both FP&L's transmission system and dealings with other utilities in the period 1945-1972. See Florida Power & Light Company, FERC Docket No. ER78-19 et al. (Phase II) Tr. 449-450.)

2. The May 23, 1975 letter from Mr. R.G. Mulholland, Group Vice President FP&L. to Mr. John R. Kelley, Director of Utilities, Utilities Commission of New Smyrna Beach (Aug. memorandum, Document No. 26). As Mr. Mulholland stated, "FP&L has not hitherto been in a position to offer transmission services of the nature generally referred to as wheeling or displacement." See also identical statement in Mr. Mulholland's letters of that date to Mr. A.W. Harrington, Director, System Engineering, Jacksonville Electric Authority (ER78-19, GT-38) and to C.F. Blair of Clewiston.

3. The position taken by FP&L in connection with its transmission rate filings in 1977 and 1978 in Florida Power & Light Company, FERC Docket No. ER77-175 and ER78-19 et al. As stated, for example, at pages 1-2 of FP&L's June 30, 1978 Initial Brief in ER77-175, "after New Smyrna and Florida Power concluded an agreement for the purchase by the City of a portion of CR-3

generation, the City requested FP&L to transmit its portion of CR-3 power over FP&L's transmission system ... FP&L never before provided this type of service to any customer..." Similarly, in appealing the Commission's decision to treat FP&L's transmission filings as filings under Section 205 of the Federal Power Act, FP&L contended that it had never previously provided transmission service. As stated at page 10 of FP&L's Reply Brief in Florida Power & Light Company v. FERC, D.C. Cir. Nos. 78-1884, et al. (May 24, 1979), for example "... there has been no rate schedule for transmission service to these customers known to either the Commission or FP&L prior to the transmission service agreements filed by the Company in the proceedings now before this court on review. These transmission service agreements provide for a new service, never before offered to these customers." But see response to interrogatory 28. In the Application for Clarification and Rehearing of FP&L in Docket No. ER78-19 et al. (January 21, 1980), FP&L stated its unwillingness to file a tariff.

4. FP&L's filing in Florida Power & Light Company, FERC Docket No. E-9574. As stated at Exhibit N, Schedule VI-2 to FP&L's application to acquire the Vero Beach municipal electric system, "(N)o current wheeling options available."

5. The February 17, 1971 memorandum to file from FP&L official J.L. Breedlove Re: Meeting Regarding Interconnection Between Lake Worth Municipal Electric System and FP&L. As recorded in the memorandum, in response to Lake Worth's inquiry on wheeling, Mr. Breedlove advised that "we would not and did not make such contractual agreements. I said that we preferred to, if necessary, buy the power from Vero Beach or Fort Pierce and sell it to the City of Lake Worth. I said we prefer to be the agent and not merely a carrier. I explained to him that this is the way we have been operating and plan to continue on the same course."

6. Testimony of R.J. Gardner in Florida Power & Light Company, FERC Docket No. ER78-19 et al. (Phase II). As stated at page 16 of Mr. Gardner's prepared testimony and elaborated on thereafter, Mr. Gardner implied that -- while not providing

wheeling -- FP&L historically did "regularly and customarily" buy power from one utility and resell it to another with a "net effect ... identical to the transaction we today call wheeling service." (Gardner prepared testimony, at 16) Mr. Gardner characterized the service as a "displacement" type service (Tr. 455). In regard to this claim, Cities note

(a) Mr. Gardner's testimony that such activity was "regularly and customarily" engaged in by FP&L was based on hearsay (Tr. 438) and unsupported by Mr. Gardner on the merits (Tr. 432, 440) and concerned transmission policy and practices in a period which Mr. Gardner had not sought to investigate (Tr. 428; 432-434) and was generally unfamiliar with (Tr. 427-28; 432);

(b) Mr. Gardner's claim that prior policy represented the provision of "displacement" service is contrary to the statement in the May 23, 1975 letters referred to above and

(c) if correctly stated by Mr. Gardner, FP&L's historic policy of insisting on capturing all sales for itself would be a further anticompetitive practice independent of its policy of refusing to wheel.

7. Internal FP&L documents relating to FP&L's 1972-73 negotiations with Homestead. These include

(a) An October 23, 1973 memorandum to file from "LLW" re: Electric Service to City of Homestead (see page 4 where LLW asks if FP&L could transport) (209140);

(b) a one page undated handwritten note from "EB" to "Ralph" stating "I agree with Berry on SR Rate it will get us off the hook and dead center -- also away from the wheeling problem" (240393);

(c) a two page September 21, 1973 memorandum initialed WLI and titled "City of Homestead" (290195); question no. 7 states ~~ces~~ "When we meet, if they (Homestead) pose the question "eyeball to eyeball" that they want to build a tie to the Keys (sic) and FPL wheeled the power -- what would be our answer? "Well -- we have never done this before, but let's talk about it -- how much power and from where?" (see also ~~261997-261998~~ 261997-261998);

(d) a one page memorandum dated August 20, 1973 and initialed "WMK" (261982); memorandum states "We should keep in

mind the possibility of transmission difficulties in wheeling power as the court has stated an investor-owned utility cannot be forced to wheel or sell power to the detriment of its own customers and own system.";

(e) a one page handwritten memorandum (no date); author unidentified stating, inter alia, "We will not wheel power we will however provided the interchange is built and in operation attempt to purchase power from other utilities and in turn sell you power providing our trans. facilities are adequate, but we cannot wheel" (209145);

(f) An October 5, 1973 FP&L memorandum re: James J. Berry's letter to F.E. Autrey Dated October 2, 1973 General Comment. As stated at page 3, "It is our belief that if we refuse to sell the City of Homestead Firm Power they will immediately request us to wheel from other Municipalities. If we encourage them to increase their generation where we can purchase power from them, we may offset the demand for wheeling as well as avoid a long-term Firm power commitment." (261980)

8. FP&L's position in Florida Power & Light Company, FERC Docket No. E-8008. As stated at page 17 of FP&L's February 24, 1975 Brief Opposing Exceptions, "The proposed interchange contract presented by New Smyrna Beach in Exhibit 77 ... contains a schedule providing for wheeling service from FP&L to it, which the Company opposes. FP&L does not provide wheeling service for any municipality, rural electric cooperative or investor-owned utility."

FP&L's policy of refusing to wheel existed during a period in which requests for wheeling were made of FP&L. Evidence of such requests include

1. Lake Worth's efforts to obtain a wheeling commitment as part of a proposed interchange agreement with FP&L. See

(a) November 6, 1970 letter from Evert A. Young (Reynolds, Smith & Hills) to Utilities Authority re City of Lake Worth, Florida: Interconnection with FP&L Company (recommending that the Lake Worth/FP&L interconnection agreement should provide a "wheeling arrangement whereby Lake Worth could buy from or sell to some power systems other than FP&L Co., but use the

FP&L Co. lines to transmit the energy";

(b) November 27, 1970 letter from C.C. Blaisdell, Jr. to J.C. Breedlove, Jr., Division Manager FP&L re proposed interconnection agreement (231788);

(c) February 17, 1971 memorandum to files by J.L. Breedlove, supra;

(d) November 4, 1971 letter from John B. Waddell, Attorney (Lake Worth Utilities Authority) to U.S. Department of Justice re Hutchinson Island Unit No. 2 ("Applicant has not been willing to discuss wheeling power in the proposed interconnection agreement. There are two municipal electric systems (Vero Beach, Florida and Ft. Pierce, Florida) within 85 miles of our system and it is possible that power could be exchanged between our system and theirs if applicant would allow transmission through its system.")

2. Documents related to Homestead's 1972-1973 wheeling requests, including (in addition to those cited above):

(a) Jan. 16, 1972 letter from J.J. Berry to H. Frank Thompson re: Interconnection - Cities of Key West and Homestead (270721);

(b) An August 31, 1972 memorandum to Mr. E.A. Adomat (271263) and a September 12, 1972 one page FP&L memorandum to file from Frank Thompson Re: Displacement of Power Request (290181) ("Ken called me and said he agreed with my opposition to this proposal and suggested that we delay giving any answer to Jim Berry or to the City of Homestead as long as possible. We have had similar requests in the past and are fearful that the Federal Power Commission may rule in the future that we must participate in this type of scheme We are, however, going to hold up just as long as possible.");

(c) a December 19, 1972 handwritten one page memorandum (transmitting attached information) from Frank Thompson to "Angie" re: "the City of Homestead Displacement of Power ("Wheeling") request (271261);

(d) A February 14, 1973 FP&L memorandum to file by Frank Thompson Re: Interchange: City of Homestead (221980);

(e) An August 16, 1972 letter from James J. Berry,

Executive Vice President, Smith & Gillespie Engineers, Inc. to Mr. H. Frank Thompson, District Manager FP&L re: Interconnection (270721); and

(f) Homestead, like Lake Worth and New Smyrna Beach proposed a transmission schedule (Schedule F) as part of its interchange agreement with FP&L. See Oct. 11, 1973 Draft Contract for Interconnection marked "Jim Berry version" (200640) (contains Schedule F -- "Power Transmission Interchange Electric Interchange Service") and compare with "Contract for Interchange Service Between FP&L and City of Homestead, Florida" marked "as submitted to Homestead" (200676)

3. The October 31, 1977 letter from C.C. Blaisdell, Jr. to Mr. R.L. Taylor, Manager, Systems Operation, FP&L (Aug. 9 Memorandum, Document 26).

4. At an April 9, 1976 meeting with Ft. Pierce, Ft. Pierce representatives tried unsuccessfully to get a wheeling commitment from FP&L. (Minutes of a Special Meeting of the F.P.U.A.).

5. Dec. 22, 1976 letter from J.P. Smith to Harry C. Luff: (seeking confirmation of verbal understanding); Dec. 30, 1976 letter from Luff to Smith (confirming).

6. Repeated requests for wheeling services made in connection with New Smyrna Beach interconnection negotiations with FP&L. See

(a) September 14, 1973 letter from Robert A. Jablon, Esq. to Ralph Mulholland (Docket No. E-8008) transmitting proposed interchange contract providing, inter alia, for transmission service;

(b) Oct. 10, 1973 letter from Mulholland to Robert Jablon (130748) enclosing interconnection proposed agreement;

(c) October 16, 1973 letter from Robert A. Jablon, Esq. to Mulholland; explaining that New Smyrna Beach is seeking transmission service, which is not provided for in FP&L's response (243804);

(d) December 14, 1973 Robert A. Jablon/Mulholland letter re: New Smyrna Beach: Negotiations for Parallel Interconnection and Interchange Agreement (243806); encloses Docket No. E-8008 testimony including proposed interchange

agreement with transmission schedule.

(e) January 25, 1974 Robert Bathen/Jack E. Mathews, Jr. letter transmitting Gainesville/Florida Power Corp. transmission schedule and proposed schedule for New Smyrna Beach/FP&L;

(f) December 20, 1974 letter from George Spiegel, Esq. to Marshall McDonald re: New Smyrna Beach, Florida: interconnection proposals alternative to FP&L acquisition ("New Smyrna requests an agreement concerning the transmission of power both from sources like St. Lucie in the FP&L system, or from other interconnected electric utilities. ... Alternatively, New Smyrna requests that FP&L file with the FPC a tariff rate for transmission service in the form of Schedule F on Exhibit 77. This clearly parallels the transmission tariff which FPC has filed at the FPC.")

(g) January 7, 1975 George Spiegel/Mulholland re: New Smyrna Beach, Florida: asking for the specifics of any transmission proposal FPL would make. New Smyrna Beach's request for wheeling was also specifically stated at a January 24, 1974 meeting at FP&L offices.

7. In Sept. 1973, Gainesville met with FP&L as recorded in a Gainesville memorandum, "In answer to a statement regard the possible future ~~interchange~~ interchange, purchase, sale or wheeling of power, the FPLC Staff present stated that they could not make any statement of policy or commitment regarding these items." (Memorandum from Charles H. Illingworth to file, Sept. 6, 1973).

In addition to denying wheeling requests made by plaintiffs; FP&L denied requests made by other municipal systems. Evidence of this includes:

1. Documents relating to FP&L's 1971 denial of wheeling for Jacksonville. See February 26, 1971 letter of H.W. Page, Manager Power Supply FP&L to Mr. J.K. Wiley, Director, Engineering Jacksonville Electric Authority (stating FP&L is "strongly opposed" to wheeling) (251726);

2. March 13, 1971 memorandum from H.C. Luff to C.H. Stanton re: Bulk Sales Summer of 1971 ("Indications are that future significant bulk sales will not be made with FP&L, nor will there be any chance to sell to J.E.A. through FP&L");

3. October 26, 1971 letter from C.H. Stanton to U.S. Department of Justice re FP&L Hutchinson Island Unit No. 2

> "... Coordination of planned expansion of generating capacity with generating utilities of similar size to which the Commission is not directly interconnected has not been possible due to failure of the directly interconnected utilities to agree on reasonable wheeling or resale arrangements. A direct request for assistance was received by the Commission in January 1971 from the Jacksonville Electric Authority. This request involved possible purchase of Commission excess system capacity for several midsummer months in 1971. JEA and the Commission were hopeful that arrangements could be made for this exchange by use of a multilateral agreement involving JEA, FP&L and the Commission. FP&L did not agree to such an arrangement."

4. Documents related to Vero Beach's spring, 1976 wheeling request including

(a) May 12, 1976 two page memorandum to FP&L files from W.E. Coe re: Vero Beach Economy Interchange Meeting of May 11, 1976 (100340) and

(b) two page June 28, 1976 "JKD" memorandum titled "FP&L's response to "refusal to wheel for Vero Beach." (100295);

5. Vero Beach letters to Department of Justice. See

(a) October 26, 1971 letter from Kenneth Morgan, Director Vero Beach Utilities to U.S. Department of Justice re Hutchinson Island Unit No. 2

> "3. The applicant controls most of the high voltage transmission in an area.
>
> We believe that complete membership in the Florida Grid System, as to coordinating, wheeling power, planning outages, expansion, overhauls, etc. would afford us the flexibility needed in obtaining bulk power from alternative sources and also coordinating planned expansion of generation."

(b) February 2, 1973 letter from Kenneth W. Morgan, Director of Utilities Vero Beach to U.S. Department of Justice re St. Lucie Unit No. 2

> "We continue to be interested in joint ownership with the applicant of the proposed St. Lucie Plant, Unit (formerly Hutchinson Island), as an alternative arrangement, the unit power purchased from said unit ...
>
> "Perhaps the Florida Operating Group will settle the issue of wheeling power; however, at this time, it is practical only on an emergency basis and by contract with the adjacent system. With the exception of the Ft. Pierce tie, FP&L Company controls all of the high voltage transmission in our area."

6. The January 27, 1971 letter from J.K. Wiley, Director of Engineering JEA to Mr. H.W. Page (272381) re: meeting on interconnected operations, attaching rough draft of "an agreement we propose concerning the transmitting of power through our systems," and asking for early consideration of the proposal.

7. September 10, 1969 memorandum from M.F. Webb, Jr. (Florida Power Corporation) to Mr. A.P. Perez (Florida Power Corporation) re: OUC Discussion with Mr. Harry Luff September 10, 1969. (PC-1001). "Mr. Luff will plan to pursue coordination with JEA, recognizing that he is opening Pandora's box with respect to the wheeling program with FP&L and us; this is the second or third time this point has come up."

8. July 22, 1970 memorandum from Clyde Booth, Connell Associates Inc. re Discussion with City Electric System in Key West (209973) (Key West engineers, R.W. Beck, proposed wheeling to cooperative engineers. "I advised Mr. Porter that the agreement with FP&L Co. prohibits wheeling and that the system's capability would not permit any appreciable transfer."

In addition, Cities note that wheeling is an inextricable component of Cities' requests for coordinating measures related to bulk power supply planning of large scale economic alternatives, coordination and pooling. FP&L's resistance to these measures, as stated in response to interrogatory 15, implies a resistance to the provision of transmission service. Cities specifically note that FP&L has long known that Cities viewed access to transmission as central to pooling. See e.g., June 2, 1966 Speech by Robert E. Bathen entitled "Florida Municipal Power Pool: A Must for Yankee Dixie" and July 11, 1967 letter from W.J. Clapp, President Florida Power Corporation to Messrs. Fischer S. Black, Robert H. Fite and Clyde A. Lilly, Jr.

In addition to the resistance to transmission service implied in FP&L's resistance to centralized dispatch and integrated pooling, Cities note FP&L's resistance to wheeling in connection with other forms of coordination. In addition to the evidence of this noted above,

1. FP&L has sought to eliminate the possibility that Cities would benefit from uniform interconnection arrangements that have

been negotiated among FP&L, TECO, and Florida Power Corporation. As documents show, FP&L unilaterally resisted an interconnection provision that would have provided for third party interchanges. See Testimony of Robert E. Bathen, ER78-19 et al. (Phase I), Tr. 691; documents attached to Bathen testimony as REB-BD; memorandum from E.L. Bivans to E.A. Adomat (February 11, 1976); memorandum from E.L. Bivans to K.S. Buchanan (December 5, 1975).

2. FP&L sought to preclude municipal access to wheeling in connection with a proposed interconnection to Georgia. See:

(a) February 19, 1974 letter from E. Bivans to Ken Wiley of JEA, transmitting February 12, 1974 draft "500 Kv Florida Operating Agreement Suggested Wording";

(b) March 11, 1974 Bivans letter to J.K. Wiley;

(c) February 27, 1974 Wiley/Bivans et al. letter and;

(d) April 16, 1974 Bivans/McDonald memorandum.

3. Homestead and other cities repeatedly requested that FP&L file a general transmission tariff and agree to improved terms and conditions with regard to transmission. Examples for the City of Homestead follow:

(a) (i) Letter from Henry C. Peters, Jr. to Robert J. Gardner, February 8, 1978 ("Proposed Transmission Agreement"), requesting "generally available published tariff";

(ii) "Joint Transmission Wheeling Tariff. . . Applicable to and Available for All Bulk Power Transactions across the State's Integrated Transmission System";

(iii) exclusion of "the cost of those transmission facilities associated with providing reliability";

(iv) "Average Transmission System Losses", elimination of ratchet and improved pricing;

(v) elimination of "if and when available" and "sole discretion" language;

(vi) elimination of FP&L's taking and retaining title to the power and energy;

(vii) longer term and other comments.

(b) "Memorandum for the Record", James J. Berry, March 1, 1978.

(c) Letter from James J. Berry to R. J. Gardner, March

2, 1978 "S&G Letter of December 9, 1977"; negotiations between the City of Homestead and Florida Power & Light Company File No. 7002-33.

(d) Letter from Robert J. Gardner to James J. Berry, June 2, 1978 ("Now your attorney has intervened, protesting not only the rates, but 'general conditions of service'. That also is not what I would call good faith negotiations."; responding to letter from James J. Berry to J.K. Daniel, May 19, 1978; Letter from James J. Berry to R.J. Gardner, June 29, 1978, responding to June 2, 1978 letter ("With regard to transmission matters, we have indicated that FP&L should file a transmission tariff, including making provision for a "joint" rate. Through this letter we reiterate this request. When we told you to file a rate without our signature, we believed that FP&L was fully placed on notice that Homestead planned to protest such filing, including the terms and conditions. The protest as to terms continue to be general. . . ."

(e) Letter from H. C. Peters, Jr. to Mr. Robert Gardner, January 8, 1979 ("The City of Homestead does not agree with all the terms and conditions contained in said Amendment but is in urgent need of the implementation of a transmission service agreement . . . ")

4. FP&L and Florida Power sought to avoid third party interconnections. E.g., letter from W.J. Clapp to R.H. Fite, November 1, 1963 (PL-1242); letter from R.H. Fite to W.J. Clapp, November 13, 1963 (PL-1243).

5. See also answer to interrogatory 15, re FP&L resistance to coordination/transmission proposals by other members of the Florida Operating Committee.

In or about 1977 FP&L ceased its blanket refusals to wheel. But see letter from C.C. Blaisdell, Jr. to R.L. Taylor (Oct. 31, 1977.) While it now provides some wheeling, it continues to refuse to provide essential wheeling services requested by Cities and, insofar as it does wheel, its wheeling practices are characterized by unreasonable delay and price. Specifically:

Since at least 1974 FP&L has continually refused express and repeated requests that FP&L file a general transmission tariff.

Evidence of the requests and the refusals includes:

1. Communications regarding FP&L's negotiations with New Smyrna Beach. As stated at page 8 of a January 9, 1975 letter from Mr. R.C. Mulholland to George Spiegel (in response to December 20, 1974 letter requesting tariff) "FP&L is not prepared to hold itself out as a common carrier of electricity and therefore does not intend to file a generally applicable tariff for the services. However FP&L will consider any specific request for transmission service." (221586) In subsequent negotiations with FP&L, relating to wheeling of CR-3 power, New Smyrna Beach continually requested a general tariff. See testimony of Robert E. Bathen Florida Power & Light Company, FERC Docket No. ER77-175 at Tr. 458. See, also December 2, 1976 letter from B.W. Wait III to R.G. Mulholland, enclosing New Smyrna Beach's proposed transmission rates and terms (204425).

2. On November 16, 1976, R.J. Gardner wrote to Harry Luff in response to the transmission question. The letter states:

> "We have repeatedly stated in these and other meetings that if any utility requires our transmission facilities to receive his share of power from any joint project we agree on, we will negotiate a transmission service agreement with that utility for that power . . . . [W]e were asked why we would not agree to a general wheeling tariff. The answer is that we feel that individually negotiated transmission service contracts are the most equitable kind of arrangement in that they can comprehensively reflect all of the conditions and particular circumstances that each party finds himself in..."

3. Communications relating to FP&L's negotiations with Ft. Pierce. See July 6, 1977 memorandum to file by E. Menge re: meeting with Bob Gardner, July 6, 1977; April 9, 1976 JRD memorandum to file re: April 8 meeting in Ft. Pierce. The memorandum states, inter alia, "It was explained that FP&L does not presently have general transmission tariffs nor do we anticipate them in the near future." (262186) See also April 6, 1976 letter from Walter Baldwin to R.G. Mulholland requesting wheeling to establish alternatives to a sale of the system (262189).

4. FP&L's position taken in litigation. In litigation relating to FP&L's proposed transmission rates members of the Cities group have continually proposed a general transmission tariff, which FP&L has continually opposed. (See, e.g.,

(a) testimony of Robert E. Bathen in Florida Power & Light Company, FERC Docket Nos. ER77-175 and ER78-19, et al.;

(b) briefs of Cities in these dockets;

(c) briefs of FP&L in Docket No. ER77-175; and

(d) the examination of FP&L in these dockets, most recently in Florida Power & Light Company, Docket No. ER78-19 et al. (Phase II) at Tr. 307-309, 353;

(e) FP&L's application for rehearing in Docket No. ER78-19 et al. (Phase II), opposing the order to file a transmission tariff.

Since at least 1975 FP&L has continually refused Cities' repeated requests for a joint transmission rate. Evidence of requests and refusals include:

1. The June 26, 1975 letter of George Spiegel to R.G. Mulholland Re: Transmission of Capacity from FP&L CR No. 3 Unit; the April 21, 1976 letter from Robert E. Bathen to J.K. Daniel Re: Agreement to Provide Transmission Service between FP&L and the Utilities Commission of New Smyrna Beach (204363).

2. Testimony and Pleadings in Florida Power & Light Company, FERC Docket Nos. ER77-175 and ER78-19 et al. See in particular

(a) testimony of Robert E. Bathen (on behalf of a joint rate) in both proceedings;

(b) testimony of Lloyd L. Williams (opposed to a joint rate) in both proceedings;

(c) and, the most recent policy testimony of FP&L's R.J. Gardner (opposed to a joint rate) at Florida Power & Light Company, FERC Docket Nos. ER78-19 et al. (Phase II), Tr. 307-309.

3. Letter and requests from various cities: e.g., June 21, 1978 letter from C.C. Blaisdell, Jr. to J.K. Daniel; Feb. 8, 1978 letter from Henry C. Peters Jr. to Robert J. Gardner; June 29, 1978 letter from James Berry to R.G. Gardner.

Insofar as FP&L has provided transmission service, it has refused to functionalize the cost of service. Thus it has refused to provide a rate that reflects the true cost of (a) non-firm service and (b) service for which FP&L does not insure generation reliability. This refusal to functionalize may be

viewed ~~alternatively~~ alternatively as a refusal to deal (i.e., the refusal to provide the service asked for) or a price squeeze (i.e., the requirement that Cities pay for services not rendered) or "full line" forcing (i.e., the insistance that Cities take services not needed). Evidence of Cities' requests for functionalization and FP&L's refusal of these requests include:

1. Documents and communications relating to the negotiations of Transmission Service Agreements between FP&L and Cities show Cities repeated requests for functionalization. See, e.g.,

(a) January 5, 1976 memorandum from Tracy Danese to Lloyd L. Williams Re: Crystal River Transmission Rate (ER77-175, Vol. VI) which refers to "conversations which we had with Bob Bathen wherein he wanted to make us consider our transmission cost on a functional basis."

(b) "Appendix II A Statement of Principles Governing Transmission Service" (204320). Page 7 of this document which bears a "September 15, 1975" receipt date by FP&L (it was obtained from FP&L in discovery), relates to the development of a charge for non-firm transmission;

(c) the December 2, 1976 Wait/Mulholland letter referred to above;

2. Pleadings, exhibits and testimony in Florida Power & Light Company, FERC Docket Nos. ER77-175 and ER78-19 et al. See, in particular;

(a) testimony, exhibits and affidavits of Cities witness Messrs. Bathen and Linxwiler in (both dockets) on behalf of the rates;

(b) testimony of Messrs. William, Morton and Bivans (opposing the rates);

(c) testimony of Staff witness Zero in ER78-19 (Phase II) (proposing a non-firm rate);

(d) testimony of R.J. Gardner in ER78-19 (Phase II) at Tr. 518 (a non-firm rate is not appropriate).

(e) testimony of E. Tammy in Docket No. ER78-19 et al. (functionalization is an accepted ratemaking method);

(f) April 26, 1976 memorandum from R.S. Buchanan to J.K. Daniel (242312).

FP&L has continually refused Cities' requests for access to FP&L's transmission facilities through investment in the facilities. Examples of requests and continued refusals include:

1. Communications and requests in the context of "TSA" negotiations. See, for example

(a) April 21, 1976 Bathen/Daniel letter suggesting investment (204363);

(b) April 26, 1976 Coe/Daniel memorandum re: Bathen's April 21, 1976 letter; recommending that FP&L ignore Bathen's concerns about pooling and transmission investment (204372);

2. November 20, 1974 Ben Fuqua/John R. Kelly letter Re: January 13, 1974 Kelly/Mulholland letter stating "Your item 5 suggests that New Smyrna Beach would invest in transmission facilities now owned by FP&L. We do not construe the St. Lucie Unit 2 license conditions as requiring that FPL in effect sell a portion of its existing transmission system, and we are not at this time willing to do so."

Cities note that most recently, Mr. R.J. Gardner, in testimony in Florida Power & Light Company, ER78-19 et al. (Phase II) has indicated that FP&L has no policy on investment in its facilities.

Insofar as FP&L has provided transmission under its Transmission Service Agreement "TSAS," Cities contend that FP&L's failure to provide for transmission under tariff has caused unreasonable delay and discrimination in the provision of such service. As evidence of this, Cities cite:

1. Exhibit I to the prepared rebuttal testimony of R.J. Gardner in ER78-19 (Phase II). (The exhibit shows up to two months and more from request for service to effective date, causing loss of opportunities for exchanges under the proposed agreement.)

Finally, Cities contend that (in the period in which FP&L would transmit at all) FP&L has unreasonably delayed the provision of transmission services as evidenced by the following:

1. FP&L has failed to give reasonable scrutiny to Cities'

request for transmission service. See FP&L's late 1979 testimony, in Docket No. ER78-19 (Phase II) that:

(a) it had never performed a written study of Cities' general tariff proposal (Tr. 293 and 519),

(b) it had not done a study of transmission policy (Tr. 320-24, 642);

(c) while Mr. Gardner testified FP&L could not provide tariff service because of the need to study wheeling transactions, the system planning department evidently had not undertaken any such study. See e.g., Tr. 739.

(d) and see similar testimony by FP&L witnesses Williams, Bivans, and Tammy in Docket No. ER77-175 (as cited in Cities' Brief);

Cities note that the deficiencies of FP&L's analyses (i.e., lack thereof) will be further detailed in their March 3, 1979 Brief in ER78-19 (Phase II), a copy of which will be forwarded.

4. FP&L acted to block development of a resource recovery facility in The Port Lauderdale-Broward County which would have provided power to municipal utilites throughout the state of Florida.

Titan Industries was a corporation one of whose purposes was organizing, financing and operating resource recovery facilities in various parts of the country. Titan selected the Ft. Lauderdale-Broward County area as a likely site for a plant and proceeded to contact municipal and county governments in Broward County, securing resolutions from many of them which committed their solid waste streams to a Titan facility. If constructed, this waste would then have been burned in a boiler to produce steam to generate electrical energy.

The facility was to be located at Port Everglades, approximately one mile from a generation station of FP&L. Titan planned to interconnect with FP&L and thus distribute output to other utilities by wheeling over FP&L lines.

Titan approached the City of Gainesville, requesting that the city express interest in the output of the proposed facility. This the city did in a letter of intent on Sept. 1, 1976 from Stanley Livengood to A. Dean Tomlinson of Titan. The burden was

on Titan to develop the arrangements to wheel power from Broward County to the City.

Livengood, Tomlinson and Harry Wright of Seminole Cooperative met with Ralph Mulholland and other FP&L representatives to discuss such arrangements. FP&L's position was as follows:

1. FP&L would not agree to interconnecting with the Titan facility except on the condition that FP&L had ownership and title to the turbine generator that would produce electricity as well as all electricity that might be generated.

2. FP&L would not put up any front money to finance construction of the turbine generator they would claim ownership to.

The option of Titan owning the turbine generator and interconnecting with FP&L was rejected by FP&L. The question of whether the energy produced under FP&L's terms would be available for sale to other utilities was not directly addressed but it was Livengood's understanding that such energy would be absorbed into the FP&L system. The project was effectively killed.

On information and belief, similar restrictions were insisted upon by FP&L in connection with a Dade County waste recovery project.

14. If you contend that TPL is refusing, or has at any time during the designated period refused, to provide transmission, delivery, displacement or wheeling services to the City or unreasonably delayed entering into any such transaction, state the basis for your contention, identifying specifically each act, failure to act and document which supports your contention, and the following: name and title of the person making the request for the wheeling service; form of the request (i.e., written or oral, in person or by telephone) and, if oral, a list of all persons present at the time the request was made; date of the request; person to whom the request was addressed; name of person who responded to the request; form of the response (i.e., written or oral, in person or by telephone) and, if oral, a list of all persons present at the time the response was given; person to whom the response was addressed; and date of the response.

15. If you contend that FPL has refused or is refusing a request that it participate in a power pool or similar coordination arrangement, state the basis for your contention, identifying specifically each act, failure to act and document which supports your contention, and furnish the following information: name and title of the person making the request; form of the request (i.e., written or oral, in person or by telephone) and, if oral, a list of all persons present at the time the request was made; date of the request; person to whom the request was addressed; name of person who responded to the request; form of the response (i.e., written or oral, in person or by telephone) and, if oral, a list of all persons present at the time the response was given; person to whom the response was addressed; and date of the response.

Interrogatory 15

15. From at least the onset of the designated period to the beginning of the 1970's FP&L excluded Cities from pooling and coordination arrangements in which it took part. It did so despite knowledge of Cities' need for access to coordination and desire for coordination. The primary means of FP&L's exclusion were refusals, both alone and in combination with others, to deal with Cities (see below and response to interrogatories 9, 11, 14, and 20) which effectively precluded their access to the pool established and operated by FP&L and other large systems.

In the period following the interconnection of Cities with the peninsular wide transmission grid, FP&L has refused and resisted pooling and coordination with Cities by inter alia, (a) frustrating efforts of utilities throughout the state to engage in efforts to further pooling, (b) refusing to provide transmission arrangements that are requisite to permitting and maximizing coordinating economies, (c) refusing and resisting the development of centralized economic dispatch and (d) refusing to enter into joint generation and transmission planning or construction activities with Cities.

Since at least the beginning of the designated period FP&L has sought to promote and engage in pooling and coordination activities on a peninsular-wide basis, with limitations as to participants. Examples of these activities have included:

1. Bilateral arrangements through interconnection. On information and belief, since at least the onset of the designated period, FP&L has been interconnected with and exchanged electricity with, the Florida Power Corporation and Tampa Electric Co. See, e.g., (a) documents 6-7, attached to Cities' August 1979 "Memorandum of Fact" to Counsel for FP&L, and documents cited at "2" below; (b) Oct. 25, 1965 letter from S.A. Brandimore, Assistant Counsel (Florida Power Corp.) to Ben H. Fuqua (263187-263190) and Nov. 13, 1965 letter from Ben Fuqua to Brandimore (263193) (re joint transmission planning); (c) May 20, 1975 letter from J.S. Bell to R.T. Bowles, Florida Power Corporation (261240) ("FP&L has long ago seen the advantages of

both coordinated planning and interconnected operation. This is evidenced by its association with the Florida Electric Power Coordinating Group and its predecessor the Florida Operating Committee since their inception. We have been interconnected with neighboring systems since 1941 and, to our knowledge, participated in all statewide planning studies proposed in Florida.")

2. Joint nuclear power planning. In 1955 FP&L entered into an agreement with Florida Power Corporation and Tampa Electric Company to "pool interests and resources to build a nuclear plant with government help." See A Half Century of People Serving People, A History Of Florida Power & Light Company, page 94. See also Statements of George Kinsman, Secretary, Florida Nuclear Group and Vice President FP&L Co., et al., AEC Authorizing Legislation Hearings, Hearings before the Subcommittee on Legislation of the Joint Committee on Atmoic Power Energy, 85th Cong., 1st Sess., 1957; June 28, 1957 letter of W.C. MacInnes Chairman, Florida Nuclear Group to Mr. James T. Ramey, Executive Director, Joint Committee on Atomic Energy; February 27, 1962 letter of W.C. MacInnes, Florida West Coast Nuclear Group, Inc. to Congressman Chet Hollifield, Chairman, Joint Committee on Atomic Energy.

As FP&L stated in support of its Turkey Point nuclear license application, "(B)eginning some ten years ago, Applicant participated with Florida Power Corporation and Tampa Electric Company in a nuclear power plant study group, and has worked with others active in the nuclear field. The objective was to be in a position to construct a nuclear power plant when justified." See FP&L's March 22, 1966 "Application for Licenses Under the Atomic Energy Act of 1954 as amended for Turkey Point Nuclear Power Project," AEC Docket Nos. 50-250, 251, at 7. See also joint nuclear power planning in the context of Florida Operating Committee activities. See, e.g. Florida Operating Committee, attachment 3 to the record of the June 28, 1965 meeting. ("Nuclear power plant data covering power plants has been proposed by General Electric for use in the Joint-Long-Range study.")

3. The Florida Operating Committee. In October 1958, FP&L President and General Manager Robert A. Fite proposed that representatives of FP&L, TECO and Florida Power Corporation meet "from time to time, to discuss the interconnected operations of the three companies and matters relating thereto." This group was often referred to by members, including in Committee minutes, as the "Florida Pool." Cities note that planning and important operating information was exchanged within the group on a confidential basis. See, e.g., Nov. 7, 1968 transmittal from E.W. Page to Florida Operating Committee (203882-203889) (The transmittal attaches a memorandum entitled "Power Supply - Peninsular Florida Estimated Situation - 1970 and 1971" and stated that the memorandum, "prepared with your assistance, is being distributed on a limited and confidential basis.")

For descriptions of the pool's activities see, e.g.,

(a) October 2, 1958 letter from Fite to W.C MacInnes (PL-899);

(b) September 18, 1961 Florida Power Corporation Press release, "New Power Line Addition Strengthens 'Power Pool' for State's Future Needs";

(c) March 1, 1965 testimony of W.J. Clapp, President Florida Power Corp. in FPSC Docket No. 7767-EU, at 66-72 (PL 933);

(d) March 14, 1973 deposition testimony of Maurice F. Hebb, Jr. in Gainesville case;

(e) 1964 National Power Survey, at 239.

(f) Testimony, evidence and decisions in Florida Power & Light Company, FPC Docket No. E-7210;

(g) Studies and reports produced by the POC (which are available to FP&L);

(h) Testimony of R.J. Gardner, Florida Power & Light Company, FERC Docket No. ER78-19 et al. (Phase II) Tr. 472-76.

(i) February 24, 1963 National Power Survey Study Area 23 report.

(j) May 1961 Sunshine Service newsletter article "Interconnection Key to Florida Power Pool";

4. The Interconnected Systems Group. See 37 FPC 548-549.

As the above materials indicate, FP&L has long been aware of the benefits to FP&L of interutility coordination. It has similarly been aware of the particular need of small systems for coordination, especially where such systems are not in contrast to FP&L, large enough to attain economies of scale in base load generation, fuel procurement, and fuel diversification. While recognizing the needs of smaller systems for coordination, FP&L not only excluded them from the arrangements referred to in "1-4" above, but did so actively and with knowledge that such systems sought access to the coordination, pooling, and interconnection arrangements which FP&L itself engaged in and benefitted from.

For evidence of FP&L's awareness of the needs of smaller systems to access to coordination see e.g.,

(a) In its attempt to take over systems FP&L sought to rely on the claims that small isolated systems would be inefficient, but

(b) If the City took service from FP&L it could benefit from FP&L's large plants; including nuclear power. See, e.g.,

(i) "Continued Ownership by City of Clewiston vs. Sale to FP&L Co.," contained in 1966 package marked "Clewiston" "BHF" (251017-251030) (The "disadvantages" of continued municipal ownership are said to include "(G)enerating facilities of a size usable by the city are unthinkable when compared to the economies of the enormous plants being built by public utilities. In the past two years, the FP&L Co. has retired as uneconomical twelve plants ranging from 12,000 Kw to 33,000 Kw capability." The "advantages" of sell out to FP&L include: "(O)ur Clewiston customers will participate in any future savings from the large scale development of conventional and nuclear power plants."

(ii) Oct. 18, 1967 "KRB" notes regarding pros and cons of Homestead sellout (270210-270219) ("FP&L Co. can provide lower rates for the citizens mass production and diversities provide greater economy. Small plants are not flexible."

(iii) "Electric Utilities Service for New Smyrna Beach Preliminary Evaluation of Alternatives" (280883-280891) (showing benefits to include fuel diversification, including

nuclear, and more efficient plants)

(c) April 21, 1956 FP&L letter to "Our Friends and Neighbors in Lake City" (PL-1362);

(d) February 15, 1956 letter from W.J. Clapp President, Florida Power Corporation to Honorable Murray E. Hagen (PL-1470);

(e) "Preliminary Proposal of Electric Utility Service for New Smyrna Beach by FP&L Co." (August, 1979 memorandum, document #10).

(f) "Franchise Issues Daytona Beach 1976" (261542-261546);

(g) 1964 National Power Survey, Chapter 16.

(h) June 26, 1967 testimony of James G. Richardson and John R. Kelly in Federal Power Commission Jurisdiction, Hearings Before the Committee on Commerce, United States Senate, 90th Congress, First Session;

(i) "Comparative Analysis of Municipal and Investor-Owned Utilities and the Benefits to Their Customers," Financial Planning (FP&L), December 11, 1973 (261497-261499);

(j) March 22, 1958 letter from Finn Ramberg (member of Vero Beach Long Range City Planning and Advisory Commission) to President FP&L, and attached questionnaire (111021);

(k) May 10, 1958 Report of the Long Range City Planning and Advisory Committee of Vero Beach, Florida: Subcommittee on Electric Light and Power.

From the start of the designated period to the early 1970's (i.e., in the period prior to the Cities' completion of interconnection arrangements with FP&L and Florida Power Corporation) small systems continually sought the benefits of coordination, in efforts of which FP&L was aware. Examples of such efforts, and FP&L's awareness include the following:

1. See generally, March 19, 1959 letter from Edwin Vennard, Managing Director, Edison Electric Institute to "Chief Executives Member Companies" (PL 319) (attaching speech given at FMUA conference re potential coordination between municipal and cooperative systems).

2. In 1955-56 Seminole Electric Cooperative sought coordination in order to go forward with a proposal to build a nuclear unit. By December 7, 1955 letter from W.J. Clapp to Parks E. Baker (PL-325) with a blind copy to Robert H. Fite, Florida Power Corporation declined to provide the backup. As stated by Seminole's Mr. Baker, in a document provided by FP&L in the Gainesville discovery (PL-324), the inability to obtain backup killed Seminole's proposal. See May 15, 1956 U.S. Department of Agriculture Rural Electric Administration Press Release (PL 324).

3. In 1958 Vero Beach asked FP&L if it would "consider pooling reserves with Vero Beach and Ft. Pierce or with an autonomous Electric Power Body for these Cities for the purpose and installation and operation of relatively larger and internally more efficient electric power generation units than might be feasible if each interested party goes it alone." March 22, 1958 letter from Finn Ramberg to FP&L Co., supra. As evidenced by the May 10, 1958 report of the Long Range City Planning and Advisory Committee of Vero Beach, Florida, Subcommittee of Vero Beach, Florida, Subcommittee on Electric Light & Power, and related documents cited in response to question #21, FP&L stated that it would not sell power to Vero Beach, but was interested in taking over the system. As the May 10, 1958 report explained, the least desirable alternative for Vero Beach was further operation as an isolated utility. In the evident absence of a commitment to pooling from FP&L, the report recommended consideration of pooling with Ft. Pierce or sell out to FP&L, so that the advantages of coordination and economies of scale could be obtained. As FP&L knew, in the absence of a pooling commitment from FP&L, Vero Beach and Ft. Pierce did undertake coordination between themselves.

4. The Florida Municipal Power Pool. On the proposal for a Florida Municipal Pool, and FP&L's awareness of this proposal see, e.g.,

(a) "Benefits of Power Pooling and its Significance to Members of the Florida Municipal Utilities Association," by Robert E. Bathen, before the Seventh Annual Conference, Florida

Municipal Utilities Association, Lake Worth, Florida, April 2-3, 1964;

(b) "Florida Municipal Power Pool A Must for Yankee-Dixie," by Robert E. Bathen, before Second Annual Meeting Yankee-Dixie Power Association, Washington, D.C. June 2-3, 1966;

(c) July 11, 1967 letter from W.J. Clapp to Fischer J. Black, Robert H. Fite, and Clyde A. Lilly Jr. (PL 1196). By the letter, Florida Power inter alia, transmitted a map of the "Potential Florida Municipal Power Pool," warned of Bathen and Spiegel's efforts, and provided a Florida Power analysis that claimed that the municipal pool could not achieve the economies of scale to compete with "the presently existing and rapidly growing Florida Power Pool;"

(d) March 30, 1966 letter from Raymond R. Risavy (Allis-Chalmers) to Ernie Bivans re Proposed Florida Municipal Power Pool (204024);

(e) Dec. 21, 1971 memorandum from H.W. Page to Marshall McDonald (204021) (enclosing a "Bill proposed last year which would set up municipal electric cooperatives" and "a paper presented by one of the municipal consultants advocating a Florida municipal power pool. You may not wish to read it all, but the map is a must."

(f) May 3, 1971 memorandum from Ben H. Fuqua to A.M. Davis, attaching comments on H.B. 1539 relating to municipal electric cooperatives (204022-23) ("Let us suppose that the Yankee-Dixie project became a reality, with the Florida municipal electric cooperative grid as its southern anchor. It is readily seen what a problem that would pose for the investor owned electric companies in Florida."

5. The FMUA "interconections committee". On the Florida municipals' efforts to achieve the benefits of interconnection by interconnection among themselves; documents related to the work of the Florida Municipal Utilities Association Interconnection Commitee, including, e.g.:

(a) Minutes and reports of 1966-67 municipal utilities groups showing interest in interconnection and pooling. These meetings took place following

(i) the refusal of Gainesville and Tallahassee's requests for access to the Florida Pool (as shown in documents referred to below).

(ii) the refusals and resistance of both FP&L and Florida Power Corporation to interconnections with Cities (as shown in the Gainesville case and in documents referred to below and in response to interrogatory 11 and;

(iii) public knowledge of FP&L's policy of refusing to sell wholesale to municipals and FPC's refusal to enter into further municipal wholesale agreements as shown in response to interrogatory 9.

(b) June 6, 1966 letter from T.W. Bostwick (Jacksonville) regarding the formation of a municipal "Interconnection Committee with the purpose of studying the possibilities of municipal interconnections throughout the state."

Mr. Bostwick notes:

> "I think the committee should also weigh the advantages that can be gained by the smaller municipalities tying to the larger municipalities, such as Jacksonville, Orlando or Lakeland inasmuch as the larger ones are already tied with the private power companies and there would be no necessity then for the smaller municipals to chance the domination of their system by a direct interconnection with a private company.
>
> "I think, too, the committee should explore the attitudes of the officers and directors of the private companies in relation to our determination to have a municipal grid. Since collectively we would have strong support for our systems, it might make the private companies face the facts of life and accept us as a part of the statewide operating grid system. I have had some indication that there is a softening in their attitude.")
>
> * * * *
>
> "I think the committee ought to consider jointly owned large nuclear generating plants and we should discuss the legal aspects of joint ownership of facilities."

(c) July 28, 1967 "Report of the FMUA Power Supply Committee." The report, transmitted to public systems in both FP&L and Florida Power Corporation service areas, concludes in part:

> "1. The municipal systems in Florida must tie or die.
>
> "2. Some of the municipals will be required to commit themselves to generation and some of the

municipals will have to commit themselves to purchase their wholesale power requirements from a Florida Municipal generation and transmission organized as a nonprofit corporation.

"3. The committee feels that a generation and transmission system from the Lakeland area to the Gainesville and Jacksonville area is entirely practical and feasible, but that the same could not be accomplished within the next few years due to the pressures we may expect from the private power companies upon our local and state authorities."

(d) FMUA "Interconnection Questionnaire" and related information on benefits of pooling. Cities note

(i) the questionnaire was circulated by Florida Power to FP&L and other private utilities, with warnings (see July 11, 1967 letter from W.J. Clapp to Fite, et al., supra)

(ii) among the "advantages" cited for power pooling are, "(O)nly by being electrically interconnected through a strong transmission system, owned and operated at least in part by the Municipal systems, can the true benefits of scale in large modern conventional and nuclear plants accrue to Municipal systems." (emphasis added)

6. On the efforts of the "twelve cities" group to achieve the benefits of pooling and coordination, and Florida Power & Light's awareness of these efforts, see, e.g.,

(a) "The Twelve City Story A Report on Action to Date by Twelve Florida Cities," Robert E. Bathen, Before the American Public Power Association, Legal Seminar, October 26, 1970.

(b) On FP&L's "great concern" over 12 Cities activities see April 13, 1969 FP&L memorandum to J.G. Spencer Jr. attaching clipping re plan of 12 cities "to build their own power production system." (PL 476) The handwritten note states "Jim — this proposed 'system' would really be 'stretched out' from Chattahoochee and Quincy to Lake Helen (near DeLand) would really involve quite a lot of transmission. However, the fact that a 'study' is to be made certainly is a matter of great concern."

(c) See also documents produced by Florida Power Corporation in the Gainesville case.

7. The Yankee-Dixie Plan. On the Yankee-Dixie Plan, see generally, "The Yankee-Dixiee Coordinated Plan For Providing Low Cost Power to the Eastern United States: A Description of the

Yankee-Dixie Power Association, Inc. and its Objectives Including the Details of the Revised Conceptual Engineering Study Made for the Coordinated Plan," June, 1966. See also Yankee-Dixie documents available from Gainesville warehouse. See also,

(a) Dec. 10, 1965 "BHF" memorandum to Fite re City of Jacksonville (251756) (re Perez's inquiry to JAX concerning Yankee-Dixie),

(b) Dec. 9, 1967 memorandum from A.P. Perez to W.J. Clapp, Confidential City of Jacksonville Department of Electric and Water Utilities" (251757) (re meeting with JAX, including discussion of Yankee-Dixie).

8. Coordination between neighboring systems. In the absence of access to the "Florida Power Pool," small systems did seek to enter into bilateral coordination arrangements with their nearby small neighbors. These efforts included (a) Ft. Pierce - Vero Beach coordination, including interconnection.(b) Kissimmee - St. Cloud coordination and (c) proposed Sebring - Wauchula coordination (see interrogatory 11).

Since about the onset of the designated period smaller systems in Florida have been interested in nuclear power. Their desire to participate in nuclear power was limited by lack of access to coordination and economies of scale. FP&L knew of this interest, and of the factors limiting the ability of the smaller systems to achieve the benefits of nuclear power. Evidence of this includes, in addition to documents referenced elsewhere relating generally to Cities' need for coordination and access to economies of scale, the following:

1. Documents relating to Seminole Cooperative's 1955-56 effort to gain access to nuclear power, cited supra.

2. Article entitled "Bravo! Lake City" in July 1956 issue of Public Service magazine, obtained from FP&L's files in Gainesville discovery (PL 1319) ("... the citizens committee stressed two main objections to Lake City injecting itself into the manufacturing of electric energy ... 2. A small city-owned plant could not provide dependable service and there was grave danger that it might even become obsolete in a few years due to atomic power development.")

3. Orlando's 1956 proposal to build a demonstration reactor. See:

(a) "Seven Proposals for Small-Scale Nuclear Power Demonstration Reactors Received by Atomic Energy Commission," AEC Release No. 777, February 7, 1956.

4. On Ft. Pierce's 1959 proposal to build a nuclear unit, see:

(a) "AEC Receives Five Proposals to Operate Small Nuclear Power Plant," AEC Release No. B-241, December 29, 1959;

(b) November 6, 1959 letter from James F. Shivler, Jr., Reynolds, Smith & Hills to City of Ft Pierce re proposal for Engineering Services Municipal Electric Utility, City of Ft. Pierce ~~Pierce~~, Florida;

(c) City Commission minutes of Nov. 9, 1959 and Dec. 7, 1959.

5. On New Smyrna Beach's interest in obtaining access to atomic power from purchases from FP&L see Jan. 12, 1959 City Commission minutes, at pages 213-214. See also March 22, 1965 letter from J. Gillespie to Mrs. Edythe Hester, City Commissioner, enclosing copies of Gillespie's 1959 recommendations urging power purchase, rather than construction of new generation. (The recommendations stated inter alia, "Progress is so rapid at this time that in five or ten years an entirely different type of generation may be developed, which could replace the entire plant at less cost than would be incurred at this time and it is not beyond the realm of possibility that atomic power would then be available to all communities such as New Smyrna Beach. In fact, in a period of ten years we would be safe in saying that the availability of atomic power would be probable instead of possible...").

6. On FP&L's awareness of Vero Beach/Ft. Pierce's interest in atomic power see Feb. 29, 1960 memorandum from "Dick H" (Richard Hill) to Ben H. Fuqua (111058) ("From an article in the Vero Beach paper it looks like they are thinking of making a request the same as Ft. Pierce for atomic energy plant.")

7. On the industry-wide belief inthe 1960's that there are significant economies of scale in nuclear power, that small units

would not be immediately competitive and that small systems should seek to gain the benefits of nuclear through pooling, see e.g.,

(a) March 2, 1961 letter from Frank K. Pittman Director, USAEC Division of Reactor Development to Alex Radin, General Manager American Public Power Association. Pittman advised that AEC will not accept any proposals submitted in connection with the "Small Nuclear Power Plant Invitations" (in which Ft. Pierce submitted a proposal). The letter further explains that:

> "Recent studies on the current status and economic potential of small size nuclear powerplants indicate plants based on existing technology currently are not economically attractive to small utilities because of high capital costs and restrictive siting requirements. The economic potential for such plants for other than specialized applications does not appear favorable at this time. In view of our analysis of the studies and experience with the SPWR project it is concluded that proceeding with the SPWR under any available cooperative arrangement would not be expected to make a sufficiently significant contribution to the achievement of economical power for general application in this size range as to justify expenditure of the funds necessary to construct the prototype at this time."

(b) Statements of national atomic energy experts and officials that the prospect for economic small reactors was not immediately favorable, and that small systems should seek access to nuclear power through interconnection and pooling. See e.g., presentations by Allen J. Vander Wayden, AEC deputy assistant general manager for reactors; Glenn T. Seaborg, Chairman AEC, and Rep. Chester Holifield, as reported in Feb. 1965, April 1965 and June 1965 APPA Atomic Power Newsletter.

(c) "Small Nuclear Power Plants" Reactor Engineering Division, Chicago Operations Office, USAEC, March 1967, 3 volumes.

(d) "Interim Report Long Range Generation -- Transmission Planning Study" by Long Range Study Group of Florida Operating Committee, July 1966 (showing FP&L calculations of economy of scale in nuclear plants);

(e) July 11, 1967 letter from W.J. Clapp to Fischer S. Black, Robert E. Fite, Clyde A. Lilly, Jr. (PL 1196) (transmitting Florida Power critique of the economies of potential municipal units);

(f) Documents cited elsewhere in response to interrogatory 15 showing municipal recognition that access to coordination or pooling was the key to access to nuclear.

8. In 1968 Gainesville requested and was refused access to Florida Power Corp.'s CR-3 unit. See

(a) June 12, 1968 letter from John R. Kelly to A.P. Perez;

(b) June 17, 1968 letter from A.P. Perez to John R. Kelly re Crystal River Nuclear Facility. In denying access, Florida Power stated that "your concern for an additional power source from us has no foundation since we are not electrically interconnected." Gainesville nonetheless intervened in the licensing proceeding in order to seek the Atomic Energy Act and antitrust laws. Gainesville's efforts were denied, however, under a holding that "(T)he Crystal River facility is plainly licenseable under Section 104(b) as we have construed that section; and the board's determination that it lacked jurisdiction to consider antitrust matters in this proceeding was manifestly correct." See March 20, 1977 AEC "Decision" in Florida Power Corp., Docket No. 50-302, slip opinion at 4-5. On June 2, 1971 Gainesville again requested antitrust review in that docket.

FP&L filed license applications under §104 of the Atomic Energy Act, 42 U.S.C. §2134, thereby avoiding requests for outside participation and forestalling otherwise required antitrust review.

FP&L refused or unlawfully sought to resist Cities' requests for access to the benefits of coordination enjoyed by FP&L. As shown in response to interrogatories 9, 11, and 14, it refused to provide wholesale power, interconnection and transmission service, thus, de facto, denying Cities' access to the benefits of coordination enjoyed by FP&L. In addition, FP&L (both unilaterally and pursuant to the Gainesville conspiracy) refused express requests for access to pooling and refused to deal with municipal proponents of pooling and their agents. Evidence of this includes:

1. September 8, 1966 memorandum to File from S.A. Brandimore (Florida Power Corporation) re Interconnection-

Tallahassee (PC 1059). As recorded in the memorandum, it was

> "... stated that the City was interested in being a member of the Florida pool. Messrs. Dunn and Perez assured Mr. Bathen that there was no pool, that the Florida Operating Group carried no colligations but was predicated on good faith and good will and a spirit of cooperation, and that the Company could not invite anyone into the Group without a willingness on the part of other members to cooperate."

2. Documents showing FP&L and Florida Power Corporation's refusal of Gainesville's express and repeated requests for access to the "Florida Pool." See

(a) June 14, 1965 letter from James G. Richardson, Commissioner (Gainesville) to Robert Fite (PL 931);

(b) Statement of James G. Richardson City Commissioner, City of Gainesville, Florida Before the Subcommittee on Communications and Power of the Interstate and Foreign Commerce Committee of the House of Representatives of the United States on HR 3608 and HR 5955;

(c) November 10, 1965 Gainesville "Application for Interconnection and Complaint Against Unlawful Actions," in FPC Docket No. E-7257 and

(d) July 19, 1966 letter from Robert H. Fite to John Kelly (PL 1132) ("I am fully aware of your interest in making an intertie with the interconnected system in Florida and since I understand that negotiations are continuing between Gainesville and Florida Power Corporation, I sincerely hope that they will be successful and that you will arrive at a mutually satisfactory contract."

(e) April 30, 1965 J.S. Gracy memorandum re Negotiations City of Gainesville (PC 1189) (Richardson then "proposed that we make a new approach to the problem of interchange and conditioned this approach on a charter change. He would like to see Florida Power consider Gainesville as a part of the overall power pool and stated that they would plan on staying in the generating field but would delay the construction of units until they could build larger ones then would otherwise be the case. In effect, he proposed that Gainesville become a part of the overall power pool on the same basis as Tampa Electric Company, Orlando, etc. He launched into a discussion

for a proposal for mine-mouth plants, EHV transmission, Appalachia etc. which would result in the possibility of four mill per Kwh power for Gainesville. I advised him that we would like to buy some at this figure."

3. July 11, 1967 W.J. Clapp letter to Fite et al., supra, warning of Bathen and Spiegel's representation of municipal interests.

4. Documents showing Florida Power Corporation's 1966-67 refusal to deal with R.W. Beck, and insistence that Tallahassee cancel potential Beck study on pooling. See response to interrogatory 11, Tallahassee.

5. Documents evidencing FP&L's contemporaneous refusal to deal with George Spiegel. See

(a) July 26, 1967 Homestead City Commission minutes and

(b) March 18, 1966 J.G. Spencer, Jr. memorandum to file re meeting with Vero Beach (111160). ("Answering a specific question, Mr. Woodson said Mr. Spiegel is not involved with the City of Vero Beach...") See also April 2, 1976 H.C. Luff "Fite Memorandum - NRC - South Dade Antitrust Hearing re H.C. Luff call to Tracy Danese, March 30, 1976." (Danese "said FPL people detested Spiegel and his employment by OUC would make communication difficult, if not impossible, between FP&L and OUC. Danese strongly urged FPL to employ other counsel.") See also FP&L's 1976-77 opposition to the potential use by Daytona Beach of R.W. Beck as a consultant to the City. See e.g., Daytona public relations sheet titled "Opposition to Beck. If asked why FPL opposes Beck ..." (281983)

6. July 15, 1958 Florida Power Corporation letter to R.H. Fite, W.C. McInnes, Lansing Smith, Jr. (FC 438) expressing concern over statewide cooperative pool.

7. February 2, 1973 Gainesville case deposition of Maurice Hebb, Jr. explaining that

(a) the Florida Operating Committee sought to "design the state system as if it were one electric system" (i.e., without regard for territorial boundaries or ownership) (Tr. 310-311).

(b) except that the Florida Operating Committee did not

"design a system ... to promote the interests of some party that was not in the committee, such as Gainesville" (Tr. 313) and

(c) Hebb's opinion "is that that was necesary that all of the utilities in the state should be integrated into a single planning program." (Tr. 314)

8. May 7, 1963 memorandum from Mr. H.C. Kean to W.J. Clapp (PC 2063) re McKean's conversation with TECO official on the importance of territorial agreements:

> "5. I called to his attention the requests for service received by Florida Power Corporation over the years from Dade City, Live Oak, Bountstown, Starke, and Vero Beach, all of which had been refused service by Florida Power Corporation. In the cases of Blountstown, Starke, and Vero Beach, they were not at the time receiving wholesale service from any investor-owned utility.
>
> "6. I also informed him that if the two companies could not comply with the territorial agreement, I could not see how he could have confidence in interchange and pooling agreements."

9. Feb. 12, 1969 memorandum from M.F. Hebb, Jr. to A.P. Perez, re Lack of Coordination between Utilities in Florida (provided from FP&L files as document number 213167-213169) ~~(Memorandum states,)~~ stating in part,

> "If I were an agent of the Federal power Commission, on the job of criticizing the Florida operation, I would drive in on the following points:
>
> 1. Lack of documentations of coordination -- How do you handle a maverick?
>
> 2. Lack of capacity pooling.
>
> 3. Exclusion of smaller utilities from FOC ..."

10. Dec. 1966 memorandum to file from BHF (263195) ~~(Memorandum records)~~ recording (a) Harry Poth statement that Florida Power Corporation should file its interconnection and interchange agreements and (b) E.H. Dunn's (Florida Power Corp. Vice President and General Counsel) "position that such filing would give the FPC jurisdiction over all existing interconnections, would permit them to force interconnections and give them jurisdiction over interstate power pools ... I told Dunn that I had no further argument to offer, that if he were willing to fight -- more power to him -- and that he might very well be correct on his position on that matter. This means that Poth could very well be wrong -- only time will tell. Tampa Electric has taken the same position

with Dunn."

FP&L further refused or resisted the efforts of other members of the Florida Operating Committee to improve coordination, including efforts to expand coordination to include Cities. Evidence of this includes:

1. Documents showing FP&L sought to frustrate coordination that might be contrary to its claim that it was not subject to Federal Power Commission jurisdiction. See

(a) August 9, 1965 memorandum from M.F. Hebb, Jr. to A.P. Perez (PC 757);

(b) February 19, 1965 memorandum from A.P. Perez to W.J. Clapp (Clapp Gainesville deposition, Exhibit 34)

(c) June 24, 1968 memorandum from M.F. Hebb, Jr. to file re Jacksonville;

(d) June 12, 1968 M.F. Hebb Jr. memorandum to A.P. Perez re City of Jacksonville ("Sooner or later an effort must be made within the State to truly pool capacity and take advantage of the savings available through an integrated plan. Possibly the municipals afford the best entree toward this step. We should continue our discussion and promotions with the two investor-owned companies, but until the jurisdictional problems are solved I doubt if any real progress will be made in this direction."

(e) September 10, 1969 memorandum from M.F. Hebb Jr. to A P. Perez (PC 1001)

(f) Nov. 3, 1965 letter from Ben H. Fuqua to S.A. Brandimore (263193) (transmitting proposed changes in Florida Power Corp. draft letter to Federal Power Commission (263188-263190) deleting language implying active exchanges between FP&L and Florida Power Corp.)

(g) April 5, 1966 "CSC" memorandum (263194) (providing for scheduled power through new tie to Florida Power Corporation, stating "(W)e will not sign any contract or make any special arrangement."

(h) Dec. 1966 "BHF" memorandum, supra (263195)

2. Documents showing efforts of other members of Florida Operating Committee to further coordination and pooling, but FP&L

resistance. See e.g., in addition to documents cited at "1" above,

(a) Deposition of Maurice F. Hebb, Jr. in Gainesville case, supra.

(b) Documents related to Florida Power Corporation's Nov. 1968 suggestion that smaller systems become part of the Florida Operating Committee. Documents include:

(i) Nov. 7, 1968 letter from W.B. Simonds, Florida Power Corp. to Members of the Florida Operating Committee (213154). The letter transmits FPC Gainesville interconnection final decision and outline "suggestion for restructuring Florida Operating Committee." (... newly interconnected systems must have a voice in setting these [peninsular bulk electric] recommendations and standards ... It is recommended that this subject be on the agenda of the next meeting of the Florida Operating Committee, and that all members be prepared to discuss and resolve it.")

(ii) Jan. 16, 1969 "BHF" memorandum to Fite and Fullerton re: Admission to membership in Florida Operating Committee of REA/Coops and Municipal Systems and cover notes (213152-213158);

(iii) Feb. 12, 1969 memorandum from M.F. Hebb, Jr. to A.P. Perez re Lack of Coordination Between Utilities in Florida (213167)

> "Through the fine efforts of the Florida Operating Committee (FOC) over the years, the operations of the five major utilities in Peninsular Florida are very well coordinated. Communications are excellent; operating concepts are agreed upon and firmly carried out. We appear to survive massive failures with minimum loss of load. Whenever we are called upon to make statements concerning coordination in Florida for industry or Congressional reports, we tout this coordination of operations as highly as we can.
>
> "There is, however, a much more basic concept in utility coordination in which the State, in my opinion, has failed and, as a consequence, is highly vulnerable to criticism from the industry and from the regulatory agencies. This has to do with the coordination of the total systems during the planning and development stages. I refer to capacity pooling, true joint transmission programs, common approach to system development with reference to outage criteria, common dedication to optimization of plant sites, coordination of efforts when it becomes necessary to speak with a single voice, and management dedication to plans of common interest. Florida is the only major load area in the nation which does not have its systems pooled through

formal agreements. There is no way we can demonstrate to regulatory groups that the managements are dedicated to common goals concerning planning and development. I suspect our own State Commission is exposed to different views from the various utilities, making it virtually impossible to expect this Commission to aid us in our problems.

* * *

"During this session of the Congress, I feel the industry is going to be faced with one of the most onerous Bills ever promoted -- the Power Plant Siting Bill. The industry will probably rise to the occasion and present a massive opposing program. The large coordinated groups -- ECAR, MAPP, CARVA, etc., will likely have a spokesman for testimony for the respective group. In Florida, unless we find a way to do this, I believe our opposing tactics will be something less than spectacular. Can you visualize a spokesman for each Company standing up under cross-examination concerning the coordination of generation programs to optimize the use of available sites, and thus minimize the pollution problem? As you know, we have had great difficulty in even coordinating rather meaningless long-range plans for the State for industry reports. There simply is no real effort being made in this State to jointly develop the transmission and generating systems of Florida to minimize costs, optimize sites and rights-of-way, and to produce the most reliable system for the lowest total investment. Although there have been "joint studies" made through the FOC, there is a complete lack of management dedication to carry out any of the recommendations arising out of these studies.

"I think we should take every opportunity to point out to the other utilities -- particularly Florida Power & Light Company and Tampa Electric Company -- that Florida Power Corporation has done its best to protect the interests of the utilities in the State without benefit of complete cooperation from these utilities. Florida Power's presence in NERC is almost a sham; we cannot always protect the interests of the other systems in this activity. It should be stressed to these utilities we are having severe problems in reporting coordinated data to the Southeast Regional Advisory Committee, the Federal Power Commission, EEI, NERC, etc., because of the lack of a coordinated pool. The FOC is not effective for this sort of thing because:

1. Its duties do not embrace this function.

2. They convene only about six times a year with a heavy agenda of day-to-day operating problems.

3. Their operating functions constitute a full-time activity for mid-management operating personnel.

4. It is not a management forum for matters such as inter-State concepts of coordination.

"If I were an agent of the Federal Power Commission, with the job of criticizing the Florida operation, I would drive in on the following points:

1. Lack of documentation of coordination -- How do you handle a maverick?

2. Lack of capacity pooling.

3. Exclusion of smaller utilities from the FOC.

4. Lack of a single voice when the Federal Power Commission seeks information on State problems. Example: The recent Port Everglades incident.

5. The "island" planning concept pursued in the State which shows no plans for strong ties with the ISG.

6. Lack of coordinated approach to regulatory bodies on matters of common interest, such as pollution, site optimization, reliability, treatment of municipals and cooperatives and long-range plans."

(c) May 26, 1969 memorandum from H.W. Page to Loftin Johnson (203881) attaching draft May 14, 1969 "Statement Concerning Regional Organization" (203862) (Page notes that the draft, prepared by Florida Power Corporation "is generally similar to other approved statements and with a little polishing should pass muster. However, something new has been added namely, the idea expressed in the last sentence." The draft's last sentence states "(I)f any other utility, whose facilities are interconnected with this group, [FOC] has an electrical system which would have an impact upon the supply of bulk power, then this utility would be encouraged to participate in the Florida Operating Committee.")

(d) July 15, 1969 letter from Louis H. Winnard, Jr. Managing Director (JEA) to Mr. Harry Luff, Assistant Director (Orlando Utilities Commission) re coordination of future generation. ("As I indicated I have sent out some feelers regarding the possibility of establishing a Committee to investigate power pooling in Florida. Early information indicates that it would not be appropriate to try to establish such a Committee at this point in time. I am hopeful, however, that I will be able to get a start on this worthwhile objective later on during the year.")

(e) September 13, 1973 letter from C.H. Stanton (Orlando Utilities Commission) to Marshall McDonald ("We believe that formation of a power pool in Florida would greatly benefit the cause of reliability and economy in the state. The benefits of pool operations are well known to you and your associates and are evidenced by successful pool operations in almost every other area of the country ... Successful formation of a power pool in Florida depends almost entirely on the desire of the major investor-owned companies to adopt the pooling concept. One of

the major companies has stated a willingness to move in this direction.

"We can only hope the others will follow. Smaller companies will participate once the larger companies set the example.")

Following the formation of the Florida Electric Coordinating Group in 1972-73, FP&L continued to resist the efforts of other utilities, including other large systems as well as Cities, to move towards pooling. As evidence of this see

1. April 13, 1976 affidavit of Harry C. Luff Jr. in Florida Power & Light Company, NRC Docket No. P-636A.

2. April 26, 1976 memorandum from E.L. Bivans Jr. to Mr. Tracy Danese re "South Dade Nuclear Power Plant, NRC Docket No. P-636A and 50-389A affidavit of Harry C. Luff, Jr.

3. Testimony of E.L. Bivans in Florida Power & Light Company, FERC Docket Nos. ER78-19 et al. (Phase I) Tr. 843-844.

4. Positions taken by the parties in pleadings and hearing room statements of counsel in Tampa Electric Company, et al., FERC Docket Nos. E77-549 et al.

5. FP&L's opposition to the FCG consideration of the Florida Peninsular Expansion Planning Study. The study was to examine the possible benefits of joint generation planning as opposed to independent generation planning. FP&L refused to adopt the same steps and perspective to the study that everyone else did. Everyone else wanted to approach generation planning in the context of the state as a whole; plan generation for the state as a whole without regard to individual service areas. As a result, generation would be placed where needed. FP&L wanted to examine each indivdidual system separately and then be allowed to place increments according to what each system can afford, piecing these increments together rather than viewing matters from a state prospective. Messrs. Dykes, Lawrence, and L'Engle are knowlegable concerning this matter.

6. On FP&L's resistance to pooling, see generally:

Interoffice Correspondence (FP&L) to Marshall McDonald from S. Buchanan re Progress Report on Power Pooling Task Force of FCG Operating Committee, December 19, 1974 (241648)

Interoffice Correspondence (FP&L) to Marshall McDonald from R.S. Buchanan re Progress Report on Power Pooling Task force of Florida Operating Committee Working Group, December 6, 1974 (241649)

Interoffice Correspondence (FP&L) to W.D. Lang, C.N. Whitmire from K.S. Buchanan re FOC Power Pooling Task Force Report on A Florida Electric Power Pool, December 4, 1974 (241669)

Interoffice Correspondence (FP&L) to E.L. Bivans, W.E. Coe from K.S. Buchanan re FOC Power Pooling Task Force Report on A Florida Electric Power Pool, November 26, 1974 (24175)

Interoffice Correspondence (FP&L) to E.L. Bivans, Tracy Danese, C.N. Whitmire from W.E. Coe re New Interchange Service Contracts FPL - TECO and FPL - FPC, February 3, 1974 (271950)

Letter to J.D. Hicks (Chairman, Technical Advisory Group, FCG) from C.H. Whitmore (Chairman, FOC), March 7, 1975 (254918)

Interoffice Correspondence (FP&L) to E.L. Bivans from J.E. Seelke re State LOLP Task Force Meeting of April 9, 1975, April 11, 1975 (254107)

Letter to R.T. Bowles (Florida Power Corporation) from J.S. Bell (FP&L) May 20, 1975 (243086)

Letter to J.S. Bell (FP&L) from Don Moore (Director System Planning, Orlando Utilities Commission) May 15, 1975 (243072)

Letter to J.S. Bell (FP&L) from L.T. Shivers (Gulf Power Company) May 14, 1975 (243073)

Letter to J.S. Bell (FP&L) from H.L. Southwick (Supervisor Distribution Planning (Florida Power Corporation) May 19, 1975 (243074)

Letter to J.S. Bell (FP&L) from R.W. Cochran (Superintendent Planning and Engineering, City of Lakeland) May 16, 1975 (243078)

Letter to J.S. Bell (FP&L) from Gary T. Lawrence (Engineer System Planning, City of Tallahassee) May 15, 1975 (243080)

Letter to J.S. Bell (FP&L) from R.L. Hestor (Director of Systems Planning, Alachua County Regional Electric Water & Sewer Utilities Board) May 16, 1975 (243082)

Letter to J.S. Bell (FP&L) from R.D. Dyer (Jacksonville Electric Authority) May 15, 1975 (243083)

Letter to H.L. Culbreath (Chairman, Florida Electric Power Coordinating Group) from Commissioners William T. Mayor, William H. Bevis, Paula F. Hawkins (Florida Public Service Commission) May 1, 1975 (24308)

Interoffice Correspondence (FP&L) to E.L. Bivans from J.L. Seelke re State of LOLP Task Force Meeting of April 9, 1975, April 11, 1975 (243107)

Meeting, Florida Electric Power Coordinating Group - Technical Advisory Group (TAG) June 12, 1975 (244209)

Organizational Chart, "Organizational Options for Florida Electric Power Pool, Present FCG Organizational Structure"; Questions relating to Florida Electric Power Pool Organization; Draft Outline, Florida Electric Power Pool; August 20, 1975

Memorandum to E.L. Bivans from J. Sam Bell, August 25, 1975 (attaching Organizational Options for Florida Electric Power Pool)

Oct. 7, 1975 H.C. Luff to Bivans et al. (244065) transmitting pooling draft

Nov. 12, 1975 letter from Luff to J.D. Hicks (245675)

May 23, 1976 "SLB" memorandum re: "so-called benefits" (272530)

March 15, 1976 letter from Luff to J.D. Hicks (252807)

Florida Electric Power Pool Agreement, March 1976 TAG - Draft #1 (272477)

Florida Electric Power Pool Agreement, April 1976 - TAG Draft #2 (272536)

Oct. 1, 1976 letter from Luff to J.D. Hicks (252877)

Dec. 9, 1976 letter from Marshall McDonald to Joseph D. Jenkins, FPSC

In addition to generally resisting the furtherance of pooling efforts involving Cities and others, FP&L has in the "FCG years" refused to engage with Cities in activities that are important components of pooling. For example:

1. FP&L has resisted the development of centralized economic dispatch, even where benefits to FP&L were demonstrable. See

(a) "A Florida Electric Power Pool," Report to the Florida Operating Committee Working Group, prepared by the Power Pooling Task Force, December 11, 1974.

(b) Testimony of E. Bivans, Florida Power & Light Company, FERC Docket Nos. ER78-19 et al. (Phase I), Tr. 843-844. (FP&L has not studied benefits of pooling/centralized dispatch; FP&L would not necessarily support the concepts, even if savings were shown.)

(c) Savings realized by electric systems in Florida under the current "Power Broker" program.

2. FP&L has sought to deny access to FP&L's transmission system. See response to interrogatory 14.

3. FP&L has refused, and continues to refuse, to voluntarily enter into joint ownership of generation and transmission projects with Cities, see e.g., Feb. 19, 1975 letter from Tracy Danese to Walter Baldwin ("You have requested the names of systems which were 'invited' but elected not to participate [in St. Lucie II] Your letter implies that FP&L affirmatively invited or solicited participation. That is not the case ... The negotiations now in progress with the systems named above are the implementation by FPL of the conditions mandated by the governmental agencies referred to.") In addition to this and evidence cited in response to interrogatories 14 and 17, Cities note FP&L's refusal to share ownership with Cities in the "joint" nuclear venture proposed by FP&L in 1976. See

(a) April 18, 1976 FP&L memorandum by "MCC" re

"cooperative nuclear opwer plant major financial considerations for FPL."

(b) Requests in conjunction with Docket Nos. P-636-A and 50-389-A et al., including pleading affidavits, correspondence and meetings. E.g., April 14, 1976 letter from George Spiegel to Tracy Danese.

(c) Correspondence and negotiations relating to so-called Central Florida project as evidenced by documents including the following.

Letter to Tracy Danese (Chairman, Florida Joint Nuclear Project Steering Committee - FP&L) from Preston H. Haskell (Chairman, Jacksonville Electric Authority) March 15, 1977 (244359)

Minutes of 2/16/77 Florida Joint Nuclear Facilities Steering Committee meeting to Florida Joint Nuclear Facilities Participants from R.C. Keuther (Secretary, Steering Committee) March 8 1977 (244352)

Letter to Harry W. Wright (Executive Vice President, Seminole Electric Cooperative, Inc.) from J. Sam Bell, Jr. (FP&L) February 4, 1977 (244351)

Letter to Sam Bell, Jr. (FP&L) from Harry W. Wright (Executive Vice President, Seminole Electric Cooperative, Inc.) February 1, 1977 (244350)

Letter to Members of Florida Utilities Steering Committee from J. Sam Bell, Jr. (FP&L) January 26, 1977

Letter to R.J. Gardner (Vice President, FP&L) from E.C. Shreve, Jr. (Director of Electric Utility, City of Ocala) December 30, 1976 (244349)

Letter to Tracy Danese (Vice President Public Affairs, FP&L) from H.C. Luff (Assistant General Manager, Orlando Utilities Commission) December 28, 1976

Letter to R.J. Gardner (FP&L) from S.L. Livengood (Assistant General Manager for Engineering & Planning, Gainesville Alachua County Regional Electric Water & Sewer Utilities Board) December 22, 1976

Letter to Tracy Danese (Vice President Public Affairs, FP&L) from Harry W. Wright (Executive Vice President, Seminole Electric Cooperative, Inc.) December 20, 1976

Letter to Robert J. Gardner (FP&L) from Robert A. Jablon (Spiegel & McDiarmid) re FP&L's Proposed Joint Venture Project, December 16, 1976

Letter to Members of Florida Utilities Steering Committee from Tracy Danese (FP&L) December 14, 1976

Letter to R.J. Gardner (Vice President, FP&L) from J. Thomas Gurney, Jr. (Gurney, Gurney & Handley, P.A.) re Joint site study, December 13, 1976

Letter to R.J. Gardner (Vice President, FP&L) from Harry W. Wright (Executive Vice President, Seminole Electric Cooperative, Inc.), December 6, 1976

Letter to R.J. Gardner (Vice President, FP&L) from H.C. Luff (Assistant General Manager, Orlando Utilities Commission) November 30, 1976

Letter to R.J. Gardner (Temporary Chairman, Florida Utilities Steering Committee, FP&L) from C.C. Blaisdell, Jr. (Utilities Director, Lake Worth Utilities Authority) November 23, 1976 (244320)

Letter to R.J. Gardner (FP&L) from City of Kissimmee, Office of Utilities Director, November 18, 1976 (244325)

Letter to R.J. Gardner (FP&L) from James N. Etheredge (Mayor, City of Bushnell) re FP&L's Proposed Joint Venture Project, November 18, 1976 (244322)

Letter to R.J. Gardner (Vice President, FP&L) from Harry W. Wright (Executive Vice President, Seminole Electric Cooperative, Inc.) November 16, 1976

Letter to Harry Luff (Orlando Utilities Commission) from R.J. Gardner (Vice President, FP&L) November 16, 1976

Letter to Bob Jablon (Spiegel & McDiarmid) from Harry Luff (Orlando Utilities Commission) re Suggested reply on pooling paragraph of Gardner's November 16, 1976 letter

Letter to Harry Luff (Orlando Utilities Commission) from R.W. Cochran (Supt. Planning & Engineering, City of Lakeland) November 12, 1976 (attaching proposal)

Letter to Members of Florida Utilities Steering Committee from R.J. Gardner (FP&L) re Extension of Time for Letters of Intent, November 12, 1976

Letter to R.J. Gardner (Vice President, FP&L) from E.V. Rutledge (Special Sales Representative, Westinghouse Electric Corporation) November 10, 1976

Letter to Robert J. Gardner (FP&L) from Robert A. Jablon (Spiegel & McDiarmid) November 12, 1976, re: FP&L's Proposed Joint Venture Project

FP&L Offer Nuclear Plant Services, November 10, 1975, November 12, 1975-Revised (203715)

Letter to R.J. Gardner (Vice President, FP&L) from E.V. Rutledge (Special Sales Representative, Westinghouse Electric Corporation) November 10, 1976 (270508)

Letter to R.J. Gardner (Vice President, FP&L) from H.C. Luff (Asst. General Manager, Orlando Utilities Commission) November 5, 1976 (272251)

Letter to R.J. Gardner (Temporary Chairman, FP&L) from Fred Kray (General Manager, Florida Keys Electric) November 3, 1976 (244312)

Letter to R.J. Gardner (Chairman, FP&L) from William R. Snow (City Manager, City of Green Cove Springs) November 1, 1976 (244313)

Minutes of Meeting of Florida Utilities Joint Venture Project, November 1, 1976 re Joint Venture Project

Letter to Tracy Danese, Esq. (Vice President Public Affairs, FP&L) from Robert A Jablon (Spiegel & McDiarmid), October 21, 1976

Letter to Tracy Danese (FP&L) from John V. Little (City Manager, Vero Beach) re Joint Venture Project, Plant Siting, Joint Participation Proposal, Generating Plant Site Study, October 21, 1976 (244732)

Letter to Harry Wright (Executive Vice President, Seminole Electric Coop., Inc.) from R.J. Gardner (Vice President, FP&L) October 19, 1976 (244738)

Letter to Tracy Danese (Vice President Public Affairs, FP&L) from Harry Wright (Executive Vice President, FP&L) October 15, 1976 (244739)

Letter to Florida Utilities Steering Committee (R.J. Gardner) from John T. Doughtry (Manager, Utility Board City of Key West) October 14, 1976 (203710)

Letter to Marshall McDonald from Tracy Danese re Lakeland Proposal to be Made at Next Executive Committee Meeting of the FCG, October 11, 1976 (261264)

"Information for those Systems which have Previously Expressed Interest in the Joint Project"

"Florida Utilities Plant Siting Project" R.J.G., October 1, 1976

Florida Joint Nuclear Facilities Steering Committee Minutes (Draft), Sept. 30, 1976

Memorandum to file from O.F. Pearson re Central Florida Project Meeting 7, TECO, Sept. 30, 1976 (120894)

Letter to Harry Wright (Exec. Vice President, Seminole Electric Coop. Inc.) from R.J. Gardner (Vice President, FP&L) Sept. 29, 1976 (252999)

Interoffice Memorandum (Orlando Utilities Commission) to Harry Luff, Tom Gurney, Jr. from Don.Moore (System Planning) re Florida Electric Utilities Joint Participation Agreement with FPL - Siting Study 9-15-76, Sept. 24, 1976

Letter to Members of Florida Utilities Steering Committee from R.J. Gardner (FP&L) re Proposal for Site Study, Sept. 15, 1976

Florida Joint Nuclear Facilities Steering Committee Meeting Minutes, Sept. 10, 1976

Letter to R.C. Kuether (Assoc. Managing Director, Jacksonville Electric Authority) from Donald Benjamin (Staff Engineer, Florida Coordinating Group) Sept. 13, 1976

"Proposed Changes to Florida Joint Nuclear Steering Committee" (Exhibit H)

Letter to Harry Wright (Exec. Vice President, Seminole Elec. Coop, Inc.) from R.J. Gardner (FP&L) Sept. 29, 1976 (244743)

Letter to Robert Gardner (Vice President, FP&L) from Harry Wright (Exec. Vice President, Seminole Elec. Coop. Inc.) Sept. 17, 1976 (244725)

Interoffice Correspondence (FP&L) to File from R.J. Gardner re Florida Utilities Steering Committee, Sept. 10, 1976 (203453)

Interoffice Correspondence (FP&L) to File from R.J. Gardner re Florida Utilities Steering Committee, Sept. 9, 1976 (203454)

Letter to E.L. Bivans, Ted Blount, Tracy Danese, Orin Pearson from R.J. Gardner, Sept. 8, 1976 (203456)

"Whether to proceed with the study on a land-based vs. barge-mounted unit (vote tally)" (203457)

Interoffice Correspondence (FP&L) to R.J. Gardner from Sam Bell re Florida Utilities Steering Committee Proposal for Site Study Sept. 7, 1976 (272325)

Letter to Steering Committee Members from R.C. Kauther (Secretary, Jacksonville Electric Authority) re: Florida Joint Nuclear Project Feasibility Study Agreement, Sept. 3, 1976.

Interoffice Correspondence (FP&L) to A.L. Heil, W.H. Rogers, Jr., J.N. Salapatas from Corporate Contracts (J.S. Odom) re Economic Study for Florida Utilities Steering Committee, Bidder Evaluation, Sept. 3, 1976 (203458)

Interoffice Correspondence (FP&L) to R.J. Gardner from Corporate Contracts (J.S. Odom) re Florida Utilities Steering Committee Economic Study of Barge-Mounted vs. Land-Based Nuclear Power Plants, Sept. 1, 1976

Letter to Bob Gardner (Vice President, FP&L) from Harry Luff (Ast. General Manager, Orlando Utilities Commission) Aug. 30, 1976

Interoffice correspondence (FP&L) to J.S. Bell, W.S. Tucker, R.E. Tallon, & W.C. Summers from R. J. Gardner re Florida Utilities Steering Committee Proposal for Site Study; August 25, 1976 (203463)

Letter to Harry A. Poth, Jr., Esq. from Robert A. Jablon, Esq. (Spiegel & McDiarmid), August 16, 1976 (no number)

Letter to Robert A. Jablon (Spiegel & McDiarmid) from R. J. Gardner (FP&L Vice President), July 28, 1976 (no number)

Draft of "Feasibility Study Agreement, Florida Joint Nuclear Project," July 21, 1976 (no number)

Letter to J.N. White (Stone & Webster Engineering Corp.) from J.S. Odom (FP&L Manager of Corporate Contracts), "Invitation to Bid," July 19, 1976 (no number)

Purchasing Agent form from R. J. Gardner (FP&L Vice President, Strategic Planning Department), July 16, 1976 (272351)

"Agreement for Engineering Services Between Florida Power & Light Company and Contractor (Draft 7/16/76)" (no number)

"Central Florida Project, Meeting 4, Orlando Utilities, Orlando Fl - 7/14/76" (252950)

"Florida Joint Nuclear Facilities Steering Committee Meeting Minutes," July 14, 1976 (no number)

"Agenda - Florida Utilities Steering Committee," July 14, 1976 (no number)

Memo to Steering Committee Members, Florida Joint Nuclear Project, from R.C. Ruether, Secretary, Jacksonville Electric Authority re: 6/22/76 meeting minutes, July 22, 1976 (no number)

"Procedure for Consultant Selection for A Study of Economics of Floating & Land-Based Nuclear Plants," 6/23/76 (no number)

Letter to Robert A. Jablon (Spiegel & McDiarmid) from Harry W. Wright (Seminole Electric Cooperative, Inc., Executive Vice President) re Central Florida Joint Nuclear Venture, July 13, 1976 (no number)

Letter to Tracy Danese (FP&L Vice President) from Robert A. Jablon (Spiegel & McDiarmid) re "Proposed joint nuclear venture in central Florida," July 8, 1976 (no number)

Letter to George C. Moore (Florida Power Corp.) & Ronald Ruether (Jacksonville Electric Authority) from R. J. Gardner (FP&L Vice President) re consultants, June 23, 1976 (203480)

Memo to N. B. Spake from George C. Moore re selection of consulting engineers for feasibility study, June 22, 1976 (no number)

Letter to J.A. Bauer (Kissimmee) from R.J. Gardner (FP&L), June 23, 1976 (252944)

Letter to R.J. Gardner from J.A. Bauer (Kissimmee) re interest in nuclear project, June 22, 1976 (252945)

Letter to R.J. Gardner (FP&L) from H.C. Luff (Orlando Utilities Commission) re Florida Utilities Steering Committee, June 10, 1976 (203484)

"Meeting Summary" by H.C. Luff (Orlando) re FP&L Joint Nuclear Project meeting of June 3, 1976. June 7, 1976 (no number)

4. FP&L refused Cities' offer of participation in its South Dade nuclear units, even while claiming that the units were needed but could not be furthered because of financial difficulties. See "Initial Brief of Florida Cities," Florida Power & Light Company, FERC Docket No. ER78-19 et al. (Phase I), April 7, 1978, at 134-135 (and documents and testimony cited there).

5. FP&L's top officials have rejected, or considered the rejection of otherwise economic business alternatives for FP&L on grounds that they might be of benefit to Cities as well. See,

(a) Opinion NO. 57, footnote 49 (b) Cities' Aug. 9, 1979 Memorandum; and (c) evidence cited elsewhere in response to these interrogatories.

6. FP&L has sought to restrict Cities' access to alternative fuels and new technologies. See, e.g., (a) Response to interrogatory 14 re Titan Industries; (b) "Guidelines for Power Generation From Municipal Solid Waste Operations" (212164); and on information and belief (c) FP&L actions in relation to Dade County waste disposal.

21. As to each instance in which you contend that FPL has attempted to acquire municipal electric systems in its service area, as is alleged in ¶ 74 of the Complaint herein, identify the date on which it began; the date on which it ended; who initiated consideration of the proposal that FPL acquire the municipal system; the method of the attempted acquisition (sale, lease, other); and the result of each such attempt.

Answer to Interrogatory 21

21. Since at least the start of the designated period FP&L has continually attempted to acquire systems in its service area. In addition, pursuant to the Gainesville conspiracy and the territorial agreement described in answer to interrogatory 22, it has aided and abetted Florida Power Corporation's efforts to acquire systems within the territory allotted to Florida Power Corporation. The method of FP&L's continuing attempt is the refusals to deal, resistance to dealing, and dealing on unreasonable terms described in response to all other interrogatories (see, e.g. especially responses to questions 9, 11, 14, and 15, and 17). This behavior by FP&L lessens the ability of municipal systems to compete and tends to induce a readiness to lease or sale of the system to FP&L. In the course of the designated period both FP&L and officials or citizens of Cities from time to time expressed interest in the development of a formal lease or sale proposal. Insofar as FP&L presented discrete proposals to purchase or lease, they are identified below.

The interrogatory also asks "who initiated consideration of the proposal that FPL acquire the municipal system." Cities note, as shown below, that it has apparently been FP&L's policy, albeit one with substantial exception, to urge Cities to issue FP&L formal requests for proposals before FP&L's made a formal proposal. Thus, in some cases city commissions or boards have formally asked FP&L for a proposal. As the documents cited below and in response to other questions show, however, such formal proposals are the culmination of FP&L's efforts to induce and facilitate proposals by refusals to deal and/or behind the scenes political activity.

On FP&L's historic intentions see generally:

(a) October 17, 1956 Fuqua/Hill memorandum (PL 18) re: plans of Lake Worth; Clewiston; Ft. Pierce and Vero Beach "in connection with a study we are now making here" and (b) January 7, 1957 Hill/Fuqua memorandum (PL 626) attaching data regarding Vero Beach; notes previous forwarding of information on Lake Worth and subsequent forwarding of information on Clewiston and

Ft. Pierce.

(b) Robert Pite, Gainesville case deposition, Sept. 25, 1972 at 15-15 (re: how interconnections came about)

"... some of these interconnections come about because we sought to purchase or to lease municipal distribution systems. That would be in the case in New Smyrna Beach, might be the case in Homestead."

Q. How would FP&L attempt to lease or buy a system by bringing about an interconnection?

A. By negotiations with the City Commission; elections on the question of a lease.

Q. Did the interconnection come about because you were successful in getting a lease?

A. No.

Q. That is my question. How do you get from a discussion of lease or purchase over into negotiating an interconnection?

A. Well, it comes about this way: in some cases a city such as Lake Worth, I believe, was a case in point, wanted to buy power wholesale -- that was the case with Homestead -- and our policy was not to sell wholesale.

So we then tried to work out a lease of their system and take over the whole thing. In the case of some of these towns the City Commission or some of them thought that would be a good thing, but none of them ever materialized and became effective.

In the meantime, if they had emergencies we tied into them. One case we agreed to supply electricity for a year or so while we could negotiate and try to work out the lease on the purchase of the distribution system.

(c) "Statement for the Record by FP&L In Response to Testimony By or on Behalf of Florida Municipalities at Senate Commerce Committee Hearings on S. 1365 on June 27-28, 1967 (PL 94).

"FP&L Co. has never made any categorical statement of policy to the effect that it would not wholesale to municipalities as witness the examples above.

"It has been pointed out that in many cases it would be to the economic benefit of a municipality's electric customers, the employees of the City electric system, and indeed, of the City itself to sell or lease its electric facilities to the company on fair terms. This matter is tinged with emotion and prejudice but certainly represents a sensible and reasonable approach to the problem."

* * *

"Homestead, along with many other cities, has consistently indicated that a permanent wholesale arrangement might lead to a purchase of the city system by the

company and that a wholesale contract was to be avoided because of the danger of loss of the property."

(d) March 30, 1957 letter from Fred Danforth, Secretary Central Surveys to Ben Fuqua (PL 322) (transmitting Lake Worth opinion survey) ("... the Lake Worth situation looks very promising. I have just glanced at the Homestead results and am sorry to say it doesn't look promising.")

(e) "A Half Century of People Serving People; A History of Florida Power & Light Company," 40-43.

(f) September 10, 1976 memorandum from T.R. Moffett, Jr. NCD to L C. Hunter, Group Vice President re Vero Beach District Engineering Requirements (#120239) ("The impact potential of the Vero Beach acquisition on the franchise election in Daytona Beach and other Municipal Operations such as Ft. Pierce, Homestead, etc. makes it imperative that we not ~~under-achieve~~ underachieve with our Vero Beach operation.")

New Smyrna Beach.

In 1959 FP&L proposed to lease the New Smyrna Beach system. This offer was rejected by the City Commission. See, e.g.

1. October 17, 1956 Fuqua/Wright memorandum seeking information on New Smyrna Beach, Starke, Green Cove Springs planning re: "Some studies we are making here" (PL 396).

2. March 24, 1958 Fuqua/Wright memorandum (PL 82) (New Smyrna Beach receives no payment to the General Fund for the electric system. "If so, the climate for negotiation should be pretty good."

3. August 19, 1958 Chas. H. Cole/A.B. Wright, Vice President, FP&L Memorandum re: New Smyrna Beach (PL 81) Information on New Smyrna Beach people and institutions and their relations with FP&L.

4. August 19, 1958 A.B. Wright/R.C. Fullerton, Vice President re: New Smyrna Beach (PL 80). In re: August 11 letter, provides a who's who of New Smyrna Beach.

5. September 16, 1958 Fite letter to Milton Frank (of Wisconsin) (PL 78). Thanking him for information on New Smyrna Beach contract. "We have been working up there for some little time now and it seems to be about one of the best 'prospects'

that we have had... we are certainly going to make every effort to acquire the property."

6. September 22, 1958 Wright/Fite memorandum (PL 77) Wright reports on August 25 meeting with City Commission.

7. September 25, 1958 "RHF" memorandum (PL 76) re: New Smyrna Beach municipal electric system: (a) get certified copy of resolution "requesting FP&L to survey the electric property, looking toward possible purchase or lease"; (b) work out plans to (i) sell firm power during winter, (ii) City Commission to agree not to order generating equipment and to initiate and put through legislation changing vote requirements for sell out. Negotiate (executive sessions) and vote on lease in spring.

8. September 20, 1958 letter from Fite to Herbert Butterbrodt (PL 75) (referenced by Frank). Says FP&L has had preliminary negotiations regarding purchase or lease.

9. October 3, 1958 "Excerpts from a Special Meeting of the City Commission of New Smyrna Beach, Florida. Held Friday, October 3, 1958. Commission agrees to work as per September 25 "RHF" memorandum. "It being understood that the acceptance of this proposal at this time shall not be construed in any way as indicating that the Commission or any of its members at this time stand in favor of the leasing or sale of the plant...."

10. April 20, 1959 Wright/Fite memorandum (PL 72). New Smyrna Beach facilities are in good shape. "In conclusion I would like to say again that in my opinion the acquisition of New Smyrna Beach certainly provides some distinct advantages other than just taking over a municipally owned property."

11. April 27, 1959 Alan B. Wright/City Commission. Lease proposal.

12. August 5, 1959 letter from Wright to New Smyrna Beach (PL 65). Acknowledging New Smyrna Beach letter formally rejecting lease proposal. FP&L regrets decision. "We are however interested in negotiating for certain of your outlying areas of distribution if these facilities are for sale ... Our Company's position with the City of New Smyrna Beach will continue to be that of a "good neighbor" and it is our sincere hope that we may work something out at some future date."

13. See August 24, 1964 Wright/New Smyrna Beach (Mayor Hathaway) letter (PL 565). Wright notes continued request for service in fringe areas. FP&L says it is still interested in buying outlying areas, as stated in 1959.

In 1966 FP&L acquired the electrical facilities in the City of Edgewater, and undertook to render electrical service in territory formerly served by New Smyrna Beach. (See PL 1-15)

In 1965 FP&L and New Smyrna Beach considered the sale or lease of New Smyrna Beach's system. See February 19, 1965 A.B. Wright/City Commission letter formally proposing sale or lease.

See also

1. February 8, 1965 Wright/Fullerton memorandum re: City of New Smyrna Beach (PL 562) "... the city officials realize that we have made no proposal as we simply discussed about what it would appear that the City would require in order to be interested in our leasing their facilities."

2. February 9, 1965 Fullerton/Fite memorandum re: Two Current Negotiations New Smyrna Beach and Keys Cooperative (PL 561).

3. February 17, 1965 FP&L draft proposal for lease or sale (PL 560).

4. February 17, 1965 FP&L draft proposal (PL 1240).

5. "RCF February 18, 1965" notes re: New Smyrna Beach proposal letter (PL 1241).

6. February 19, 1965 Wright/New Smyrna Beach (PL 559) proposal.

7. September 7, 1965 "Minutes of Special Meeting of the City Commission of the City of New Smyrna Beach." "Mr. Allen Wright of FP&L Co. appeared before the Commission stating what they would like to negotiate further with the City and stated he would have a proposal ready within 30 days "

8. September 20, 1965 City Commission Minutes.

9. R.C. Fullerton letter to Elmer L. Lindseth, (Chairman, CEI) (PL 553) "You are right this [New Smyrna Beach] is a municipal system and a number of people there are interested in us taking over the operation, a desire we regard with natural

enthusiasm."

In 1970 FP&L again sought to acquire New Smyrna Beach. See

1. Sept. 13, 1968 memorandum from A.B. Wright to R.C. Fullerton (210404) ("As explained previously, the City is accordingly faced with the alternative of either selling the entire system or making a connection with our Company and this decision will have to be reached at a fairly early date because of the time factor involved in obtaining substation transformers and other equipment.")

2. April 21, 1970 A.B. Wright/J.G. Spencer Jr. memorandum re: New Smyrna Beach (PL 547). Regarding our discussion of "what might be done to change the present City Charter of New Smyrna Beach to permit some equitable arrangement for the leasing or sale of the City's electric utilities, I am attaching a suggested change in Section 193 of the City Charter... Mayor Doster is definitely interested in endeavoring to work out a sale or lease arrangement with our Company. Of course, we all realize that the present Charter, Section 193, will have to be changed if we are ever going to resolve this matter." This involves a change in the voting requirement from 2/3 majority voting to sell or lease a system, to a simple majority.

3. May 14, 1970 Spencer/Wright Re: New Smyrna Beach (PL 546) Sid Hoehl is looking over "the suggested changes to the New Smyrna Beach City Charter which you sent to us .... I agree with you that we cannot and should not take a lead part in promoting the action, but if we are asked for advice or to review any papers, I think we should do all we can to help. Good luck -- keep us advised."

4. July 9, 1970 Wright/Doster (PL 545). In our recent discussions "in response to your request we would be interested in endeavoring to work out with the City some form of lease agreement..."

5. July 17, 1970 Notes (on Utilities Commission letterhead) re: July 17, 1970 conference of City and FP&L;

6. July 20, 1970 memorandum from A.B. Wright to J.G. Spencer re City of New Smyrna Beach (261825);

7. July 27, 1970 memorandum from A.B. Wright to J.G.

Spencer Jr. (222132);

8. Sept. 4, 1970 memorandum from A.B. Wright to E.L. Bivans re New Smyrna Beach (222133) (Lease negotiations are continuing; "if everything goes well it is possible that we could take possession after the first of the year (we hope).");

9. Utilities Commission minutes of Sept. 23, 1970 and Oct. 7, 1970;

10. See "Stalemate Seen in Smyrna Lease Move", Sept. 30, 1970 Daytona Beach Morning Journal ("Wright emphasized that 'nothing was settled' at the meeting, but agreed that without some modification of the bond ordinance governing the city's electric system nothing can be settled"); "FPL Funds May Pay For Two Elections," Sept. 17, 1970 Today; "FPL Seeks Takeover of Smyrna Utilities" Sept. 16, 1970 Orlando Sentinel; "Meeting With FP&L Surprise to Officials," July 10, 1970 Daytona Beach Evening News.

11. June 5, 1973 memorandum from R.C. Pringle, Jr. to R.G. Mulholland re City of New Smyrna Beach (261773) ("One thing that I would like to bring out is that during 1970 when we got involved with things before it was finally dropped because of the City Charter stating that it required 75% of the freeholders approval before any of the City facilities could be leased or sold. In January of this year by referendum the Charter was changed and now only requires a simple majority of those voting.")

In 1973-75 FP&L again sought to acquire the New Smyrna Beach system. In May 1973 the City Commission wrote to FP&L expressing a desire that a proposal be submitted. In Aug. 1974 FP&L submitted a formal proposal. In Jan. 1975 the citizens rejected the proposal in a referendum. Evidence of the above includes the following:

1. Documents referred to in response to interrogatory 11, showing FP&L's resistance to interconnection with New Smyrna Beach during the course of the takeover attempt.

2. May 13, 1973 letter from R.W. Beck, City Manager to Robert Pringle (230539) (City Commission expresses a desire that your company submit a proposal.)

3. June 15, 1973 letter from R.G. Mulholland to R.W. Beck (230536) (FP&L "would be receptive to discuss either of the two [lease or sale] proposals.")

4. Sept. 4, 1973 letter from S. Victor McDonald, City Commissioner to Marshall McDonald (230724).

5. Sept. 20, 1973 letter from Marshall McDonald to S. Victor McDonald (23072).

6. Oct. 8, 1973 letter from Marshall McDonald to S. Victor McDonald (230822).

7. Oct. 25, 1973 letter from S. Victor McDonald to Marshall McDonald (230817).

8. Aug. 27, 1974 letter from R.G. Mulholland to City Commission (261871) (acquisition proposal).

9. Sept. 20, 1974 letter from George Spiegel to Marshall McDonald (230785).

10. Dec. 10, 1974 and Nov. 11, 1975 (230469) letters from Robert A. Jablon to Evan L. Williams, Utilities Commissioner.

11. Dec. 20, 1974 letter from George Spiegel to Marshall McDonald.

12. Jan. 17, 1975 letter from George Spiegel to R.G. Mulholland.

13. Dec. 10, 1974 letter from R.W. Beck to Utilities Commission.

14. FP&L internal memorandum (230465) stating that the citizens have rejected FP&L's proposal by a Jan. 28, 1975 vote of 2197 to 891.

Homestead.

1967: see

1. July 28, 1967 "RHF" Memorandum to File (PL 93) regarding July 27, 1967 meeting with Homestead Attorney Turner; Homestead asked for (i) territorial agreement; (ii) more emergency help; (iii) future permanent connection with FP&L. "We emphasized again that purchase of the Homestead facilities, or lease of them should be considered also."

2. October 3, 1967 Fite/O.R. Pearson letter (PL 86). You will recall that "the Council, in addition to requesting proposals for an interconnection or a wholesale power contract, agreed

(without too much enthusiasm I admit) to consider a proposal at the same time to purchase or lease your system. We have been working on such a proposal in addition to the arrangements concerning interchange or wholesale contract."

3. November 30, 1967 F.E. Autrey/R.H. Fite (PL 85) re: Homestead Territorial Agreement. Commissioner Mayo of FPSC called regarding Homestead territorial agreement. "I told him that I thought the City would be having to make a decision shortly after this territorial agreement is ordered as to whether they are going to buy more generation or request us to sell them wholesale power or us take over their system... the City had agreed to listen to and consider a proposal for us to buy or lease their distribution system."

4. Oct. 18, 1967 "KRB" notes (270210-270219) ("FP&L Co. can provide lower rates for the citizens. Mass production and diversities provide greater economy. Small plants are not flexible.")

1976. As recorded in the minutes of the March 10, 1976 City Council meeting, at 10, Mayor House called FP&L and spoke with Mr. Irwin and asked if FP&L would be interested in coming down and talking about the possibility of selling the light plant. "Mr. Irwin contacted his supervisor who sent word back that because of antitrust laws FP&L had to be very careful how they approached us and could not approach us without formal request from Council for them to come down and talk about this." On March 17, 1976 O.R. Pearson wrote Mr. Willis Irwin, requesting such a meeting. Discussions did not result in a definitive proposal by FP&L.

Ft. Pierce 1965. See

1. April 2, 1965 Memorandum from R.D. Hill to R.C. Fullerton (PL 29) Re: April 1, 1965 meeting with Ft. Pierce.

"I was then asked by Mr. White, one of the Commissioners, whether we were interested in purchasing the property, i.e., the plant and distribution system. I told him that we were but that any recommendation from us would require study before any proposal could be presented. ... The only question asked of me by the press was were we interested in purchasing the Ft. Pierce

electrical system and I advised them that we were."

2. May 5, 1965 R.D. Hill to City Commissioners (PL 33). FP&L suggests lease or sale.

3. May 12, 1965 Harding/Hill letter (PL 36). Re: Hill's May 5 letter. Harding told Hill (by phone) on May 7 that the City was not interested in lease or sale. "It may be that the City's position with regard to the lease of the City's electric utility to your company was slightly altered as a result of the May 10, 1965 meeting. At that meeting it was my understanding that Commissioners Castle and Trucker were authorized to discuss with you further the possibility of a lease agreement ... This office is looking forward to conferring with you in the very immediate future about the possibility of stand-by, emergency standby or wholesaling of electricity."

4. June 1, 1965 City Commission meeting. "Motion was made by Mr. Tucker, seconded by Mr. Nelson that we terminate our talks with FP&L regarding the tie-line for emergency power." Passes 3-2. "Motion was made by Mr. Tucker, seconded by Mr. Castle that we invite FP&L, if the invitation has not already been given, to present us in writing a proposal for the lease and sale of our electric facilities with the understanding that we are not committed in any way, in any respect, to anything else but to consider and study their proposal."

5. June 2, 1965 (PL 41) Harding/Hill letter communicating Commission votes.

1976. On March 1, 1976, a meeting was held between representatives of the F.P.U.A. and FP&L to consider the acquisition of the Ft. Pierce system. The meeting is reported in the F.P.U.A. minutes. Contemporaneously, FP&L advised Bob Skinner that FP&L would likely withdraw "in the event that future legal situations arose that in our opinion would be detrimental to our continuing these efforts." Memorandum to file, J.K. Daniel, April 28, 1976.

On March 26, 1976, a meeting of the F.P.U.A. was held to consider intervention in NRC Docket No. P-636A. Mr. Daniels implied that such intervention might cause FP&L to cease negotiations.

At a meeting between FP&L representatives and Mr. Menge on April 8, 1976, and at another meeting with the FPUA, April 9,

1976, FP&L tried to convince Ft. Pierce not to intervene in South Dade. At the May 9 meeting, FP&L said they would get a task force to Ft. Pierce in a week or ten days "to gather final information regarding the negotiations and they would be prepared to make an oral presentation within 30 days." FP&L did gather such information, but no definite formal offer was submitted.

According to Ft. Pierce representatives, once the City obtained wholesale power, interest in selling the system diminished.

Starke. 1955. See February 1, 1955 A.B. Wright/R.H. Fite memorandum (PL 644) "... I feel this would be a good time at least to feel out the attitude of the Starke officials as to a possible lease arrangement ...."

1969. According to FP&L's response to Gainesville case interrogatories, "On September 3, 1969 a meeting was held between representatives of the City of Starke and FP&L Co., during which the possibility of selling the Starke system to FP&L Co. were discussed." According to FP&L, those present were FP&L's Wright, Pringle, and Durian and Starke Commissioners Gerald Williams and Neil Tucker. The only document cited by FP&L is a September 3, 1969 Wright memorandum to file.

Clewiston. From at least the beginning of the designated period FP&L continually sought to lease or purchase the Clewiston system. Evidence of this includes

1. June 2, 1950 memorandum from Sidney S. Hoehl (attorney) to R.H. Fite (referred to in PL 209 below). "I do not believe that there are any real legal problems involved in our acquisition of the electric system in Clewiston or in securing a franchise from Clewiston."

2. In 1955-57 FP&L talked with Clewiston regarding lease or sale, and made a proposal which was rejected by the City in 1957. See

(a) January 13, 1955 E.W. Smith (Regional Manager)/Fite memorandum (PL 118) regarding negotiations with Clewiston. "These negotiations are urgent at this time because the City is faced with the necessity of making certain improvements to their distribution system prior to the summer session of

1955. The City has the money on hand to do this work and are now prepared to do so but are withholding action pending the outcome of our negotiations... the City officials have indicated a willingness to receive a proposal from us ... [in view of existing contracts] we believe that our proposal to the City should contemplate continuance of the existing contract until it expires November 1, 1958... In consideration of all these factors and the small amount of out of pocket money required initially, we feel that we should make every effort to acquire this property at this time.."

(b) June 12, 1957 letter from Mrs. Pearl B. Stephens (Deputy Clerk, Clewiston) to R.D. Hill (PL 204) inviting FP&L to survey property in contemplation of proposal.

(c) October 2, 1957 memorandum from Sidney Boehl, Jr. (attorney) to R.F. Lewis (Special Asst. to the President) (PL 209) regarding legal aspects of proposal.

(d) September 20, 1957 (PL 196) document entitled "FP&L's proposal." (While document also bears handwritten words "not submitted," according to FP&L's interrogatory answers in the Gainesville case, a proposal of this date was made.)

(e) PL 217 handwritten notes recording contact with Clewiston citizen Robert Cochrane apparently October 1957.

(f) November 29, 1957 letter from Fite to Fred C. Sites (Mayor) (PL 112) Fite disappointed to receive Sites' November 26 letter "saying that the Commission has directed you to advise us that our proposal to lease the municipally owned distribution system at Clewiston is not acceptable."

3. FP&L's continuing interest in Clewiston is evidenced by January 9, 1959 letter from Fite to W.B. Irby, Glades Electric Cooperative, Inc. (PL 1061). "I think I should mention Clewiston as an area for special treatment. As you know, we have been interested in purchasing the municipal facilities there and serving the area retail.

"We probably will continue to negotiate for the purchase of Clewiston if and when the opportunity presents itself."

4. In 1965 FP&L sought to lease or acquire the system in connection with Clewiston's intervention at the FPC.

(a) See August 26, 1965 J.G. Spencer Jr. memorandum to file. (PL 308) On August 26 Hill, John Majewski and Spencer visited Commissioner McCarthy in Clewiston. McCarthy said "he has the support of the Council, when the [Coop] contract expires, to either buy wholesale from FP&L Co. or install their own diesel engines. He had not contacted us since he knew our 'policy' is not to wholesale to cities, but he thinks we should and that if we refuse, the Government should force us to ... He also stated that the City would not consider the lease or sale of their facilities."

(b) September 3, 1965 handwritten memorandum (no author listed) regarding September 13, meeting with McCarthy, Hill and Spencer (PL 307) "We told Mr. McCarthy that we were back for two purposes -- to convince him that FP&L Co. was ready to negotiate with the City on the purchase, lease, management or any other plan to serve the City with electric power -- we have a completely open mind -- and 2) that while we are talking we want them to withdraw from any participation in the current FPC hearings."

(c) "Memo to File" (PL 306). Typed memorandum regarding September 3 meeting with Mr. McCarthy. "Mr. Spencer and Mr. Hill discussed possibilities of further discussion for sale or lease or operation of their electric distribution system and that we would like to make a further study and proposal. Mr. McCarthy advised us that he was definitely interested in pushing purchase of wholesale power from us... and that he thought our present policies were discriminatory..."

(d) Package of material marked "Clewiston", "REF" "1966," including "General Background," "Discussion of FP&L Co.'s Purchase Offer for the City of Clewiston Electric System," "Continued Ownership By City of Clewiston vs. Sale to FP&L Co." (251017-251030) (The document lists, as a disadvantage of continued ownership, "(G)enerating facilities of a size usable by the city are unthinkable when compared to the economies of the enormous plants being built by public utilities. In the past two years the FP&L Co. has retired as uneconomical twelve plants ranging from 12,000 Kw to 33,000 Kw capability." It lists as an advantage "(O)ur Clewiston customers will participate in any

future savings in the cost of electricity resulting from the large scale development of conventional and nuclear power plants."

Vero Beach:

1957-1959. In 1959 FP&L and Vero Beach discussed possible lease. FP&L was invited to do so by a Vero Beach committee considering alternatives. The discussion took about two months and apparently nothing further came of it. Documents show that, independent of the Vero Beach invitation, FP&L sought to lease or purchase Vero Beach. See

1. October 22, 1957 letter from Nicholas P. Callaghan to MacGregor Smith (111014). Callaghan is a FP&L stockholder and Vero Beach ratepayer -- outraged by Vero Beach service. "I propose to do something about it. I am wondering if I could enlist your aid ... it would seem to me that some action should be taken to see that perhaps a company such as the FP&L Co. could negotiate the purchase of the utility from the city and operate it ..."

2. October 28, 1957 Smith/Callaghan. (111013) "I was glad to get your letter and to learn that we have such a friendly ally living in Vero Beach. Some of us will be calling on you soon to get your views as to the best way the problem should be handled."

3. March 22, 1958 Finn Ramberg (member of Long Range City Planning and Advisory Commission) to President FP&L (111021-221, Folder 34). Would like to meet to discuss alternatives available to Vero Beach system, including pooling; sell out; wholesale.

4. March 26, 1958 Fuqua/Hill (111020). Will visit Vero Beach, will give talk instead of written answers.

5. March 28, 1958 Fuqua/Ramberg (111019) will meet.

6. April 1, 1958 Remberg/Fuqua (111018) setting April 1, 1958 meeting.

7. April 2, 1958 Vero Beach/FP&L bill comparison (111016).

8. May 10, 1958 Report of the Long Range City Planning and Advisory Committee of Vero Beach, Florida: Subcommittee on Electric Light and Power. [This document was identified as Citizens Exhibit No. 36 in Florida Power & Light Company, FPC

Docket No. E-9574.

The Committee recommends that "prompt action be taken concurrently" to (a) explore pooling with Ft. Pierce: "It appears likely that such a Vero Beach - Ft. Pierce combination would be economically justified through use of larger and more efficient generating units, through having deep water docking facilities with cheaper fuel, and for other factors explained later ..." (b) "Invite (by Council Resolution) the FP&L Co. to come to Vero beach for a conference. They would survey the Vero Beach electric system and submit a system lease or other proposal. A FP&L Co. proposal should be attractive in that economies should be possible because of the company's large scale operation. They are able to generate with very large units at efficiencies much higher than is possible in any local operation. They purchase fuel at very low cost through long term contract." (c) "Supplementing those two efforts, consideration should be given to the building of a new steam power plant in Vero Beach. The unfavorable factors as to small capacity and location of such a plant make this solution of the problem of doubtful value except as a last resort."

FP&L told the Committee it was not interested in wholesaling (page 14 of report).

9. August 1, 1958 Fuqua letter to R.A. Scott (111031). Thanks Scott for article regarding Vero Beach; notes FP&L met with Long Range Committee "We had thought that they might possibly invite us to Vero Beach for a discussion of possible lease or sale of their electric property to the FP&L Co. Up to this date we have heard nothing from them."

10. February 6, 1959 R.D. Hill memorandum to File (PL 621). Hill, Fuqua and Parkerson of FP&L met with Riley Woodson of Black & Veatch. Woodson is working with Long Range Planning Committee. Woodson "was authorized to inquire FP&L's attitude in regard to outright purchase or lease..." Woodson to get back to Fuqua on February 9 after talking with his ~~principles.~~ principals.

11. February 9, 1959 Woodson letter to Fuqua (111033) proposing to hold secret talks for 60 days on sale or lease possibility.

12. February 13, 1959 Fuqua letter to Woodson (111036). Fuqua looking forward to talks.

13. April 24, 1959 memorandum, no author, no identifying stationary, (111055) stating in part, "The Company and the City's representatives have mutually concluded that no basic change in the business relationship between the Company and the City can be advantageously made at this time." (Note that this memorandum is identified by FP&L as "memorandum to file; author unknown" in response to an interrogatory on takeovers in the Gainesville case.)

Cities note that, in the absence of a complete takeover FP&L sought to aid city ratepayers in their efforts to change service. See, e.g.,

1. October 11, 1961 letter from John W. Hesselton to MacGregor Smith (PL 614); Hesselton states concern with municipal service.

2. October 24, 1961 Smith letter to Hesselton (PL 611) FP&L's R.D. Hill will visit to "discuss the situation. Perhaps Mr. Hill will have some suggestions as to what might be done."

3. November 2, 1961 Hesselton letter to Smith (PL 608). Thanking for Hill's visit. "I think I know how to go about attacking -- the problem as I would prefer, peacefully and without identifying your Company specifically ... I shall plan to accept Mr. Hill's kind offer of getting into his hand the draft of the petition I plan to draw up..."

1967-1968. In 1967-68 FP&L sought to purchase or lease the Vero Beach system. Evidence of this includes:

1. November 24, 1967 R.D. Hill memorandum to file (PL 599). Re: November 21, 1967 meeting at Vero Beach. Vero Beach wanted to talk about territory, wholesale power, emergency service.

"Mr. Wallace [of Black & Veatch] brought up the question of rates and trading of power and also at the time made a statement that Messrs. Spencer and Fuqua had previously told them they were not interested in wholesale power."

"At this time I asked them (those representing the city) as a diversion, whether they were interesting (sic) in selling or leasing the property to us. They said "yes," that they would be

interested in a proposal and asked how long it would take to make such a proposal. I told them if we had the information a proposal could be made in 30 days.

"At this point Mr. Wallace read a proposal to the group that we were presumed to have made in 1959."

2. November 28, 1967 letter from Hill to Vero Beach (City Manager Pryde). Re: November 21 meeting. "The third question involves wholesale power to the City and we are reluctant to go further into this at this time as we believe there are other alternatives which should first be fully studied. These include interchange, lease, sale."

3. February 19, 1968 letter from J. Noble Richards (Mayor) to Fite. (121203). Vero Beach wants to discuss, inter alia, "the possibility of purchasing power from FP&L."

4. February 21, 1968 "Progress Report Re: Vero Beach Electric Power System" by Indian River County Taxpayers Association (121197). "The big and most immediate question before the Committee today is to determine whether FP&L would be willing to sell us firm bulk power at a cost which could justify its purchase."

5. February 22, 1968 Hill/Fite memorandum (120963). Background on Vero Beach officials.

6. February 29, 1968 Fite letter to Fred J. Prestin (City Councilman) (121185). Re: meeting with Vero Beach. "Other plans discussed involve more direct participation by FP&L for supply of electric service to Vero Beach. There has been insufficient time to formulate the details of such plans but we are going ahead with the studies and hope to present you with such proposals at a later date."

7. April 11, 1968 Fred J. Prestin, Chairman Electrical Study Committee to Mayor Richards (121051) "Buying power outside is the only way to be in line for atomic energy in the near future, which will make all small generating plants obsolete. Purchase rates will probably go down then."

8. May 9, 1968 letter from J. Noble Richards to Fite (121194). "The City is not interested in proposal for selling or leasing any part of its system." The City wants an interconnec-

tion, "and we would also be interested in your proposal to purchase any excess power and energy that would be available if we install new generating equipment."

1974-1980. From 1974-1978 FP&L was again actively involved in Vero Beach acquisition. See generally documents, testimony, and pleadings in Florida Power & Light Company, FPC Docket No. E-9574. On May 27, 1976 FP&L formally proposed to acquire the system. In September 1976 this propsal was approved by the voters. On March 31, 1978 FP&L formally withdrew its application to acquire the property in Florida Power & Light Company, FPC Docket No. E-9574. However, Commissioner Gregg of Vero beach stated, "Should in the future the climate for regulatory approval change, it shall be the intent of both parties to re-initiate discussions." March 31, 1978 Gregg letter.

In January, 1980 Bob Skinner of Ft. Pierce attended a public meeting at Vero Beach where Robert J. Gardner said that FP&L would consider making a lease offer after settlement with the Department of Justice.

Key West. In 1956 FP&L sought to lease or acquire the Key West electric system. Evidence of this includes:

1. August 5, 1955 letter from Bill Spillman (on letterhead of Key West Citizen newspaper) to MacGregor Smith (PL 643). Sources indicate FP&L is going to offer 12 milllion for the City system. "Since you mentioned aboard the Golden Falcon that there had been discussions about the possible purchase I am asking for confirmation." Mayor Harvey "said they would be glad to sell the system if the FP&L would give the city six percent of the gross the same as Miami gets." Document bears handwritten note "talked on phone."

2. December 21, 1955 letter from Spillman to Fuqua (PL 638) regarding phone conversation of yesterday. Identifies fiscal agent for the city. "There is some question as to whether he can be fired or not."

3. December 23, 1955 Bill Neblett (Florida State Senator - Key West) letter to Ralph Scott (PL 637). "Our present unsettled City Commission is difficult to do business with, particularly since there is still a seat in dispute which if resolved to my

satisfaction will change the present majority. If you believe that I can be of any assistance to you I should be glad to discuss it."

4. January 18, 1956 Fuqua memorandum to file (PL 636). Declined (on FP&L's behalf) invitation to speak at Key West (Jr. Chamber of Commerce) on the purchase by the Company of Key West system. Declined in view of confusion and "until we receive an official invitation from the City..."

5. Undated and no author (PL 639), reading in part:

> "The new City Commission has mutually agreed to look into all avenues to lower electric rates in Key West, it was learned today. The Commissioners and experts in the electric utility field met Thursday for informal luncheon to discuss the lower electric rate subject.
>
> Robert Fite, President and General Manager of the FP&L Co., told the Commissioners that he would be receptive to an invitation from the City to send some experts in the utility field to study the local system toward the possibility of recommending measures to lower the electric rate."

6. February 14, 1956 V.A. Lang (City Manager) to Fite (PL 634). "I have been directed by the City Commission to advise your company that the City Commission is not interested, now, or in the near future, in any proposition involving the sale of the City Electric system of the City of Key West."

7. February 16, 1956 Spillman/"Ben" (Fuqua). Asks him to look over resolution regarding FP&L's visiting --"it is about the best we can hope for at the present time" --"designed to take the pressures off and make this a mutual agreement." The proposed resolution states that while FP&L will be welcome to inspect for purposes of making an offer, "It is understood by this resolution that the City Commission is not trying to sell City Electric System but is merely acting as a business agent for the citizens since by law, they must decide by referendum on any disposition."

8. February 24, 1956 Lang/Fite letter (PL 632). City Commission voted 3-2 (as Spillman predicted) that FP&L can come to Key West "at any time, not later than March 1, 1956 if they are interested in making a proposal for the purchase of the City Electric System."

9. February 28, 1956 Fite/Lang telegram (PL 631) "Please advise by wire if it will be agreeable to the City Commission for

us to send representatives to Key West next week to devote thirty days to examining the books ... At the end of this period we will be in a position to state whether or not we can make a proposal for the purchase or lease of the Key West Electric System, which will be in the interest of the city and its citizens."

10. March 2, 1956 Lang/Fite letter (PL 630). In order for FP&L's files to be complete, Lang quotes February 6, 1956 City Commission minute extracts, Commissioner Carbonell "stated that FP&L Co wanted a special invitation and he was not willing to issue any special invitations of this kind," but anyone can inspect the books at any time.

Lake Worth. By resolution of December 26, 1956 the City Commission resolved to contact FP&L to "inquire of their interest in the purchase or lease of the entire electric utility system." (PL 868). On May 15, 1958 FP&L made a lease proposal to the City (PL 856).

On July 24, 1958 the proposal was voted on by the City's freeholders. A majority of those voting favored the proposal. The total voting, however, fell short of the percentage required to constitute a valid election (PL 804). Evidence of FP&L's desire to acquire this City includes:

1. March 28, 1956 memorandum from Paul R. Greenaway; copy sent to R.D. Hill and B.H. Fuqua (PL 870). Re: March 27 Lake Worth Commission meeting.

2. October 1956 "Data on City of Lake Worth" (PL 869).

3. December 9, 1957 Robert Wall, Jr./Fite memorandum (December 9, 1957). (Lists employees who "will be of assistance to you in anything that we want to do in Lake Worth ... I thought you might want to put this in your Lake Worth book."

4. March 1957 "Opinion Survey of Lake Worth, Florida for the FP&L Co.," Central Surveys Shenandoah, Iowa.

5. June 24, 1958 Dave Bosworth letter to R.C. McCombs (PL 846). ("... we are anxious to begin rendering the service to you folks at an early date.")

6. April 10, 1958 "FP&L Co. Stockholders, Lake Worth, Florida April 10, 1958." (PL 848).

7. June 18, 1958 R.D. Hill to Fellow Employees (PL 849).

("This is very important to all of us as success in this election will assist us in our negotiations for other municipal systems.")

8. June 24, 1958 letter from Fite to "Dear Lake Worth Stockholder" (PL 847) (help us win the election).

9. "FP&L Offers Top Notch Service" (PL 837). (Press release).

10. July 18, 1958 Fite/Freeholders of the City of Lake Worth (PL 830) (urging vote for lease -- offering transportation to polls).

11. July 25, 1958 Charles H. Cole/Fite memorandum (PL 828) ("Don't feel badly about 'Lake Worth'. We'll get it".)

12. July 31, 1958 Ed Wood/Fite memorandum (PL 820). ($22,933 in Lake Worth expenses to date).

13. "BHF" (Fite) November 4, 1958 "Memorandum regarding R.D. Hill's Meeting with the Lake Worth Committee for Leasing the Light Plant" (PL 813).

("it was agreed that upon Mr. Fite's return the leaders would join with him in activities leading to asking the City Commission to negotiate again with the Company and hold another election.")

14. July 13, 1959 Fuqua letter to H.S. Nonneman, Supervisor Municipal Affairs Dept. Dayton Power & Light (PL 804). Acknowledging Nonneman's July 6 letter regarding "our efforts to lease the Lake Worth municipal electric system. Unfortunately, those efforts have not as yet been successful."

Pursuant to the territorial agreement with FP&L, described in answer to Interrogatory 22, Florida Power Corporation sought to take over many systems within its territory. Members of the Cities group that it sought to take over include Ft. Meade, Alachua, Newberry, and Sebring. Others include Bushnell, Lake Helen, Wauchula, and Williston. In addition, it acquired the Town of St. Marks franchise from Tallahassee.

See:

1. Ft. Meade

(a) "Record of Presentation by Florida Power Corporation At Meeting of City Commission, Fort Meade, Florida, October 14, 1969" (see page 27 exchange where, because of territorial agreement, Ft. Meade is told they have no alternative but

Florida Power Corporation);

(b) October 15, 1969 memorandum from R.L. Simmons to Messrs Perez, Hines Shenk, et al. re Ft. Meade City Commission meeting -- purchase proposal

(c) November 19, 1969 memorandum from R.L. Simmons to Messrs. Perez, Hines, Shenk, et al.

(d) July 21, 1958 "Ft. Meade -- Data Needed for Purchase or Lease Proposal" (PC 36);

(e) July 15, 1958 memorandum from G.P. Woodham to W.W. Snow re: Ft. Meade Contract (PC 35).

2. Newberry

(a) May 1, 1962 memorandum from Andrew H. Hines, Jr. to Mr. W.M. Pickett re: City of Newberry (PC 2166);

(b) May 7, 1962 memorandum from H.E. Milton to E.E. Dearmin re: City of Newberry (PC 2170)

(c) May 4, 1967 memorandum from R.C. Roberts to A.H. Hines, Jr. re: Newberry (PC 2162)

(d) October 16, 1964 memorandum from R.C. Roberts to Mr. H.E. Milton re Audit Report City of Newberry (PC 847);

(e) March 15, 1962 memorandum from W.M. Pickett to A.V. Benson re Town of Newberry (PC 2168);

(f) March 20, 1962 memorandum from A.V. Benson to W.M. Pickett re Town of Newberry;

(g) May 9, 1962 memorandum from E.E. Dearmin to A.V. Benson (PC 2169);

(h) May 21, 1962 memorandum from H.E. Milton to E.E. Dearmin re Glen Smith, City of Newberry (PC 2165);

(i) September 21, 1962 memorandum from H.E. Milton to E.E. Dearmin re Town of Newberry -- Change of Officials;

(j) October 21, 1966 memorandum from S.A. Brandimore to R.C. Roberts re City of Newberry: Acquisition of Electric System (PC 218);

(k) October 18, 1966 memorandum from H.E. Milton to E.E. Dearmin re City of Newberry (PC 219);

(l) September 20, 1965 memorandum from R.G. Roberts to A.V. Benson re City of Newberry (PC 2164).

3. St. Marks

(a) January 15, 1964 letter from M. Howard Williams, attorney for the Town of St. Marks to Hon. J.E. Teague, Jr. Mayor, City of Tallahassee.

4. Alachua

(a) July 1956 letter confirming purchase proposal (PC 192);

(b) March 10, 1956 "Study of Municipal Electric Utility Operations, Alachua Florida" (PC 483);

(c) March 28, 1956 memorandum from Dick W. Judy to W.W. Wolff re City of Alachua Electric Utility Facilities (PC 484);

5. Sebring (in addition to documents cited above)

(a) November 22, 1955 letter from W.W. Wolff to City Council (PC 1965)

(b) June 11, 1958 memorandum from W.W. Snow to E.K. McKean re possible new load in Desoto City Substation (PC 995);

(c) September 4, 1958 memorandum from E.K. McKean to W.W. Snow (PC 992);

(d) March 14, 1960 letter from J.S. Gracy to K.E. Fenderson, Sebring Utilities Commission (PC 1985);

(e) April 25, 1960 letter from Elgin Bayless, Chairman Sebring Utilities Commission to J.B. Gracy (PC 1981);

(f) Draft FPC letter to Mayor and City Council (PC 1986) summarizing FPC takeover efforts;

(g) June 20, 1961 letter from John G. Gravlee to Mayor and City Council urging takeover consideration and summarizing past correspondence [listed below];

(i) Letter February 12, 1959 to Hon. Mayor and City Council, City of Sebring from W.J. Clapp making the first formal purchase offer.

(j) Letter March 4, 1959 from Jack R. Stroup City Clerk, City of Sebring to W.J. Clapp stating the offer had been referred to Sebring Utilities Commission with whom any further negotiations should be made.

(k) Letter May 18, 1959 from E.O. Hunt, Chairman Sebring Utilities Commission to George Woodham advising that the Utilities Commission would not be interested in the Company's

offer.

(l) Letter May 26, 1959 from W.W. Wolff to Hon. H.H. Billinger, Chairman City Council, re-submitting the Company's offer and inviting Council to a meeting in St. Petersburg.

(m) Letter March 14, 1960 from J.S. Gracy to Sebring Utilities Commission referring to a conference held on December 10, 1959, advising that the contemplated lease proposal had not been found practical and tendering an offer to purchase for $3,000,000.

(n) Letter April 5, 1960 from F. Elgin Bayless, Chairman Sebring Utilities Commission to J.S. Gracy stating that the Commission could not recommend the sale of the properties at this time.

(o) Letter April 18, 1960 from J.S. Gracy to F. Elgin Bayless, Chairman Sebring Utilities Commission acknowledging his letter of April 5, 1960 expressing the hope that the phrase "at this time" indicates they would consider the Company's offer if their expected Feasibility Report is unfavorable to steam installation, and inviting further conferences.

(p) Letter April 25, 1960 from F. Elgin Bayless, Chairman Sebring Utilities Commission to J.S. Gracy acknowledging his letter of April 18, 1960 stating that the Commission is not interested in further discussion of the sale of the plant.

(q) Letter May 26, 1960 from John G. Gravlee to Sebring City Council extending invitation for the Council to be guests of the Company for a St. Petersburg trip on June 8, 1960.

(r) Letter May 31, 1960 from Jack R. Stroup, City Clerk of Sebring to John G. Gravlee advising that the Council will not be able to make the visit to St. Petersburg.

(s) Letter May 31, 1960 Mayor J.D. Hunt to John Gravlee advising that he will not be able to make the trip.

(t) Letter June 17, 1960 to John G. Gravlee to Sebring City Council acknowledging Council's letter of May 31, 1960 referring to rejection of Company's offer by Utilities Commission and asking for its re-consideration by City Council and requesting an opportunity to discuss the subject with the City Council.

(u) Letter July 14, 1960 from J.S. Gracy to F. Elgin Bayless, Chairman Sebring Utilities Commission informing him of a new plan to spread purchase payments over a period of thirty to sixty years and renewing Company's offer to purchase. This five page letter details cash and other benefits to the City as a result of purchase offer. Attached to letter is computation of estimated franchise tax benefits.

(v) Letter August 12, 1960 from F. Elgin Bayless, Chairman Sebring Utilities Commission to J.S. Gracy advising that City Council had considered proposal contained in letter of July 14, 1960 and decided to decline said offer.

(w) July 12, 1961 memorandum from W.W. Snow to A.V. Benson re City of Sebring (PC 1990);

(x) September 13, 1963 letter from W.J. Clapp to Joseph D. Macbeth (PC 2070);

(y) September 16, 1963 letter from W.J. Clapp to Joseph O. Macbeth (PC 2071);

(z) October 15, 1963 memorandum from John G. Gravlee to Andrew Hines, Jr. (PC 2072)

In addition to attempts to take over Cities, other municipal systems which Florida Power sought to take over included Bushnell, Lake Helen, Williston, and Wauchula.

1. Bushnell

(a) November 10, 1966 memorandum from E.E. Dearmin to A.H., Hines, Jr. re Bushnell (PC 374);

(b) December 21, 1966 memorandum from E.E. Dearmin to file re meeting -- City of Bushnell, December 13, 1966 (PC 199);

(c) January 6, 1967 memorandum from D.E. Merlin, Jr. to E.E. Dearmin re City of Bushnell (PC 198);

(d) January 19, 1967 memorandum from D.F. Melin, Jr. to E.E. Dearmin re City of Bushnell (PC 2775);

2. Lake Helen (see also documents cited above)

(a) July 19, 1965 memorandum from O. R. Martin to W.W. Snow (PC 915).

3. Wauchula

(a) "Resolution adopted by Board of Directors at Regular Meeting held June 16, 1960" (PC 1715);

(b) July 12, 1961 memorandum from E.K. McKean to W.J. Clap (PC 2041);

(c) September 26, 1958 memorandum from W.C. Schroepe to W.J. Clapp re purchase of City of Wauchula property (PC 2009);

(d) December 19, 1958 memorandum from John G. Gravlee to W.W. Wolff re City of Wauchula: Suggested Plan of Procedure (PC 2050);

(e) October 13, 1958 letter from W.J. Clapp to Mayor and City Council (PC 2011)

4. Williston

(a) "City of Williston -- Distribution Purchase Proposal and Franchise" March 9, 1965 (PC 1888);

(b) "City of Williston Survey of Electric Utility Operations" Florida Power Corporation Comptroller's Department, February 26, 1961 (PC 879)

22. As to each territorial agreement and understanding between FPL and another electric utility that is referred to in ¶¶ 76, 78 or 79 of the Complaint herein, state the date on which each such agreement or understanding commenced; the date on which each such agreement or understanding terminated; the geographical area(s) covered by the terms of each such agreement or understanding; the identity of the other utility; the identity of the persons involved on the part of each of the parties; the identity of any person having knowledge of any such agreement or understanding; the terms of each such agreement or understanding; all acts and/or failures to act which it is claimed are part of each agreement or understanding; and the effect on the City of each such agreement or understanding.

Answer to Interrogatory 22

1. Cities contend that FP&L has entered into and engaged in territorial agreements or understandings with Florida Power Corporation (FPC) and Tampa Electric Company (TECO). The agreements include (a) bilateral arrangements between the utilities and (b) unilateral action by each utility in recognition of the bilateral arrangements. For evidence relating to these agreements, see generally, testimony and evidence in

(a) Gainesville Utilities v. Florida Power & Light Company, 573 F.2d 292 (5th Cir. 1978), cert. denied, 99 S.Ct. 454 (1978)

(b) United States v. Florida Power Corporation and Tampa Electric Company, M.D.Fla. No. 68-297 Civil T.

2. The arrangements or understandings between FP&L and (a) FPC and (b) TECO commenced at least prior to the onset of the designated period.

As shown in the Gainesville decision, the agreement between FP&L and Florida Power Corporation predated the beginning of the designated period. See Gainesville Utilities Department v. Florida Power & Light Company, 573 F.2d 292 (5th Cir. 1978) at 297-298. The division of territory between FP&L and TECO also predates the commencement of the designated period. See June 23, 1952 letter from M.R. McKinley, Vice President Tampa Electric Company to H.K. McKean, General Superintendent Florida Power Corporation (PC 5030). See also (a) June 2, 1957 letter from H.J. McKinley to McKean; (b) October 10, 1972 Gainesville deposition of A.P. Perez, at 80-83; (c) Oct. 12, 1961 letter from Robert H. Fite to Sam Bucklew (PL 415); (d) Oct. 6, 1961 letter from Sam Bucklew to Bob Fite (PL 417); (e) Oct. 6, 1961 letter from Sam Bucklew to McGregor Smith (PL 418); (f) Oct. 10, 1961 letter from MacGregor Smith to Sam Bucklew (PL 416); (g) July 11, 1960 letter from Robert H. Fite to Sam Bucklew (PL 420).

Cities do not here contend that either TECO or FPC continue to act pursuant to these agreements or understandings. They do contend that FP&L continues to do so. That is, FP&L continues to act as if the agreements are in effect.

3. The agreements or understandings in toto cover peninsular

Florida. In particular, they encompass the retail service territory of the three utilities named.

4. Persons involved on behalf of each of the parties include those company officials and agents identified in the documents identified below.

5. In essence, and as stated in the complaint, the agreements provided that FP&L (and the other participants) would not engage in bulk power transactions or supply arrangements with customers or potential customers within the perimeter of the retail territory of another party to the agreements. As identified further below, the terms of the agreements, as embodied in actions pursuant to the agreements, included (a) refusals to deal in bulk power or coordination with entities in another utility's service territory (b) assistance to one another in the acquisition and maintenance of retail and bulk power monopoly in respective territories (c) conscious parallelism in behavior towards municipal systems and (d) joint control of access to the peninsular wide coordination mechanisms created by TECO, FP&L, and FPC. While FP&L has since participated in energy brokerage beyond its territory, it still refuses firm wholesale power sales and various coordination arrangements with Cities outside the perimeter of its retail service area.

Until the Gainesville litigation FP&L and Florida Power Corp. both pursued policies of refusing or resisting parallel interconnections with Cities. See response to Interrogatory 11. Cities also note Florida Power Corporation's 1961 statement, in the context of its effort to retain the Winter Garden franchise, that no additional interconnections with municipal systems would be made. See W.W. Snow memorandum "City of Winter Garden, Notes on meeting held in Mr. Gracy's office on May 5, 1961, at page 5, item 19. (FPC Docket No. E-7679, Exhibit 68). ("(No additional interconnections with municipal power systems. It was pointed out that we are holding to this policy now.")

The effect of these agreements or understandings on Cities was and is to restrain competition and the availability and terms of supply alternatives, causing the Cities to incur higher costs and lose sales and customers or potential sales and customers

and, possibly, their franchises; see also the response to Interrogatories 13 and 2.

The terms of the agreements, including actions taken or not taken pursuant to the agreements, include the following:

Refusal to deal in territory of another. On FP&L and FPC's refusal to provide wholesale service to entities in one another's territory, see

a. November 11, 1963 telegram from Robert E. Fite to Mr. Albert C. Valdes, Chairman Citizens Committee for Representative Government, Winter Garden Florida (PL 1218);

b. February 23, 1956 letter from City Attorney, City of Arcadia to Florida Power Corporation; February 7, 1956 letter from W.J. Clapp to R.H. Fite; January 13, 1956 letter from Robert H. Fite to W.J. Clapp (provided to FP&L as document 23, August 9, 1979 memorandum)

c. "Fact Finding Report for the City Commission of Haines City, Florida" (PL 1200);

d. February 15, 1956 letter from W.J. Clapp to Honorable Murray E. Hagen, Mayor of the City of Lake City (PL 1470);

e. December 23, 1954 memorandum from E.E. Dearmin to W.J. Clapp re W.T. Jackson-Starke (PL 1366)

f. November 16, 1956 letter from Louise Roberts, City Clerk (Lake Helen) to FP&L (PL 1371); November 19, 1956 memorandum from A.B. Wright to Ben Fuqua re City of Lake Helen, Florida (PL 1370); November 21, 1956 letter from A.B. Wright to Lake Helen (PL 1369); June 23, 1958 letter from "Bob" (Fite) to "Bill" (Clapp) (PL 1368)

g. January 13, 1959 letter from Ben Fuqua to W.C. Drummond, President, Levy County State Bank (PL 1247); January 7, 1959 memorandum from Ben H. Fuqua to Mr. M.B. McDonald (PL 1246); January 16, 1959 letter from W.J. Clapp to Ben H. Fuqua (PL 1249) (All of "g" is re Chiefland)

h. May 7, 1963 memorandum by W.J. Clapp (PC 2063) (Re May 6 talk with Hicks of TECO. "I also called to his attention the requests for service received by FPC over the years from Dade City, Live Oak, Blounstown, Starke, and Vero Beach, all of which had been refused service by FPC. In the case of Blountstown,

Starke, and Vero Beach, they were not at the time of the request receiving wholesale service from any investor-owned utility."

1. Aug. 13, 1963 H.K. McKean memorandum to file (PC 2064) [re conversation with Fischer Black of TECO], "I told him that it had always been our policy to refer any questions raised by a city in another company's territory to that company immediately and abide by whatever decision that company should made regarding our meeting with representatives of such a city."

On Florida Power Corp.'s insistence that TECO not serve Bartow or Sebring, see interrogatory 9.

On FP&L's refusal to interconnect with entities within the retail territory of Florida Power Corporation see response to interrogatory #11, Gainesville.

Assistance to the other party in the acquisition of systems and customers. In addition to the documents cited above, see the following concerning mutual assistance in acquisition of municipal systems and customers.

(a) March 15, 1962 letter from Adolph Flegenheimer to FP&L (PL 492); March 21, 1962 letter from R.C. Fullerton to Adolph Flegenheimer (PL 490); March 21 1962 letter from R.C. Fullerton to J.S. Gracy (PL 491); April 11, 1962 letter from J.S. Gracy to R.C. Fullerton (PL 489) [Assistance in potential Sebring acquisition];

(b) September 1962 memorandum for file by William B. Shenk re Proposed VA Hospital - Gainesville (FP&L refers FPC to potential VA Gainesville load)

Consciously parallel limitations on service to municipalities. As evidence of this see:

(a) FPC and FP&L's refusal to sell wholesale power to municipal systems. On FP&L's refusal to sell wholesale, see response to Interrogatory 9. FPC, by Board of Directors actions in 1960, discontinued its policy of selling wholesale to municipalities, except those previously under contract. FPC, "Resolution adopted by Board of Directors at Regular Meeting held June 16, 1960" (PC 2471) See, also September 13, 1963 letter from W.J. Clapp to Mr. Joseph O. MacBeth City Attorney City of Sebring (PC 2070). As stated by FPC official J.S. Gracy in a May

13, 1963 memorandum to file (recording a talk with TECO official Fischer Black (PC 2065), Mr. Gracy stated that "I personally felt that we would have been much better off if we had adopted many years ago the policy that FP&L adopted." See also March 14, 1963 letter from E.K. McKean to J.S. Gracy and related March 12, 1963 letter from C.S. Coomes to E.K. McKean (PC 573-74) (FPC solicits FP&L on terms of emergency service to a municipal system.)

(b) FP&L and FPC's resistance to parallel interconnection with Cities and insistence on a retail territorial agreement as a precondition to an interchange agreement. See response to Interrogatory 11.

(c) FP&L and Florida Power Corporation's simultaneous refusal to deal with municipal proponents of pooling. See response to interrogatory 15.

(d) FP&L, Florida Power Corp., and TECO exclusion of Cities from peninsular-wide coordination, as shown in response to interrogatory 15 and below.

Sharing of control, and attempt to maintain control, over the peninsular Florida-wide coordination.

As further described in response to Request #15,

(a) FP&L combined with TECO and FPC to create and maintain peninsular-wide coordination.

(b) Cities were excluded from participation in this coordination.

Cities contend that the territorial agreements or understandings encompassed, or were related to the understanding that control of access to this, or alternative, coordination would be an item of mutual concern and governance. As evidence of this see, in addition to documents cited in response to interrogatory 15, see

(a) December 7, 1955 letter from W.J. Clapp to Parks E. Baker, President Seminole Electric Cooperative (PL 325) (Refusing backup to Seminole nuclear project's blind carbon copy to Fite of FP&L);

(b) July 15, 1958 letter from W.J. Clapp to R.H. Fite; W.C. MacInnes; Lansing J. Smith, Jr. (PC 488) (Informing of

"threat to our industry" from coop planning for statewide generation, urging that ~~boss~~ IOU's keep one another informed and nip it in the bud)

(c) May 7, 1963 memorandum to W.J. Clapp from H.K. McKean (PC 2063) (re Clapp's talk with Hicks of TECO — "I also informed him that if the two companies could not comply with the territorial agreement, I could not see how we could have confidence in interchange and pooling agreements.")

(d) November 1, 1963 letter from W.J. Clapp to R.H. Fite (PL 1242) (urging Fite to put clause in interchange agreements with munis to prevent tie-in with other munis); November 13, 1963 letter from Fite to Clapp (PL 1243) (will keep Clapp's suggestion in mind)

(e) September 8, 1966 memorandum to file from S.A. Brandimore (PC 1059) (FPC records its response to Bathen's request for Tallahassee access to pool, "the Company could not invite anyone into the Group without a willingness on the part of other members to cooperate.") More generally, see the FOC policy of inviting new members by unanimous agreement. See, e.g., April 23, 1971 letter from H.C. Culbreath (President TECO) to Fullerton, Perez, Stanton, and Winnard (FP&L, FPC, OUC, JEA) (PC 1463) (re invitation to Lakeland to join FOC. "If each of you are agreeable, I would appreciate your letting me know and informing the others to whom the letter is addressed, as well.")

(f) Documents related to Gainesville's request for interconnection and pool access, as referred to in response to Interrogatories 11 and 15.

(g) July 11, 1967 letter from W.J. Clapp to Black, Fite, and Lilly, Jr. (PL 1196) (warning of Bathen and Spiegel's plan for a municipal pool), and related evidence, as referred to in response to Interrogatory 15 of simultaneous FP&L and Florida Power Corporation refusal to deal with municipal proponents of pooling.

Cities specifically note that while there is evidence that TECO and Florida Power Corporation have ceased to act pursuant to the territorial agreements and understandings referred to above, FP&L continues to do so. Evidence of this includes:

(a) While Florida Power Corporation has offered and sold portions of its nuclear unit (CR-3) to systems outside of its retail territory, FP&L refuses to do so.

(b) As documented in response to Interrogatory 9, FP&L refuses to sell wholesale tariff power outside of its retail service territory.

Florida Power Corporation by contrast, offered to make wholesale tariff power available to Ft. Pierce even as FP&L refused to do so under its own tariff. See March 17, 1976 letter from R.N. Skinner to Lee Scott, Florida Power Corporation (asking if Florida Power Corp. is interested in purchasing system or selling wholesale); March 30, 1976 letter from Scott to Skinner (wholesale is available under filed tariff, a copy of which is enclosed).

(c) As stated in response to Interrogatory 15, Florida Power Corporation and TECO have either ceased active opposition or positively support peninsular Florida wide pooling and coordination activities in which Cities may participate. FP&L by contrast, has resisted and continues to resist such developments.

(d) Florida Power Corp. has had on file a general transmission tariff since 1974. FP&L has refused to file a general transmission tariff, and even when ordered to do so in Docket No. ER78 19 et al., limited such filing to transmission associated with interchange service.

APPENDIX II

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

OPINION NO. 57

Florida Power & Light Company	)	Docket Nos. ER78-19 (Phase I) and ER78-61

OPINION AND ORDER REVERSING INITIAL DECISION AND REJECTING TARIFF AVAILABILITY LIMITATIONS AND NOTICE OF CANCELLATION

Issued: August 3, 1979

DC-A-7

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Florida Power & Light Company	)	Docket Nos. ER78-13 (Phase I) and ER78-81

OPINION NO. 57

APPEARANCES

Harry A. Poth, Jr., Robert T. Hall III, James R. Mitchell and Floyd L. Norton IV (Reid & Priest) for Florida Power & Light Company

William E. Chandler, William C. Wise and Robert Weinberg for Seminole Electric Cooperative

Robert A. Jablon, Daniel J. Guttman and Sandra J. Strebel for the Utilities Commission of New Smyrna Beach, Fort Pierce Utilities Authority, Cities of Starke and Homestead, Florida

Robert P. Shapiro and Harvey L. Reiter for the Staff of the Federal Energy Regulatory Commission

WHOLESALE ELECTRIC
SERVICE: AVAILABILITY:
ANTITRUST

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Charles B. Curtis, Chairman;
Georgiana Sheldon, and Matthew Holden, Jr.

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

OPINION NO. 57

OPINION AND ORDER REVERSING INITIAL DECISION
AND REJECTING TARIFF AVAILABILITY
LIMITATIONS AND NOTICE
OF CANCELLATION

(Issued August 3, 1979)

Before the Commission is a consolidated proceeding to determine whether certain limitations on the availability of firm wholesale requirements service, along with notices of cancellation of such service to specific wholesale customers, are unjust, unreasonable or unduly discriminatory, and particularly whether they are anticompetitive in effect. With one exception, we find that the proposed limitations on requirements service availability have not been justified. Accordingly, we reject these tariff provisions. Moreover, since the notices of cancellation are founded upon one of these rejected limitations on availability, they must likewise be rejected.

To set the stage for our discussion, we wish to state at the outset our view that, where a utility possessing market power in a relevant market seeks to amend a general tariff to impose conditions which foreclose supply options or increase the costs of competitors, or which otherwise contribute to the acquisition or maintenance of monopoly power, its application for amendment must be rejected and found unjust and unreasonable under Sections 205 and 206 of the Federal Power Act - unless the utility can show that compelling public interests justify the service conditions.

Moreover, even where overriding public policy objectives are shown to justify some restriction on wholesale service, such a utility must be called upon to demonstrate that its proposal is the least anticompetitive method of obtaining legitimate planning or other objectives.

On the basis of our analysis of the record before us, we conclude that FP&L's proposed tariff restrictions would eliminate the only practical source of base-load power or energy to competing utilities within the markets dominated by the Company. Furthermore, the proposed restrictions would appear to create the potential for additional anti-competitive effects by inhibiting the formation of new distribution utilities within these markets. FP&L has failed to satisfactorily demonstrate countervailing public interests that warrant approval of any of these proposals, except for the one which would provide separate partial requirements service. To the extent that legitimate purposes are sought to be attained by FP&L, there appear to be a number of alternative means of less anticompetitive effect for their accomplishment. The Commission wishes to emphasize that we are not today holding that a utility with market power is, per se, precluded from amending a general tariff to impose conditions which limit service availability. The Federal Power Act accords a utility the right to propose such limitations and an opportunity to demonstrate that its proposed change in service is just and reasonable. In the instant case, we find only that FP&L has failed to carry its burden of justification.

An initial comment is also in order concerning the applicability of antitrust laws and policies to our proceedings. From its inception, this proceeding has focused on issues related to the justness and reasonableness of FP&L's rate proposals when evaluated in light of their alleged anticompetitive effects. The 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. The Commission acknowledges that it is not specifically responsible for enforcing the Sherman Act or any other of this nation's antitrust laws. And we wish to emphasize that in evaluating the anti-competitive effects of a proposed rate change and in making findings with respect thereto, we do not make findings that violations of the antitrust laws have occurred. Instead, it is our obligation to evaluate the public policies expressed in federal antitrust laws and to reflect those policies in the conduct of our responsibilities under the Federal Power Act. 1/ This we have endeavored to do in the instant case.

1/ It is now beyond question that antitrust law and policies do relate to this Commission's responsibilities under the Federal Power Act. See, Gulf States Utilities Co. v. FPC, 411 U.S. 747 (1973); and FPC v. Conway Corporation, 426 U.S. [illegible]

While we believe our evaluation of the anticompetitive effects of the proposal is correct and supported by the record, we recognize that these anticompetitive effects may not have been demonstrated with the rigor as would be demanded in proceedings where specific findings of violations of the antitrust laws are at issue with attendant potential for the imposition of civil and criminal penalties. Lastly, we wish to note that the fairly elaborate account of FP&L's past conduct in its market place is not intended by this Commission to be a determination of factual disputes which may be the subject of litigation in other forums. Rather we merely observe that the evidence in this record of that past conduct casts a shadow over FP&L's claimed need to restrict service and, therefore, is of probative value in determining whether the Company has satisfactorily carried its burden of justification for the proposed service limitations. The structural and conduct analyses required in an antitrust proceeding, and presented to us here, are of considerable assistance in isolating demonstrated anticompetitive effect from unfocused allegations. It is important to examine the markets in which relevant electric services are bought and sold and then determine how the questioned rate provisions may affect the competition, or potential competition, in these markets. This opinion attempts to present our interpretation of the facts and law along these lines.

BACKGROUND

The Procedural History On October 14, 1977, FP&L filed in Docket No. ER78-19 proposed changes to its firm wholesale electric tariff, schedule SR-1, which would bifurcate that schedule into a full requirements schedule SR-2 and a separate partial requirements schedule PR, and increase the rates for each of these services. Under schedule SR-1 firm service has been generally available "in all territory served by the Company." FP&L now proposes to limit the availability of firm wholesale services to those existing customers named in the two new schedules, which previously purchased under schedule SR-1. Also, the Company would limit service under schedule PR to existing customers which do not own sufficient generating capacity to meet their peak load requirements.

In a related action, FP&L filed in Docket No. ER78-81, on December 1, 1977, a notice of cancellation of firm partial requirements service to one of its SR-1 customers, the City of Homestead, Florida, which has sufficient capacity to meet its load. Instead, the Company would make wholesale sales to Homestead under rate schedules in an interchange agreement between these two parties. Under Sections 205 and 206 of the Federal Power Act, a utility must receive Commission approval to replace one service to a wholesale customer with another service. Commission jurisdiction over changes in rates, charges, classification or service necessarily encompasses this situation. The Commission must first find that this customer reclassification is in the public interest. See, Pennsylvania Water and Power Company v. FPC, 343 U.S. 414, 422-424 (1952).

By order of December 30, 1977, the Commission consolidated these dockets, suspended both the tariff availability restrictions and the Homestead cancellation for five months, and suspended the proposed rate changes for two months. Phase I of these consolidated proceedings was established to allow for separate hearing and decision on the legality of the tariff availability restrictions and the cancellation of the firm service to Homestead.

Following a schedule of conferences, evidentiary submissions, hearings and briefs, Presiding Administrative Law Judge Curtis Wagner issued his Initial Decision on April 21, 1978. He concluded that the proposed availability limitations for full and partial requirements services are just and reasonable, and approved the cancellation of firm partial requirements service to Homestead.

Briefs on exceptions to the Initial Decision were filed on May 8, 1978, by the Commission Staff, the Cooperative group of wholesale customers, 2/ and the municipal group of wholesale customers (the Florida Cities). 3/ On May 12, 1978, FP&L filed its brief opposing these exceptions.

2/ The Cooperatives include Seminole Electric Cooperative, Clay Electric Cooperative, Lee County Electric Cooperative, Okefenoke Rural Electric Membership Corporation, and Suwannee Valley Electric Cooperative.

3/ The Florida Cities include Fort Pierce, New Smyrna Beach, Homestead, and Starke.

By order issued June 1, 1978, the Commission stated its intention to issue a final decision in Phase I as soon as possible and urged FP&L to refrain from implementing the tariff availability restrictions and cancellation of requirements service to Homestead, pending a final ruling on these issues. By letter dated June 9, 1978, FP&L informed the Commission that, without waiving its legal rights, it would provide FR service to Homestead and also to the City of Ft. Pierce, Florida, pending final Commission action.

The Rate Change Proposals Firm wholesale service under FP&L schedule SR-2, filed on October 14, 1977, would be available to meet the total capacity and energy requirements of purchasing utilities over the indefinite future. It is comprised of a two-part demand and energy rate, based on FP&L's average system costs which includes the production costs of its nuclear, gas and oil-fired generating plants. Its predecessor, schedule SR-1, was made available to all wholesale purchasers within FP&L's service territory. However, the Company now proposes to limit full requirements service to six rural electric cooperatives which presently take this service. A potential purchaser requesting full requirements service from FP&L in the future could not anticipate receiving this service and would not receive the SR-2 rate for any service it was able to arrange. 4/ While there will be no abatement of retail sales to new customers, FP&L has stated that it is not willing to commit itself to serve any new wholesale customers but would be willing to discuss the possibility when the situation arises. 5/

FP&L wholesale schedule FR, also filed on October 14, 1977, is a modification of schedule SR-1 designed to meet partial power and energy requirements, complementing the purchaser's own generation or other firm power purchases. Like schedule SR-2, it is composed of a two-part demand and energy rate based on average system costs; however, the rate levels are different and the demand component is stratified to reflect differing prices for peak and base/intermediate demand....Each tariff has two energy rate blocks, but the SR-2 lower block is attained after purchase of

---

4/ FP&L brief opposing exceptions at 10.

5/ Id.

175 kWh per kW of billing demand, versus 400 kWh under schedule PR. Moreover, schedule PR requires the customer to specify its "contract demand" on FP&L for succeeding 12 month periods. The customer's monthly billing demand is never less than 90% of its contract demand plus 75% of its maximum recorded peak demand. Conversely, the demand charge for purchases above 110% of contract demand is higher and the customer may not increase its contract demand for succeeding 12 month periods by more than 125% without the consent of FP&L. The Company asserts that these design differences between schedules PR and SR-2 encourage partial requirements customers to increase their load factors.

Partial requirements customers, including the Cities of Homestead and New Smyrna Beach, previously took service under schedule SR-1 which, as noted earlier, was available to all customers in FP&L's service territory. With the filing of schedule PR, however, FP&L proposes to limit this service to three customers, the Keys Electric Cooperative and the Cities of New Smyrna Beach and Starke. Homestead which, like Fort Pierce, has sufficient generating capacity to meet its load, would be excluded from this service. 6/

Although not directly at issue in this proceeding, it would aid the clarity of this decision to describe the four interchange power and energy services which FP&L and several utilities reciprocally provide under bilateral agreements. The transactions under these agreements are voluntary and of relatively short duration. Rates are determined at the time of sale, based on incremental instead of average system costs. Emergency interchange service, denominated Schedule A, provides the buyer with capacity and energy in the event of a forced outage, for a period lasting no longer than 72 hours. For pricing purposes, Schedule A service is deemed to be provided by the seller's designated fossil-fired steam or combustion turbine generators and recovers only out-of-pocket energy costs. 7/

6/ As will be discussed later, Fort Pierce began purchasing under schedule PR on March 23, 1978. Homestead also continues to receive service by agreement of FP&L. However, FP&L asserts that it will terminate service to both, if the Commission approves its rate changes.

7/ Under certain circumstances, the buyer may alternatively return capacity and energy in kind within the current billing period.

Scheduled interchange service, Schedule B, provides capacity and energy for periods of less than 12 months, when the buyer is short of capacity primarily due to forced or scheduled plant outages. The buyer must meet the reserve requirement associated with Schedule B service. Delivery of Schedule B power and energy occurs when in the seller's discretion no impairment of fuel stocks or service to other customers would result. Capacity and energy rates are based on the production costs of the seller's fossil-fired and combustion turbine generating units. Economy interchange service, Schedule C, provides for non-firm energy exchanges of short duration, priced to split the savings between the seller's incremental cost of generation and the buyer's decremental cost. 9/ Finally, firm interchange power, Schedule D, provides capacity and energy for periods of 12 to 36 months. Unlike firm service under Schedule SR-2 and PR, this service is curtailable during extreme cold weather and emergency conditions, in which case the demand charge may be adjusted. Schedule D service is apparently priced at the scheduled outage rate, Schedule B, for fossil-fueled and combustion turbine capacity and energy (Exhibit 29). With intermittant usage Schedule D may be cheaper than the PR rate; however, it apparently becomes more expensive than Schedule PR as the customer's load factor increases (Tr. 254). FP&L proposes to provide firm service to Homestead and Fort Pierce only under Schedule D, and has offered them 240 MW of Schedule D capacity through 1980.

The Initial Decision. The basic issue of this proceeding as characterized by the Presiding Judge is whether FP&L can justify a reclassification of wholesale services based on the relationship of customer load to customer generating capacity. In hearing this case, the Judge imposed the burden of proof on FP&L to demonstrate that its proposed tariff modifications and restrictions were just and reasonable. He largely refrained from considering the evidence presented by Staff and the Florida Cities intended to demonstrate that the proposed restrictions

---

9/ The price of interchange energy is characteristically determined by FP&L's generating units with high operating costs, not by base-loaded nuclear or natural gas-fired units.

were part of an anticompetitive pattern of activities by the Company, leading toward monopolization of the the retail power market.

The Presiding Judge concluded that FP&L's proposed restrictions on eligibility for wholesale services were justified on the basis of differences in cost of service. He agreed with the Company that the load patterns of customers with capacity equal to their peak demands could be so erratic as to make FP&L system planning unduly difficult, warranting the complete exclusion of such customers from wholesale service at average-cost rates. He decided that incrementally-priced interchange services, described above, were acceptable alternatives for customers such as Homestead and Fort Pierce. The Judge found that interchange power could be used to meet their base load requirements "at a lower rate than under the partial requirements schedule," Initial Decision at 14, and suggested that these self-sufficient utilities could purchase bulk power from other sources because FP&L has agreed to wheel. He deferred to civil courts the allegations of these two customers that FP&L had breached contractual obligations to serve them under schedule SR.

The Judge also found that the bifurcation of schedule SR-1 into separate SR-2 and PR schedules was just and reasonable. Moreover, he concluded that the Company could change the availability provision of its tariff to limit wholesale services to customers named in schedules SR-2 and PR. This was based on his assessment of certain financial, operational and capacity planning problems asserted by FP&L and his determination that the two-year notice of termination provision in the schedules did not assure that the Company would recover all capacity costs.

The Judge dismissed the allegations that FP&L's proposals would have an anticompetitive effect, based on a Company representation that it had no interest in acquiring new retail franchises because of fuel problems. Finally, he sought to mitigate concern that FP&L would strictly construe its tariff limitations by reciting several of the Company's interpretations made during the course of the proceedings, but not added to the proposed tariffs.

In sum, the Presiding Judge approved each of the Company's proposed changes to its wholesale tariff. Based on this, he also approved the proposal that Homestead (and Fort Pierce) become ineligible for service under FP&L's average-priced wholesale rates and allowed to take firm interchange service only.

Positions of the Parties The position of the applicant, FP&L, has been summarized in the two proceeding sections of this opinion. It further states that public utility obligations under the Federal Power Act are limited. However, we are basically concerned here with the obligations undertaken by FP&L itself in its schedule SR-1 tariff, which makes wholesale service generally available throughout the Company's service territory, in contrast to the proposed limitations on availability of schedules SR-2 and FR. 9/ Finally, FP&L denies that it has engaged in anticompetitive activities, states that Staff's and Florida Cities' allegations are largely irrelevant and questions their application of the antitrust laws.

Exceptions to the Initial Decision raised by Florida Cities are prolix. However, they may be simplified, briefly.

Florida Cities contend that the proposed tariff is an attempt to abandon service to the City of Homestead because Homestead is currently receiving full interchange service and under the terms of the proposed rate schedule could no longer receive partial requirements service although it desires to do so. Cities claim that restrictions in the proposed full and partial requirements tariffs are tantamount to refusals to deal in either total or partial requirements service. FP&L's partial requirements tariff, they assert, is designed to limit the sale of wholesale power. This is accomplished by restructuring the sale of partial requirements service to only those systems which require such service to complement the insufficient generating capacity or firm power purchases to meet their native loads and therefore does not apply to systems which nominally have generation sufficient to meet their loads regardless of the age or efficiency of such generation. Both Homestead and Fort Pierce would be served only at interchange rates, creating a price squeeze.

9/ To the extent the Presiding Judge may suggest that schedule SR-1 does not make wholesale service generally available because service contracts may still be required, Initial Decision at 8, this is not reflected in the provision itself. During cross examination FP&L's rate design witness acknowledged that utilities within the Company's service territory, such as Fort Pierce, Jacksonville and Orlando, were eligible for firm service under the terms of Schedule SR-1. See, infra at 30. After all, the purpose of this proceeding has been to limit that provision to certain named and existing customers. Moreover, FP&L has in the past filed unexecuted service "agreements" when customers have commenced service.

Cities contend that FP&L is attempting to deny or make it more difficult for them to establish economic alternatives. Apart from the tariff proposals at issue, this is accomplished by denying joint participation in new nuclear generation, opposing municipally supported legislation, and refusal to file or establish a general rate for transmission. They also state that FP&L has refused to support a general integrated power pool in Florida.

The Cooperatives assert in their brief on exceptions that the Initial Decision ignored their position and relied excessively on FP&L testimony. The Cooperatives, which through Seminole are planning base load generating units, will require partial requirements service in the future instead of schedule SR-2 service. Because they are not named in the PR tariff they are not assured of this service, so that these limitations deny them the necessary supply flexibility to account for changing situations.

Staff alleges several acts of monopolization by FP&L. Staff states that FP&L has refused to sell wholesale power to the municipal utilities, thereby constituting a refusal to deal proscribed by United States v. Otter Tail Power Co., 331 F. Supp. 54 (D. Minn. 1971), aff'd, 410 U.S. 366 (1973). In this regard, it points to an historic FP&L policy not to serve municipal systems at wholesale, an FP&L refusal to serve Fort Pierce under the SR-1 tariff, and the limitations on the availability of the SR-2 and PR tariffs presently at issue. Staff views FP&L's dominance over transmission facilities and its corresponding refusals to wheel as bottleneck monopolization proscribed in United States v. Otter Tail Power Co., supra. Staff cites examples of FP&L's refusing to wheel third party bulk power to the Cities of Jacksonville, Homestead, and Lake Worth, and it asserts that, while FP&L has very recently announced in Docket No. ER77-175 a new policy to permit wheeling, that policy is far too restrictive in terms of rates and terms. Staff sees another example of monopolization in FP&L's restrictions on access to its nuclear generating units. Specifically, Staff asserts that smaller utilities do not have the individual loads to justify a nuclear unit but, due to the economies of such units, utilities may become uncompetitive without access. Staff also alleges that FP&L has unreasonably restricted coordination, both in terms of economy exchanges and power pooling. It then contends that FP&L has established barriers to entry in the form of restrictions in its franchise agreements with municipalities, particularly the standard thirty year term. This is occurring, according to Staff, while FP&L maintains a policy of acquiring municipal systems; however, FP&L has not acquired another utility in recent years. The Staff concludes that FP&L's proposed tariff restrictions would further its monopoly power in the relevant markets, as defined by its economic witness.

THE EXISTENCE OF COMPETITION AND MONOPOLY POWER

The Relevant Markets We begin our discussion of FP&L's tariff proposals by defining the relevant markets, which provide a framework for determining the possible existence of monopoly power, the opportunities for competition and the required breadth of any remedial action we may order. The Staff economic witness identified two broadly-defined product markets as relevant to the investigation of the anticompetitive effect of FP&L's proposed tariff restrictions. This analysis was not challenged by any party and reflects FP&L's own conceptualization of its business. 10/ The retail market involves sales of capacity and energy to ultimate consumers by vertically integrated utilities such as FP&L and by distribution utilities. The bulk power market involves sales of wholesale power and energy to retail distributors (including the captive retail distribution centers of vertically-integrated systems) by bulk power producers and suppliers. These product market definitions are amply supported by the record, and we adopt them in our analysis.

The bulk power product market was further disaggregated by the Staff witness into five submarkets essentially consisting of full requirements power, partial requirements and coordination services, component bulk services, sales at transmission voltages to ultimate consumers and transmission services. In so doing he attempted to demonstrate the interchangeability of firm full requirements power with "unbundled" bulk power services which may be purchased from several sources to meet the requirements of a retail distributor, in conjunction with generation owned by that distributor.

While we do not dispute the validity of this subdivision of the wholesale market, a more practical method of analyzing that market for purposes of this proceeding is to separate bulk power transactions into discrete firm requirements and coordination submarkets. Essentially, this parallels the distinction between FP&L's schedule SR-2 and PR firm services on the one hand and its interchange services on the other. FP&L's firm services are non-interruptible; priced on the basis of average system costs; designed to meet a

---

10/ In a 1976 presentation to the Company's Senior Management Council, FP&L's vice president for strategic planning subdivided the Company's activities into discrete bulk power and electric service businesses (Exhibit GT-1, at 1).

base, intermediate and/or peak load requirements; firm power is continuously available over the indefinite future. Conversely, interchange services are interruptible; incrementally priced on the basis of oil-fired generation costs; ancillary power is of limited duration. Depending on the feasibility of self-generation or supplementary firm-power purchases, partial requirements service is reasonably interchangeable with full requirements power to meet a retail load. Such interchangeability is a requisite for grouping these products in a common market. See, United States v. du Pont & Co., 351 U.S. 377, 393 (1956). Of course, FP&L did not itself distinguish between these two firm services in its SR-1 schedule prior to this case. However, interchange services cannot be used to sustain load requirements and may only be used to augment other primary sources of bulk supply. In particular, FP&L's wholesale customers do not regard Schedule C firm power as interchangeable with SR or PR firm power and the Company describes them as different services.

FP&L sells electric power and energy to most of the heavily populated areas along the eastern and lower western coasts of peninsular Florida and portions of central and north-central Florida. Within or adjacent to this service territory are 22 smaller areas served by municipal and cooperative utilities. The Staff witness identified this composite area, comprised of some 35 Florida counties, as the relevant geographic market for both retail and wholesale product markets. This was primarily determined from information in FP&L's 1975 annual report. The service territories of larger bordering utilities 11/ were excluded from the retail geographic market because of the unavailability of wheeling service into the FP&L service territory and the existence of retail territorial allocation agreements with FP&L which prohibit retail competition (Exhibit GT-6, at 8-9). 12/ This is not to say that competition does not exist in the relevant retail market. As we discuss later, there is significant competition, primarily franchise and yardstick competition,

---

11/ Florida Power Corporation and Tampa Electric Company.

12/ These retail territorial agreements are not at issue in this proceeding and we express no opinion as to their merit. They require approval by the Florida Public Service Commission and have been upheld on judicial review. Storey v. Mayo, 217 So. 2d 304 (Fla. 1968), cert. den., 395 U.S. 909 (1969). In 1974 this authority was expressly given to the Florida Commission. See, Florida Statutes Annotated §366.04.

and FP&L itself has recognized that its neighboring utilities are both customers and competitors (Exhibit GT-6, at 1). Furthermore, even territorial allocation agreements are subject to modification under limited circumstances in proceedings before the Florida Public Service Commission. Peoples Gas System v. Mason, 187 So.2d 335 (Fla. 1966).

The wholesale bulk power geographic market was similarly constrained because relatively few wholesale transactions are made across its boundaries. This geographic limitation applies as well to the bulk power submarkets, particularly the firm requirements submarket, described supra, because of wholesale territorial agreements and the absence of firm power transmission services. Although there is a potential for competition in the wholesale market, actual competition has been inhibited by FP&L, as we discuss below. We are not required to remedy that situation now. This opinion reflects our concern that wholesale monopoly power not be used to maintain or enhance a utility's retail market position.

Monopoly Power Monopoly power has been defined as the ability to control prices or exclude competition from a relevant market. United States v. Aluminum Co. of America, 148 F.2d 416 (2d. Cir. 1945). It may be readily apparent in cases where prices have been controlled or competition demonstrably excluded; however, such showings are not essential. American Tobacco Co. v. United States, 328 U.S. 781, 811 (1946). 13/ Instead, the characteristic test is based on a firm's share of the market, and a predominant share warrants the inference of monopoly power. United States v. Grinnell Corp., 384 U.S. 563, 571 (1966). In United States v. Otter Tail Power Co., 331 F. Supp. 54 (D. Minn. 1971), aff'd, 410 U.S. 366 (1973), an inference of monopoly power was based on a finding that the defendant utility possessed a 75.6% share of the relevant market. We find that FP&L has monopoly power in these relevant markets, as determined by Dr. Taylor in unrebutted testimony.

Based on 1976 data, FP&L has been shown to possess a 76% share of the retail market in terms of customers served. Its closest rivals are the eight municipal utilities located within FP&L's service territory which generate a portion of their power requirements. 14/ Collectively, these eight

---

13/ Monopoly power can be exercised as well through subtle efforts to prevent competition from developing. United States v. Griffith Amusement Co., 334 U.S. 100 (1948).

14/ The eight utilities are Florida Public Utilities in Fernandina, Fort Pierce Utilities Authority, the City of Homestead, Jacksonville Electric Authority, City of Key West, Lake Worth Utilities, the City of New Smyrna Beach and the City of Starke (Exhibit GT-6).

systems have a 11% share of retail customers served (Exhibit GT-3). In 1976 FP&L's share of total kilowatthours sold at retail was 75%, compared to the collective 13% sold by the eight generating municipals. 15/

The statistical measurement of monopoly power adopted in United States v. Otter Tail Power Co., supra, was the percentage of towns served at retail within the relevant market. FP&L provides retail service to approximately 90% of the communities in the relevant market with populations of over 1000 people (Tr. 1369). 16/

The inference of FP&L's monopoly power in the retail market is strengthened by several additional considerations. First, the existence of territorial allocations obviously provides a very effective barrier to new retail competition from existing utilities. Second, the substantial cost of acquiring utility property at the expiration of an existing supplier's franchise could be a barrier to competition for existing firms and new entrants as well (Exhibit ST-8). Third, the absence of wheeling services that would allow a utility to provide retail service to a noncontiguous area would stop any retail competition which overcame the first two barriers. 17/ In sum, these high market entry barriers confirm the inference of monopoly power based on

---

15/ FP&L's share of the relevant market has grown somewhat between 1966 and 1976 from 73% to 76% of total retail customers and from 74% to 75% of retail sales (Tr. 1368).

16/ Cf., Brown Shoe Co. v. United States, 370 U.S. 294, 337 (1962), a case brought under §7 of the Clayton Act where monopoly power was measured on the basis of cities in the relevant market with populations exceeding 10,000. In City of Mishawaka v. American Electric Power Co., 465 F. Supp. 1320, 1325 (N.D. Ind. 1979), the court found monopoly power where the defendant served at retail 89% of the municipalities in the relevant market.

17/ Cf., Boston Edison Co., Docket Nos. E-8167 and E-8700, Order Reversing in Part and Affirming in Part Initial Decision, mimeo at 3 (December 7, 1976), where the Commission dealt with a transmission rate for retail service to a noncontiguous territory.

FP&L's market share. Consumers Power Company, 6 NRC 892, 1013 (1977). Moreover, entry barriers enhance the opportunities for exploitation of this power.

Although the record does not contain precise statistical indicia of FP&L's share of the wholesale power market, it is clear that the Company has monopoly power over bulk power transactions as well. FP&L's share of the retail market is a suitable base on which to assess its share of the wholesale market, because the bulk power which the Company produces to serve its own captive retail service territory must be included as part of the wholesale market. United States v. Aluminum Co. of America, supra, 148 F.2d at 424. Thus, FP&L possesses at least a 75% share of the wholesale market, to which must be added the Company's wholesale sales to municipal and cooperative utilities within the relevant market. The only other supplier of wholesale requirements service within the relevant market is the Jacksonville Electric Authority which supplies its own distribution system, plus the distribution utilities in Jacksonville Beach and Green Cove Springs.

Moreover, included in FP&L's bulk power resources are virtually all of the nuclear generating capacity and substantially all of the gas-fired generation available within the relevant market, each of which give the Company a significant edge in the production of low-cost power for base load requirements. Three of the four operating nuclear plants in the State of Florida are solely owned by FP&L (Tr. 388, 1625). 18/. Only New Smyrna Beach and the Cooperatives, acting through their generation and transmission subsidiary, have gained direct access to nuclear generation, through small ownership interests in Florida Power Corporation's nuclear plant. The Company does not dispute that its long-term, noncurtailable supply of natural gas gives it an advantage over municipal generating systems; 19/ however, it asserts that it should be allowed to retain this bargained-for advantage for sales to existing customers (Tr. 205). By comparison, municipal generating units are small-capacity, oil-fired steam or internal combustion machines

---

18/ See, Fort Pierce Utilities Authority v. Nuclear Regulatory Commission, ____ F.2d ____, D.C. Cir. Nos. 77-1913 and 77-2111 (March 23, 1979).

19/ See generally, Sebring Utilities Commission v. FERC, ___F.2d___, 5th Cir. Nos. 77-2911 and 77-2972 (March 30, 1979).

which characteristically have high operating costs and are ill-suited to provide baseload requirements. 20/

Finally, we note that FP&L owns 81% of the transmission lines within the relevant market with operating voltages of 69 kV or above. The Jacksonville Electric Authority owns the next-largest share, 8% (Exhibit GT-6). These are the facilities over which bulk power is transported within the relevant market and FP&L's ownership share gives it "strategic dominance" over transmission. United States v. Otter Tail Power Co., supra, 331 F. Supp. at 60.

As noted above, FP&L did not undertake to define relevant markets and did not challenge the analysis of Staff's economic witness. Instead, its economic policy witness challenged the basic relevance of structural analysis to regulated public utilities. The Company's thesis is that regulation prevents a utility having monopoly power from controlling prices and excluding competition from the market, i.e., the indicia of monopolization under Section 2 of the Sherman Act. 21/ However, this is not really a rebuttal to Staff's position. Instead, it simply confirms the role of the Commission in eliminating or modifying rate provisions, designed by a utility, which would otherwise facilitate price control or exclusion of competitors. 22/ We believe the idea that regulated utilities are immune from charges based on the exercise of monopoly power has been thoroughly discredited by United States v. Otter Tail Power Co., supra.

ACTIONS OF COMPETING UTILITIES WITHIN THE RELEVANT MARKETS

Introduction In cases where the anticompetitive effects of wholesale rate schedules are at issue, we anticipate focusing primarily on structural analysis to measure the existence of monopoly power, and on the suspect rate provisions themselves to determine their effects on the

---

20/ Florida Cities' brief on exceptions at 76-77. See, Exhibits 28 (REB-C) and 41 (JW-1, at 3-4).

21/ FP&L brief opposing exceptions at 43.

22/ Clearly, regulation does not insulate electric utilities from operation of the antitrust laws. Cantor v. Detroit Edison Co., 428 U.S. 579 (1976); see, Consumers Power Power Company, supra, 6 NRC at 1011-12. Nor is this Commission precluded from considering antitrust law and policy. Gulf States Utilities Co., Docket No. ER76-816, Order Approving Settlement Subject to Condition (October 20, 1978).

enhancement or maintenance of monopoly power. If, for example, a rate provision would weaken a competitor or raise the entry barriers to a market where competition can exist, that will likely be sufficient evidence of anticompetitive effect to warrant its elimination or modification -- absent a weightier showing that the provision serves some countervailing public interest. City of Huntingburg v. FPC, 498 F.2d 778 (D.C. Cir. 1974); Northern Natural Gas Co. v. FPC, 399 F.2d 953, 971 (D.C. Cir. 1968). 23/

Unlike presentations in civil and criminal actions to enforce the antitrust laws, it is not necessary in our deliberations to have an extensive record on the past conduct of a utility towards its customers, or its intent in establishing or maintaining a restrictive rate provision. See, Missouri Power & Light Company, Opinion No. 31, mimeo at 9-10 (October 27, 1978). 24/ Every rate case in which anticompetitive effects are alleged need not become a full-blown antitrust proceeding.

23/ In rate change proceedings such as this one, heard under Section 205 of the Federal Power Act, the applicant bears the ultimate burden of nonpersuasion. However, Staff and intervenors may be required to come forward with some evidence to focus their allegations of anticompetitive effect, and to relate that evidence to the targeted rate provision. See, Northern California Power Agency v. FPC, 514 F.2d 184 (D.C. Cir. 1975).

24/ However, there may be situations in which the rate proponent may demonstrate the innocuity of a questioned provision because, for example, the utility has a general wheeling tariff, or undertaken other actions which weaken or eliminate its monopoly power. See, New England Power Pool, Opinion No. 775, mimeo at 33 (September 10, 1976), aff'd sub. nom., Municipalities of Groton, et al. v. FERC, 587 F.2d 1295 (D.C. Cir. 1978).

However, as noted supra, at 3, conduct may be relevant to our assessment of the justification for and purpose of a service limitation. In the case before us a full record has been compiled and we are further aided by a recent decision of the Court of Appeals for the Fifth Circuit 25/ in fully understanding the anticompetitive effects of FP&L's rate proposals. 26/ Moreover, the documentary evidence of Staff and the Cities, largely obtained from Company files, is frequently incongruous with the testimony of Company witnesses. 27/ By and large the testimony of witnesses presented by Staff and the Cities is a summary recapitulation of hundreds of pages of correspondence and internal company documents contained in over 200 exhibits. This evidence has been of significant assistance in probing the effects of FP&L's alleged need to restrict the availability of service under schedules SR-2 and PR.

The Company's reaction to the voluminous evidence of the Cities and the Staff relating to anticompetitive conduct is essentially a demurrer. FP&L asserts that this evidence is irrelevant to its proposed tariff modifications and that issues of anticompetitive conduct should be raised in other forums. While we agree that the Commission has no authority to enforce the antitrust laws, this does not make the evidence irrelevant to the formulation of remedies well within our authority. 28/

25/ Gainesville Utilities Department v. Florida Power & Light Co. 573 F.2d 292 (5th Cir. 1978), cert. denied, ___ U.S. ___, 99 S. Ct. 454 (1978). This opinion was issued after Judge Wagner wrote his Initial Decision.

26/ This evidence confirms our conclusion that FP&L has monopoly power in the relevant markets. Judge Wagner was also concerned by what he characterized as "disturbing episodes of Florida Power & Light Company's past conduct which raise serious antitrust questions." Initial Decision at 5. However, time constraints led him to defer to the Commission or the Justice Department.

27/ See, Gainesville Utilities Department v. Florida Power & Light Co., supra, 573 F.2d at 301, note 14.

28/ Federal Power Commission v. Conway Corp., 426 U.S. 271 (1976); City of Pittsburg v. FPC, 237 F.2d 741, 751 (D.C. Cir. 1956); Pacific Gas and Electric Co., FPC Project Nos. 1988 and 2735, mimeo at 10-13, order of April 1, 1976.

Wholesale Market Division. FP&L has been found to have engaged in a per se violation of the Sherman Act by conspiring with Florida Power Corporation to divide the Florida wholesale power market. In Gainesville Utilities Department v. Florida Power & Light Company, 29/ the United States Court of Appeals for the Fifth Circuit reversed and remanded a district court judgment, based on a review of the evidence which "compelled" a finding that the two largest utilities in the State of Florida had conspired to avoid selling wholesale power to customers in each other's service territories. 30/

This case arose from efforts by the Gainesville, Florida, municipal utility system to end its costly operation in isolation by interconnecting with either FP&L or Florida Power Corp. 31/ The Court found that beginning in 1965 Gainesville's efforts to interconnect and coordinate its operations were met with a joint strategy to induce the municipal to interconnect with Florida Power Corp., on precondition that all three systems agree to a retail territorial allocation. Correspondence sent to Gainesville and to the Federal Power Commission, regarding an interconnection application under Section 202(b) of the Federal Power Act, was routinely passed between FP&L and Florida Power Corp. with the understanding that concerted action was contemplated and invited. 32/

29/ Supra, note 24. The record in this case contains a number of exhibits from that antitrust proceeding.

30/ Gainesville Utilities Department v. Florida Power & Light Co., supra, 573 F.2d at 299, 303. Gainesville and Florida Power Corp. reached a settlement before the action was tried.

31/ See, Gainesville Utilities Department v. Florida Power Corporation, 40 FPC 1227 (1968), reversed, 425 F.2d 1196 (5th Cir. 1970), reversed, 402 U.S. 515 (1971).

32/ See also the consent decree in United States v. Florida Power Corp. and Tampa Electric Co. (1971 Trade Cases para. 71, 637, M.D. Fla. 1970).

The court was particularly impressed by the documentary evidence which demonstrated a "routine" course of conduct spanning two decades whereby each utility would refuse to sell power to existing wholesale customers of the other or to municipalities served at retail by the other which were attempting to establish new distribution utilities. On remand, the case is once again before the district court for precise determination of the effect of the wholesale territorial allocation on Gainesville's difficulty in obtaining an interconnection, plus attendant damages. Until the trial court enters its new judgment, we shall not know how FP&L is to be enjoined from engaging in anticompetitive conduct against municipal utilities or directed to remedy the damage done.

Acquisition Efforts and Franchise Competition The principal allegation leveled against FP&L's tariff limitations is that by restricting access to wholesale power the Company may thereby increase its dominance as a retail supplier. The record is richly detailed with evidence of retail competition to serve entire communities between FP&L and existing municipal systems.

FP&L's first attempt to acquire the Lake Worth utility is documented in a letter to FP&L employees from the Company's West Palm Beach Division Manager, dated June 13, 1958, which sought "a list of your relatives and friends who live in Lake Worth." The District Manager proposed to send these sympathetic members of the community information concerning a forthcoming election on a proposed 30-year lease of the municipal system to FP&L, where a successful vote would "assist us in our negotiations for other municipal systems" (Exhibit GT-34, at 64). Literature distributed to Lake Worth voters promised better service and an immediate rate reduction averaging 20%, plus an aggregate reduction of $14 million over the 30-year lease. Although winning a simple majority vote, the election failed to attract the requisite 50% voter participation and the proposition failed. Efforts were renewed in 1968 through a Lake Worth property owner; however, preliminary discussions were terminated without action.

FP&L offered to furnish firm power to the New Smyrna Beach municipal utility during the winter of 1958, provided the City Commission would agree not to order any additional generating equipment and enact an ordinance which would permit disposition of its electric utility on a majority

vote. 33/ FP&L then planned to negotiate a lease of the utility the following spring and submit it to the voters for approval (Exhibit GT-34). An April 1959 report to Company management stated that the proposed acquisition "certainly provides some distinct advantages other than just taking over a municipally owned property." The report noted the considerable possibilities of industrial and residential development in the area (Exhibit GT-34, at 73).

The Company's action in 1959 did not win it a lease of the New Smyrna Beach system (Exhibit GT-34, at 61); however, FP&L tried again in 1965, sending an inquiry to the City Commission which was virtually identical to the letter sent to Fort Pierce in May of that year (Exhibit GT-34, at 75). 34/ FP&L Executive Vice President R. C. Fullerton described the prospect of taking over the New Smyrna Beach municipal system to the chairman of another investor-owned utility as something the Company viewed "with natural enthusiasm" (Exhibit GT-34, at 75). Also in 1965, FP&L purchased from New Smyrna Beach all of its electric utility facilities in the City of Edgewater where it had previously provided retail service to only a portion of the community.

Intermittent negotiations occurred between FP&L and New Smyrna Beach in 1970 and 1973. In 1974, the Company devised an internal plan for acquiring the municipal utility (Exhibit GT-34, at 32), and sent senior management representatives to discuss an acquisition proposal with the city utility commission, estimating a rate reduction of more than $600,000 under FP&L ownership. Company management informed the utility commissioners that FP&L could provide cheaper and more dependable service because of its greater power plant capacity and

---

33/ Characteristically, Florida municipal charters require the approval of greater than simple majority of voters for disposition of local utilities. Similar terms were extracted from the City of Clewiston in 1965. See, the initial decision in Florida Power & Light Co., 37 F.P.C. 560, 573, adopted, 37 FPC 944 (1967), affirmed sub nom., Federal Power Commission v. Florida Power & Light Co., 404 U.S. 453 (1972).

34/ Infra, at 22.

its diversity of fuels (Exhibit GT-34, at 34). Another acquisition presentation was made to the utility commission in 1975, at the City's request.

FP&L sought to acquire the Fort Pierce utility in 1968 when the subject was raised by a city commissioner at a meeting convened to discuss a possible interconnection of the two systems (Exhibit GT-59). The response of the Company's division manager mentioned the interconnection only as an interim arrangement, concentrating instead on the sale or lease of the municipal utility. FP&L stated that any lease should be for a period of 30-years to coincide with the term of a standard electric franchise. In return, the Company offered to immediately interconnect the systems, apply FP&L's lower retail rates and "lend its full support toward attracting industry to the area." Fort Pierce thereafter invited lease or sale proposals; however, negotiations stopped short of acquisition.

Acquisition was again raised by Fort Pierce officials in March of 1976. The minutes of a meeting with FP&L senior management officials record that the City felt that disposition of its utility system was necessitated by an inability to exploit the economies of scale in electricity production:

> Mr. Skinner [Fort Pierce's Chief Engineer] said we think its very efficiently operated. We realize the big problem facing us is not the high cost of fuel or the inefficiency of our system, but the inefficiency as compared with putting oil into a larger boiler and turbine. That's where we're getting caught short on the heat rate input to the boiler. We have a problem competing with FP&L favorably today because it represents around 65% roughly of the cost of doing business, the cost for fuel oil. (Exhibit GT-31.)

When Fort Pierce inquired at that same meeting about the purchase of 30 MW of base-load firm power, the Company responded that it did not wish to sell firm power unless the purchaser could reciprocate with sales of firm power to the Company. This would require Fort Pierce to maintain generating capacity sufficient to meet its own load. FP&L also discouraged purchase under the SR-1 schedule,

indicating that it was not really firm and "awfully expensive" (Exhibit GT-31, at 17).

The Company continued to develop an acquisition proposed throughout 1976 (Exhibit GT-34). However, enthusiasm was apparently dampened when Fort Pierce intervened in proceedings before the Nuclear Regulatory Commission regarding FP&L's proposed South Dade nuclear generator.

FP&L proposed a sale or lease of the Homestead utility in 1976 when its president met with city officials to discuss Homestead's request for a retail territorial agreement, an emergency interconnection and wholesale purchases (Exhibit GT-18, at 1). In 1976 the Homestead City Council discussed the topic with FP&L; however, negotiations were apparently not continued.

The record indicates that acquisition of the Vero Beach utility was considered by FP&L in 1957, 1958 and 1959. 15/ Thereafter, a serious effort to acquire the Vero Beach system was undertaken in 1976 which culminated in approval of the sale by the City electorate and an application to the Federal Power Commission under Section 203 of the Federal Power Act. Internal management correspondence concerning implementation of the acquisition by FP&L suggests that Vero Beach would be viewed as a bellwether by other municipals thinking of entering or leaving the utility business:

> The impact potential of the Vero Beach acquisition on the franchise election in Daytona Beach and other Municipal operations such as Ft. Pierce, Homestead, etc. makes it imperative that we not under achieve with our Vero Beach operation. (Emphasis supplied.) 16/

After hearings in Docket No. E-9574, the Vero Beach acquisition was approved by an administrative law judge on grounds, advocated by FP&L, that the municipal utility could no longer efficiently generate its own power requirements and that FP&L would provide an economic source of retail supply for the citizens of Vero Beach. This con-

---

15/ Exhibits GT-34, at 74; GT-32; and GT-62.

16/ Staff Exhibit GT-34, at 1.

trasts with the finding by the Presiding Judge that Vero Beach was a "truly excellent" utility with outstanding growth potential. See, Florida Power & Light Co., Docket No. E-9574, Initial Ruling and Order on Phases I and II (February 6, 1978). However, FP&L thereafter withdrew its application in early 1978 prior to the commencement of a final phase of the acquisition proceeding which was to consider the possible anticompetitive effects of the proposal.

In summary, the record documents 20 years' worth of franchise competition between FP&L and the municipal utilities located within its service territory. At various times FP&L has promoted acquisition or willingly received municipal proposals. Most, if not all, of those incidents occurred when the municipal systems were arranging new bulk power supplies from the options of self-generation, wholesale purchase from FP&L, and retail purchase from FP&L after franchise disposition. The Company has not succeeded in many acquisitions, because the municipal candidates solved their supply problems by adding generation. However, the record strongly indicates that self-generation is becoming less and less attractive to the point where FP&L's witness Gerber has described small scale generation as an anachronism. Since FP&L controls the remaining two options, 37/ we conclude that its wholesale monopoly power can only increase, and, thereafter, its retail power as well. See, Borough of Ellwood City v. Pennsylvania Power Co., 462 F. Supp. 1341, 1346 (W.D. Pa. 1979).

The Presiding Judge expressly accepted the Company's representation that it was not interested in acquiring Homestead or Fort Pierce because of capacity problems and operating difficulties. Since we find the premise of this representation unconvincing, 38/ we would be remiss to wholeheartedly accept its conclusion. In any event, it does not overcome the weight of the evidence to the contrary. 39/

37/ As discussed infra, at 31, municipal purchase of entitlements in large generating units constructed by FP&L does not currently appear to be a viable option.

38/ Infra at 34-37.

39/ Alternatively, it appears that the Florida Public Service Commission could require FP&L to provide retail service if the customers of a municipal utility voted to disband operations. See, Florida Statutes Annotated, §366.03.

Potential Losses of Franchises The Company appears well aware of the relationship between its wholesale sales to municipal utilities and its ability to retain existing retail franchises. In March of 1977, a market development presentation was made to FP&L management which stressed, inter alia, the need to maintain the integrity of the Company in relation to publicly financed utilities (Exhibit GT-64). 40/ Between 1976 and 1985, for example, franchises covering retail sales to 41.8% of FP&L's customers are to expire (Exhibit GT-66). In addition, FP&L serves another 93 communities at retail with no franchise agreement. Franchise competition can be a positive force to encourage better service and lower rates; thus, a utility should not be allowed to tilt the balance by artificially making wholesale service unattractive to potential retail market entrants. United States v. Otter Tail Power Co., supra, 331 F. Supp. at 61. The record contains evidence relating to three franchise expirations, of which Daytona Beach is the most fully documented.

In 1975 or 1976, the City of Daytona Beach undertook a study of municipal distribution versus FP&L franchise renewal. In response, the Company mounted a significant effort to inform City residents of the benefits of franchise renewal. Of particular note are the Company's statements that each of the Florida municipal utilities had rates higher than FP&L (except for two with access to hydroelectric power) and that municipals charge these higher rates because FP&L "can gain greater economies of scale in all facets of its operation" (Exhibit GT-6, at 1 and 3). FP&L won renewal

---

40/ In a 1975 paper on "Strategic Issues In Inter-utility Relations" prepared by Company witness Gardner, emphasis was placed, inter alia, on franchise renewals and phase out of wholesale tariffs (Exhibit GT-10). See also, Exhibit GT-49.

of its franchise after a record high election expenditure (Exhibit GT-76). Due to the continuing expirations of retail franchises, we conclude that vigorous franchise competition exists within the retail market which FP&L can influence through its wholesale sales policies.

The Company characterizes its efforts to renew franchises and acquire others as sales promotion and business preservation. 41/ However, these actions may still run afoul of antitrust law and policy when undertaken by a possessor of monopoly power. Otter Tail Power Co. v. United States, 410 U.S. 366 (1973); and City of Mishawaka v. American Electric Power Co., 465 F. Supp. 1320, 1329-32 (N.D. Ind. 1979).

FP&L's Relationship with Homestead Traditionally, FP&L has demonstrated considerable reluctance to engage in firm power transactions with municipal utilities, even within its own service territory. During the 1950's and 1960's this amounted to an unqualified refusal. Rate schedule RC under which firm service was provided to cooperatives required that capacity and energy "not be resold or distributed by the Customer to any municipality or unincorporated community for resale" (Exhibit GT-51). In an initial decision adopted by the FPC in Florida Power & Light Co., 37 FPC 544 (1967), 42/ Hearing Examiner Wenner recounted six separate instances over a period of 13 years when the Clewiston municipal utility requested and was refused wholesale service by FP&L. 43/ In 1963, the Company's president informed the City of Winter Garden that FP&L did not "supply

---

41/ FP&L brief on exceptions at 45.

42/ Affirmed, Federal Power Commission v. Florida Power & Light Co., 404 U.S. 453 (1972).

43/ 37 FPC at 572-73.

municipal systems firm wholesale power for distribution through a municipal distribution system" (Exhibit GT-16). 44/

Homestead first requested firm wholesale service from FP&L in 1967, to which the Company responded that it did not provide this service to municipalities and did not wish to serve any. Wholesale power from FP&L was Homestead's alternative to the immediate installation of new generation or disposition of its system (Exhibit GT-22). Robert Fite, the Company's president, and F.E. Autrey, a vice president, stated that FP&L would not refuse to sell wholesale power, if that was the only arrangement negotiable; however, they added that the City would not receive the rate at which firm sales were made to cooperatives and that a retail territorial allocation was a necessary precondition to any service. FP&L emphasized the comparative benefits of an emergency interchange agreement or sale of the municipal system in lieu of wholesale purchases (Exhibit GT-18). Homestead was unable to negotiate a firm wholesale contract and instead made intermittent purchases from FP&L over the ensuing five years at average prices that were considerably higher than those paid by FP&L's cooperative customers (Exhibit GT-29, at 33).

In April of 1972, Homestead requested a more sophisticated interchange agreement with FP&L including the purchase of firm power to meet a portion of the City's load; however, FP&L negotiators responded that FP&L was only interested in an interchange where both parties had capacity to meet their own demands plus ample reserves (Exhibit GT-29, at 1-3). Instead, Homestead and FP&L entered into new emergency service agreements whereby the Company only agreed to supply emergency power needs "to the extent it has capacity available. . . ." FP&L applied its then-existing rate schedule "WM," applicable to total requirements purchases by cooperative customers (Exhibit GT-29, at 4-11).

Homestead next requested power from FP&L in August of 1973, proposing a firm purchase of 12-16 MW from 1975 through 1980. The City stated that it intended to use

---

44/ See also, Gainesville Utilities Department v. Florida Power & Light Co., supra, 573 F.2d at 198.

this capacity for base load, purchase interchange energy to meet its intermediate load and use its own generation only for peak load capacity and reserve (Exhibit GT-29, at 12). 45/

The Company first decided to respond to Homestead's request with the so-called "Marshall Theory": Homestead was to be told that FP&L had no firm power to sell. Company negotiators were advised to have load and reserve estimates available to substantiate this response (Exhibit GT-29, at 14). Immediately thereafter, however, the Company concluded that Homestead had been listed as a customer under all requirements schedule SR and was actually receiving firm power at committed intervals. 46/ FP&L then decided that if Homestead requested a transmission interchange agreement as well as firm power, it would employ Schedule D and use Schedule SR as the negotiated rate thereunder.

In October of 1973, Homestead submitted a comprehensive request for an interchange agreement and simultaneous purchase of firm power from FP&L to serve the base-load portion of the City's requirements (Exhibit GT-29, at 24-28). However, Exhibit GT-29 (at 29-31) reveals that the Company wanted to avoid any obligation to sell firm power to Homestead by withdrawing schedule SR from its existing wholesale customers, including Homestead and replacing it with an "Emergency Rate Schedule" telling the City that it has no firm power to sell.

45/ The Company's chief representative at this meeting was its vice president, E.L. Bivans, who later testified in this proceeding. Copies of Bivan's notes (Exhibit GT-29, at 12) were sent to the Company's president and other executives.

46/ This discussion is recounted in the notes of Company employee "WMK" (apparently W.M. Klein, a negotiator in dealings with Homestead), Exhibit GT-29, at 15. The notes bespeak a certain surprise in learning that Homestead was an SR customer: "Rate SR offers firm power. Apparently, the Company has been honoring their request for a number of years, and is not in a good position to refuse to continue offering firm base load power of 12 MW to 14 MW, which is consistent to [sic] their previous demands."

Alternatively, it considered offering Homestead a Schedule D (firm interchange) rate lower than schedule SR in return for a signed contract stating that the City would install additional generation capable of carrying its electrical load. The final paragraph of this internal memorandum seems an apt summarization of FP&L's reaction to Homestead's request for firm power:

> It is our belief that if we refuse to sell the City of Homestead Firm Power they will immediately request us to wheel from other municipalities. If we encourage them to increase their generation where we can purchase power from them, we may offset the demand for wheeling as well as avoid a long-term Firm Power commitment. (Exhibit GT-29, at 31.)

FP&L's hope to induce Homestead to construct additional generation for base load requirements in lieu of firm power purchase was not done without knowledge of the consequences for the City. In December of 1973, FP&L's financial planning department prepared an analysis of FP&L and the municipalities in or near its service area entitled "Comparative Analysis of Municipal and Investor Owned Utilities and the Benefits to Their Customers" (Exhibit GT-34, at 42-44). This study determined that, except for Orlando and Jacksonville, municipal utilities charged higher retail rates than FP&L, because:

> The size of most municipal units is limited by the size of the city. This limit on size prevents the smaller municipal utilities from realizing many of the economies of scale available to large utilities. This fact was clearly revealed in the analysis. The smaller utilities had less efficient heat rates and higher fuel and operating costs per KWH of power sold. These higher costs appeared to be major contributing factors in the high cost of power to their customers.

Negotiations on the Homestead interchange agreement continued and in December of 1973 a final set of discussions occurred, from which FP&L learned that the

"key" to this agreement was FP&L's willingness to simultaneously supply service under both the interchange agreement and schedule SR after construction of necessary interconnection facilities by Homestead. Engineering and billing problems were not considered serious by FP&L personnel. However, Company negotiators opposed a written commitment to serve the City under Schedule SR after completion of the interconnection "because we [FP&L] already have a contract to serve them on SR and the agreement does not necessarily prohibit such an arrangement to continue" (Exhibit GT-29, at 39). Instead, FP&L's vice president, R. G. Mulholland did send a letter to Homestead's City Manager, in January of 1974, after the interchange agreement was signed, stating the Company's understanding that it would provide Homestead with electric power for 36 months after completion of the City's new interconnection facilities at a rate not to exceed the Company's approved wholesale rate schedule in effect at that time (Exhibit GT-29, at 43).

Homestead's high-voltage interconnection facilities were completed in October of 1977. Without advance notice to Homestead or any indication from the City that it no longer wanted average-priced firm power, FP&L filed the rate change application with this Commission which proposes to terminate SR service to Homestead. In place of SR power, FP&L states it will sell Homestead incrementally-priced, curtailable Schedule D power, which the Company admits is more expensive than schedule SR when used for base load.

Thus, Homestead has received wholesale service from FP&L since the 1950's, including firm requirements service under the SR-1 tariff since that tariff first became effective. From the time of agreement in 1973 to completion of the interconnection in October 1977, FP&L served Homestead under the SR-1 tariff (Exhibit 29). We find no evidence to support FP&L's contention that completion of the interconnection somehow eliminated Homestead as an existing wholesale requirements customer. Nor is it persuasive to assert that the parties intended for Homestead to be served at an incrementally-priced Schedule D rate instead of the average-cost schedule SR. 47/

47/ The record indicates that FP&L did not publish a rate level formula for Schedule D until February 10, 1978, when it made an offer of Schedule D capacity to Fort Pierce.

Indeed, knowing Homestead's desire for base-load firm power, the Company's representations as to the meaning of their interchange agreement in January of 1974 are quite to the contrary. It would be difficult to reach any other conclusion, given the weight of this largely unrebutted evidence.

FP&L's Relationship With Fort Pierce The efforts of Fort Pierce to purchase firm power from FP&L bear a marked similarity to those of Homestead. In March of 1976, Fort Pierce approached the Company about purchasing firm power to meet the the City's base load requirements and using its own generators for peaking purposes. Fort Pierce renewed its request in letters to FP&L in April and December of 1976. The December letter requested separate price quotations for base, intermediate and peaking capacity. The City also informed FP&L that it immediately wished to begin purchasing "base capacity and energy on a year-round basis in amounts ranging from 25 MW to 30 MW," and requested a statement of the Company's terms and conditions. Although FP&L recognized its obligation to provide service under Schedule SR-1, both in an internal memorandum and in a letter to Fort Pierce, the Company failed to respond with specific information on which Fort Pierce could act. After another letter to FP&L in April of 1977, the parties met in July and Fort Pierce was told that FP&L had no firm power to sell. 48/

Fort Pierce maintained its position that it was entitled to firm power under the SR-1 tariff throughout the remainder of 1977. On October 14, 1977, FP&L filed changes to the tariff which limited its availability to existing customers. Thereafter, the Company offered Fort Pierce up to 240 MW of capacity through the end of 1980, but under the terms of Interchange Schedule D, not Schedule SR.

On March 24, 1978, during the cross examination of FP&L's rate design witness, Lloyd Williams, by counsel for Fort Pierce, Mr. Williams acknowledged that the City was eligible to purchase firm service under the SR-1 tariff. The same day, FP&L delivered a draft service agreement to the City and firm service began immediately. However, a dispute remains concerning the duration of service and FP&L has stated its intention to terminate service to Fort Pierce if we approve its proposed restriction of firm service to named and existing customers

---

48/ However, in July of 1976 FP&L's System Planning Department prepared a market assessment of firm interchange sales between 1977 and 1985 which projected an "available supply from FPL" ranging between 1604 MW and 1998 MW in 1977. This report assessed the opportunities for sale of firm power to 10 different utilities in peninsular Florida, including Fort Pierce (Exhibit GT-7).

which do not have generating capacity sufficient to meet their peak loads.

Limitations on Alternative Sources of Capacity Unrebutted Company documents in evidence indicate that it is FP&L's policy to retain full ownership of the nuclear generating plants which it constructs. The Company has stated that the full capacity of these units is needed to serve its own customers, so sharing is not to be anticipated until FP&L reaches the optimum amount of nuclear capacity for its system (Exhibit 27). However, no party disputes that joint ownership of such facilities would provide municipal and cooperative utilities (as well as other utilities in the region) with access to FP&L's economies of scale (Exhibit GT-1, at 6).

FP&L is the sole owner of three operating nuclear plants having aggregate capacity of 2,188 MW. FP&L has agreed to share a portion of St. Lucie No. 2 nuclear plant with neighboring systems including Homestead and New Smyrna Beach; however, FP&L documents in evidence indicate that this was done at the insistance of the Justice Department and that FP&L has not committed itself to share the capacity of any future unit (Exhibit GT-71, at 22). 49/

The Availability of Transmission Services FP&L now offers four wheeling services which correspond to its interchange capacity and energy services. 50/ Wheeling may be provided for one-year periods, with service available at the sole discretion of FP&L when transmission capacity is not otherwise required by the Company. Transmission schedules TA, TB and TC correlate to inter-

---

49/ In 1973 FP&L considered cancelling St. Lucie No. 2 because of "escalating costs and Justice Department review of our antitrust status" (Exhibit 20). Then in 1976 the Company considered a shift to coal-fired plants for future base-load generation "to eliminate the Atomic Energy Act as a route to municipals' investment in generation" (Exhibit GT-1, at 13). See also, the decision of the Atomic Safety and Licensing Appeal Board, Nuclear Regulatory Commission, in Florida Power & Light Co., Docket No. 50-389A (ALAB-420, July 12, 1977), regarding antitrust review proceedings on St. Lucie No. 2.

50/ A complete description of these four services is found in Exhibit 28 (REB-AX), a draft service agreement sent to the City of Fort Pierce on December 6, 1977. The rate for these services is currently under adjudication.

change schedules for emergency, scheduled and economy capacity and/or energy services. 51/ Of particular significance to this case is schedule TD, denominated "firm transmission service." However, "firm" is a misnomer because Schedule TD service may be reduced or interrupted at the Company's discretion for periods up to 30 days. 52/

In short, these four wheeling services only offer surplus transmission capacity on an as-available basis. FP&L does not contend that any of these four wheeling services could be utilized to transmit alternative power supplies to utilities within the relevant markets from third parties equivalent to those obtainable under schedules SR-2 or PR. The Company states that an appropriate rate would have to be negotiated at the time a potential wheeling customer arranged its alternative power supply. 53/

51/ Supra at 4-5.

52/ Section I of the draft agreement (Exhibit 28, REB-AX) provides:

> In the event that Firm Transmission Service cannot be provided due to an unanticipated reduction or interruption of FP&L's transmission facilities supplying such service, or if such service is provided in an amount less than 80% of the Contracted Demand for Firm Transmission Service as a result of unanticipated reduction or interruption of power delivered by the Commission to FP&L for the City's account pursuant to Service Schedule D of the City-Commission Contract, and such reduction or interruption continues for a period of thirty (30) days, the Charge for Firm Transmission Service will be adjusted as follows: In each succeeding month, the higher of (a) the maximum MW delivered to FP&L in any one hour during that month, or (b) the maximum MW delivered to FP&L in any one hour during the preceding six months, will be substituted for the Contract Demand for Firm Transmission Service for purposes of calculating the Charge for Firm Transmisison Service. Upon such reduced or interrupted service being restored to 80% or more of the Contract Demand for Firm Transmission Service, the Charge in each succeeding month shall be based upon the full Contracted Demand for Firm Transmission Service.

53/ FP&L brief opposing exceptions at 41.

THE REASONS GIVEN BY FP&L FOR ITS TARIFF LIMITATION PROPOSALS

FP&L would seek to justify its proposed limitations on full and partial requirements availability in terms of operational constraints. Specifically, it asserts that future power supply is too uncertain to allow unlimited access to its requirements service.

According to FP&L, customers which are self-sufficient in generating capacity could arbitrarily shift their load between service from FP&L and their own generation. This would purportedly lead FP&L to maintain capacity in excess of its other customers' needs but with no assurance that such capacity would be fully utilized, thereby increasing rates to all customers. The Company proposes to remedy this uncertainty by making these on-again/off-again customers ineligible for service under schedule PR.

However, the difficulty with this proposition is that it has virtually no record support and is based on a few conjectural statements by Company witnesses. In fact, FP&L's rate design witness prepared a model load duration curve in 1975 showing that customers with generating capacity less than peak demand and customers with capacity greater than peak demand would each purchase base-load requirements from the Company, under an SR schedule modified for parallel operation, and use their own capacity intermittently to meet intermediate, peak and reserve demands (Exhibit GT-71, at 33). This is consistent with the repeated requests of Homestead and Fort Pierce for base-load firm power. 34/ Moreover, the natural inclination of these systems to buy base-load power would apparently be reinforced by the design of FP&L's PR rate which is intended to promote high load factors. 35/

34/ Supra at 27-31. Again in their testimony, Florida Cities state their intention to use schedule PR for base-load purposes and use their own generation for peaking (Tr. 659).

35/ Supra at 3-4. While FP&L is discouraging purchases by self-sufficient municipals it has apparently adopted a marketing strategy which promotes high load factor usage as a means of improving its declining system load factor (Exhibit GT-64).

FP&L relies on oil, natural gas and uranium to fuel its generation. It cites the 1973 oil embargo and resulting drastic oil price increases and the expiration of long-term oil supply contracts and replacement by three-year contracts to cast uncertainty upon its oil supply. As for gas supplies, it references high levels of curtailment and the expiration of a major gas supply contract in 1979. Concerning nuclear fuel, FP&L notes that it only has a two year inventory and that its long-term supply contract was cancelled by the seller in 1975.

FP&L may well face fuel supply problems, as do other suppliers in the electric utility industry. However, they are not of a magnitude that would justify the proposals before us in this case. It appears that FP&L continues to possess long-term fuel oil contracts and that it has entered into shorter-term oil contracts (3 years) with favorable cancellation provisions in order to gain greater flexibility in responding to price changes on the open market (Exhibits 22, at 3; 51, at 9). FP&L's natural gas warranty contract with Amoco Production Company provides for daily deliveries of 200 MMcf through 1988, such deliveries being beyond the purview of the present curtailment plan of the transporter of this gas, Florida Gas Transmission Corporation (Exhibit 51, at 9; Tr. 431). 56/ Finally, an affiliate of FP&L is engaged in uranium exploration (Tr. 454) and FP&L's existing nuclear units do not appear in danger of being curtailed due to fuel shortage. 57/

56/ See, Sebring Utilities Commission v. FERC, ____F.2d____, 5th Cir. Nos. 77-2911 and 77-2972 (March 20, 1979).

57/ In 1978 FP&L and several other utilities won a judgment in federal district court against their nuclear fuel requirements supplier, Westinghouse Electric Corporation. Virginia Electric & Power Co. v. Westinghouse Electric Corp., Civ. No. 78-0514-R (E.D. Va. October 27, 1978). In an unreported opinion the court held that Westinghouse was not excused for delivering nuclear fuel by reason of force majeure provisions in its contracts with the various utilities. See, Antitrust Trade Regulation Reporter, No. 887, at A-15 (November 2, 1978).

Among the fuel-related problems which FP&L gives as a reason for limiting firm wholesale service is its inability to procure a coal supply contract. However, on cross examination, FP&L vice president Gardner acknowledged that the Company has no coal-fired generation and has no plans to construct any. These points are confirmed by the testimony of FP&L's vice president in charge of fuel procurement which was presented to the Florida Public Service Commission in the spring of 1977 (Exhibit 22). 58/ On brief, FP&L has argued that the inability to obtain a coal supply contract has impaired its ability to plan coal-fired generation. However, the only evidence in the record of FP&L's need for such a plant was its desire to avoid municipal access to nuclear generation, the base load alternative to coal, which could come from antitrust review before the Nuclear Regulatory Commission. 59/

FP&L points to environmental regulations which make construction of coal-fired units difficult and make nuclear units almost impossible to build. It also points to escalating costs, litigation and regulatory delays and requirements as additional factors stopping future nuclear unit construction, or at least yielding a 12 year lead time which necessitates equal lead time for load forecasting. It refers to its cancellation of the proposed South Dade nuclear units and the substantial delay in licensing and resulting increase in capital costs of its St. Lucie No. 2 nuclear unit. As for existing generating units, FP&L states that its Turkey Point nuclear units have experienced steam generator leaks causing unscheduled outages in the past and requiring extensive scheduled outage in the future for repair, and that its combined cycle Putnam units, due to their novel design, have not been reliable. Finally, FP&L refers to its common stock selling below book value as evidence of financial difficulties which have limited its construction budget to internally generated cash.

58/ Exhibit 22 indicates that while coal may well be used in the future, economic, environmental and reliability problems make it largely irrelevant to FP&L's current capacity planning.

59/ Supra at 32, n. 48.

We certainly cannot deny that these constraints do pose problems for utilities such as FP&L, but the record fails to establish that FP&L is so hampered by regulatory requirements and financial difficulties as to be incapable of expanding its generating capacity as needed in the future. FP&L is, after all, offering 240 MW of Schedule D capacity to Homestead and Fort Pierce, and the recent rate of increase in demand by FP&L's other customers cannot be characterized as rapid. FP&L has been greatly reducing its demand and load forecasts in recent years, with the actual rate of growth being relatively low averaging at most around four percent annually (Tr. 848). To the extent that the record gives any indication of FP&L's current financial condition, it reveals that FP&L has experienced significant improvement in earnings and related market factors. About the time FP&L filed this case, it was reporting lower, more manageable growth; greater internal generation of funds; improved earnings and coverage ratios; and increased dividends (Exhibit GT-78). Suffice it to say that the record, comprised largely of company documents, is ambivalent on this issue.

FP&L would support the separation of full and partial requirements tariffs in terms of costs of service on the basis of different load patterns. 60/ These separate full and partial requirements tariffs differ both in terms of demand and energy charges. FP&L contends, therefore, that it has designed different rates to reflect more precisely the different costs of serving these different customer groups. Establishment of separate full and partial wholesale requirements rates is common practice. We have in fact recognized the differences in the costs of serving full and partial requirements customers, not to mention different types of partial requirements customers. 61/ In the present case, FP&L's proposal of separate full and partial requirements rates appears reasonable. 62/

60/ FP&L asserts that its wholesale customers without any generating capacity have relatively stable and predictable load patterns which allows it to plan operations and design rates to recover costs of serving these full requirements customers. It further contends that partial requirements loads are less stable but that the PR tariff allegedly encourages such customers to stabilize their purchases of power.

61/ E.g., Boston Edison Company, Opinion No. 809-A, Docket Nos. E-7733 and E-7734, Issued December 9, 1977 (mimeo at 20).

62/ Of course, in Phase I of this docket we are not addressing the specific costs of service and rate designs of the ST-1 and PR tariffs. Accordingly, our determination does not reflect on how those two rates will ultimately function

BALANCING THE PUBLIC INTEREST CONSIDERATIONS

When the SR-1 and FR tariffs are viewed from a perspective on the relationships between FP&L and other utilities within the relevant markets, the Presiding Judge's conclusion that the Company's proposal has "no discernible anticompetitive effect in and of itself" is inadequate. 63/ With alternative sources of base-load wholesale capacity unavailable, FP&L's tariff restrictions would deny to Homestead, Fort Pierce and other nominally self-sufficient utilities within the relevant market, the only remaining source of supply, schedule FR. It would conclude, finally, the municipals efforts over ten years to obtain a source of economically-priced, base-load power. Municipals like Homestead and Fort Pierce would become likelier to leave the utility business. Indeed, the citizenry might force these utilities to come to FP&L requesting takeover. See, City of Mishawaka v. American Electric Power Co., supra, 465 F. Supp. at 1329. Of even greater importance to the Company would be the assurance that in future franchise renewal contests with potential retail market entrants, it could point to existing municipal utilities as characteristically expensive and unable to exploit scale economies.

Homestead and Fort Pierce would not be able to economically utilize higher-priced, lower-quality Schedule D service to meet their base-load requirements. Such offers to sell at impractical prices and terms have been construed as unlawful refusals to deal, when done to further monopoly power. Eastman Kodak Co. v. Southern Photo Materials Co., 273 U.S. 359 (1927).

63/ We recognize and fully appreciate that the Initial Decision was written before FP&L agreed to continue to serve Homestead and Fort Pierce under its FR tariff pending the final outcome of this case. We have not been burdened by the time constraints faced by the Presiding Judge. Under the circumstances the Judge is to be commended for his efforts.

The restriction of wholesale service to named and existing customers is an even greater threat to potential franchise competition. The record indicates that FP&L generally plans to minimize sales of average-priced wholesale power to municipals and cooperatives (Exhibit ST-17). After reviewing the record of FP&L's efforts to renew the Daytona Beach frachise, it does not appear likely that the Company would offer a potential distribution utility an average-cost rate. The signal to potential retail distributors in areas presently served by FP&L at retail and over which FP&L has wholesale monopoly power is quite clear. Cf., City of Mishawaka v. American Electric Power Co., supra. FP&L's offer to discuss the feasibility of service to new customers under specific contract rates does not reassure us. 64/

The balancing of competition against other public interest considerations, required by City of Huntingburg v. FPC, 65/ becomes relatively simple once this case is

---

64/ As Staff notes in its brief on exceptions, at 9, the Presiding Judge erred in finding that FP&L had committed to serve new systems in FP&L's service territory.

65/ 498 F.2d 775 (D.C. Cir. 1974).

stripped to its essential elements. The proposed restrictive provisions are anticompetitive, we find no countervailing reasons for their implementation, and they are to be deleted. The Company has not demonstrated that it should be allowed to change the general availability provision of schedule SR-1 which makes wholesale service available to all municipal and cooperative customers in FP&L's service territory. 66/ Proposed terminations of firm, average-cost service to Homestead and Fort Pierce are based on these restrictive provisions, so the proposed cancellations are rejected. The Homestead cancellation would also violate the understanding of the parties that this customer would continue to purchase schedule SR after the completion of their interconnection. FP&L shall continue to serve Homestead and Fort Pierce, under schedulle PR. However, the proposal to bifurcate schedule SR-1 into separate rates for total requirements and partial requirements service is soundly based with no discernible anticompetitive effect and we approve it.

In spite of the anticompetitive conduct recounted above, we wish to stress that there may be acceptable service limitations with diminished anticompetitive effects which ameloriate some legitimate operational problems faced by FP&L. Indeed, the Intervenors recognize that the Company should be allowed to fashion reasonable terms and conditions to wholesale service. However, FP&L has not provided us with any middle ground, much less a showing that it has selected a tariff limitation that is the least anticompetitive means of solving any such operational problem.

Finally, we note that FP&L has matters pending before us in over 30 dockets, most involving interchange transmission service filings in which antitrust allegations have been made.

66/ Schedule SR-1 provides:

AVAILABLE:

In all territory served by the Company.

APPLICATION:

To electric service supplied 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 for resale.

We see little need in those cases for the kind of elaborate presentation made in this one. It would be helpful to the Commission for the parties to pinpoint the competitive problems and defenses relating to the filings in each of these cases.

The Commission orders:

(A) The Initial Decision issued in these consolidated proceedings on April 21, 1978, is hereby reversed.

(B) All limitations on the availability of wholesale requirements service, as proposed by FP&L, except for the limitation of full requirement service under the SR-2 tariff to utilities with no generating capacity, are hereby rejected.

(C) FP&L is directed to revise its proposed SR-2 and PR tariffs to conform to this order within 60 days. Until revised tariffs are accepted by the Commission, the availability provisions of the otherwise superseded SR-1 tariff shall remain in effect.

(D) The notices of cancellation of requirements service to Homestead and Fort Pierce are hereby rejected.

(E) Exceptions not granted are denied.

By the Commission.

(S E A L)

Lois D. Cashell,
Acting Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

OPINION NO. 57-A

)	Docket Nos. ER78-19
)	(Phase I) and
)	ER78-81

OPINION AND ORDER DENYING REHEARING

Issued: October 4, 1979

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Charles B. Curtis, Chairman; Georgiana Sheldon, Matthew Holden, Jr., and George R. Hall.

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

OPINION NO. 57-A

OPINION AND ORDER DENYING REHEARING

(Issued October 4, 1979)

On August 3, 1979, the Commission issued Opinion No. 57 in these consolidated proceedings which rejected the proposal of Florida Power & Light Company (FP&L or Company) to limit the availability of its firm wholesale requirements service to certain named and existing customers. Notices of cancellation filed by FP&L with regard to two existing wholesale customers were also rejected, because they were based on the Company's restrictive availability proposal. In our decision we found that FP&L's proposals were unjust and unreasonable under the standards of Sections 205 and 206 of the Federal Power Act, particularly because of their anticompetitive effects. On September 4, 1979, FP&L filed an application for rehearing of Opinion No. 57 in which it requests that the decision be modified in certain limited respects. 1/ The Company has raised no legal or factual consideration not previously considered and we shall deny the application. However, we wish to reemphasize the holding of our opinion in light of several representations made by FP&L in its latest pleading.

FP&L now represents a willingness to provide wholesale requirements service under its tariffs to a number of Florida utilities in addition to those presently served:

> The Company is either serving, or is willing to provide service to, the following: Clewiston;

1/ No other party applied for rehearing.

> Florida Public Utilities at Fernandina Beach; Fort Pierce; Green Cove Springs; Homestead; Jacksonville Beach; Key West; Lake Helen; Lake Worth; New Smyrna Beach; Starke; Vero Beach; Clay Electric Cooperative; Florida Keys Electric Cooperative; Glades Electric Cooperative; Lee County Electric Cooperative; Okefenokee Rural Electric Cooperative; Peace River Electric Cooperative; and Suwanee Valley Electric Cooperative. Reasonable terms and conditions, including reasonable notice provisions, will, of course, be necessary, as the Commission itself recognizes (Mimeo, p. 40).
>
> The Company is willing to continue providing service to the cooperatives listed above to the extent of their loads in the geographical areas in which they are now receiving service from FP&L. 2/

No controversy remains regarding the provision of wholesale requirements service to these utilities. Also, FP&L now agrees to provide requirements service to "new utilities in its service area that may be established by those entities it presently serves at retail . . . ." 3/

The sole purpose of FP&L's application is to request that we modify Opinion No. 57 to permit the insertion of a new availability restriction into the Company's requirements service tariffs. FP&L now proposes to exclude large self-sufficient utilities, including the Jacksonville Electric Authority, the Orlando Utilities Commission and the City of Gainesville. The Company does not represent that any such large utility has requested service.

2/ Application for Rehearing of Florida Power & Light Company at 3. Two of these utilities, Fort Pierce and Homestead, were the subjects of the notices of cancellation rejected in Opinion No. 57.

3/ Id. at 2. See, Opinion No. 57 at 39.

In support of its request for modification FP&L reiterates the arguments considered during our earlier deliberations. It argues that our decision should be modified in light of the Company's wheeling policy and opportunities offered to other utilities to participate in FP&L's St. Lucie No. 2 nuclear power plant.

We shall not consider adoption of the Company's new proposal at this stage of the proceedings. If FP&L wishes to propose any term or condition of service under its requirements tariff, the Company should do so in a new filing wherein it should be prepared to demonstrate that the proposal is "the least anticompetitive method of obtaining legitimate planning or other objectives." 4/

The Commission orders:

FP&L's application for rehearing of Opinion No. 57 is hereby denied.

By the Commission.

(S E A L)

Kenneth F. Plumb,
Secretary.

4/ Opinion No. 57 at 2.

APPENDIX III

FLORIDA POWER & LIGHT COMPANY

INTER-OFFICE CORRESPONDENCE

LOCATION Miami, Florida
DATE February 20, 1976

TO Mr. H. L. Allen

FROM W. E. Coe

COPIES TO

SUBJECT: New Interchange Contracts with Florida Power Corp. and Tampa Electric Co. Re: Mr. E. L. Bivans' letter of 2/11/76 to Mr. E. A. Adomat

I believe several incomplete statements were included in Mr. Bivans' letter.

1. Mr. Bivans was briefed several times by Ken Buchanan on areas of the proposed contract that were within his area of responsibility - planning.

2. After his December 5 letter to Ken, several hours were spent trying to explain to Mr. Bivans the provisions of the contract for supplemental power, which he erronously refers to as "universal wheeling".

3. Preliminary draft copies were not distributed to Mr. Bivans as well as several other officers in the company since it was requested by Mr. R. G. Mulholland that only those who were relatively familar with interchange contracts and has some responsibility for them be asked to make the preliminary review. This includes the two lawyers selected by Mr. Tracy Danese.

4. Once the preliminary drafts were resolved to their final form, it was Mr. Mulholland's request that a wider distribution be made and a review session be held. It was intended at that time that Mr. Bivans would be asked to explain his "serious concerns".

5. I, along with many others, am completely unaware that Mr. Bivans was "to represent the company in inter-company matters, both in and out of FCG".

6. My understanding of Mr. McDonald's directions following the Senior Management Planning Council meeting on Regulatory problems was that Power Supply was to secure uniform bilateral interchange contracts as a deterrent towards formal pooling. I did not receive any directions that Mr. Bivans was responsible for this assignment since, while he was Vice President of Power Supply, he made no effort towards resolving the lack of a uniform interchange contract.

APPENDIX IV

FLORIDA POWER & LIGHT COMPANY
INTER-OFFICE CORRESPONDENCE

TO Mr. F. E. Autrey, Executive Vice President
LOCATION Strategic Planning
DATE September 19, 1973

FROM R. J. Gardner
COPIES TO (See below)

SUBJECT: Waste Disposal - Power Generation, Dade County

Al Adomat received a call from the County informing him that an engineering firm desiring to bid on a waste disposal plant wishes to talk to us. Adomat and I talked to the firm (card attached hereto) in my office.

They wish to obtain from us a letter of intent to either

(a) own and operate the turbine-generator plant, or

(b) purchase power from their turbine-generator plant.

The letter of intent would cover the major terms and conditions of our agreement and, if they were the successful bidder, we would work out and sign a contract with them.

For our purposes I think we must do one of the above two things subject always, of course, to working out an agreement which is in the best interests of our customers. I think it important that the negotiations be handled by someone from your department. They would require assistance from Mike Cook, Walt Rogers, and Al Schmidt.

I told Mr. Herbert that someone would be in touch with him today to set up a time for initial negotiations.

In the meantime I have informed Mike Fraga of the conversation. I have taken the liberty of drafting a set of criteria which I think should be followed in these negotiations (attached).

R. J. Gardner
Vice President

RJG:std

Attach.

(Copies to: J. J. Hudiburg, E. A. Adomat, Michael C. Cook, W. H. Rogers, Jr., A. D. Schmidt, E. G. Brewer, M. C. Cook, Jr., M. T. Fraga)

GUIDELINES FOR POWER GENERATION FROM MUNICIPAL SOLID WASTE OPERATIONS

Background -

Increasing interest is being displayed by local governments in processing solid waste as opposed to disposing of it in land fills. The higher cost of processing can be offset by disposing of reclaimed materials and by combusting the waste, and generating and selling electric power. Several local governments have sought FPL involvement in the planning of solid waste processing systems which would incorporate power generation. Dade County is now out for bids on a system and at least two contractors are seeking to negotiate with FPL for commitments regarding power production for incorporation by the contractor in bids to the County.

The amount of direct benefit is small because solid waste can generate only a small fraction of our power needs. The principal value in FPL's participation is:

1. Augment community and customer resources by displaying corporate responsibility in assisting the solution of a pressing local problem.
2. Gain experience and insight into the potential for profitable future increased involvement in waste processing.
3. Deter the competitive threat of municipal generation.

Guidelines for Power Generation
from Municipal Solid Waste Operations
(continued)

The following are suggested guidelines for use in planning in the area of our involvement with waste disposal power generation:

1. FPL should own and operate the electric power generation facilities including:

   - Turbine-Generator
   - Turbine-Generator auxiliaries
     - Lube-oil system
     - Hydrogen system
     - Controls
   - Turbine operator foundation
   - Condenser
   - Condenser cooling system
   - Cooling system makeup and conditioning system
   - Generator and exciter controls
   - Generator bus
   - Power transformer
   - Switchyard

2. FPL should pay for steam generated by the municipally-owned and -operated boiler system. FPL should not be responsible for waste collecting, handling, processing, or burning at this time. FPL should not be responsible for noise, odor, or emissions from other than the T-G plant.

3. The payment for steam should be such that the resulting bus bar cost of power to FPL compares favorably with average bus bar costs from existing plants, and is such that the resulting bus bar cost is competitive to what the municipality's cost would be if it generated the power.

4. FPL should seek financing of the T-G plant through either the municipality or the waste plant contractor. Repayment of the capital [illegible]

5. If FPL must finance the T-G plant, there must be provision for non-recovery of fixed charges due to poor availability of the steam.

6. In the event contractors to the municipality for waste processing systems seek commitments from FPL concerning power generation, it is important that such commitments be consistent as between contractors and as between municipalities.

7. Close coordination should be maintained with the local government at all times, particularly when dealing with contractors or bidders to insure that FPL's overall relationship with the local government is not impaired.

8. The negotiations with either local governments or contractors should be the responsibility of the Division General Manager who, in turn, should consult with the Group Vice President to insure consistency and conformity to policy.

9. Assistance in negotiations should be obtained from Power Resources; Power Plant Engineering, General Engineering, and System Planning in regard to contract provisions on technical matters and for cost information. The Treasurer shall provide assistance in economic and financial analysis.

GUIDELINES FOR NEGOTIATIONS FOR POWER PURCHASED
FROM MUNICIPALLY OWNED WASTE DISPOSAL FACILITIES
- DADE COUNTY -

FPL OWNED TURBINE GENERATOR PLANT

1. Power Plant Engineering to provide cost of a turbine plant. Size: 50MW; steam conditions 750° F., 650 psi. To include turbine generator, controls, feedwater heaters condenser, condenser cooling system (assume fresh water cooling towers) including makeup water system, all turbine auxiliaries (hydrogen cooling, seal oil, lube oil, voltage regulation, etc.), generator bus, power transformer and switchyard.

2. County to be responsible for waste storage, waste processing, boiler, boiler feedwater system.

3. Auxiliary power to be supplied to County at standard government rates.

4. Rates will be on basis of ¢/MBtu at standard conditions with appropriate adjustments for variation from standards.

5. There should be provisions for steam quality (silica carryover).

6. Power Resources to supply operating and maintenance costs and other requirements.

7. There will have to be agreements concerning metering of steam, calibration, etc.

8. There will have to be agreements concerning availability of steam and possibly cost adjustments for poor availability.

9. Provisions for maintenance outages of the turbine plant.

10. There must be a long-term lease of the ground under turbine plant, rights of access, space for maintenance facilities.

11. We may want to have Black Clawson finance the construction of the turbine plant, and we will pay by an additive to the steam payment, i.e. ____¢/MBtu is for repayment of the capital cost plus interest. This eliminates need for No. 8 above.

12. It is possible also that we could contract with Black Clawson to operate and maintain the turbine plant, again for an additive.

FPL PURCHASE POWER

1. Costs need to be obtained from Power Resources for power from various size units.

2. If power supply is to be continuous, it should be considered as baseload power. Our payment should be based on comparable baseload power costs. I would guess its worth somewhere around 10-12 mills.

APPENDIX IVA

Presently projected system growth rates and generation expansion plans indicate that on the order of an additional 6000 MW or more of combined cycle and/or gas turbine generation will be required by FPL between now and the year 1993. Because of the dwindling oil supplies, FPL is actively studying other energy conversion methods such as coal gasification. Future large fossil units are being designed and specified to burn coal as the primary fuel.

Both coal gasification methods and large coal burning boilers lend themselves to the consumption of solid waste. Some gasification processes are also very easily adaptable to energy recovery from sewage. Indications are that integrated systems of the gasification process and present technology in combined cycle generation would prove highly desirable from an economic point of view.

Dade County is at present asking for bids by private contractors to build and operate resource recovery facilities for the disposal of the county's solid waste. These bids would be based on a 20 year contract and are due by June 17, 1974. At least two other counties within the FPL service area have expressed similar interest in this type of disposal system.

At the same time, there has been no lack of interest by private contractors obviously with profit incentive. There are several systems within the United States presently participating to warying degrees with governmental agencies in waste disposal systems.

So that FPL might be placed in a prepared position when future waste disposal proposals arise throughout Florida, and at the same time establish a corporate position on the optimal extent of our participation in such

projects, we would recommend that an engineering consultant with experience in such areas be immediately retained. This consultant would be used to extend the Brown and Root "state-of-the-art" study (already completed) to a point where recommendations on corporate approaches could be made. We would further recommend that these recommendations be completed by June 1, 1974, so as to allow time for management decisions before the Dade County bid due date of June 17, 1974.

APPENDIX IVB

FLORIDA POWER & LIGHT COMPANY
INTEROFFICE CORRESPONDENCE

TO Mr. F. E. Autrey

FROM W. M. Klein

SUBJECT: Use of Solid Waste for Power Generation

LOCATION Miami, Florida
DATE March 25, 1974

COPIES TO Mr. Marshall McDonald
Mr. R. J. Gardner
Mr. J. C. Walden
Mr. M. T. Fraga
Mr. J. L. Howard
Mr. W. J. Hopgood

We have been working with representatives of Dade County to determine if FPL can use solid waste for generation of electricity. During the time we have been involved in this, inquiries have also been received from Ft. Lauderdale and Sarasota concerning possible FPL participation in resource recovery operation by using the "fuel" portion of the solid waste.

As you know, the use of solid waste for power generation has received considerabl publicity in the news media and various magazines have carried articles on the subject. Several pilot projects are underway. The most notable one is the Union Electric project in St. Louis where processed solid waste is being used as a supplemental fuel to coal for power generation. In view of this increased publicity and increasing public awareness of the need to more effectively dispose of solid waste, the use of solid waste to generate power can be expected to appea to be an ideal solution to municipal authorities and the general public. The current energy crisis causes people to look at the use of solid waste as a fuel as a practical solution that helps eliminate solid waste while providing a substitute fuel for scarce and expensive petroleum.

Based on these facts, we believe that it is imperative that FPL take an affirmati position on the use of solid waste for power generation. We need to make a formal commitment to the Dade County Proposal for disposal of solid waste. (A summary of information being submitted to prospective bidders is attached.) However, any commitment made here may well lock FPL in from a practical matter to ma formal commitments to other municipalities located in our service territory.

Therefore, we feel that the consideration given to Dade County's proposal is extremely important since it may well set a pattern for the Company systemwide. We also feel that we cannot afford not to participate since the County representa tives seem determined that the "fuel" portion of the solid waste be used. They have on several occasions made reference to the fact that "if FPL doesn't use thi fuel or steam from the fuel, then they would build and operate their own power plant."

In view of this attitude on the part of Dade County, FPL must work out a way to participate in the Dade County procedure for disposal of solid waste. Therefore, while insuring that Dade County or the successful bidder doesn't generate electri we must at the same time avoid setting a precedence that would be completely unacceptable elsewhere on the system.

Given the fact that the "fuel" cannot be burned in our boilers without extensive modification, we have only two major alternatives - purchase of steam or prylosis of the fuel into gas. Purchase of steam would require the minimum investment but would require location of generating facilities at each resource recovery plant. The prylosis procedure would require substantial investment but would give the Co more control over location and operation of the generating facilities.

The Task Force will make their recommendations later this week. In view of the long-term impact on the Company and the investment involved, we believe that this matter should receive your consideration since we must make a formal commitment to Dade County in the very near future.

W. M. Klein

WMK:ipr
Attach.

APPENDIX V

APPENDIX V

Examples of FPL actions to mislead governmental agencies

a. The Testimony of FP&L Board Chairman and Chief Executive Officer, Marshall McDonald and Related FP&L Briefing in Florida Power & Light, FERC Docket No. E-9574 Show That FP&L Misled The FERC in Order to Gain a Favorable Ruling on its Acquisition of Vero Beach.

One of the issues raised by Staff and Intervenors in Docket No. E-9574 was the ability of FP&L to provide low cost and high quality service to citizens of Vero Beach, assuming that the system were acquired. In July, 1977, Mr. Marshall McDonald was cross-examined on, inter alia, the consequence of prospective repairs (on steam tubing generator bundles) on the Turkey Point Units. The basis for this examination was a statement in the Company's 1976 reports to the SEC that: "Procurement of materials may require one to two years and installation may require that each unit be out-of-service for approximately two years." Counsel for Citizen Intervenors sought to obtain information on the consequences of the repairs referred to. As shown in the transcript 2/ Mr. McDonald's response was to: (1) generally disclaim any particular personal knowledge of the matter, and (b) state that any impact statement must await a definite decision to proceed with repairs -- and that such decision had not been made. 3/ As Counsel for Citizen Intervenors sought to ask further questions on the effect of Turkey Point repairs, Counsel for FP&L interposed that the question was "hypothetical." (Tr. 791)

1/ See, e.g., Walker Process Eqpt., Inc. v. Food Machinery & Chemical Corp. 382 U.S. 172 (1965); California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972); and Otter Tail Power Co., supra.

2/ At Tr. 783 et seq.

3/ Thus, the following exchanges (emphasis added):

BY MR. SPIEGEL:

Q If you needed to know what the impact would be on the interests of the stockholders or bills to the ratepayers, is there somebody in the company you could ask about that?

A Mr. Spiegel, there are a lot of people I could ask. But until the engineers have completed their studies and determined what measures would actually be employed, when they would be employed, there could not be a complete answer given until then.

(FOOTNOTE CONTINUED ON FOLLOWING PAGE)

Citizen Intervenors sought to ask further questions on the effect of Turkey Point repairs, Counsel for FP&L interposed that the question was "hypothetical." (Tr. 791)

FOOTNOTE CONTINUED FROM PREVIOUS PAGE

Q I agree that you cannot expect to have a complete answer as to what the impact will be. But my question is: Do you think there may be somebody in the company studying that at that point, who would be able to give you estimates and judgements and ranges of what that impact would be?

A Mr. Spiegel, ther are people studying the problem, studying the alternatives available to us, comparing the various ones, determining what is in the best interest of our customers to do when that is determined. The other matters can be determined.

But right now it would be the purest speculation to ask for a result, when the basic actions that would cause the cost differential have not been determined.

(Tr. 789-90)

* * * *

Q Is there anybody in the company at this time, in view of the statement in the shareholders report, to whom you think you could turn to provide an estimate of the impact that this shutdown would have, if it occurs, on rates and/or earnings of Florida Power and Light Company?

Or is it a matter nobody would be looking into at this time?

A They would be looking into this, Mr. Spiegel, when the basic actions that would actually be acomplished have been decided on.

Q Do you know whether the basic actions to which you refer have by now been decided upon?

A It is my understanding that they have not been decided upon, sir.

Q Therefore, it is your belief that no one in the company is studying and considering the impact either on rates or on earnings of the fact that the unit may be -- may be -- shut down for up to two years?

FOOTNOTE CONTINUED ON NEXT PAGE

In their December, 1977 Initial Briefs, both Staff and Citizen Intervenors specifically expressed concerns about the implications of the Turkey Point repairs referred to in the SEC filings. In its December 20, 1977 Reply Brief, FP&L responded that:

> "In their briefs, Staff and Citizen Intervenors make several diversionary arguments regarding future diminished reliability of FP&L's system which ignore the record evidence. First, Staff (Br. 7-9, 14) and Citizen Intervenors (Br. 32-33, 48) assert that the contingencies surrounding FP&L"s nuclear units at Turkey Point undercut any claim that the proposed transaction will not impair reliable service to Vero Beach customers. As the record indicates, at the time Mr. McDonald testified in June, the Company had not yet completed its studies regarding the repairs, if any, which might be necessary (Tr. 785, 789-790, 795-796). Until these studies are concluded, any conclusions which can be drawn would be pure speculation."

It subsequently became apparent that the determination to expend over one hundred million dollars to repair Turkey Point had not only been made in April, 1977, but had been made at a Board of Directors meeting attended by Mr. McDonald.

As testified to by FP&L's Orrin Pearson in rebuttal testimony filed in March, 1979 in Florida Power & Light, FERC Docket No. ER 78-19 et al. (emphasis added):

> Q Please summarize the situation concerning the operation of the Company's Turkey Point nuclear units 3 and 4.
>
> A In 1975 and 1976, the Turkey Point units began to experience a series of steam generator leaks. The Company and the NRC began an exchange of information regarding the leakage, the outcome of which was to cause the units to be shut down during the fall of 1976 for inspection. Subsequently, the NRC has imposed conditions for continued operation involving reinspection

---

FOOTNOTE CONTINUED FROM PREVIOUS PAGE

> A Mr. Spiegel, there are so many speculations of what might happen that our customers cannot afford to have people who are making analyses of every possible action that might happen in the future. When one becomes certain enough that we have some reasonable parameters, then the information can be obtained. But just as a continual exercise to look at all the possibilities, we cannot afford people like that.
>
> (Tr. 792-93)

> at six month intervals and authorization by the NRC to restart the unit following a full review of the inspection results. The conditions also required a shut down for leak repairs if certain criteria were exceeded. The Company thus faced the distinct possibility that both units would be off line at the same time. A unit could be off line because of the need to make repairs in the unit. The other unit could be off at the same time because of refueling or a planned inspection. Faced with this possibility, the Company determined to prepare to replace the lower sections of the steam generators, (or tube bundles). In April 1977 the Company signed a contract to purchase material for this repair. Work has also been underway to develop the necessary repair procedures . . ."

The April, 1977, determination testified to by Mr. Pearson was evidently made at a Board meeting attended by Mr. McDonald. As stated in the April 18, 1977 minutes of FP&L's Board of Directors: 1/

> "Mr. Adomat then reviewed the proposed contract with Westinghouse for replacement of the steam generator tube bundles and answered numerous questions concerning its positions.
>
> After further discussion, upon motion duly made and seconded, Mr. Taravella abstaining, it was resolved, that this Board approves new capital expenditures budget item No. 178 amounting to $3 million in estimated expenditures, of which 2.20 million is to be spent during the budget year and $780,000 is to be spent after the budget year and authorizes its inclusion in the 1977 capital expenditures budget; and be it further resolved that this Board approves net increase by revision in previously authorized budget item No. 137, amounting to an increase of $104,025,000 with total estimated expenditures of $108 million, of which $10,300,000 is to be spent in 1977 and $97,700,000 after 1977, and authorizes its inclusion in the 1977 capital expenditures budget."

b. FP&L Falsely Claimed Surprise in Order to Delay Adjudication of its Anticompetitive Practices and Preserve its Opportunity to Acquire Vero Beach.

Document no. 1 is a March 16, 1977 "status report on litigation with antitrust implications." The document was prepared by FP&L Counsel John E. Mathews, Jr. for FP&L Senior Vice President

---

1/ As reprinted at Tr. 457-58 of Florida Power & Light, FERC Docket No. ER78-19, et al.

Robert Wall. Copies were sent to other FP&L counsel. That letter made the following statement (At Document no. 1, at 7) in regard to FP&L Docket No. E-9574:

> "The same essential antitrust issues are involved here as in the proceedings before the Nuclear Regulatory Commission. Florida Power & Light is taking the posture that it will do everything possible to expedite an early favorable completion of the hearings before the Federal Power Commission."

On August 5, 1977 Staff and Intervenors filed their testimony in Phase III of the proceeding. That phase was to consider, inter alia, allegations of anticompetitive conduct. Among the testimony filed was that of FERC economist Dr. Gordon Taylor, who provided abundant analysis and documentation of FP&L's anticompetitive practices.

Upon receipt of the August 5, 1977 testimony FP&L abruptly departed from its prior effort to expedite the hearing and began a continued series of efforts to postpone the hearing -- efforts which culminated in the Company's March, 1978 withdrawal of its application to purchase the system. On behalf of these efforts Counsel for FP&L represented, inter alia, that it was surprised by the development of the case into an antitrust proceeding.

On August 17, 1977, FP&L moved to convene a prehearing conference and postpone the hearing on its anticompetitive conduct. On behalf of postponement, FP&L stated 1/ that its "preliminary review" of Staff testimony revealed that it

> "contains serious allegations that FP&L has allegedly violated the antitrust laws. In short, an acquisition case has been transformed into an apparent antitrust proceeding ... To require FP&L to proceed under the present schedule to litigate a full antitrust proceeding would be unfair, prejudicial and a denial of due process. As FP&L has noted above, the issues in this case have been substantially enlarged to review FP&L's alleged anticompetitive conduct."

At the August 22, 1977 prehearing conference, Counsel for FP&L stated 2/

1/ At 4. (Emphasis added)

2/ At Tr. 170-71. (Emphasis added)

> "It is clear from this testimony that has been filed for Dr. Taylor, and clear to us now from the testimony that citizen intervenors propose to obtain from their own experts, that as of August 5 we face a broad scale investigation of past activities of Florida Power & Light Company."

As Staff Counsel detailed at the August 22 1/ prehearing conference, FP&L in fact did have ample record notice of the scope of Phase III of the proceeding. As the March 16, 1977 letter of counsel shows, FP&L's claim to the contrary -- a claim whose successful promotion resulted in months of administrative delay -- was a misrepresentation.

c. Cities Would Seek to Show That FP&L Misrepresented the Circumstances Surrounding the Cancellation of South Dade.

FP&L announced the cancellation in February, 1977, following the award of an interim rate increase by the Florida Public Service Commission. The announcement tied the cancellation to the Company's dissatisfaction with the level of the increase. The FPSC found this claim wanting. It stated:

> "However, the prudence of the decision to cancel the nuclear units planned for the South Dade site, the first of which was planned to begin service in 1986, is not as evident. The announcement that the South Dade unit had been cancelled was made on February 21, 1977, the date that this Commission granted an interim increase of $87.9 million dollars to the company. However, cross-examination of witness Gardner demonstrated that the interim award was but one of many considerations which affected the decision to cancel the South Dade unit. Further questioning with regard to the ramifications of the decision to cancel, the factors leading to the decision, and the timing of the decision itself cast further doubts upon the prudence of this action. While the decision does not impact upon this particular rate case in terms of dollars and cents, it is our intent to revisit this decision at an appropriate time." (Order No. 7843, Docket No. 760727-EU(CR), P. 24).

1/ At Tr. 178-180.

As testified to by Robert E. Bathen, 1/ documents provided by FP&L show that financing difficulties do not appear to have been the key concern in cancellation and, in fact, that FP&L viewed South Dade as financeable. Moreover, as Mr. Bathen summarized, to the extent that financing was a difficulty, Cities had offered to provide assistance. As Mr. Gardner told the PSC, however, the Company had not considered a joint venture with others at South Dade. Finally, as summarized by Mr. Bathen, discovery documents indicate that South Dade may have been cancelled because of fear of related antitrust review.

In sum, FP&L's presentation to the Florida PSC (and its affirmation of that presentation in Docket No. ER78-19, et al.) not only misrepresented the basis for cancelling South Dade, but there is evidence that the decision was motivated by anticompetitive design. 2/

d. Cities Could Show That FP&L Continually Sought to Evade its Tariff (and Federal Power Act) Obligations and Required Cities to Litigate Their Rights Against FP&L's Baseless Claims.

Since the filing of its initial tariff at the FERC in 1973, FP&L has continually sought to evade its express tariff obligations. Should the case go to trial, Cities would demonstrate that these efforts, individually and collectively, constituted an anticompetitive abuse of the administrative process. 3/

When FP&L filed its proposed tariff restrictions in November, 1977, for example, it claimed that they were necessitated by service difficulties. A discovery request by Cities sought all documents relating to the decision to change the tariff. The documents produced in response 4/ not only did not support, but bore no relation to FP&L's claimed basis for the tariff change. As the Commission concluded in its August 3, 1979 Opinion, 5/ the difficulty with FP&L's claimed basis for the filing "is that it has virtually no record support and is based on a few conjectural statements by Company witnesses." Nor was the filing in Docket

---

1/ At Tr. 655-56 of Florida Power & Light Company, FERC Docket Nos. ER78-19, et al. (Phase I).

2/ See also FERC Opinion No. 57, supra, at fn. 49.

3/ To be clear, the abuse referred to above exists above and beyond the unlawful activity inherent in the refusals to deal themselves.

4/ See Florida Power & Light Company, FERC Docket Nos. ER78-19, et al., Tr. 649-50.

5/ At 34.

Nos. ER78-19, et al. the first instance in which FP&L contemplated a trumped-up claim of incapacity as the basis for denial of tariff service. As the record in Docket Nos. ER78-19, et al. shows, an identical strategy was contemplated by FP&L in its 1973 efforts to deny wholesale service to Homestead. 1/

Should the case proceed to trial, Cities would also seek to demonstrate that, FP&L threatened Vero Beach with litigation in order to bar it from SR power, and that FP&L knew that, as detailed in FERC Opinion No. 57, at pages 29-31, its 1977-79 attempt to abandon wholesale service to Homestead upon the completion of the interconnection flew in the face of FP&L's contractual obligation to the contrary.

In addition to FP&L's efforts to gain official approval of refusals to deal by making claims that it must have known to have been fatuous, FP&L has even sought to restrict tariff service in the face of official notice that its failure to serve under the wholesale tariff is an illegality. The FERC Staff Report in Florida Cities v. Florida Power & Light Company, FERC Docket No. EL78-4, 2/ considered the possibility that evidence of criminal behavior in FP&L's 1976-78 refusal of tariff service to Ft. Pierce might be cause for referral of FP&L's activities to the Department of Justice for possible criminal prosecution. In recommending against referral, Staff stated (Id. at 30):

> "Staff believes that at this time such a high degree of culpability [to justify referral] cannot be deduced from the evidence gathered in this investigation. However, should FP&L attempt to discontinue 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 this point, FPL would have been on clear notice that failure to serve under SR-1 is an illegality."

Shortly after the release of this report, FP&L, in filings in Florida Power & Light Company, FERC Docket Nos. ER78-395 and ER78-400, sought (again) to unlawfully limit tariff service to the City of Homestead. 3/ Should the case proceed, Cities would seek to demonstrate that this filing constituted an unlawful action taken with knowledge of its unlawfulness.

1/ See Opinion No. 57 at page 28 on the "Marshall Theory."

2/ "Staff Investigation Report," Florida Cities v. Florida Power & Light Company, FERC Docket No. EL78-4, April 7, 1978.

3/ FP&L's filing proposed to terminate service on June 1, 1978.

e. The Company's Simultaneous Forwarding of Factually Contradictory Positions in Florida Power & Light Company, FERC Docket Nos. ER78-19, et al. and Florida Power & Light Company, FERC Docket No. E-9574 Represents Further Evidence of its Willful Forwarding of Baseless Claims in Order to Further its Monopoly and to Frustrate its Competitors.

In the 1977-78 proceeding on behalf of its request to purchase Vero Beach, FP&L claimed that its own interest and the public interest would be served by FP&L's undertaking to serve a large new municipal load (Vero Beach) by advancing the time FP&L could utilize new nuclear and coal generation.

At the same time, FP&L sought to claim that because of service difficulties it could not undertake to serve virtually identical municipal load (Ft. Pierce) at wholesale in view of the added burden on the Company. In support of these essentially contradictory positions, FP&L simultaneously presented an abundance of contradictory "factual" testimony. The example noted at "a" above is an illustration, and further examples would be supplied upon request. See, generally, Cities' Initial Brief in Florida Power & Light Company, Docket Nos. ER78-19, et al. (Phase I).

f. The Circumstances Surrounding the 1973 Antitrust Review of St. Lucie II Indicate That FP&L Misled Orlando in Order to Obtain a Favorable Antitrust Review on St. Lucie II.

Should the case proceed to trial, Cities would seek to demonstrate that in 1972-73, FP&L led Orlando to believe joint ventures would be possible in order to obtain favorable comments from Orlando in the Department of Justice review of St. Lucie II. Following Orlando's early 1973 submission of these comments, FP&L ceased to support joint venture efforts.

g. FP&L Has Provided Inaccurate Congressional Testimony in Order to Protect its Monopoly Position.

During the mid-60's, FP&L testified before Congress that, inter alia, it was not engaged in power pooling and that it had no policy against wholesaling to municipalities. As discussed supra, and as Cities informed FP&L at the time (see Document no. 2 and 3), this testimony was not accurate.

h. The failure of FP&L to file with the Federal Power Commission, as required by Section 205(c) of the Federal Power Act, 16 U.S.C. 824d(c), and related regulations, 18 C.F.R. 35.1, the territorial agreement found by the United States Court of Appeals for the Fifth Circuit in Gainesville Utilities Department v. Florida Power & Light Company, 573 F.2d 292 (5th Cir. 1978) cert. denied, ___ U.S. ___.

i. The following documents indicate that FP&L sought to conceal information, regarding the state of its electrical connection to Florida Power Corporation, during the course of an FPC proceeding in which FP&L knew such information could be detrimental to FP&L in the determination of its jurisdictional status:

(a) August 9, 1965 memorandum from M.F. Hebb, Jr. to A.P. Perez (PC 757);

(b) September 24, 1965 memorandum from R.E. Raymond to A.P. Perez (PC 756);

(c) September 29, 1965 memorandum from R.E. Raymond to A.P. Perez (PC 755);

(d) November 22, 1965 memorandum from A.P. Perez to File re FP&L-Florida Power Corporation Tie at White Springs (PC 754);

(e) November 24, 1965 letter from R.E. Raymond to Loftin Johnson (PC 753);

(f) December 3, 1965 memorandum to file from R.E. Raymond (PC 751);

(g) August 19, 1965 Prepared testimony of Ernest L. Bivans in Florida Power & Light Company, Docket No. E-7210, at 4-5;

(h) Initial Brief of FP&L in Florida Power & Light Company, Docket No. E-7210; January 14, 1966, at 8.

(i) Exhibit 93, FPC Docket No. E-7257, addendum for January 1966.

These documents reveal that FP&L denied a closed interconnection with Florida Power, while FP&L was expressly planning to close an interconnection and hide the information from the FPC.

j. FP&L has misreported information on its Form 12 to the Federal Power Commission.

In Florida Power & Light Company, FERC Docket Nos. ER78-19 et al. (Phase II), Cities contended, inter alia, that FP&L's rates were excessive because, inter alia, of a failure to functionalize its transmission system. In view of FP&L's failure to perform the needed functionalization study, Cities did so, relying on information provided by FP&L in its Form 12. See testimony of Joseph N. Linxwiler, Jr., Docket Nos. ER78-19 et al. (Phase II).

The transcript of the cross and redirect examination of FP&L witness Bivans at 761-763, 781-782, 796-800 shows that FP&L's Form 12 was substantially misreported and not checked by the key FP&L official responsible in the subject matter.

k. In FERC proceedings FP&L stated that its transmission rates were initial rates when in fact it previously had a transmission rate.

Florida Power & Light Company v. FERC, D.C. Cir. No. 78-1884, et al., decided January 24, 1980, concerned FP&L's provision of transmission service. In that case FP&L opposed the FERC's decision to treat FP&L's transmission agreements with, inter alia, Tampa Electric Company as rate changes -- as opposed to initial rates. As FP&L told the Court, inter alia,

> "Prior to placing these new interchange agreements into effect, Homestead, Lake Worth, TECO and Vero Beach had never received any type of transmission service from FP&L."
>
> * * *
>
> "In the proceedings on review, FPL has filed rate schedules under which it will provide transmission service to Homestead, Lake Worth, TECO and Vero Beach, none of which previously received transmission service from FPL."

See March 16, 1979 FPL Brief at 12 and 14a.

Exhibit 92 in Gainesville v. Florida Power Corp., FPC Docket No. E-7257 is the Dec. 29, 1960 interchange agreement between FP&L and TECO. That agreement provided terms for the delivery of power from third parties. As W.C. MacInnes, President of TECO wrote to Robert H. Fite on Dec. 29, 1960 (PL 429), "... the new agreement specifies no rate for wheeling, but permits negotiation of a rate based on conditions in existence during the period of delivery."

l. FP&L failed to reveal the existence of a "three terminal tie" on FP&L's system, in an FERC proceeding where that fact was material.

FP&L refused to agree to low-voltage parallel interconnection with New Smyrna Beach. New Smyrna Beach had requested a low voltage parallel tie in the early 1970's. In testimony in Docket No. E-8008, Robert E. Bathen described the then present arrangement as "clumsy, uneconomical and very costly." However, New Smyrna Beach had accepted the isolated tie as what it could get (Tr. 571).

New Smyrna Beach continued to seek a low voltage parallel tie. See testimony of Robert E. Bathen in FPC Docket No. E-8008. A "three-terminal line" would have been required to provide a low voltage interconnection. Ernest L. Bivans testified at Tr. 1364 that the "relay protection associated with three-terminal line does not provide the degree of reliance that is inherent in conventional two-terminal line sections." He further testified, as to the limitations of three-terminal lines, that it is not FP&L's practice to construct or operate three-terminal lines and that such lines are not "acceptable to the standards of service of Florida Power & Light Company" (Tr. 1376). The Company's position was clearly stated that "the problem is a three terminal connection." (Tr. 1415). Mr. Bivans and FP&L did not reveal that FP&L in fact had a three-terminal connection at Hartman Road Station and possibly at other locations on the FP&L system.

m. FPL's Continued Pattern of Forwarding Baseless Claims is Attested to by Court and Agency Evaluation of the Sworn Testimony Presented by Top FPL Officials.

The above examples of anticompetitive use of the governmental process must be placed in the context of an extraordinary number of recent findings that FPL's top officials have been less than credible in the presentation of sworn testimony. In his February 6, 1978 interim order in Docket No. E-9574, Judge McGowen found 1/ the Company's case "to be presented at times with reluctance and marked by less than candid testimony ..." As the Fifth Circuit states at footnote 14 of the Gainesville decision, "(T)he officials of the power companies deny the existence of a territorial agreement", but "[W]here such testimony is in conflict with contemporaneous documents we can give it little weight..."

Finally, as the FERC states in its August 3, 1979 decision in Docket No. ER78-19, 2/ "the documentary evidence of Staff and Cities, largely obtained from Company files, is frequently incongruous with the testimony of Company witnesses."

1/ At 3.

2/ At 18, citing footnote 14 of Gainesville.

In sum, should the case proceed to trial, Cities would seek to demonstrate that FP&L has not merely sought to protect and further its monopoly power by action through the governmental process, but has continually sought to do so by the litigation of baseless claims, and active misrepresentation before legislative and administrative agencies.

LAW OFFICES OF

MATHEWS, OSBORNE, EHRLICH, McNATT, GOBELMAN & COBB

1010

1510 AMERICAN HERITAGE LIFE BUILDING

JACKSONVILLE, FLORIDA 32202

(904) 354-0624

March 16, 1977

PRIVILEGED AND CONFIDENTIAL
PREPARED SOLELY FOR USE OF COUNSEL
IN CONNECTION WITH
FP & L LEGAL MATTERS

Mr. Robert Wall
Senior Vice President
Florida Power & Light Company
Post Office Box 3100
Miami, Florida 33101

Re: A Status Report on Litigation with Antitrust Implications

Dear Bob:

In accordance with our recent meeting in Miami, I am making this attempt to summarize my understanding of the present status of the various pieces of litigation with antitrust implications in which Florida Power & Light is involved. The common denominator, of course, in all these cases, is that the Washington law firm of Spiegel & McDiarmid is involved in some manner in representing the opposition in each of them. By copy of this letter, I am asking those attorneys who have primary responsibility in the active management of the proceedings to correct any erroneous assumptions I may have.

1. South Dade Antitrust Hearing - NRC Docket No. P-633A.

This particular proceeding is being handled on behalf of Florida Power & Light by the two firms of Lowenstein, Newman, Reis & Axelrad and Mathews, Osborne, Ehrlich, McNatt, Gobelman & Cobb, with J. A. Boukknight, Jr. and the undersigned directing the activity on behalf of the two firms involved.

To simplify things, I am attaching a copy of my Status Report dated November 3, 1976. Since that time, of course, a great many things have transpired, including the announcement by Florida Power & Light that the South Dade projects, as such, are cancelled.

Technically, the application for two nuclear plants to be erected during the 1980s by Florida Power & Light at an undetermined site is still pending before the Nuclear Regulatory Commission and the antitrust review is still under consideration by the Licensing Board.

Recognizing that the management decision of Florida Power & Light, whether to continue with the antitrust review concerning this application might take some time, the Licensing Board has temporarily suspended the discovery proceedings which had begun pending notification by Florida Power & Light as to whether the application would be withdrawn.

Hearings in the nature of a pre-trial conference on discovery matters were held before the Licensing Board on January 31, 1977. Prior to these hearings, Florida Power & Light had already produced a considerable volume of documents and had answered some interrogatories. A judgment decision was made to continue the general document search of Florida Power & Light's files under our supervision, recognizing the fact that, even if the application for the two new nuclear plants is withdrawn, the same type of discovery will probably be required in the event the Licensing Board grants the petition for intervention by a number of Florida municipalities requesting antitrust hearings with reference to the proposed nuclear plant at Hutchinson's Island, known as St. Lucie No. 2. The status of that proceeding will be commented upon later herein. Because many of the data requests in the Federal Power Commission proceeding, involving the acquisition of Vero Beach duplicate document requests in this proceeding, the document researchers are working with personnel of Steel, Hector & Davis and with Dick Merriman of Reid & Priest, as well as counsel in this docket, in trying to eliminate duplication of effort and to assure consistency of response.

You will recall that the infamous CAPCO decision, rendered by the Licensing Board containing two of the same members as the Licensing Board in the instant proceeding, has indicated a philosophy on the part of the Nuclear Regulatory Commission to require applicants for licenses to give to their opposition a great deal more than we presently feel the basic antitrust laws demand as a prerequisite for a non-conditioned license.

We anticipate no further actual litigation in what has been referred to as the South Dade proceedings until management decides what official position to take with reference to either continuing this antitrust hearing or withdrawing the application.

2. Older Nuclear Plants - NRC Docket Nos. 50-335A and 50-389A.

A petition to intervene requesting antitrust hearings and license

conditions for the existing nuclear plants now owned and operated by Florida Power & Light, or in the process of construction, was filed by the firm of Spiegel & McDiarmid on behalf of a number of municipal electric systems after a preliminary hearing in the South Dade matter in which the Licensing Board had indicated that it would not allow the municipalities represented by Spiegel & McDiarmid to litigate in the South Dade proceeding a claimed entitlement to an ownership share of the older plants. The thrust of the petition for intervention, which was originally filed on behalf of 22 municipals, was a contention that because of changing conditions and continued anti-competitive actions supposedly practiced by Florida Power & Light since licenses were granted for the older plants, a Licensing Board should be created by the Nuclear Regulatory Commission to re-open the licenses on those plants and impose conditions giving direct access to the older plants by the intervening cities. The Nuclear Regulatory Commission did create the same Licensing Board which was already handling the South Dade matter to consider whether or not to grant the petitions for intervention and to hold any required antitrust review with reference to the older plants. Because of the broad sweep of the allegations, the Licensing Board created held oral arguments in Washington on February 1, 1977 and we are waiting for a decision as to whether the full-scale hearings will be held.

The attorneys representing the intervening cities are Spiegel & McDiarmid and Florida Power & Light is represented by the Lowenstein, Newman, Reis & Axelrad and Mathews, Osborne, Ehrlich, McNatt, Gobelman & Cobb firms. Several of the original petitioners for intervention have withdrawn, while a few others seek to be added.

Preliminary indications from the Licensing Board are that they are seriously considering allowing the intervention on behalf of cities as to the plant under construction, (St. Lucie No. 2), and have not yet determined whether to grant the petition with reference to St. Lucie No. 1 and the Turkey Point plants. If the petition is granted in any manner, it was apparently originally contemplated that the hearings would be simultaneously conducted with the South Dade hearings. The rural electric cooperatives, who are involved in the South Dade hearings, have not, as yet, tried to intervene in the older plants proceeding, but their attorneys have indicated that the matter is under consideration.

As a matter of policy, you will recall that the Company

for the cities of Homestead and New Smyrna Beach and the cooperatives which secure a portion of their power supply from Florida Power & Light. Intensive negotiations have been conducted with the REAs and New Smyrna Beach, and offers of entitlement have been made, but, as yet, no final agreement has been reached with any of them. We have been asked by the Licensing Board to file a written memorandum as to what is the present status of the St. Lucie No. 2 license conditions in view of the petition for intervention. We have written the Board a letter and will file a memorandum brief on March 21st saying that we consider Florida Power & Light bound by the negotiated license conditions on St. Lucie No. 2 except for any party that is participating in the intervention. This means, in essence, that, at the present time, we recognize the license conditions for the cooperatives and for Homestead, but not for New Smyrna Beach which is one of the intervening cities. We have, under consideration, the question of whether to go ahead and try to work out something with New Smyrna Beach on St. Lucie No. 2 also.

It has been our opinion, in trying to guess what is going to happen in the future concerning this proceeding, that one of the following will occur:

(a) If we continue the South Dade proceeding, the Licensing Board may grant the petition for intervention with reference to St. Lucie No. 2. We are hopeful they will deny it with reference to St. Lucie No. 1 and Turkey Point.

(b) If the South Dade application is withdrawn, it is almost a certainty that the Board will order a full-scale antitrust hearing with reference to St. Lucie No. 2 and may seriously consider including St. Lucie No. 1 and Turkey Point.

(c) It is our intention to appeal immediately any decision of the Licensing Board granting intervention either as to St. Lucie No. 2 or St. Lucie No. 1 and Turkey Point.

(d) The Board is obviously making some legal distinction between the status of St. Lucie No. 2, the application for which was made subsequent to the 1970 amendment to the Atomic Energy Act, which authorized

provision of the law at a time when an antitrust review was not required. There is a real question as to whether the Licensing Board has the jurisdiction to re-open the license conditions of plants which are already in operation, and it is our belief that they do not. We further strongly believe that they do not have the right to re-open St. Lucie No. 2 where the potential litigation and antitrust review was settled by Florida Power & Light agreeing to license conditions with reference to the only entities which requested the same. Of the intervening cities, it appears that those which did not receive an entitlement as to St. Lucie No. 2 simply never made any timely request for the same, with the possible exception of Orlando, which is taking the position that Florida Power & Light, in some way, promised them access to any new plants if they would not request the same for St. Lucie No. 2.

3. Gainesville vs. Florida Power & Light.

This is a treble damage action brought by the City of Gainesville in the Federal District Court in Jacksonville wherein a jury found Florida Power & Light was not guilty of any violation of antitrust laws alleged. Spiegel & McDiarmid, together with the Washington firm of Rowley & Scott, represented the plaintiff and Mathews, Osborne, Ehrlich, McNatt, Gobelman & Cobb represented Florida Power & Light. The case is on appeal to the Fifth Circuit Court of Appeals in New Orleans with oral arguments having been held in December 1976, and we are waiting for the Court to render its opinion. It has been our position that the Appellate Court would uphold the lower Court judgment in favor of Florida Power & Light.

4. New Smyrna Beach - Transmission of Power from Florida Power Corporation's Crystal River Nuclear Plant to New Smyrna Beach over the Transmission Lines of Florida Power & Light.

Extensive negotiations have been held but no contract ever entered into as to the charge to be made and the conditions under which the power owned by New Smyrna Beach will be transmitted to New Smyrna Beach from Crystal River. A filing has been made with the Federal Power Commission as to what Florida Power & Light is doing and is charging for this service. Spiegel & McDiarmid represent New Smyrna Beach and the firms of Reid &

any litigation that ensues before the Federal Power Commission.

The firms of Lowenstein, Newman, Reis & Axelrad and Mathews, Osborne, Ehrlich, McNatt, Gobelman & Cobb have actively participated in the negotiations and have been kept fully informed and have had input into the antitrust aspects of this matter.

5. Vero Beach - Acquisition.

At the present time, there are two separate pieces of litigation involved in the potential acquisition of Vero Beach municipal power system by Florida Power & Light. One is a State Court action in the Circuit Court by three individuals seeking to stop the acquisition which is being directed by the firm of Steel, Hector & Davis. It is our understanding that since the original filing of pleadings and motions directed thereto by the defendants, there has been little activity in this case except for written discovery requests. Consideration should be given to other discovery, including depositions, which is in the planning stage. I have not personally seen the pleading file in this matter.

The second action involves the same three individuals who have filed a petition with the Federal Power Commission seeking an antitrust hearing as to alleged anti-competitive practices by Florida Power & Light prior to Federal Power Commission approval by the acquisition. There are some collateral matters, such as IRS approval of the defeasance of municipal bonds, but the primary delaying factor in the Vero Beach situation at the present time is the Federal Power Commission proceeding.

A hearing has been scheduled in this matter to begin in Washington on June 27, 1977 with a very rigid time schedule for discovery, data requests and preliminary matters. Florida Power & Light is represented by the firm of Steel, Hector & Davis, as general counsel, and the firm of Reid & Priest, with Matthew Childs and Richard Merriman, of the two respective firms, actually primarily handling and directing the work.

We have been coordinating with them on the data requests and personnel from our office are actively participating in the search of the documents and in deciding which request will warrant objection.

Meanwhile, negotiations under the direction of Senior Vice

President Ralph Mulholland, with Matthew Childs and others from the firm of Steel, Hector & Davis, have been in progress with Vero Beach officials to secure more time before final accomplishment of the acquisition.

Vero Beach, which is an active party before the Federal Power Commission at the present time, seems to be taking the same position as Florida Power & Light, that is, that the intervention by the three individuals has no merit. Spiegel & McDiarmid are representing the three individuals who are the active intervenors. The same essential antitrust issues are involved here as in the proceedings before the Nuclear Regulatory Commission. Florida Power & Light is taking the posture that it will do everything possible to expedite an early favorable completion of the hearings before the Federal Power Commission.

6. Justice Department - Antitrust Investigation.

On behalf of the Florida Municipal Utilities Association, city attorney Osee Fagan of Gainesville on July 21, 1976 wrote the Justice Department, Antitrust Division, asking for a full-scale investigation of Florida Power & Light alleging anti-competitive conduct and monopolistic practices he claimed were having a very harmful effect on the various municipal operations in the State. The thrust of the allegations was that Florida Power & Light monopolized nuclear energy and transmission lines, refused to wheel, and, specifically, to file a general wheeling tariff with the Federal Power Commission, refused to participate in a "true" state-wide pool and active coordination and wanted no part of an integrated power pool in the State. Several conferences have been held with the Justice Department and a clear indication was manifested by the Justice Department attorneys that they might well institute legal proceedings to stop the acquisition of the Vero Beach system. In addition to the usual antitrust questions, they also brought up the natural gas supply of Florida Power & Light as possibly having antitrust ramifications.

The Justice Department has been kept advised of the Vero Beach situation and, because of the Federal Power Commission hearing and the fact that no final date has been specified to accomplish the acquisition, it appears that they are simply going to watch while continuing their investigation without any specific action being taken. The Justice Department is not participating as they have a right to do in the several matters

pending before the Nuclear Regulatory Commission involving the licensing conditions of nuclear plants.

In addition to the Lowenstein and Mathews' firms, the firm of Covington & Burling, in Washington, are representing Florida Power & Light in this matter. In addition, Tom Capps of Steel, Hector & Davis has participated in talks with the Justice Department.

It was feared, when there was a definite date pending for finalizing the acquisition of Vero Beach, that Justice might well file a lawsuit in Federal District Court seeking to enjoin the same. There has been some reluctance, however, for the Justice Department to relitigate any of the Otter Tail type issues involving the electric industry in Federal Court. Their posture seemed to be to use their interpretation of Otter Tail to force concessions from investor-owned utilities in administrative proceedings, rather than to take the chance that the Federal Courts and the United States Supreme Court might limit the Otter Tail requirements as interpreted by Justice.

Under the new 1976 statute granting the Justice Department all of the powers that any other Federal agency has in subpoenating witnesses and requiring document production, Justice could unquestionably enter into a discovery phase paralleling and duplicating that in other proceedings if they so desired.

It is our strong belief that the Fagan letter, which started the Justice Department inquiry, was probably written by someone from Spiegel & McDiarmid and that they are continuing to have input into the Justice Department.

X 6. St. Lucie No. 2 - Present License Conditions.

At the present time, construction on St. Lucie No. 2 has stopped because of Court orders and other matters involving either site selection, safety, or environmental considerations. It had been felt that an antitrust hearing on license conditions for St. Lucie No. 2 had been obviated when the Company agreed with the staff of the Nuclear Regulatory Commission to accept certain conditions in connection with the construction permit for St. Lucie No. 2, giving direct access by way of reasonable ownership shares to the cities of Homestead and New Smyrna Beach and other cooperatives which purchased

power from Florida Power & Light.

Negotiations have been rather extended in trying to resolve just what ownership shares should be granted to the cities and cooperatives, it being the fundamental position of Florida Power & Light that it should be related to their previous peak loads proportionate to the amount of power that had been purchased from Florida Power & Light.

Concerning Homestead and New Smyrna Beach, the basic issue has been how much power they should receive. Homestead has been offered two megawatts, but has not, as yet, indicated they would be willing to actually purchase the same and has requested extensions of time in order to make a decision.

New Smyrna Beach is represented by Spiegel & McDiarmid and they have, at times, asked for entitlement shares that would give them a higher nuclear mix than Florida Power & Light. Controversy and negotiations have resulted in an interchange agreement actually being negotiated by the parties and the interchange is under construction now. No agreemem has been reached as to the amount of their ownership entitlement.

Concerning the cooperatives, the two basic matters to be resolved are, (a) the ownership shares, and (b) whether or not Florida Power & Light must aggregate the entitlement of the various cooperatives to their generation emity known as "Seminole". The cooperatives take the position that they have individually, in certain "hell and high water" contracts, given all the responsibility for their generation needs to a super co-op known as "Seminole". Florida Power & Light has taken the position that the license conditions require it only to sell to the individual co-ops, but that it will contract with Seminole provided the individual co-ops will all contractually obligate themselves to the financial requirements of St. Lucie No. 2, including not only the generation of power and the cost associated therewith, but also to the cost incurred with shutting down the plant, nuclear disasters, or having to terminate production because of national nuclear energy policies. Negotiations which had been dragging recently have been activated again in this field with the hope that if some agreement could be reached with the co-ops, they would not intervene in the older plants proceedings before the Licensing Board of the Nuclear

Regulatory Commission discussed above.

6. Gas Transmission Cases.

Spiegel & McDiarmid are obviously involved in this and the matters are being handled on behalf of Florida Power & Light by Steel, Hector & Davis and Reid & Priest.

7. Ft. Pierce.

At the request of the city of Ft. Pierce, some preliminary discussions were held concerning the sale of the Ft. Pierce system to Florida Power & Light. Spiegel & McDiarmid are involved in some way in trying to prevent Ft. Pierce and Florida Power & Light from reaching an agreement and it can be anticipated that they will find individuals who will be the pro forma parties in the event they decide to institute litigation. At the present time, Florida Power & Light is taking a rather "wait and see" attitude to see how the Vero Beach situation finally works out before attempting to reach an agreement with Ft. Pierce.

8. Daytona Beach Franchise.

The present franchise of Florida Power & Light to serve Daytona Beach expires in the fall of 1977. For over a year, various elements of the City of Daytona Beach, including the local newspaper, have been waging a strong campaign to try to get Daytona Beach not to renew the franchise but to start its own municipal operation and to purchase the lines and equipment of Florida Power & Light. The City of Daytona Beach has recently hired the firm of Spiegel & McDiarmid to represent them in the negotiations for a new franchise. There are actually two activities going on simultaneously - one is the attempt to negotiate a new franchise agreement, and the second is the effort on behalf of certain elements in the City to start up a municipal operation.

Florida Power & Light, under the direction of Jim Spencer, is represented by Steel, Hector & Davis and by local counsel, Kermit Cobia. It is hoped that a referendum election will be held by early summer of 1977 concerning the new franchise. A new 30-year agreement has been offered by Florida Power & Light; but, quarterbacked by Spiegel &

thrown up. Certain unreasonable data requests have been made by the City concerning the value of the Florida Power & Light operation in Daytona Beach and the undersigned has been cooperating with the attorneys and others involved in trying to respond in accordance with the best interests of the Company, taking into account all of the antitrust considerations that might be advanced.

9. Present Rate Cases Before the Florida Public Service Commission.

Following some hearings, the basic temporary relief sought by Florida Power & Light was denied by the Florida Public Service Commission with only a small portion of the rate relief being granted. Hearings are now being conducted as to permanent rate relief sought. So far, we have not been able to see any direct activity by Spiegel & McDiarmid in these proceedings, although everyone is suspicious that they could appear at any time. The broad scope of the inquiry by the staff of the Public Service Commission, involving the possible sale of power from mothballed generating units of Florida Power & Light to municipalities and/or the coops or other private companies, appears to be motivated by factors that are not directly inspired by the usual Spiegel & McDiarmid type of allegation. When and if Spiegel & McDiarmid enters the picture, we will be apprised by Steel, Hector & Davis who are actively handling the hearings on behalf of Florida Power & Light so that prompt counteraction may be taken.

10. At our recent meeting in Miami, you also mentioned possible Spiegel & McDiarmid activities in connection with South Beach and some other matters. We will continue to respond and advise with any antitrust considerations involving these matters.

As we conceive our role in the immediate future, we will continue to exercise our responsibility in the nuclear regulatory matters, the Justice Department matter, the Gainesville suit, and other areas where we are involved in direct participation. On the matters being handled by general counsel and the other firms, we will be kept advised and will be consulted on trying to coordinate all matters having to do with antitrust considerations. We will do our best to be informed, make our recommendations and to keep you and Tom Capps fully apprised of the current situation with periodic status reports.

Since this is the first attempt to give an overall picture of just where we are on the advance battle lines, I would appreciate any suggestions you might have as to format or other ways of making sure that you, Tom Capps and others at all times have a general overall view of all that is happening. We deem one of the most important aspects of this is to make sure that we are consistent in pleadings and responses to data requests in each of the proceedings.

Sincerely,

JEM, Jr/lm

John E. Mathews, Jr.

cc: Tom Capps, Esquire
Tracy Danese, Esquire
J. A. Boukmight, Jr., Esquire
Richard W. Merriman, Esquire

FLORIDA POWER CORPORATION

INTER-OFFICE CORRESPONDENCE

FC-757

Electrical Design
(OFFICE)

Confidential

DATE August 9, 1965

Mr. A. P. Perez

ATTENTION OF

During the Florida Operating Committee meeting in Tampa on Thursday, August 5, the engineers of Florida Power & Light broached the subject of the discussions which had been held by the executives of the three investor-owned utilities concerning the problem of Federal Power Commission jurisdiction. They made particular reference to the idea of opening the transmission ties across the state line. It appears they had been asked to "feel out" the Committee on this possibility.

Incidentally, at this meeting there were no members of the Orlando Utilities Commission or the City of Jacksonville. Naturally, we were somewhat surprised since we considered this information highly confidential. It is our observation all the engineers attending this meeting, including those from Florida Power & Light, consider this as a very poor approach to the problem. Comments were made hesitatingly but positively that the industry as a whole has been promoting interconnected operation for several decades, and the idea of opening the ties would be a reversal of the trend which has been advocated in the past. When we were asked what it would take to physically accomplish opening the ties, we stated that any operating engineer could look at a map of our transmission system and see immediately what the major problems would be. Although engineers of Tampa Electric did not contribute greatly to this discussion, it was apparent this item was not news to them. We have the impression the responsible engineers on this Committee look upon this move in an embarrassed fashion -- that it is the brain child of someone who has not thought the thing through clearly. The manner in which it was discussed, and the fact that the Chairman of the Committee requested the discussions not be repeated outside the Committee, indicates the general feeling in the matter.

Several factors are to be considered in this proposal:

1. Severing of the state ties is contrary to the investor-owned utility approach to an integrated power system across the country.

2. This move would be an invitation to the development and extension of a federally controlled interstate power grid, such as the Yankee-Dixie proposal.

3. The importance of the Cape Kennedy load is such that the proponents of federal power might prove that an isolated power system in Florida could not adequately protect the load and could open the door to a federal power plant in the Cape Kennedy area.

4. With no particular investigation in the matter, it is obvious duplication of facilities would occur on each side of the Florida/Georgia state line so that the utilities of each state could firm the loads along the state line.

There are numerous other technical reasons against opening these ties which we do not propose to go into at this time. In order to protect my relationships with the engineers working through the Florida Operating Committee, I request these comments be held in confidence as much as possible.

M. F. Webb, Jr.

MFWJr:gbw

cc
WJC
END

FLORIDA POWER CORPORATION

INTER-OFFICE CORRESPONDENCE

PC-757

Electrical System
(OFFICE)

SUBJECT: Confidential

DATE: August 9, 1965

TO: Mr. A. P. Perez

ATTENTION OF:

During the Florida Operating Committee meeting in Tampa on Thursday, August 5, the engineers of Florida Power & Light breached the subject of the discussions which had been held by the executives of the three investor-owned utilities concerning the problem of Federal Power Commission jurisdiction. They made particular reference to the idea of opening the transmission ties across the state line. It appears they had been asked to "feel out" the Committee on this possibility.

Incidentally, at this meeting there were no members of the Orlando Utilities Commission or the City of Jacksonville. Naturally, we were somewhat surprised since we considered this information highly confidential. It is our observation all the engineers attending this meeting, including those from Florida Power & Light, consider this as a very poor approach to the problem. Comments were made hesitatingly but positively that the industry as a whole has been promoting interconnected operation for several decades, and the idea of opening the ties would be a reversal of the trend which has been advocated in the past. When we were asked what it would take to physically accomplish opening the ties, we stated that any operating engineer could look at a map of our transmission system and see immediately what the major problems would be. Although engineers of Tampa Electric did not contribute greatly to this discussion, it was apparent this item was not news to them. We have the impression the responsible engineers on this Committee look upon this move in an embarrassed fashion -- that it is the brain child of someone who has not thought the thing through clearly. The manner in which it was discussed, and the fact that the Chairman of the Committee requested the discussions not be repeated outside the Committee, indicates the general feeling in the matter.

Several factors are to be considered in this proposal:

1. Severing of the state ties is contrary to the investor-owned utility approach to an integrated power system across the country.

2. This move would be an invitation to the development and extension of a federally controlled interstate power grid, such as the Yankee-Dixie proposal.

3. The importance of the Cape Kennedy load is such that the proponents of federal power might prove that an isolated power system in Florida could not adequately protect the load and could open the door to a federal power plant in the Cape Kennedy area.

4. With no particular investigation in the matter, it is obvious duplication of facilities would occur on each side of the Florida/Georgia state line so that the utilities of each state could firm the loads along the state line.

There are numerous other technical reasons against opening these ties which we do not propose to go into at this time. In order to protect my relationships with the engineers working through the Florida Operating Committee, I request these comments be held in confidence as much as possible.

M. F. Hebb, Jr.

MFHebb:gbw

WJC
END

FLORIDA POWER CORPORATION

PC-756

INTER-OFFICE CORRESPONDENCE

System Operations
OFFICE

TO:

DATE: September 24, 1965

Mr. A. P. Perez

ATTENTION OF

At the Florida Operating Committee meeting Thursday, September 23 I discussed with Mr. Harry Page our plans to rebuild and reconductor the Jasper-White Springs 69-KV line, and in our discussion I brought up that when the span in the White Springs-Live Oak section was removed by Florida Power & Light Company that their Company agreed when we needed service from them to reinstall it provided no through power flow would occur.

Mr. Page stated that because of the Federal Power Commission problems that they are having and because they have stated in their testimony that this span has been removed, that a letter from me to Mr. Loftin Johnson requesting this might be sufficient. However, it would be much better, in his opinion, that Mr. Clapp write to Mr. Fite concerning this. This ended our discussion concerning this item.

It is my opinion that rather than writing letters some telephone calls or visits by you and/or me be made to Mr. Loftin Johnson or you and/or Mr. Clapp to Mr. Fite.

I think we should discuss this thoroughly very soon because we are planning to ask for bids on the construction of this line within the next few weeks.

R. E. Raymond

RER:bm

FLORIDA POWER CORPORATION

INTER-OFFICE CORRESPONDENCE

FC-755

System Operations
OFFICE

DATE September 29, 1965

TO Mr. A. P. Perez

ATTENTION OF

Phosphate mining and processing loads are now developing southeast of Jasper (between Jasper and White Springs). This area is presently served by a radial 69-KV line from Jasper to White Springs.

Earlier this year, due to its problems with the Federal Power Commission, Florida Power & Light Company removed one span from its 69-KV line between White Springs and Live Oak to insure and demonstrate that there was no possibility of flow through from or to Florida Power Corporation, thus into Georgia. Florida Power & Light Company representatives, prior to removal of this span, led us to understand that if and when Florida Power Corporation needed service from its system (from the 69-KV Live Oak line) the conductor would be replaced in this span and the switches closed, provided no through tie between the two systems was made. In other words, Florida Power & Light Company would provide radial service only.

In order to provide required capacity to serve the forecasted loads in the area southeast of Jasper (between Jasper and White Springs), the existing Jasper-White Springs 69-KV line must be rebuilt and converted to 230-KV. Therefore, it is requested that Florida Power & Light Company reinstall the span of conductor removed from its White Springs-Live Oak 69-KV line and provide Florida Power Corporation radial service to its customers southeast of Jasper during the time Florida Power Corporation rebuilds its transmission line from Jasper to White Springs.

To insure that no through tie is made between the two systems, Florida Power Corporation will open its switch number 56 at Jasper (of the Jasper-White Springs 69-KV line) and then have the switch closed that will provide service from Florida Power & Light Company's Live Oak 69-KV line.

The load presently being served in this area is peaking at approximately 5,000 KW and on an average day 100,000 KWH are delivered. It is anticipated by January 1, 1966 peak demand may be approximately 7,000 KW with a like increase in KWH delivered.

Rebuild of the line between Jasper and White Springs is planned in two parts. The first part will be that between the Jasper Substation and the Occidental Mining tap. It is anticipated that work on this rebuild will start about November 1 and be completed about January 15. Upon completion of this part of the line rebuild, the phosphate mining load and service responsibility will be transferred from Florida Power & Light Company to our Company by first opening the switch northwest of White Springs, then closing the switch at Jasper. The remainder of the line between the Occidental Mining tap and White Springs then will be rebuilt. During the time of this rebuild a peak demand of approximately

Mr. A. P. Peret September 29, 1965

500 KW will be experienced at the White Springs Substation. It is anticipated that the line rebuild will be completed by March 15, 1966.

The responsibility of serving the load to White Springs will then be transferred back to Florida Power Corporation from Florida Power & Light Company by first opening a switch on the Live Oak side of White Springs and then closing a switch between White Springs and Jasper. At no time will there be a through circuit between the two systems.

R. E. Raymond

RER:bm

P. S. At 3:00 p.m. after writing the above, I received a telephone call from Mr. H. W. Page, Manager, Power Supply, Florida Power & Light Company. Mr. Page's telephone call was in regard to my discussion with him at the Florida Operating Committee meeting concerning service from the Florida Power & Light Company system to our loads south of Jasper. Mr. Page stated that Florida Power & Light Company's attorneys suggested that he call me and request that no letter be written to them requesting that the removed span of wire between Live Oak and White Springs be replaced in order to provide service to our loads south of Jasper, the reason for this being that the Federal Power Commission might be able to use this letter to the detriment of Florida Power & Light Company. He said that if we insist upon writing a letter that it be delayed for at least a week or ten days.

I informed Mr. Page that it was not our intention to write such a letter but that Mr. Clapp would contact Mr. Fite by telephone. He informed me that Mr. Fite will be out of town the remainder of this week and all of next week.

FLORIDA POWER CORPORATION

PC-754

INTER-OFFICE CORRESPONDENCE

Operating Departments
(OFFICE)

FP&L-FPC File
at White Springs

DATE November 22, 1965

Memo to File

ATTENTION OF

I talked to Mr. Robert H. Fite of Florida Power & Light Company this afternoon in connection with Florida Power & Light restoring the missing span in their line at White Springs. I explained to Mr. Fite that we wished to reconstruct our 69 kv line between Jasper and White Springs to 120 kv construction. I advised Mr. Fite that we would take necessary total interruptions to our facilities prior to their closing in on our system so that at no time would it be possible for power to flow from the Florida Power & Light system at White Springs through our Jasper bus to our interconnected system and to the Georgia Power Company's system.

I reminded Mr. Fite that we had talked along these lines when he had earlier advised us that they were removing a span of transmission line at White Springs, at which time he indicated that they would restore the removed span when it became necessary for us to rebuild our Jasper-White Springs line. He remembered our previous conversation but stated that he had not anticipated that we would be reconstructing our Jasper-White Springs line this soon. He asked that we send him our step-by-step plans, with appropriate sketches, as to how we proposed to do the reconstruction, and also how we would propose to prevent the tieing through of the Florida Power & Light transmission system with our interconnected system at Jasper. To this end, Mr. Raymond will direct a letter to Mr. Loftin Johnson of Florida Power & Light, setting forth the information requested by Mr. Fite, and advising Mr. Johnson of the conversation between Mr. Fite and myself of today.

Mr. Fite promised that upon receipt of this information they would promptly evaluate it and advise us if they would, or would not, restore the missing transmission line span.

A. P. Perez

APP:bg

cc: Mr. W. J. Clapp
Mr. R. E. Raymond
Mr. M. F. Webb, Jr.

FC-753

November 24, 1965

Mr. Loftin Johnson
Vice President
Florida Power & Light Company
P. O. Box 3100
Miami, Florida 33101

Dear Mr. Johnson:

Reference is made to a telephone discussion between Mr. Robert H. Fite and Mr. A. P. Furst of our Company on November 22, 1965, and to other previous discussions in connection with the problems involved to provide adequate service to the Occidental Corporation of Florida near Jasper, which necessitates that our Jasper-White Springs 69-kv line be rebuilt and converted to 120 kv.

You will recall that several months ago your company caused to have removed one span of conductor in your 69-kv line between the Live Oak Substation and the Florida Power Corporation White Springs Substation. However, in these discussions with Mr. Fite in which he advised us that your company was removing a span of the Live Oak-White Springs 69-kv line, he indicated that your company would restore the removed conductor when it became necessary for us to rebuild our Jasper-White Springs line, with the stipulation that same be so through tie to the Florida Power & Light Company transmission system with our interconnected transmission system at Jasper. Mr. Fite requested that a letter be directed to you outlining step-by-step plans and procedures with appropriate sketches outlining how we propose to accomplish this reconstruction and prevent the tieing through of the Florida Power & Light Company transmission system with our interconnected system at Jasper.

The Occidental Corporation of Florida load is between 5,000 kw and 8,000 kw and it is anticipated that by the end of 1966 this load will be more than doubled. Therefore, it is necessary that we immediately proceed with the reconstruction of our transmission line in order that adequate service may be provided to Occidental Corporation of Florida.

We are planning to immediately reconstruct the section of transmission line between Jasper Substation switch number 56 and switch number 1176 on the Jasper side of the Occidental tap. After the reconstruction of this section has been completed, we plan to rebuild the transmission line between switch number 1177 south of the Occidental tap to switch number 210 south of the White Springs Substation and this will include the rebuilding of the White Springs Substation with a new White Springs Substation.

Mr. Lyndon Johnson November 24, 1965

Attached are sketches with step-by-step plans which we propose to follow in accomplishing the necessary switching involved in the reconstruction of this line.

After you have evaluated your company's position concerning this line, and in your evaluation you determine that your company will serve this area during our reconstruction program, I would appreciate it if you will initiate the necessary action for the restoration of this span of conductor about December 15 in order that we may immediately begin the reconstruction of our line to serve Occidental Corporation of Florida.

Yours very truly,

FLORIDA POWER CORPORATION

R. E. Raymond
Vice President

RER:lm
Attc.
cc: Mr. R. H. Fite
Mr. A. F. Peren (2)

PC-751

System Operations

December 3, 1965

Memorandum to File

Thursday afternoon, December 2, I telephoned Mr. Loftin Johnson of Florida Power & Light Company concerning their decision in regard to serving White Springs and Occidental of Florida mine during the period Florida Power Corporation rebuilds the section of line between Jasper and Occidental tap. Mr. Johnson stated that he had studied my letter to him and that he needed to talk to Mr. Fite in order to obtain a final okay and that he would very probably have this by Friday morning since Mr. Fite was in town and he would be able to contact him.

This morning at about eleven o'clock I received a telephone call from Mr. Johnson; Mr. Harry Pope was on an extension. Mr. Johnson said that they would serve this area under the conditions outlined in my letter, however, they did not want to do this until after the first of the year and that he would have the span restored and work with our people to pick up the load of White Springs and Occidental tap during the week of January 3. I informed him that I would have our people make the necessary arrangements through dispatching channels for this work. He asked that we put nothing concerning this in writing for obvious reasons.

I assured Mr. Johnson that we would do the work on our part of the system as rapidly as possible so that his company could restore their system to the condition it is today. He said that the reason for this delay until the week of January 3 was to be able to eliminate from the Federal Power Commission report any notation concerning this work as of the end of this year. He said that the only other item concerned would be how to pay for or exchange the energy used during the time Florida Power & Light Company is serving this area for us. He said it was not critical at this time that we determine how this be done but that before the switch over to Florida Power & Light Company is made this should be resolved. One way this can be done of course is as part of our inadvertent interchange and each day a meter reading can be made and this amount of energy can be returned immediately to Florida Power & Light Company. I told Mr. Johnson that we would handle it in any way and in any manner they wished us to.

I passed this information to the Transmission Construction And Maintenance Department and the Electrical Design Department and System Operating Department. Work will be scheduled and coordinated so that the actual line rebuild where an interruption is required to the section of line between Jasper and the Occidental tap can start during the week of January 3. I am also requesting the Transmission Construction And Maintenance Department to rebuild this section of line under a high-priority rush program.

R. E. Raymond

RER:bm

cc: Mr. A. P. Perez <= THIS COPY FOR
Mr. L. M. Scott
Mr. W. B. Simonds
Mr. H. F. Kelly, Jr.

BEFORE THE

FEDERAL POWER COMMISSION

FPC DOCKET NO. E-7210

TESTIMONY OF ERNEST L. BIVANS

Q. Please state your name and address.

A. Ernest L. Bivans, 380 Glenridge Road, Key Biscayne, Florida.

Q. What is your position with the Florida Power & Light Company?

A. Assistant Chief Engineer.

Q. Please give us your education and employment background.

A. I graduated from the University of Florida in May, 1942 with a Degree of Bachelor of Electrical Engineering. Upon graduation, I entered the service of the U. S. Army Signal Corps. In the service I attended radar schools at Camp Murphy, Florida; Radiation Laboratory M.I.T. in Boston; and at Camp Evans in Belmar, New Jersey. I served one year in Panama where I was in charge of operating several radar units. I also served one and one-half years in Europe operating various types of radar.

In November, 1945 I was employed by the Florida Power & Light Company as a Junior Engineer. During the next several years I progressed to Assistant Engineer, Engineer, Senior Engineer and Section Head of System Planning. During this period I performed various phases of engineering which included system planning for distribution, transmission and generation facilities, preparation of construction budgets, underground engineering, distribution, transmission and substation engineering, relay engineering, preparation

Q. Mr. Sivans, Mr. Jacobsen referred to a former interconnection between F.P. Corp. and FPL near Live Oak and White Springs in the northern part of the State of Florida. At pages 17, 26 and 44-45, Mr. Jacobsen states that the interconnection was dismantled on April 19, 1965. Please give a brief history of the operation of that interconnection and the reasons why it no longer exists.

A. As explained by Mr. Fuqua, the emergency interconnection near Live Oak and White Springs was ordered by the FPC in 1941. Prior to 1959, the Live Oak tie was operated continuously closed and ties in at both F.P. Corp.'s Jasper terminal and FPL's Starke terminal. In May, 1959, the use of this line as a "free flowing" interconnection was discontinued.

In the fall of 1959, FPL's transmission system from Palatka to Starke was converted to 115 kv with the Lake City-Live Oak area load served through a 115/69 kv auto-transformer bank at Starke. Since May, 1960, the tie has been inactive, that is, normally open at Live Oak Tap Station with each company serving its own local distribution load. Only in the event of an emergency has the tie at Live Oak Tap Station been closed and the line operated radially from either Jasper or Starke.

By 1963 the load in the Lake City-Live Oak area had grown to the point that the Live Oak tie with F.P. Corp. was fast becoming obsolete insofar as its capacity for providing emergency back-up service. Therefore, in August, 1963, a project was authorized to construct a 115 kv line to Lake City from the end of the Baldwin-Macclenny 115 kv line at Macclenny and to install switching and terminal facilities at Baldwin and Lake City. Upon completion of this project, the Live Oak

tie with the F.P. Corp. was dismantled on April 19, 1965.

Q. Have you made a comparison of the energy transactions over the Live Oak tie and the energy consumed by the load in the Lake City-Live Oak area for 1964 as compared to 1953?

A. Yes, I have.

Q. What does your comparison show?

A. In 1953, FPL received 4,967,000 kilowatt hours (kwh) from F.P. Corp., delivered 14,923,000 kwh to F.P. Corp., and FPL distributed 28,076,100 kwh in the Lake City-Live Oak area. For 1964, the corresponding figures were 4,366,000 kwh, 19,000 kwh and 106,228,000 kwh. This shows that even though the load in the Lake City-Live Oak area in 1964 was 378 per cent larger than in 1953, the energy transfers across the Live Oak tie that were considered "trivial" by the FPC Staff in 1953 were even less during 1964. In 1953 the energy received over the Live Oak tie represented approximately 18 per cent of the energy consumed by the Lake City-Live Oak load, whereas in 1964, it was only 4 per cent of the energy consumed by the Lake City-Live Oak load.

Q. Mr. Bivans, on page 17, Mr. Jacobsen describes a photograph of a portion of the one-line system diagram mounted on panels in the System Dispatching Office. This photograph (Exhibit No. 5) shows a portion of the diagram which included the former interconnection with F.P. Corp. near Live Oak. Has this interconnection been removed from the diagram since the interconnection has been dismantled?

A. Yes, it has.

Q. Mr. Bivans, in his testimony Mr. Jacobsen referred to the Florida Operating Committee. Who are the members and what is the function of that Committee?

F.P. Corp. records these balances and then checks to see that the total of the inadvertent balances for all five systems is zero. If it is not, F.P. Corp. contacts the other systems in order that the error can be located and corrected.

Q. Mr. Bivans, on pages 28 and 29 and 72 of his testimony, Mr. Jacobsen discusses an extract of a study made by a Planning Committee of the Florida Operating Committee in April 1960 (Exhibit No. 10). Please comment on this report.

A. This was a study of a hypothetical system for the year 1970 and does not describe, nor was it intended to describe FPL's present system, or that of any of the other participants in the study. Although the five Florida systems cooperate with each other, these systems plan and operate independently and not on an integrated basis. As a matter of fact, Jacksonville and Orlando did not participate in this long range study. The FPC's 1964 National Power Survey Report states:

> ".....the electric systems in Georgia, Alabama, eastern Mississippi, and western Florida operate on an integrated basis and are interconnected with the systems in the peninsula of Florida, which operate together." (p.244)

FPL generating expansion has always been planned and installed solely by FPL to serve its own load. All transmission lines which have been constructed by FPL that do not connect with facilities of a neighbor are planned and constructed solely by FPL without consultation with any member of the Florida Operating Committee. Any new tie line FPL has constructed connecting with a neighbor has been built pursuant to an agreement solely between the two companies, independent of the Florida Operating Committee. An informational report on construction status of new plants and transmission lines is made at meetings of the Florida Operating Committee.

Q. Mr. Bivans, was it considered to be cold on the peak load day of 1964?

A. Yes, the temperature at the time of the peak was 43°F in Miami, 35°F in Palatka and 36°F in Punta Gorda.

Q. Mr. Bivans, did FPL have any reserve capacity over and above the peak of 2372 mw?

A. Yes, as I have previously said the capacity available was 2489 mw to meet a peak of 2372 mw or a reserve of 117 mw.

Q. Had FPL elected, could it have carried its own load?

A. Yes.

Q. Dr. Jessel on page 14 testified that of the 404,000 kw reserve requirement for 1964, 232,000 kw was supplied by the four other Florida systems. Do you have any comments regarding this?

A. Yes. As I have previously testified, FPL in planning for and installing generating capacity does not rely upon any of its neighbors for its reserve or firm capacity. The data as presented in FPL's Form 12 for 1964, Schedule 16, pages 26 and 27 need clarification. The 232,000 kw "spinning reserve that is instantly available for emergencies" is not a firm or guaranteed quantity. The designated spinning reserve allocations for the Florida systems are purely voluntary. Therefore, we cannot and do not take into account this spinning reserve -- so-called "instantly available for emergencies" -- in the design or installation of adequate reserve generation, as shown in FPL Exhibit No. ____ (B-2). It may be noted from Staff Exhibit No. 3, that during the three-month period from June through August 1964, Jacksonville's actual spinning reserve was less than 80% of their share on 34 occasions; Orlando's actual spinning reserve was less than 80% of their share on 10 occasions; F.P. Corp.'s actual spinning reserve was less than 80% of their share on 37 occasions; and TEC's actual spinning reserve was less than 80% of their share on 23 occasions.

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Florida Power & Light Company	)	Docket No. E-7210

INITIAL BRIEF OF FLORIDA POWER & LIGHT COMPANY

Richard M. Merriman
Harry A. Poth, Jr.
Reid & Priest
815 Connecticut Ave., N. W.
Washington, D.C. 20006

Attorneys for
Florida Power & Light Company

January 14, 1966

Interconnections

FPL is interconnected only with Florida Power Corporation (F.P.Corp.), Tampa Electric Company (TEC), the Orlando Utilities Commission (Orlando), and the City of Jacksonville (Jacksonville), all of which operate solely in the State of Florida. (T. 223-4, 240; Ex. 42) The Sanford interconnection between FPL and F.P. Corp., discussed at length during the hearing, is approximately 180 miles from the Georgia-Florida State line. (T. 224) */

Purchases and Sales of Power

FPL has no firm power contracts to buy from or sell to, either directly or indirectly, any company in or outside the State of Florida. (T. 212, 223) FPL does not buy or receive power from or sell or deliver power to Georgia Power Company or any other electric system in other states, and FPL has no arrangement with F.P.Corp. to participate in exchanges of power between F.P.Corp. and the Southern Company system. (T. 240)

All scheduled power transactions between FPL and F.P.Corp., TEC, Orlando and Jacksonville are under emergency conditions on a "when, as and if basis". (T. 228-9) Inadvertent flows of power

---

*/ A former interconnection between F.P.Corp. and FPL near Live Oak and White Springs in the northern part of Florida was dismantled on April 19, 1965. (T. 56, 65, 83-4, 225-6)

That the Florida electric systems operate effectively without help from out-of-state systems is apparent from the Federal Power Commission's recent report to the President on the recent power failure in the Northeast part of the United States. Mr. Bivans discussed the split which occurred in F.P.Corp.'s system at Ft. White on January 28, 1965 when F.P.Corp. lost its Bartow Unit No. 3. (T. 751) With regard to that outage the FPC said:

> "The Florida Power Corporation on January 28, 1965 lost 480,000 kw of generation, an amount equal to about half of its total load, but with the help of interconnected systems there was only a slight and brief drop in frequency and with the exception of one industrial customer which was buying power on an interruptible basis there was no disruption in service." */

It is significant to note that the help received by F.P.Corp. came only from systems in the Florida peninsula south of Ft. White and none came from out-of-state.

---

*/ A Report to the President by the Federal Power Commission, December 6, 1965 on the Northeast Power Failure of November 9 and 10, 1965.

STATEMENT OF OPERATING ARRANGEMENT BETWEEN FLORIDA POWER & LIGHT COMPANY AND FLORIDA POWER CORPORATION FOR INTERCONNECTION AND INTERCHANGE OF POWER

Florida Power Corporation and Florida Power & Light Company operate two interconnections. The tie at Lake City is normally open unless either party specifically makes a request for assistance. This tie is considered to be of little value to the "pool" operation.

The tie at Sanford is normally closed and performs all the functions of a regular interconnection. On a reciprocal basis, the tie carries normal inadvertent energy, emergency capacity, overhaul capacity, etc. The tie also renders the same services in connection with the pool operation. In this instance the capacity and energy could possibly be for a third or fourth party (Tampa and Orlando).

In accounting for the energy at the end of each month, settlement is made only for the "scheduled" energy (as defined in the minutes of the "Pooling Agreement Meeting".

Energy at the Lake City tie is usually based on the previous month's operating costs at Florida Power Corporation's Suwannee Plant or Florida Power & Light Company's Palatka Plant (depending on the supplying Company).

Energy at the Sanford tie is usually based on the previous month's operating costs at Florida Power Corporation's Turner Plant or Florida Power & Light Company's Sanford Plant (depending on the supplying Company).

Both of the above are the total fuel, operation and maintenance costs per KWH of the supplying plant plus 10%, plus 1 mill.

There have been occasions when capacity was requested by one party and the other party was required to start up a high cost unit to provide this service. In that case, the costs of the high cost unit were used to determine

billing.

The methods of operation and the means of settlement are a combination of "left-overs" from an old contract, verbal agreements to conform to some clauses of the Tampa contract and oral agreements between the two Companies as transactions are made.

July - 1964

Addendum January - 1966

On April 19, 1965, Florida Power & Light Company dismantled the Lake City interconnection. In August, 1964, a new point of connection was established between Florida Power Corporation's West Lake Wales Substation and Florida Power & Light Company's Brevard Substation. This new point of interconnection, known as the Brevard interconnection, operates and functions the same as the previously-described Sanford interconnection.

In Florida Power & Light Company, FERC Docket Nos. ER78-19 et al. (Phase II), Cities contended, inter alia, that FP&L's rates were excessive because, inter alia, of a failure to functionalize its transmission system. In view of FP&L's failure to perform the needed functionalization study, Cities did so, relying on information provided by FP&L in its Form 12. See testimony of Joseph N. Linxwiler, Jr., Docket Nos. ER78-19 et al. (Phase II).

The attached transcript of the cross and redirect examination of FP&L witness Bivans shows that FP&L's Form 12 was substantially misreported and not checked by the key FP&L official responsible in the subject matter.

(FERC - FLORIDA POWER & LIGHT COMPANY, DOCKET NO. ER78-19 (PHASE II, et al.), Wednesday, November 28, 1979, at Washington, D. C., Volume No. 7)

C O N T E N T S

indicate that the thermal limits on each line greatly exceed the actual useable megawatts of transferred capacity on the lines in South Florida, is that correct?

A Yes. I referred to a map and referred to certain lines which connect South Florida to the northern part of our system and to the western part of our system and I pointed out that the total, the mathematical total capacity of those lines greatly exceeded the actual operating transfer capacity of the line.

Q Are you familiar with Florida Power & Light's Form 12 filed with this Commission?

A I know of it. I have a copy of it in my file in my office. I can't -- or what you mean by "familiar" --

Q Well, have you seen Form 12?

A Yes.

Q Have you participated in providing information for the Form 12?

A I have in the past, but I am not sure what information or what parts of it I furnished to it now. There is also a form number 1 and we furnish input either into one or the other or both of them.

Q The Form 12 relates to, I think it is entitled, "Power System Statement", is that correct?

A I don't know. I would have to see the form.

Q Are you aware there is a portion of that form which

relates to high voltage line data?

A I accept your statement.

Q Would you accept, subject to check, that Florida Power & Light in its 1978 Form 12 in Schedule 19(b) provided data for maximum loading on each transmission line?

A I will accept that.

Q Are you aware that Florida Power & Light made no adjustments to its filing to indicate that the capacity of its lines are below the possible loading of each line alone?

A As far as I know, the capacity ratings given for lines in that report and in other reports is the thermal rating of the line and do not necessarily represent the ratings of all of the lines when they are operating together as an integrated transmission system.

Q So you would accept, subject to check, that Florida Power & Light did not in fact make adjustments to take into account possible limitations for the system itself?

A Yes, I would accept that.

Q Are you aware that according to the instructions of that schedule, Florida Power & Light is required to make those adjustments?

A I do not, I am not aware of the instructions.

Q Would you accept, subject to check, that that in fact is the case?

A No, sir. I would like to see what it says before

I accept your statement on it.

Q Yes. I show you page 32 from Florida Power & Light's 1978 power system statement, Form 12, Schedule 13(b), and paragraph No. 2 which states the following:

"The maximum possible loading shown in Column 5 should be that at the time of annual system peak taking into consideration not only the characteristics of the line itself, but also that of its associated equipment and other operating limitations that might be imposed by normal system connection, if the capacity of the line under the above conditions is below the possible loading of the line alone, please specify by number the limiting factor, such as, 1, transformer capacity, 2., limitations in capacity of other connecting lines, 3., systems stability, 4., permissible voltage drop, 5., relay settings, 6., continuous current rating of circuit breakers, 7., generating station capacity, 8., line capacity controlled by parallel circuits and load locations or, 9., other factors which should be explained."

A As nearly as I can determine the maximum possible rating shown in this particular section of FPC, or the power statement Form 12, are thermal ratings and no adjustments have been made as per the instructions of Instruction 2.

Q Thank you. Turning to page 11 of your testimony, Mr. Bivans, lines 50 to 54, you discuss the losses provisions in the transmission service agreement and you state the

Reboef

BY MR. HALL:

Q In this same regard, Mr. Bivans, talking about transfer capability of limitations, you were talking to Mr. Shapiro before lunch about the Form 12, I believe it was Schedule 13(b), and Mr. Shapiro asked you why there was an apparent contradiction between the numbers on that schedule and the numbers you were talking about.

Can you explain that?

A Well, can I borrow the report.

(Short pause)

THE WITNESS: In looking at the instructions attached to Schedule 13(b), it would be a horrendous task to try to identify the limiting factor under Columb 5 "Maximum Possible Loading", without running continuously studies, study the line outages, generation outages, shift in generation, for the peak load period which is identified in Schedule 13(b) and there are so many different combinations and contingencies that could affect how a particular line is loaded that the people who supplied this information took the easy way out and just gave the thermal rating.

I would say there are, for most of the lines there is a contingency or another line outage or generator outage that would load that particular line up to it thermal limit, but that does not mean that that particular contingency will load them all up to the thermal limit at the same time.

So this instruction, "maximum possible loading", would presume, or at least my interpretation is, the maximum possible loading shown in Column 5 should be that at the time of the annual system peak, taking into consideration not only the characteristic line itself, but that of associated equipment and operating limitations that might be imposed by normal system connections -- well, there are numerous operating conditions that might be imposed on the system or that could be postulated that could be posed on the system for this particular load period for this particular timing, that would -- well, to make this, you would have to make so many postulated studies, load flows, outages, changes in generation, outages in generation, to establish the maximum loading for each line for this particular load level at this particular time that it is just not practical.

BY MR. HALL:

Q Mr. Bivans, you were talking with Mr. Guttman about certain aspects of the intervenor's proposed functionalization in the company's transmission system this morning.

How much of the company's peak load does the Turkey Point plant represent? Approximate percentage?

A About 20 percent.

Q Twenty or 25?

A Twenty or 25 percent.

MR. GUTTMAN: Turkey Point unit or plant?

Recross (Gutman)

Q At the beginning of Mr. Hall's redirect, you gave a lengthy examination of the reason why you did not comply with the instructions in Form 12. Do you recall that explanation?

A Yes.

Q Was that explanation -- were you reading from what you told the Commission in the Form 12? Was that explanation that appears in the form itself?

A No, sir.

Q Who is responsible for that form in FP&L?

A That particular schedule I understand was prepared by system operations.

Q Are you in any way responsible for that form?

A You asked me that before and I said "No".

Q Do you review that form?

A That particular form?

Q Yes, that particular form.

A That particular schedule in Form 12?

Q Yes.

A I did not review the one that appears in this for this year.

Q Have you reviewed the one that appeared in that response to that request in any prior years?

A I have seen it in prior reports, yes, sir.

Q Do you recall that it had, it was based on the same

assumptions that the one we have just discussed is based on; that is, without adjustments as required by the reporting system?

A I don't believe I ever read the instructions on that.

Q Has anybody ever asked you or your department to check whether the figures in the transmission system on that form are correct as to the transmission planning system planning department's understanding?

A No.

Q Is the final responsibility for information on the composition of the transmission system within the purview of the system's operations planning or your own branch?

A The final --

Q Well, who is responsible ultimately for determining this information, you or the systems operation people?

A I think Mr. Adomat, A-d-o-m-a-t, has the responsibility for signing the report.

Q Assuming you were to go back, you being FP&L, and adjust that report, and I know you said it would be difficult, for the information that the Commission has requested, who would perform that adjustment in FP&L? Would it be your office or someone else's office?

A To comply strictly with those instructions which I stated earlier, it would be a very tedious task. I doubt -- well, I am positive that the clerical help who prepared that

data in there haven't the expertise or talent or facilities for making that determination.

MR. HALL: Do not have?

THE WITNESS: Do not have. Then they would come to our department and ask us to do it.

BY MR. GUTTMAN:

Q So the information that Mr. Shapiro was asking about that particular schedule would be one for which your department would be responsible?

A No. I didn't say that.

Q It would be one for which your department had the necessary technical skills to provide the information?

A Yes.

Q And who would be responsible for it?

A Responsible for what?

Q For that schedule.

A Well, right now, that information is furnished by the systems operations, system operations, which is under the direction of W. E. Coe, C-o-e.

Q And to the best of your knowledge, Mr. Coe has never come to you and said he needed assistance in preparation of that schedule?

A That is correct.

Q Do you know of any other instances in which the transmission information provided by Florida Power & Light,

in response to this Commission's reporting requirements, has not been preapred pursuant to the instructions of the Commission?

A As far as I know, everything in the report is prepared pursuant to the instructions of the Commission where it is practicable or possible to perform some.

I am sure there must be instructions in there which are virtually impossible to comply with exactly, in the exact manner in which they might be interpreted.

Q When that occurs, does Florida Power & Light state in its response Florida Power & Light thinks it is impracticable for whatever reasons?

A I don't know. You would have to examine the report.

Q Have you ever examined the report?

A From that standpoint?

Q Yes.

A No.

Q Have you or have you caused anyone in your department to examine the transmission information supplied to this Commission to see whether it was accurate?

A Have I -- you mean any information that our department, that is furnished, that is contained in this report -- information that my department has furnished has been checked by my department to be reasonably accurate.

Q Then it is your testimony that the information contained in the schedule that Mr. Shapiro was showing you was

not furnished by your department?

A That schedule was not furnished by our department, no.

MR. GUTTMAN: Thank you. No further questions.

PRESIDING JUDGE: Mr. Shapiro, anything further.

MR. SHAPIRO: Just a brief question, Your Honor.

BY MR. SHAPIRO:

Q Mr. Bivans, you gave a number of examples of emergency as one involving an airplane crash in which you might have to ask a wheeling customer to curtail service, is that correct?

A Yes.

Q If the wheeling customer were obtaining say short-term firm service that would appear in a day or two, would Florida Power & Light ask the wheeling customer to curtail service before any other class of customer?

A Let's put it this way: If he is separated from his wheeled source by the loss of wheeled transmission, Florida Power & Light does not have the obligation to supply that power from its resources under that transmission schedule, but we do have underlying interconnection service agreements from which power can be obtained, because you are physically isolated so there is no way -- it is beyond our control for that wheeled power to continue.

We are not interrupting it. Somebody else did. Or the

to implement Lake Worth's interchange agreements, Lake Worth declined to sign the agreement. FPL tendered the agreement executed June 28, 1978 only by it in order to implement Lake Worth's interchange agreements without further delay.

Between February 6, 1978 and May 15, 1978, TECO entered into interchange agreements with Homestead, Lake Worth and Orlando. On July 5, 1978, FPL and TECO executed an "Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Tampa Electric Company," which is required in the implementation of those three interchange agreements.

Between June 6, 1978 and July 10, 1978, Vero Beach entered into interchange agreements with Florida Power, TECO and Orlando. On August 1, 1978, FPL and Vero Beach executed a transmission service agreement, which is required in the implementation of those interchange agreements.

Prior to placing these new interchange agreements into effect, Homestead, Lake Worth, TECO and Vero Beach had never received any type of transmission service from FPL. These entities generated electricity in their own generating facilities to meet their load requirements, with the exception of Homestead which purchased the remainder of its requirements from FPL--initially as a partial requirements firm power customer and also more recently under an interchange agreement with FPL. This

SUMMARY OF THE ARGUMENT

The Federal Power Act recognizes that a utility may provide several distinct services (types of electric service) for which it must have rate schedules on file with the Commission. The statute further provides that changes to rate schedules in force, i.e. for existing services, are subject to suspension and refund, logically implying that initial filings for new services are not to be so treated. In the proceedings on review, FPL has filed rate schedules under which it will provide transmission service to Homestead, Lake Worth, TECO and Vero Beach, none of which previously received transmission service from FPL. In determining that the FPL filings are subject to refund and treating them as changes in existing rate schedules, the Commission exceeded its statutory authority and failed to follow its own Regulations. The Commission's treatment of the FPL filings is inconsistent with its own prior decisions which have been endorsed by the courts. The Commission's characterization of the filings further aggrieves FPL by incorrectly shifting the burden of proof in the proceedings to the Company.

Second, the Commission did not issue suspension orders in two proceedings until after the 30-day statutory notice period had expired. In the absence of official

TAMPA ELECTRIC COMPANY

"Center of Power for Florida's Center of Activity" — Tampa, Florida

December 29, 1960

Mr. Robert H. Fite, President
Florida Power & Light Company
P. O. Box 3100
Miami 30, Florida

Dear Mr. Fite:

The purpose of this letter is to confirm the understanding reached concerning the interchange of energy between our two companies.

The rates for energy agreed upon were for kilowatt-hours interchanged on a "when, as and if" basis, and should firm power be desired by either company, that would be the subject of special negotiation.

For energy generated by either company two rates were agreed upon, one for energy generated with high pressure equipment of 600 pounds per square inch and above, and one for low pressure equipment under 600 pounds per square inch, which classification includes Diesels.

The rates agreed upon were as follows:

For energy generated by high pressure equipment $0.00525 per Kwh plus fuel clause adjustment.

For energy generated by low pressure or Diesel equipment $0.00750 per Kwh plus fuel clause adjustment.

The fuel clause adjustment for each company shall be based on the average cost of fuel oil or its equivalent in storage at its generating stations during the preceding month, and for the Florida Power & Light Company this figure shall apply to its west coast plants. It was agreed that each company should use the fuel clause now in use by the Tampa Electric Company, which is based on a normal price of Bunker "C" fuel oil of $1.10 per barrel in storage, with a multiplier of $0.000026 per Kwh for each 1¢ variation above or below $1.10 per barrel in the price of fuel oil.

PL-429

TAMPA ELECTRIC COMPANY

"Center of Power for Florida's Center of Activity" | Tampa, Florida

December 29, 1960

Mr. Robert H. Fite, President
Florida Power & Light Company
P. O. Box 3100
Miami 30, Florida

Dear Mr. Fite:

We are enclosing two copies of a letter agreement that sets forth our understanding of the new arrangement to be placed in operation January 1, 1961 and superseding our letter agreement of April 5, 1954 and amended May 5, 1960.

You will note the new agreement specifies no rate for wheeling, but permits negotiation of a rate based on conditions in existence during the period of delivery. As we recently indicated, we anticipate no such charges will be necessary as a result of our normal operations in the near future.

Yours very truly,

W. C. MacInnes
President

CITY OF HOMESTEAD, FLORIDA

PL-34

December 13, 1967

Florida Power & Light
4200 West Flagler
Miami, Florida

Attn: Mr. Robert Fite,
President

Dear Bob:

There has been some discussion here about the possibility of buying power from Florida Power & Light on a wholesale rate.

Please let me know if your Company has changed your policy in this respect and if so what we could expect in the way of rates.

Very truly yours,

C. V. Ivey
Supt. of Utilities

CVI:mlb

CITY OF HOMESTEAD, FLORIDA

ATTACHMENT
7-19-67

July 19, 1967

FPL-1244

Mr. Robert Fitz, President
Florida Power & Light Company
P. O. Box 3100
Miami, Florida 33101

Dear Mr. Fitz:

The City of Homestead is in receipt of the "Statement for the Record by Florida Power & Light Company in Response to Testimony by or on Behalf of Florida Municipalities at Senate Commerce Committee Hearings on S. 1365 on June 27-28, 1967."

Included in the text of the "Statement" is the following:

> "Florida Power & Light Company has never made any categorical statement of policy to the effect that it would not wholesale to municipalities as witness the examples above"

While the word "categorical" may encompass an intent not interpreted by this writer, I personally have been advised verbally on at least two separate occasions that Florida Power & Light would not consider wholesale power to the City of Homestead since such sale would not be in keeping with existing policy of Florida Power & Light Company.

In view of the aforementioned statement by Florida Power & Light Company before the Senate Commerce Committee, June 27-28, 1967, it would appear that Florida Power & Light Company would sell to the City of Homestead an agreed upon amount of power at wholesale rates.

In view of the aforementioned circumstances, I therefore, on behalf of the City of Homestead, Florida, request that Florida Power & Light Company sell to the City of Homestead at wholesale rates offered co-ops in the State of Florida, or at a similarly acceptable rate, blocks of power ranging from 5,000 KW to 10,000 KW in quantity.

In the event you or representatives of your organization wish to discuss this request with the City Council of the City

of Homestead, please advise this writer at your earliest convenience and such a meeting shall be arranged.

Your response to this communication would be deeply appreciated.

Very truly yours,

O. R. Pearson
City Manager

ORP:rt

CITY OF HOMESTEAD, FLORIDA

FL-1245

July 19, 1967

The Honorable Warren G. Magnuson
Chairman
United States Senate Commerce Committee
Senate Office Building
Washington, D. C.

Dear Senator Magnuson:

The City of Homestead has received a copy of the Statement of Florida Power & Light Company made before the Senate Commerce Committee, relative to S. 1355, on June 27-28, 1967.

Please be advised that the City of Homestead has been told by representatives of Florida Power & Light Company, on various occasions, that it was not the policy of Florida Power & Light Company to sell wholesale power for resale to municipalities or other type consumers. That, as a matter of fact, this practice would be illegal. Upon noting the statements of Florida Power & Light Company, relative to the fact that they "have never made any categorical statement of policy to the effect that it would not wholesale to municipalities", the City of Homestead felt its position should be made clear to you.

I have forwarded the enclosed letter to Mr. Robert Fitz, President of Florida Power & Light Company formally requesting the sale of electricity to the City of Homestead, at a wholesale rate. You will note that in my letter to Florida Power & Light Company I invited representatives of their company to meet with the Council concerning this subject.

I would also point out to you that the City of Homestead has operated its electric generating plant in areas that were not profitable enough for Florida Power & Light Company to extend service. Now that these areas are becoming populated it is Florida Power & Light Company's position that they have a county franchise and the City of Homestead is infringing on this franchise by extending to the county and by annexing territories into the corporate limits of the City of Homestead.

I would draw your attention to the fact that Homestead Municipal Electric Generating Utilities was in existance a good deal prior to the establishment of Florida Power & Light Company here in the State of Florida. This, of course, raises in our minds the question of who is infringing upon whom.

This communication is sent to you for your consideration and to assist you in your deliberations.

Very truly yours,

O. R. Pearson
City Manager

ORP:ft

Enc. (1)

...TES OF A SPECIAL MEETING OF THE CITY COMMISSION OF THE CITY OF NEW SMYRNA BEACH, ...IDA, HELD IN THE CITY HALL ON THURSDAY, JUNE 19, A. D., 1958, AT 1:00 P. M.

...eeting was called to order by Mayor-Commissioner Robert L. Arnau with the follow... ...bers of the Commission present:

Commissioner Thomas E. Tipton	Present
Commissioner Julius B. Harris	Present
Commissioner F. L. Edwards	Present
Commissioner Fred R. Brannon, Jr.	Present
Mayor-Commissioner Robert L. Arnau	Present

...s present at the meeting were City Manager W. T. Slattery, City Auditor and Clerk E. ...ks, City Attorney R. Lee Freeman and Clerk Barbara Bond.

Jess Thomas of Reynolds, Smith and Hills appeared before the Commission as per the ...uest of the Commission to discuss a maintenance program for the power plant in order ...t the City would know what maintenance has to be done in order to get through the se...

...winter. Mr. Thomas stated that the summer maintenance program for the plant has ... already been started and that he has gone over the list of parts and things that have to ... be done with the superintendent. He estimated that it would cost approximately $15,000.00 ...0 additional to cover everything that will be needed for the maintenance unless something b... ...ng should break. He stated that he thought with this maintenance program they should get t... ...through the winter without over 6 months on any one engine. Commissioner Edwards suggest... ...ed that Mr. Thomas check with Florida Power & Light Co. to see if the City could buy some ... power from them in case of an emergency. Mr. Thomas stated that unless the City was pl... planning to buy more generating equipment and informed Florida Power & Light Co. to that effe... ...ct, then they may not sell power for resale under normal circumstances. He stated that it ... would be better to create a state of emergency before asking them. Mayor Arnau asked Mr. ... Thomas if he thought we will be in a case of emergency. Mr. Thomas stated that if we have a n... ...rmal winter and the same rate of growth exists as before last winter then we should be ... able to get through this winter without any trouble. City Attorney Freeman suggested tha... ...t Mr. Thomas meet with him at some time to discuss the reserves.

Mr. Robert Matthews appeared before the Commission requesting that they give some consideration to the possibility of selling water through a master meter to property developed just west of the west of the city limits owned by Ellison and Avery, Inc. He stated that he wanted to find out if the city has the capacity to furnish this water and what the rate will be.

City Attorney Freeman stated that there will be another request for the purchase of water. He stated that he is now considering this matter in order that he can report the legality of this or determine whether it will present any problems for the City that he has not completed his study on this.

The payroll for the month of June 1 through 15, 1958, in the following amounts was presented to the Commission for approval:

Regular Employees	$16,946.47
Lifeguards	1,213.00
Golf Course	369.48
Airport	223.64
	$18,752.60

Commissioner Brannon moved that the payroll and the new and terminated personnel ... by the payroll be approved. This motion was seconded by Commissioner Harris and ... ly carried.

Vouchers for the month of May in the amount of $48,592.97 were presented to the C... for approval.

AGENDA

PAYROLL MEETING OF UTILITIES COMMISSION
City Hall, 9:30 A.M., March 29, 1967
NEW SMYRNA BEACH, FLORIDA

1. APPROVAL of Payroll.

2. APPROVE Certifications For Payment:

   1. Reynolds, Smith & Hills (65144) 7w 67
      Water Improvements Program
      Meridith Corporation
      $6,480.47 (Partial payment)

   2. Reynolds, Smith & Hills (65144) - 7w. 68
      Water Improvements Program
      J. W. Meaders & Company
      $61,605.39 (Partial payment, 2-1-67 to 3-1-67)

3. REPORT from Mr. Gautier regarding additions to Enabling Act.

4. DISCUSSION of further plans for new Distribution Plant.

5. DISCUSSION of power generation situation.

6. COMPUTER program presentation by Burroughs Representative.

7. FINANCIAL REPORTS: Statements: Month of January 1967
   Nine Months-May 1966 thru Jan. 1967.

   Discuss repayment of loan to Library.

   Discuss interdepartmental City billing.

8. DISCUSSION of Emergency Ordinance regarding underground utilities installations.

9. Hunt Water Meters

MINUTES OF PAYROLL MEETING OF THE UTILITIES COMMISSION HELD AT CITY HALL, NEW SMYRNA BEACH, FLORIDA, 9:30 A.M., WEDNESDAY, MARCH 29, 1967

Those present: J. U. Gillespie, Chairman
J. Carlyle Harvey, Vice Chairman
J. E. Tumblin, Secretary
John C. Deal
Claude E. Talley
E. W. Gautier, Attorney
J. V. Little, Director of Utilities

Chairman Gillespie called the meeting to order at 9:30 A.M.

In discussion of the payroll, Mr. Little pointed out that the night dispatcher had been terminated and with Commission's agreement he planned not to fill this position at this time but by having the regular crew at the Steam Plant take the night trouble calls: a savings of approximately $400.00 per month. Commissioner Talley moved that payroll be approved as presented. Commissioner Tumblin seconded motion which unanimously carried upon roll call vote.

Discussion of May 1, 1967, take over of sewer facilities by Utilities Commission: Mention was made of problems at the disposal plant which are in the process of being corrected. Mr. Little spoke of the possible need for additional staff at the time of taking over the sewer system; an Administrative Assistant to be considered after study of a financial statement on the sewer situation and a preliminary draft of our budget for the coming year. Commission agreed that Mr. Little should begin now to interview prospective applicants.

Certifications for Payment were read by Chairman Gillespie as follows:

1. Reynolds, Smith & Hills (65144) Certificate No. 67
Water Improvements Program
Meridith Corporation
$6,480.47 (Partial payment)

2. Reynolds, Smith & Hills (65144) Certificate No. 68
Water Improvements Program
J. W. Meaders & Company
$61,505.39 (Partial payment, 2-1-67 to 3-1-67)

After brief discussion, Commissioner Harvey moved to approve and recommend to City Commission for payment Certificate No. 67, Meridith Corporation, in the amount of $6,480.47 (partial payment) and Certificate No. 68, J. W. Meaders & Company, in the amount of $61,505.39 (partial payment). Commissioner Talley seconded motion which unanimously carried upon roll call vote.

Mr. Gautier reported as follows: Enabling Act - Three amendments to be added:
1. Public Hearings on Rate Changes.
2. Public Hearings on Revenue Certificate Issues.
3. Provision enabling membership in state-wide transmission net-work corporation.

Commission was asked and stated had nothing further to add. City Commission will be asked for additions, after which final draft will be prepared and sent to Legislature.

Mr. Gautier also reported: Easement for North Beach Hi-line has been obtained from Trustees of the Internal Improvement Fund of the State of Florida.

Mr. Little reported that plans for a new distribution plant will have to await future financing and that $150,000 should be included in the next financing program for a distribution building.

Burroughs Company representatives, Jim Ross and Cliff Evans, presented a detailed report of the B4000 computer which the Utilities Commission is considering purchasing. This report offered explanations and pictures of operation, costs, time and personnel for computerizing billing, payroll, budget accounting, etc. Commission thanked these Representatives and discussed the problems entailed in setting up such a system which, among other things, will require instructions to be issued for conformity of billing. Also, it was stated that the Utilities Commission would purchase computer equipment and charge the City for services performed on same.

The power generation situation was reported on by Mr. Little, who said no sums of money should be spent on existing facilities at this time other than required for routine maintenance; but, that Commission should begin now for study and plans for the addition to the Steam Plant which will be needed by 1969. Mr. Little stated there are two alternates: to try to buy firm power from Florida Power & Light, although their policy is to sell no firm power to municipalities, or to ask Orlando Utilities for a direct tie-in to their Indian River line. After discussion, Commissioner Harvey moved to authorize Mr. Little to set up a work session meeting for the Commissioners with representatives of Reynolds, Smith & Hills to proceed with preliminary plans for the addition to the Steam Plant. Commissioner Tumblin seconded motion which unanimously carried upon roll call vote.

The financial reports: Statement for month of January 1967, and nine months statement for May 1966 thru January 1967 were presented and it was agreed that the overall situation is sound, with the exception of the Water Department, and that a water rate schedule is needed, possibly after budget work is completed.

Interdepartmental City billing was discussed and it was shown that City accounts have been brought up to date, owing only for Christmas lighting and an over estimate of an advance payment.

Loan to Library: Mr. Little read the Ordinance and presented figures, worked up by Mr. Hevarter, on this "without interest" loan - "repaid within 20 years." After discussion, Commissioner Talley suggested that this should be discussed with City Commission and request re-negotiation whereby they would pay the interest on the loan - which we have to pay depositors of the meter fund.

Mr. Little presented pictures of the Kent water meters - residence wall installation, and the Kent Company's request for the Utilities Commission to sponsor a dinner meeting (all expenses assumed by the company) for all building and plumbing contractors in the area to present the Kent product. Commissioner Harvey moved approval to have this meeting. Commissioner Talley seconded motion which unanimously carried upon roll call vote.

City Clerk, Neil Michaelsen again presented the emergency ordinance which would provide for underground installation of utilities and stated that the ordinance is needed to enable the City to receive funds from the Government for the Beautification Program. It was felt that since it is the duty of the Utilities Commission to retain control of the operations of the utilities, Attorney Gautier will present at the next meeting a revision of this proposed ordinance which will provide for decisions regarding feasibility of situations calling for underground installation of utilities to lay with the Utilities Commission rather than City Commission or the Planning Board.

There being no further business, the meeting adjourned.

The above minutes approved at the regular meeting of the Utilities Commission held at the City Hall on _____, 1967, in New Smyrna Beach, Fla.

_____
Chairman

ATTEST:

_____
Secretary

See also Appendix VIE

APPENDIX VIA

FLORIDA POWER & LIGHT COMPANY

West Palm Beach, Florida
May 5, 1945

City Commissioners
City of Fort Pierce
Fort Pierce, Florida

Dear Commissioners:

This refers to our recent discussion in connection with your power problems and the manner in which these problems might be solved. We feel confident that our Company can adequately serve the present and future requirements of the City of Fort Pierce with the type of service which would definitely promote the growth of your City, and towards that end we suggest that some form of lease or sale agreement be developed which would permit our Company to operate the City's electric plant and distribution system.

It is realized that at this time, it is impossible to submit definite figures, and also that any agreement would be subject to approval of the qualified voters of Fort Pierce and the Board of Directors of the Florida Power & Light Company, but in an endeavor to at least establishing the framework, in our opinion, this agreement should cover the following salient features:

1. If a lease, it should be for a period of 30 years which would coincide with the term of a standard electric franchise to be granted by the City to the Company, and should become effective as early as possible.

2. A lease, upon its effective date, should provide that the Company immediately proceed to install necessary transmission, substation and other facilities to tie in with the City's distribution system. Likewise, it should provide for necessary improvements to the system and thereafter for expansion of it in order to serve all customers and, repair existing facilities as they wear out.

3. Any sale or lease should provide the City with appropriate financial remuneration.

City Commission
City of Fort Pierce

May 5, 19

4. An agreement should provide for the application of Florida Power & Light Company Rate Schedules, as filed with Florida Public Utilities Commission, which are now or later effective throughout the Company's system. The application of these rates would result in an annual savings to the electric customers of Fort Pierce.

5. A lease should provide at the end of its term that the City would have the option to acquire the property at depreciated value which the Company has installed during the term of the lease except for the substation and transmission system tie. Also, if the City did not exercise this option, then the Company would have the right to acquire the City's electric property at depreciated value.

Other matters of interest and advantage to the people of Fort Pierce are as follows:

- Under Florida Power & Light Company policy there are no connection charges and we have no plans for imposing such charges. Normal extensions are made without charge to the customer.

- Florida Power & Light Company would establish a district office in Fort Pierce suitably located and well staffed, which would be an asset to the City. Trouble calls would be covered on a 24-hour basis.

- All present Electric Department employees would be taken over by Florida Power & Light Company at salaries and wages equal to or above the remuneration now received by these employees and all regular Company benefits including pension plan, group life insurance, hospitalization insurance, paid vacation, sick leave, etc., would be made available to them.

Florida Power & Light Company as a Company and through its employees will contribute to the support of all community activities, Chamber of Commerce,

City Commission
City of Fort Pierce

May 5, 196[illegible]

We will continue our negotiations in an attempt to reach a mutual[illegible] satisfactory agreement with respect to granting a 10-year electric franchi[illegible] and also to permit the sale or lease of the utility facilities. In the meanti[illegible] it will be in order to plan the emergency connections necessary by the City and us to supply the power requirements which you have requested.

Very truly yours,

[illegible] Hill
Division Manager

[illegible]:j

On September 3, 1965, Mr. J. G. Spencer, Jr., Vice President, and R. D. Hill, Eastern Division Manager, visited with Mr. Dan McCarthy, City Commissioner and Chairman of Public Utilities Committee, in Clewiston, Florida. Visit lasted approximately 2 hours, plus. Purpose of the visit was to discuss, on the part of the Town of Clewiston, their intervening to the Federal Power Commission through attorneys hired by the Town to secure a wholesale rate from the FPL Co.

Mr. Spencer and Mr. Hill discussed possibilities of further discussion for sale or lease or operation of their electric distribution system and that we would like to make a further study and proposal. Mr. McCarthy advised us that he was definitely interested in pushing purchase of wholesale power from us and that he thought our present policies were discriminatory in that we were serving the REA and that the type of systems was comparative. This was further discussed. He stated that he would, speaking on behalf of other Commissioners, discuss any new proposal presented by us.

We presented Mr. McCarthy with a comparison of Clewiston rates and, in effect, with FPL and he was interested in the comparison, and, in particular, he commented on the commercial rate as they had compared to proposal of several years ago. There was an indication that Mr. McCarthy would be interested in a proposal, possibly by the REA, if their charge per kwh was around 11 mills. He stated that he felt, after study, this would give a fair rate of return under the conditions and expense necessary to render service to the city's distribution system. We asked Mr. McCarthy what the status was of the city's contact with the attorneys, Stegel and Goldberg. He stated that he had signed papers for the attorneys August 26 but they had not been mailed promptly. He also said he had received request for information from the attorneys on September 2 asking for a map showing our substation facilities where REA was receiving our service. Mr. McCarthy again brought up the fact that Mr. Irby was not fair with them and there were three instances of violation of the contract and that Mr. Irby was generally friendly except when dealing with the services and costs rendered by the REA.

Mr. McCarthy also advised that he was familiar with the Federal Power Commission's story and our rebuttal and he felt that the cities were not being properly protected; in fact, Mr. McCarthy brought up the question of rendering service to Ft. Pierce and the statement was that we had refused to assist Ft. Pierce. We advised this was not so; that we made proposal for standby and they had refused, but had asked us for a proposal of sale or lease for their distribution and plant properties.

We asked Mr. McCarthy if he would contact his attorneys and, if possible, hold their case with the Federal Power Commission until we could have other meetings with him. He promised to call the attorneys and find out the status and that he would call Mr. Spencer or Mr. Hill.

It is Mr. McCarthy's intention to be in Miami on Friday and he plans to visit with Mr. Fite and Mr. Spencer for further discussion.

Mr. McCarthy told of a visit with Mr. Vaughn who told him he was not taking any part and if his own people made reasonable request that he would review and discuss the case with them. Mr. McCarthy mentioned his friendship with the Honorable Paul Rogers, and that Mr. Rogers told him that he was concerned by the actions of the Town of Clewiston as it affected his Bill regarding the FPC's effort to place our company, and others who were intra-state companies, under their jurisdiction.

Mr. McCarthy told us that the Town's annual revenue is $457,000 and that $92,000 was turned over to the Town for general funds.

[illegible] PL-307 [illegible]

Meeting with Mr. Dan McCarthy, Commissioner, City of Clewiston
Time: 9:15 AM, Friday, Sept 3, 1965
Place: Mr. McCarthy's office
Present: McCarthy, R.D. Hill, J.A. Graves Jr.

We told Mr. McCarthy that we were back for two purposes - 1) to convince him that FP&L Co. was ready to negotiate with the city on the purchase, lease, management or any other plan to serve the city with electric power - we have a completely open mind and 2) that while we are talking we want them to withdraw from any participation in the current FPC hearings.

He at first said the City would not entertain any lease or sale but, after seeing the savings we could give residential & commercial customers, and hearing other arguments, stated that of course they would listen to any offer but that we should include an offer to sell them wholesale and at a rate equal to the REA rate. He said they would withdraw the complaint to FPC

432,000 revenue -

97,000 to general fund -

Miami, Florida
August 26, 1965

MEMO TO FILE

J. G. Spencer, Jr.

City of Clewiston - Electric Service

On Tuesday, August 24, 1965, Mr. Fuqua called Mr. Fullerton from Washington with the information that Mr. Merriman had been contacted by the law firm of Speigel & Goldberg to request a copy of our testimony to be given in the FPC hearing. They said they represented the City of Clewiston, who wanted wholesale power from Florida Power & Light Company. Dick Hill had no knowledge of any new developments in Clewiston. On Thursday, August 26, Dick Hill and I, together with John Majewski and Curtis Chase, went to Clewiston. We first called on Mr. Dan McCarthy, a member of the City Council, at his office. Mr. McCarthy was very friendly and very frank in his statements - and the following information came from his conversation.

The City Council has five members, with elections for three of them now in process. Mr. Fred Sykes and Mr. Thomas Jones (Mayor) do not have to run this year. Two other present members are not seeking reelection. Mr. McCarthy is running for another term. There were eight applicants for the three seats and the first election was about two weeks ago when the three receiving the lowest number of votes were eliminated. The main election is on September 7, at which time the three with the highest number of votes will be elected for varying terms. McCarthy was high man in the primary. I believe, but did not verify, that both Sykes and Jones are connected with the U. S. Sugar Corporation. None of the five candidates are with U. S. Sugar.

Mr. McCarthy outlined their discussions with our Company and with Glades Co-op several years ago. He gave Mr. Fite credit for the lower rate they were able to get from the Co-op and was very high in his praise of Mr. Fite and several other Company people who helped them with engineering and distribution problems.

Glades Co-op presently has a contract with U. S. Sugar to furnish power requirements of the City of Clewiston. They bill U. S. Sugar but Clewiston pays the bill. They presently pay approximately 17½ mills. Their demand is about 4500 KW and they have about 1900 customers. Usage is about 15 million KWH. The City charges their residential customers $12.62 for 300 KWH and 2¢ for all KWH above 300. This represents the major income of the City. Mr. McCarthy says it is the only way they can get all residents to pay their share of expenses and improvements because of homestead exemption. He says the rates are too high but the answer is a lower wholesale rate to the City since they need the income.

He confirmed that they have retained Speigel & ~~Goldman~~ Goldberg since they had represented other cities in Washington and before the FPC. The City has written a letter to U. S. Sugar stating that the power contract is unsatisfactory and will not be renewed when it expires on July 15, 1967. The letter was forwarded by U. S. Sugar to Glades Co-op. McCarthy stated that Mr. Irby was a personal friend and customer, but was impossible to negotiate with. He said he has the support of the Council, when the contract expires, to either buy wholesale from Florida Power & Light Company or to install their own diesel engines. He had not contacted us since he knew our "policy" was not to wholesale to cities, but he thinks we should and that if we refuse, the Government should force us to. He has been to Tallahassee and to Washington to see Senator Holland and Representative Rogers. He said he is solidly against Big Government except when Big Business does not accept their responsibility. He is apparently well informed on FPC proceedings and Senator Holland's bill. He has copies of national REA statistics of co-ops and, from this, knows their cost of power. He was upset because he could not get this information directly from Irby or us. Also was unhappy because the Co-op had increased size of substation serving the City (to 10,000 KVA) without telling them of plans until it was done, and the City was forced to spend considerable money for equipment to coordinate relaying and reduce fault currents.

Just before we left, Mr. McCarthy made a statement that if we would make them a proposition, then perhaps the Co-op would come down to around 12 mills on their rate.

He also stated that the City would not consider the lease or sale of their facilities.

We then went to see Mr. Harry Vaughn, President of U. S. Sugar Corporation. He was extremely friendly to Dick Hill and me and had much praise for the friendship and good relations he had with FP&L Co. He said he knew nothing of the City trying to buy wholesale from us, but did know of the letter the City had written and which he had forwarded to the Co-op. He said the pressure must be coming from Mr. McCarthy. They (U. S. Sugar) "do not try to influence City policies" except to fight anything that would hurt U. S. Sugar, but he would do anything he could to help FP&L Co.

J. G. Spencer, Jr.

JGS:AP

HELPING BUILD FLORIDA

P.O. BOX 3100
MIAMI, FLORIDA 33101

October 3, 1967

242137

Ex. GE-3
P. 50 of 7

The Honorable C. R. Pearson, City Manager
City of Homestead
Homestead, Florida

Dear Olaf:

Thanks very much for your letter of September 28. The vacation was fine. The only trouble with vacations is that they finally come to an end.

I am scheduled to be in New York October 9-10-11 at the Annual Meeting of clients of Ebasco Services Inc. I have agreed to participate in the program and am sorry that the Ebasco Meeting conflicts with the dates you suggested for a meeting with the Homestead Council.

You will recall when we met last that the Council, in addition to requesting proposals for an interconnection or a wholesale power contract, agreed (without too much enthusiasm I admit) to consider a proposal at the same time to purchase or lease your system. We have been working on such a proposal in addition to the arrangements covering interchange or wholesale contract.

In view of the time required to get these various proposals in shape, I would like to see us set a meeting for the last part of November or the first part of December as a time to sit down and discuss all these matters.

If this is agreeable, we would like, in the meantime, to send one or two of our accounting and engineering people

242138

to Homestead for several days to get further information about your system to be used in making a proposal to purchase or lease. Would it be agreeable for us to do this?

I am told that we have now completed physical arrangements to make an interconnection with your system at a second connection point and that as much as 3,000 kilowatts could be delivered through the new connection. Therefore, there are ample physical facilities to make available emergency power for your requirements in the event of any breakdown or overloading of your system. If the need should arise, we will make an emergency connection immediately upon advice from you. I assure you that you need have no concern of being without power while we are preparing for our next meeting.

Please let me know if these suggested dates are agreeable with you.

With best wishes.

Sincerely yours,

Robert E. Fite
President & General Manager

REF:bjc

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

GAINESVILLE UTILITIES DEPARTMENT and CITY OF GAINESVILLE, FLORIDA, Plaintiffs, vs. FLORIDA POWER CORPORATION and FLORIDA POWER AND LIGHT COMPANY, Defendants.	No. 68-305-Civ-J

- - - - - - -

DEPOSITION OF: ROBERT H. FITE

TAKEN: Pursuant to notice by counsel for plaintiffs

DATE: December 4, 1972

PLACE: Florida Power and Light Office
Miami, Florida

TIME: 9:20 o'clock a.m.

BEFORE: Gerald N. Eichar, Jr.
Notary Public
State of Florida at Large

A Yes, I believe I recall that there was such an understanding, at one time, but I don't remember when, Mr. Scott.

Q Do you recall how you learned about the existence of this territorial understanding?

A Yes; through Dick Hill, who is the man that contacted the people at Vero Beach for the company.

Q When you say you do not recall when it was, am I to understand that you do not know how long they had such an oral understanding or how long ago it started?

A That's correct.

Q Mr. Fite, you are listed on the same Answers to Interrogatories as having participated in negotiating the terms of a territorial agreement with the City of Homestead. Do you recall participating in such sessions?

A Yes.

Q I have here a memorandum that bears what appears to be your initials -- anyway, the initials RHF, dated July 28, 1967. It's a memorandum to file.

A (Witness examines document.)

Q Independent of the document, Mr. Fite, do you recall the meeting with the Homestead City Commission on July 27, 1967?

A Well, I recall meetings with them that I

participated in concerning this matter. Whether that was the particular one, I'm not positive. I don't say that it wasn't, Mr. Scott. I certainly participated in the meetings there in Homestead with Mr. Autrey of our company, who I imagine was at most of them, also, and we negotiated with the city and I know Turner and I know the people that are mentioned there and I know I have talked to them.

Q But you and Mr. Autrey met on a number of occasions with these same people; is that what you are saying?

A Yes.

Q. And you can't pin down this one particular one?

A Oh, yes, I think this was a meeting that took place and it's the one I was in; yes.

Q Do you recall specifically that the meeting was held at the request or at the invitation of the City Commission of Homestead?

A I don't know whether it was or not.

Q The second paragraph lists three requests made by the city. "(1) A territorial agreement; (2) Provision for an addition emergency connection to supply up to 5,000 kw more than the existing connection which is about 2,000 or 3,000 kw; and

(3) A future permanent connection with FP&L for the purchase of the service at wholesale for resale by the City."

Then the next paragraph, your memorandum says "We made it clear that we would like very much to conclude a mutually agreeable territorial agreement, but also made it clear that this agreement must be concluded before undertaking negotiations for an interchange or to sell wholesale."

Why the territorial agreement first, Mr. Fite?

A Well, because the City of Homestead had, in the past, attempted to get our customers to disconnect and to connect with the City of Homestead. They had extended their lines into areas where we already had lines.

I recall one case specifically where they ever ran their lines across the lines that we had running in the opposite direction and they attached their wires to our poles so that there had been, as you can appreciate from that occurrence alone, a lot of controversy and we were very desirous of eliminating for the benefit of everyone. Again, the same policies and principles that we have talked about here before, saving money, avoidin; duplication and trying to hold down the rates for the customers.

Q Now, this conflict you spoke of, it involved an area inside or outside the city limits?

A Probably outside. I don't recall exactly. Outside the city limits, for the most part.

Q Did Power and Light serve any customers inside the city limits?

A Yes, we did.

Q Then, did some of the dispute involve customers inside the city limits?

A Well, the disputes had to do with, mostly, new customers and some that they tried to take away; but mostly new customers that came into an area.

The City of Homestead is one of the places that used this necessity to take electricity before you could get water.

MR. ADKINS: Did you ever hear of the tie-in policy?

MR. SCOTT: Do some places do that?

THE WITNESS: This is my own legal opinion of restraint of trade.

MR. SCOTT: We have been over that before.

MR. MATHEWS: Will again, too.

MR. ADKINS: Yes, we will.

MR. SCOTT: Before we go over this

memorandum, I'm going to ask you some more questions about it, but I will ask the court reporter now to mark it Exhibit 23.

(Whereupon the above mentioned memorandum was marked as Exhibit Number 23 for identification by the reporter.)

BY MR. SCOTT:

Q The single paragraph on the last page of your memorandum, Mr. Fite, reports that Mr. Turner said, "The City was more interested in a wholesale contract than anything else."

Did you ever make a contract to supply Homestead with electricity at wholesale while you were here?

A No, sir.

Q Do you know why not?

MR. ADKINS: Object to as argumentive.

BY MR. SCOTT:

Q What problems got in the way, if you remember?

A I don't recall; just don't know.

Q In the third paragraph, still going into the wholesale contract bit, on the second page, you state that "we pointed out that we don't now serve any municipalities wholesale, we don't want to serve any, but if they really want wholesale service and this is

the only arrangement that can be negotiated, if the territorial agreement has been settled, that we would not refuse to sell wholesale, but we would not expect to give the City our REA wholesale rate."

What were Power and Light's reasons, as you remember them, for not extending to a city the wholesale rate that was available to a REA?

A Well, our opinion, at the time, was that the wholesale REA rate was one that had some elements of subsidy in it. It was a rate that was formulated in the days when I wasn't here with the company. So I don't recall all the considerations that went into it. It was during the period when I was in New York.

But as you know, the whole REA movement was to get electric service to rural customers who hadn't been able or who hadn't been served by the private companies mostly for electric reasons.

There was no justification from a profit and loss standpoint to extend lines to these customers and they in turn were not able to pay for the lines. So the Roosevelt administration sponsored and finally --

MR. MATHEWS: Franklin Roosevelt?

THE WITNESS: Yes, sir. FDR.

It had to have subsidy in it in order to make it work at all. And there was a

lot of subsidy and is a lot of subsidy supported by taxpayers and, then, as a part of that whole movement, our opinion was that the companies, particularly Florida Power and Light, had aided in the subsidy by taking a lower rate than was economic and it didn't carry its share of the cost as compared to what the other classification of rates carried, and so we didn't want to spread that to a municipal operation which, in reality, is a business operation. It's one that is certainly not in the category of a non-profit activity. It's a proprietary business. It's a -- that's the best way I can express it. I think that's what that word means. Did I use the right word, Mr. Scott?

MR. SCOTT: I think so.

BY MR. SCOTT:

Q Do you know, historically, how the Homestead municipal system started?

A No.

Q The next paragraph of your memorandum indicate that you also pointed out to Homestead "that an inter-

change agreement may be more desirable to the City than a wholesale contract." Why was that true?

A I don't remember.

Q The next sentence says "We emphasized again that purchase of the Homestead facilities, or lease of them should be considered also."

A Where is that?

Q That's the second sentence in the last paragraph, page two.

A Yes.

Q Do I understand then, from this memorandum, from your summary of the meeting, that the proposal to purchase or lease the Homestead facilities came from the Power and Light representatives?

A Yes.

Q Your sentence says "We emphasized again." Had the subject come up earlier?

A Oh, yes.

Q Do you recall where the impetus of the proposa to lease or purchase the Homestead system came from on the earlier occasions?

A Yes. That originated with the Florida Power and Light Company, generally speaking.

Now, let me see. Thinking back, again, maybe that isn't exactly true. I think one of the first

efforts in connection with leasing or purchasing Homestead actually came from Homestead. I didn't participate in it to any great extent. MacGregor Smith did, and it came, I believe, from this fellow whose name is in this memo here, Turner.

Q City Attorney of Homestead?

A Yes. So I'll have to retract what I said there at the beginning about the company being the originator. I think it really came from Homestead or rather from Mr. Turner.

Bear in mind that was prior to all this negotiation that took place as described in this letter.

Q Well, now, as your memory appears to be coming back about some of these things, does it help you to recall what happened later about the wholesale contract?

A No, sir.

Q Do you recall any subsequent discussions at all about whether Power and Light -- this is in 1967 -- any subsequent discussions about whether Power and Light would serve Homestead at wholesale?

A No, I don't recall any more about it in detail Our Mr. Gene Autrey took over these negotiations and I withdrew pretty much from them as time went on after this period.

Q They really do call Mr. Autrey Gene?

A We also have a Betty Crocker that works for us too.

Q Yes, I noticed that.

Mr. Fite, are you aware that a written territorial agreement was subsequently made with the City of Homestead?

A That's my understanding; yes, sir.

Q Did you also note that it was filed for approval with the Florida Public Service Commission?

A Yes.

Q Have you ever participated in the development of the reasons to give the Public Service Commission for approving territorial agreements; that is for finding them to be in the public interest?

A My memory is very hazy about it. I can't recall any details at all; no, sir.

Q I think it has already been developed in these depositions Mr. Fuqua has testified at a number of these proceedings before the Public Service Commission as to the reasons for approving the agreements.

Have you ever discussed it with Mr. Fuqua or been consulted by Mr. Fuqua as to what reasons should be given to the Public Service Commission for approving a territorial agreement?

A I can't remember anything in detail; no, sir.

FLORIDA POWER & LIGHT COMPANY 121183 VP

INTER-OFFICE CORRESPONDENCE

LOCATION West Palm Beach

DATE November 24, 1967

COPIES TO Mr. R. C. Fullerton
Mr. J. G. Spencer

TO MEMO TO FILE

FROM R. D. Hill

SUBJECT:

Mr. R. D. Cox and I visited with a group representing the City of Vero Beach on November 21, 1967 at noontime. Those present besides Mr. Cox and myself were: Mr. F. C. Wallace of Black and Veatch; Mr. James T. Vocelle, City Attorney; Mr. Jack Sturgis, City Commissioner, and who operates a lumber and supply company; Mr. Fred J. Prestin, City Commissioner; Mr. James Pryde, City Manager, and Mr. Fred Gossett, Plant Manager.

This meeting was the result of an earlier call to Mr. Fullerton from Mr. Prestin which was relayed to me. I visited these people to discuss several matters.

1. A territorial agreement, which to some degree had been investigated previously, but was held up as a result of conversation several months ago with Mr. Pryde who was not informed at the time, being newly appointed. The result of this discussion was that Mr. Frank Phillips, Distribution Manager, Mr. Wallace and I should review the territory and establish a territorial agreement which I would told would have to be approved on our part by the Florida Utilities Commission. I told them I was not interested in losing any customers but would work toward adjustments to the best interests of Florida Power & Light Company and Vero Beach.

2. The question of wholesale power was presented and I told them I did not think this was a good idea and then withdrew my answer and stated I thought a review of the third purpose of the meeting, (discussion of emergency service), might enter into this and be a solution. I said we would be glad to discuss this but that it would depend, of course, on the interpretation of what constituted emergency service. This then brought on the third question.

3. I told them that we are still interested in working out something that would be amicable to them and ourselves in the way of emergency service but that it was a subject of further discussion for conclusions.

121190

Mr. Wallace brought up the question of rates and trading of power and also at the time made a statement that Messrs. Spencer and Fuqua had previously told them they were not interested in wholesale power.

At this time I asked them (those representing the city), as a diversion, whether they were interesting in selling or leasing the property to us. They said "yes," that they would be interested in a proposal and asked how long it would take to make such a proposal. I told them that if we had the information a proposal could be made in about 30 days.

At this point Mr. Wallace read a proposal to the group that we were presumed to have made in 1959. He plans to send me a copy of this. At this time Mr. Vocelle spoke up and said their charter did not permit the sale of their property but that this was not something he would be too concerned about as a referendum and legislation change could be made if something of this nature was worked out.

It was further proposed by Mr. Sturgis that the answers to the questions Mr. Vocelle stated as being necessary; namely, territorial agreement, wholesale power and emergency tie, should be in writing.

Further Notes

I see that it is necessary that other members of the Commission should be visited to get their attitude regarding these matters. I think I should visit with Mr. Phillips and work out the territorial agreement as soon as practicable. Also, since Mr. Spencer had worked with me on Vero Beach matters previously that he again enter the picture with me in my visitations up there.

I have obtained copies of the 1965 and the 1966 audit of the Electric Revenue Fund and also received a copy of the Review of Electric System Planning that Black and Veatch submitted on November 20, 1967.

RDH:mj

PV

West Palm Beach
February 22, 1968

Mr. R. H. Fite

R. D. Hill

120963

Here is the information you requested on the Vero Beach City Council:

J. Noble Richards, Mayor
Retired lawyer and former Chairman of the War Claims Board of Appeals & Hearing

Robert Allison, Vice Mayor
Owner, Allison's Super Market

Fred J. Prestin (a former mayor)
Citrus executive with Indian River Producers Association

Jack Sturgis (also a former mayor)
Owner, Sturgis Lumber & Supply Co.

Taylor C. Simpson
Hillcrest Memorial Gardens (cemetery)

City Manager: James Pryde

City Attorney: James T. Vocelle

Committee members with whom we are to meet:

Fred J. Prestin, Chairman

Colonel William N. Carey, Ret.
Civil engineer and member of Indian River Taxpayers' Association

Dr. B. Q. Waddell
Eye doctor and president of Indian River Chamber of Commerce

Elmer Olexo
Owner, Tropical Motel & Apartments, Vero Beach

Mr. R. H. Fite 120964 February 22, 1968

Dr. Tom R. Guy
Is a local man reared in Vero Beach, is im-
Downtown Merchants' Association. Believe
he is a pharmacist.

Larry Finnegan
Member of the Board of Realtors.
Very emphatically would like to sell their
Vero Beach electric plant to us.

Commander George F. Owens, Ret.
Electrical engineer, M.I.T. graduate
Technical adviser for the group

Frank Phillips
Distribution Superintendent,
City of Vero Beach

RDH:mj

121103

FLORIDA POWER & LIGHT COMPANY

HELPING BUILD FLORIDA

P.O. BOX 3100
MIAMI, FLORIDA 33101

February 29, 1968

The Honorable Fred J. Prestin
City Council Member
City Hall
Vero Beach, Florida 32960

Dear Mr. Prestin:

In accordance with your request at our meeting in Vero Beach last Tuesday, I am writing this letter to describe various plans for connecting the city's electric system with that of Florida Power & Light Company.

We discussed a number of different plans and I will try to describe each of them briefly in the following paragraphs.

First, we discussed an interconnection of the two systems for use in emergencies that might occur on either system. Such a plan would contemplate that Vero would continue to increase its power plant facilities as the load grows, and would maintain a reasonable reserve. FPL would do the same and in the event either of us had an emergency which required power from the other system, then the system called upon would help the other to the full extent of its capacity, so long as the supply didn't jeopardize service to the supplying system's regular customers. In other words, there would be no firm requirement on Vero or FPL to supply any given amount of power at any given time; however, in emergencies - if capacity was available - the other system would have access to it.

This is the kind of plan we have in effect with Jacksonville. The rate would be the same for power sold or bought, except as to adjustments that might be necessary because of differences in cost of oil or gas.

A second plan discussed was sale by FPL to Vero of a base load block of power with the Vero generating facilities carrying the rest of the load. The amount of power mentioned was 10,000 KW. This would be supplied by FPL around the clock and the Vero plant would pick up the rest which might be as little as 1,000 or 2,000 KW at night, and as much as 15,000 to 17,000 KW during the peak load periods. Such a plan would provide for increasing amounts of base load power from FPL as Vero's requirements grow, thus, there would be no necessity for the City to install any new generating equipment.

This second plan covers a firm power supply which we would be obligated to have available. A firm power rate would be made effective to cover the firm supply and a copy of such a rate is attached. This is the rate I described at our meeting in Vero. Around the clock purchase of a fixed base load supply such as the 10,000 KW we discussed would result in a present cost to the City of about 10 mills per kilowatt hour.

Either of these plans should be covered by a ten-year contract.

I am sure you realize that if a plan of any kind is agreed upon, it will be necessary for someone to spend sizable sums to bring a high voltage line from our system to the City, to install a substation with adequate transformers and to purchase all the other facilities needed for physical interconnection and for protective and safety devices to operate the systems in parallel.

I do not know at this time how much money is involved but we have in mind that the City would furnish, own and operate all of the equipment, including the switching station and transformers, at least beyond the point of connection with our high voltage system.

Other plans discussed involve more direct participation by FPL for supply of electric service to Vero. There has been insufficient time to formulate the details of such plans but we are going ahead with the studies and hope to present you with such proposals at a later date.

In the meantime, having in mind the deadline you told us you had to meet, I wanted to get this letter to you as quickly as possible.

I know Mr. Hill will be glad to get answers to any questions you may have. Please feel free to call on him or Mr. Fullerton or me.

In addition to the plans we discussed, I want to reiterate that we stand ready to be of assistance at any time, as we have in the past, should an emergency occur.

In conclusion, I want to express my appreciation again for your invitation to meet with you at Vero Beach, and to tell you that we were delighted to get acquainted with you and the members of your Committee.

With best wishes.

Sincerely yours,

Robert H. Fite
President & General Manager

RHF:bjc

Attach.

APPENDIX VIB

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

GAINESVILLE UTILITIES DEPARTMENT and CITY OF GAINESVILLE, FLORIDA, Plaintiffs, vs. FLORIDA POWER CORPORATION and FLORIDA POWER AND LIGHT COMPANY, Defendants.	No. 68-305-Civ. J

DEPOSITION OF: ALAN B. WRIGHT

TAKEN: Pursuant to notice by counsel for the Plaintiffs

DATE: September 28, 1972

PLACE: Florida Power and Light Company
Miami, Florida

TIME: 9:15 o'clock a.m.

BEFORE: Judy S. Eichar
Notary Public
State of Florida at Large

Q Had you any instructions from the home office as to any company policy regarding sale of power to municipal distribution system at wholesale?

A Oh, from time to time we would have requests for emergency power and have to just -- this having been clear with the home office, why this would be furnished to them if we had it available. Also we had connections with some of the REA co-operatives which was wholesale.

Q With the connections with the co-operatives arrangements -- were any of them arrangements for firm power?

A Firm to certainly the extent we had it, yes, sir.

Q Well, were there any contractual arrangements for the providing of specific amounts of power up to a specified maximum?

A Oh, yes. Where we serve sub-stations, why we were familiar with the capacity of that particular sub-station that the co-op was installing.

Q Did you have any similiar arrangements with municipal utilities?

A Well, we had an inter-change arrangement with Jacksonville Electrical Authority, city of Jacksonville, and with the Orlando Utilities Commission. We, as I mentioned awhile ago, have sold temporary emergency power

on a wholesale basis to the city of New Smyrna Beach. I believe that is the only one with which I am familiar.

Q Then the only arrangement for supplying firm power at wholesale to a municipal utility was a temporary arrangement?

A This is true.

Q Were you aware of any policy or did you receive any statement of policy from the home office about providing or not porviding firm power at wholesale to municipal systems?

A Well, the only thing my understanding was it would be on an emergency basis. The municipals that I just mentioned, two of whom we had inter-change agreements, and the town of New Smyrna was only on an emergency basis.

Q What was the nature of the arrangement with the other municipals? Which one was it other than New Smyrna Beach?

A I said Orlando Utilities and Jacksonville we had an inter-change agreement with those. We have them.

Q But no arrangements for supplying firm power at wholesale?

A Well, now, I want to back up a little bit. We recently -- I say recently, about a year and a half

ago, made one with Starke but they have not utilized it. This too is on an emergency basis.

Q Well, again, did you have any instructions or were you aware of any policy of the company not to supply firm power at wholesale to municipal systems except on an emergency basis?

A Well, the only ones that I have had any part in negotiating had been on an emergency basis.

Q I understand that, but I want to know whether you knew of a company policy about that or whether it just happened by coincidence in your region?

A No. It was my understanding that this was the company policy.

Q Were you aware of any company policy concerning the necessity of arranging a territorial agreement or service agreement with a municipal or co-operative system that was inter-connected with the Power and Light Company either for emergency purposes or for sale of power at wholesale?

A No. I am not saying -- as far as any area I was concerned with we had no firm policy on territorial agreements. We certainly endeavor to keep from running into each other. We observe corporate limits and municipalities.

Q In your divisional region have there been

something about that.

BY MR. SCOTT:

Q I show you now a document dated August 5th, 1959, supplied to us by Power and Light counsel in this litigation. It is a letter from you to Mr. F. H. Lee, city auditor and clerk of the city of New Smyrna Beach.

Is this your reply to their request for firm power at wholesale?

A Yes, sir. I recall writing that and it was a reply to their request that we sell them firm wholesale power. I received the request from this Mr. -- what is his name? Lee?

MR. SMITH: Yes, sir.

MR. SCOTT: In the third paragraph, --

MR. SMITH: Excuse me. Can you wait a minute until I read this.

MR. SCOTT: Certainly.

MR. SMITH: Thank you.

BY MR. SCOTT:

Q In the third paragraph of your letter it says:

"We do not have an arrangement to sell wholesale on a long term basis and we would not change our policy at this time."

By whom was that policy promulgated, sir?

A I couldn't say. It was just a long standing understanding that I had from the general office. It came from the general office. Most of our rates specified "not for resale" which would mean they would not be a wholesale rate.

Q What is the purpose of such a specification in a rate schedule?

A Well, my opinion is that a utility is in a much better position to better satisfy its customers if it provides complete service and has full authority over from generation to the ultimate consumer. Both generation, transmission and distribution; where you split responsibilities, why, certainly you are just making it a little more difficult for the ultimate consumer to know who to go to in case he has got some problems.

Q And is this policy that you mentioned in the letter still the policy of Power and Light Company?

A It has been changed in recent months. Under the Federal Power Commission I think we have got a different set of guide rules, as I understand. I am not really too familiar with them.

Q Do you know what the present policy is?

A Yes, that we will sell wholesale.

Q Are there any municipal systems that you

know of to which Power and Light does sell at wholesale on a long term basis?

A It is my understanding that we have recently concluded an agreement with Vero Beach.

MR. MATHEWS: I am going to object to the form of the question and to the answer as to his understanding on the grounds that the documents speak for themselves and no predicate has been laid to show that he understands the exact terms of the documents.

MR. SMITH: Same objection.

MR. SCOTT: Could we have that letter marked exhibit number five to the deposition, please. This is the letter from Mr. Wright to Mr. Lee.

(Whereupon the above mentioned letter was marked as Plaintiff's Exhibit Number Five for identification by the reporter)

BY MR. SCOTT:

Q Were there discussions with New Smyrna Beach of lease or purchase of the city system by Power and Light Company in later years?

A Yes, yes.

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

EXHIBIT ____
(ET-44) p. 1 of 5

GAINESVILLE UTILITIES DEPARTMENT and CITY OF GAINESVILLE, FLORIDA,

Plaintiffs,

vs.

No. 68-305-Civ.

FLORIDA POWER CORPORATION and FLORIDA POWER AND LIGHT COMPANY,

Defendants.

DEPOSITION OF: RICHARD C. FULLERTON

TAKEN: Pursuant to notice by counsel for the Plaintiffs

DATE: September 26, 1972

PLACE: Florida Power and Light Compan

Miami, Florida

TIME: 9:05 o'clock a.m.

BEFORE: Judy S. Fisher
Notary Public
State of Florida at Large

kinds, and I don't know whether we had to schedule the item or not. We wouldn't be able to deliver them any.

Q And the territorial agreement is a part and parcel of this; is that correct?

A I think it is. I think those contracts are filed in as one piece, although I can't positively say. They are in the same file, I can tell you that.

Q I have an unsigned, undated draft where that is true but I have no signed agreement.

MR. SMOTE: What is that unsigned, undated draft of?

MR. LIBBY: The Vero Beach agreement to which we were just referring.

BY MR. LIBBY:

Q Mr. Fullerton, I apologize for handing you a bad Xerox copy here but that is a copy of the agreement with Glades Electric and the rate schedule.

A This purports to be an agreement. I can't read it. I signed it. Some modification and limitation of monthly rate apparently. It says in the next to the final paragraph, it says when this matter becomes effective it will cancel the modification of "limitations of service" and monthly section of the rate now contained in our letter of June 20th, 1972.

Q Yes.

A It is just some letter of understanding changing some agreements that we have with them. Substituting something here on EC.

Q Well, the last paragraph of that first page, sir, states that the company is not going to impose a condition on the preferred rate schedule which is that the Glades shall not sell for resale or distribution to any municipality or unincorporated township and in consideration of that, I believe, the city received the sum of $900 some odd dollars per month. Does that comport with your understanding?

A I know that we have a special situation there on that. The details of the special situation have been known to me from time to time but at this particular conjuncture I would not remember.

Q It is a pre-existing custom? What was the purpose of no wholesale for resale to let's call them towns restriction?

A What was the purpose of that rule?

Q Yes, sir.

A Policy.

MR. MEMERS: In contrast with REA's you are talking about?

MR. BRET: Yes. You sell power to REA's for resale but where that power may

be used for wholesale to a municipality -- you don't sell it, and I am trying to -- I don't really fully understand the difference, the reasoning behind that.

BY MR. LIBBY:

Q Would you explain that, please?

A Well, if you ever get it straightened out tell me about it.

Well, there is no need to lie about it. The truth is I don't know.

Q You don't know? Would you know where the policy originated?

A I presume when we first started doing business with EPA's.

Q Which was sometime in the earlier years of the 60's?

A And we were not ourselves wholesaling to municipalities, so why should we sell to somebody else and let him wholesale it. I mean that is as good as a reason as I can think of if you want me to think one up.

Q Now what was the reason you were not wholesaling to municipalities?

A Well, I will tell you nobody ever told me but I got sense enough to figure it out and so have you.

Q Well, would you just explain it for --

A Have you ever looked ahead if you owned the business? If you had the private enterprise company where you are going to go, and you are going to end up with a generation-transmission system that is all you are going to have because these boys are going to take it all away from you and in a tax-free operation you get along fine.

Q Your reference to having it taken away from you, would you elaborate on that, sir?

A They take your customers away from you.

Q If you are wholesaling to a municipality and the municipality is serving its residence, you are worried about the municipality extending its lines beyond its city limits and taking away your customers?

A That is a conceivable condition.

Q Is it as profitable to sell wholesale to a municipality as it is to sell retail to the individual resident of that municipality?

A I don't know. I never had any experience wholesaling to a municipality.

Q Has a study ever been done about the relative merits or demerits of wholesale for municipalities as opposed to REA's?

A I don't know.

...ttest:

...City Clerk

...City Clerk

...he above and foregoing minutes were read ... approved at the Regular Meet...g of the City Commission held October 13, A. D., 1958.

...Presiding Officer

MINUTES OF A SPECIAL MEETING OF THE CITY COMMISSION OF THE CITY OF NEW SMYRNA BEACH, HELD AT THE CITY HALL ON FRIDAY, OCTOBER 3, A.D., 1958, AT 1:00 P.M.

...he meeting was called to order by Mayor-Commissioner Robert L. Arnau with the follo...embers of the Commission answering present at roll-call:

Commissioner Thomas E. Tipton	Present
Commissioner Julius B. Harris	Present
Commissioner F. L. Edwards	Present
Commissioner Fred R. Brannon, Jr.	Present
Mayor-Commissioner Robert L. Arnau	Present

...l present at the meeting were City Manager W. T. Slattery, City Auditor and Clerk ...ughes, City Attorney J. U. Gillespie and Clerk Barbara Bond.

...ity Electric Inspector Main Weimer appeared before the Commission explaining the nu... of his job and requesting a little more favorable portion of the fees paid for electr... inspections. City Manager Slattery stated that Mr. Weimer has been doing an excellen... and that he felt a 75-25 split would be more favorable.

...fter a discussion of this matter, Commissioner Harris moved that a change of fees fo... electrical inspector be changed from 60%-40% split to a 25%-75% split effective Oct. ...seconded by Commissioner Edwards and unanimously carried.

...property owner of North Atlantic Ave. appeared before the Commission presenting a r... have some work done on North Atlantic Ave. He stated that it was almost impassabl... the sections and that no work had been done on it in some time. City Manager Slatte... explained that the grader has been broken and they had no way to repair this street, ...would be taken care of as soon as possible.

...public hearing was heard at this time on the appeal made by Mrs. Elsie Chamberlain ...ugerine, Fla. to the notice sent by the City Manager for her to clean her lot on So... Atlantic Ave. Mrs. Chamberlain appeared before the Commission stating that there was ...rash on her property, but that she had planted the wild vine and flowers and would l... ...ve more time to clean this. She stated that she expects to clean her property when ...he dies. Mrs. Chamberlain stated that she had seen worse looking property in the C... ...at has not been cleaned and that she felt it should be enforced all over the City ...f is to clean her lot. City Manager Slattery stated that the City crews do not ha... ...time to go out and clean all the property in the City, but that when the office has a ...mplaint, they send out a notice, and he stated that notices are sent out every day.

...fter more discussion of this matter, Commissioner Brannon moved that the decision of ...ity Manager, after hearing the evidence on the appeal, be upheld. This motion was s... Commissioner Edwards with a roll-call vote as follows:

Commissioner Thomas E. Tipton	Yes
Commissioner Julius B. Harris	Not Voting
Commissioner F. L. Edwards	Yes
Commissioner Fred R. Brannon, Jr.	Yes
Mayor-Commissioner Robert L. Arnau	Yes

...he payroll for the period September 16th through 30th, 1958 was presented to the Co... for approval in the following amounts:

Regular Employees	$7,027.93
Golf Course	547.40
Airport	281.39
Lifeguards	772.50
Volunteer Firemen	36.30
	$ 17,965.72

Commissioner Brannon moved that the Zoning Board be allowed to hire a secretary for their meetings, the cost not to exceed $5.00 per meeting. This motion was seconded by Commissioner Harris and unanimously carried.

Mr. Allan Wright, Vice President of Florida Power and Light Co., appeared before the Commission, introducing the President, Mr. Plate. Mr. Wright stated that they have been making studies of the situation here and that there are several problems involved that will effect both sides. He stated that very little can be worked out in resolving any type of problem without charter changes and that these changes should be made and that they were looking into this. He stated that if they were able to work things out, that would be satisfactory, it would eliminate the necessity of the City buying additional generating facilities. He stated that if the City eliminated any purchasing at this time, and if they decided they wanted to work things out, Florida Power & Light would make connections and build sub station west of town and give firm power for the winter season. He stated that this would give Florida Power time to make an inventory of the plant.

Mr. Wright stated that if agreeable with the Commission, additional engine equipment will not be purchased and that at the proper time, legislation could be introduced for the charter changes. He stated that they would certainly be willing to extend their services and make connections even though we may not need them, but that there was certainly every indication that we will need it.

Commissioner Tipton stated that it would be impossible to get anything installed to take care of the winter load now. Mayor Aman asked if Florida Power had any portables, and Mr. Wright stated that he had, but that he was not thinking in terms of this, but would make connection in Mission City Area or Samsula or pick up part of Edgewater.

Commissioner Harris asked if Florida Power wanted the City to lay aside all plans for expansion until they had the referendum to change the charter, and that if it did not go through or Florida Power made an offer unreasonable, and the City felt that they could not go through with it, what would they do.

Mr. Wright asked that the City initiate legislation and let the people know what would be the outcome, and that Florida Power would furnish power until this is determined. Commissioner Harris stated that if everything was favorable and was passed legislation, and the Florida Power made the City an unreasonable offer, then the City would be in trouble. Mr. Wright stated that he thinks the City will know before legislature meets if Florida Power is going to make a prohibitive offer.

Commissioner Brannon stated that he is opposed to any attempt to change the Charter. He stated that he felt that if they got into legislation or election, and then find out it would not be possible, they would not get good financing on the bond rates.

City Manager Slattery asked if Florida Power would be interested in selling the City power and at what figure. Mr. Wright stated that it would not be interested on a permanent basis. City Attorney Gillespie asked if they haven't furnished cities power before, and if they have changed their policy. Mr. Wright stated that they have furnished power to cities in trouble and that they would do this again in an emergency only.

Commissioner Edwards asked if they had checked far enough to give them a figure for the plant purchase. Mr. Wright stated that they did not know how much the bonded debt was, but it would cover that, plus reduction in rates, no connection charges, and running extensions without making charges, and that there would certainly be some money to go back to the general fund. Mr. Plate stated that they could not tell the City without taking a look. He stated that they could not expect the City to make an agreement like that unless they could get rid of their indebtedness, and that they would have to meet this. He stated that he can tell them that the residential rates will be reduced. He stated that they would certainly expect to see that the employees got jobs, and that he thinks they would have to pay as much or more into the general fund. He stated that Florida Power can't determine by next Spring if they can submit a plan that is good enough and that if they decide they do not feel that the purchase is good, Florida Power and Light would do the same thing next winter in so far as furnishing emergency power, until the City can purchase additional engines. Mr. Wright further said that if the majority say they do not want to change the charter, there isn't any-thing that could be done. He stated that Florida Power would come to with a proposal before they change the charter and arrive at some agreement sometime next spring.

City Attorney Gillespie stated that the City would have to advertise that the bill would be presented in legislature 30 days before the day presenting the bill.

Mr. Plate stated that they wanted to send someone up here to check accounts and rates and take a survey, and that they would try to make a good proposal.

Mr. Plate stated that the people in Lake Worth had voted 6 to 1 for them and that so many of the outstanding people in Lake Worth worked to win the election, but they could not get them, they only received 32%.

Commissioner Edwards stated that he would like to do what most of the people want and that he would like to see Fla. Power & Light submit a proposal. Commissioner Tipton stated that this affects everyone and that if they can save everyone money, they should go along with it.

Mr. Plate said that Fla. Power could not expect to come in unless they offered a proposal that would give the general fund what they are getting now, and they would not want to do it if they couldn't. He stated that there would be a 7 to 15% saving on the bill. City Manager Slattery stated that if they sold the plant, the City would probably have to raise water rates and everyone would be paying more for the water.

. unanimously carried.

Upon, the meeting was declared duly adjourned at 9:20 A.M. on Friday, July 24, A.D. at the City Hall.

ST:

The above and foregoing minutes were read and approved at the Regular Meeting of the City Commission held August 10, A.D., 1959

/ Clerk

President Officer

/ Clerk

TES OF A REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLO IN THE CITY HALL ON MONDAY, JULY 27, A.D., 1959, AT 8:00 P. M.

Mayer of guidance was offered by City Clerk Lee.

meeting was called to order by Mayor-Commissioner Robert L. Arnau with the followir ng of the Commission answering present on roll-call:

Commissioner Thomas E. Tipton	Present
Commissioner Julius B. Harris	Present
Commissioner F. L. Edwards	Present
Commissioner Fred R. Brannon, Jr.	Present
Mayor-Commissioner Robert L. Arnau	Present

o present at the meeting were City Manager W. W. Gunn, City Auditor and Clerk F. H. ef of Police T. N. Johnson and Clerk Barbara Bond.

Walter Braddock of the Volusia County Mosquito Control appeared before the Commiss erning the matter of rent for the building at the airport. He stated that they bu ir own building and were supposed to pay $1.00 per year for the use of the ground. ted that they had had a lease, but they have been unable to find it and there is a sibility of its being destroyed in the hangar in Daytona. Mr. Paul Hunt, new Direc the Southeast Volusia Mosquito Control, appeared before the Commission and request the City draw up another agreement with a token rent. Mr. Hunt stated he would l any records that may be available.

er further discussion of this matter, Commissioner Harris moved that a rent of $5.0 th be set for the Mosquito Control. This motion was seconded by Commissioner Brann n a roll-call vote as follows:

Commissioner Thomas E. Tipton	Nay
Commissioner Julius B. Harris	Yea
Commissioner F. L. Edwards	Nay
Commissioner Fred R. Brannon, Jr.	Nay
Mayor-Commissioner Robert L. Arnau	Yea

. Quentin L. Hampton, engineer with the Gannett, Fleming, Corddry and Carpenter, Inc esented a completed application by the City from the Housing & Home Finance Agency ds for the sewer project. Mr. Hampton explained the application and stated it was the City Manager and City Clerk to execute, and that the State Board of Health is a letter of endorsement of this project to the City. He stated that the project c ,000,000.00, and also stated that this sewer project should take care of the City u 75.

ter a discussion of this matter, Commissioner Brannon moved that the City Manager a ty Clerk be authorized to execute this application for financing as soon as the end the State Board of Health is received. This motion was seconded by Commissioner T unanimously carried.

. Jesse Simmons of the American Heritage Life Insurance Co. appeared before the Com ermine a payroll savings plan for the city employees. He explained how the progr ld work and stated that the City would have to deduct the money out of the employ ees.

After a discussion of this matter, Commissioner Edwards moved that the City Manag City Clerk check to see how many employees want this payroll savings plan and wha bookkeeping costs would be. This motion was seconded by Commissioner Brannon and unanimously carried.

City Manager Gunn read recommendations from Smith & Gillespie Engineers for the a of bids on the Bethune-Volusia Beach Water Main as follows:

Part A -	Cement-Asbestos Pipe: Johns-Manville Sales Corp.	$ 67,871
Part B -	Mechanical Joint Fittings: Southern Pipe & Supply Co.	3,304
Part C -	Mechanical Joint Valves & Hydrants: Finley's Municipal Supply Co., Inc.	2,614
Total-	Low Combination - Base Bid for Cement-Asbestos and Cast Iron Pipe with Mech. Joint Valves and Fittings	$ 73,790

Commissioner Brannon moved that these bids be accepted on the recommendations of engineers. This motion was seconded by Commissioner Edwards and unanimously carr

Commissioner Brannon moved that minutes of a Regular Meeting of July 13th, minute Special Meeting of July 16th, and minutes of a Special Meeting of July 20th, be a This motion was seconded by Commissioner Edwards and unanimously carried.

Acting City Attorney Brannon read Ordinance No. 592 entitled 'AN ORDINANCE AMENDI RATES FOR WATER SERVICE WITHIN THE CORPORATE LIMITS OF THE CITY OF NEW SMYRNA BEA AND AMENDING SECTION 13-9 OF THE CODE OF ORDINANCES OF THE CITY OF NEW SMYRNA BEA AND PROVIDING WHEN THIS ORDINANCE SHALL BECOME EFFECTIVE AND REPEALING ALL ORDINA PARTS OF ORDINANCES IN CONFLICT HEREWITH'.

Commissioner Brannon moved that Ordinance No. 592 be adopted. This motion was se Commissioner Edwards and unanimously carried.

Commissioner Brannon moved that the second reading of Ordinance No. 592 be waived motion was seconded by Commissioner Edwards and unanimously carried.

Commissioner Brannon moved that Ordinance No. 592 be passed on final passage. Th was seconded by Commissioner Edwards and unanimously carried.

City Manager Gunn read a letter signed by twenty-one business concerns requesting mission to consider carefully the matter of permitting merchants to make reasonab of merchandise along the front wall of their business locations as they have had stantial loss of sales when this display is not permitted. There was a discussio lay this matter over to the Merchants Division of the Chamber of Commerce, but no was taken along these lines and the City Manager was instructed to file the lette

Commissioner Tipton presented the Commissioners with a letter he had drafted to F lorida Power & Light Co. and stated that their proposal had never been officially turned down. He stated that City Manager Gunn could copy the letter and send it to Mr. Wright of Florida Power & Light Co. if they had no objections.

Commissioner Brannon moved that they tell Florida Power & Light that their proposal to the City is rejected, but if they are interested in wholesaling us power on a long te m basis, we would like to know it, and the City Clerk to so inform them. This motion was seconded by Commissioner Tipton and unanimously carried.

Commissioner Harris asked that they set a date for the referendum election. After a discussion of this matter, Commissioner Brannon moved that the referendum election b e set for the first Tuesday after the first Monday in December. This motion was seconded b y Commissioner Harris and unanimously carried.

As there was no further business to come before the Commission at this time, Comm issioner Brannon moved that the meeting be adjourned. This motion was seconded by Commissi oner Harris and unanimously carried.

Whereupon, the meeting was declared duly adjourned at 9:30 P.M. on Monday, July 2 1963, at the City Hall.

ATTEST:

The above and foregoing minutes w and approved at the Regular Meeti City Commission held August 12, 1

Mr. Robert Matthews appeared before the Commission concerning the bill he owes th
the amount of $1,546.53, including material costs, labor costs, equipment rental
supervision costs for work done in Ellison Royal Subdivision. Mr. Matthews state
did not think he owed what he is billed for. He stated that the audit shows that
City made $1,500.00 profit on this subdivision and that he did not think the City
make money on work done for sub-dividers.

Mr. Matthews requested on benalf of the people living on Eleanor St. for the City
the railroad crossing at Eleanor St.

After further discussion of Mr. Matthews' bill, Commissioner Brannon moved that t
ment of the bill, in the amount of $1,546.53 be accepted without any committments
part of the City. This motion was seconded by Commissioner Harris and unanimoual

There was a discussion regarding the $1,500.00 bill owed by Wright & Hester for t
done in Smyrna Dunes Subdivision and it was pointed out that Wright & Hester were
to attend this meeting to discuss this matter.

Commissioner Brannon moved that the City Clerk notify Wright & Hester that since
failed to meet with the Commission this morning in reference to the $1,500.00 bil
they would have to work out something to the City's satisfaction by the 10th of A
or legal action will be taken. This motion was seconded by Commissioner Tipton a
unanimously carried.

There was no further business to come before the Commission at this time, Comm
Brannon moved that the meeting be adjourned. This motion was seconded by Commiss
Harris and unanimously carried.

Whereupon, the meeting was declared duly adjourned at 10:15 A.M. on Friday, July
1959, at the City Hall.

Attest:

City Clerk

The above and foregoing minutes we
and approved at the Regular Meetin
City Commission held August 10, A.

Presiding Officer

City Clerk

MINUTES OF A REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF NEW SMYRNA BEAC
HELD IN THE CITY HALL ON MONDAY, AUGUST 10, AD, 1959, AT 8:00 P.M.

A prayer of guidance was offered by City Auditor and Clerk F. H. Lee.

The meeting was called to order by Mayor-Commissioner Robert L. Arnau with the fol
members of the Commission answering present on roll-call:

Commissioner Thomas E. Tipton	Present
Commissioner Julius B. Harris	Present
Commissioner F. L. Edwards	Absent
Commissioner Fred R. Brannon, Jr.	Present
Mayor-Commissioner Robert L. Arnau	Present

Also present at the meeting were City Manager W. W. Gunn, City Auditor and Clerk F
[illegible] and Clerk Barbara Bodd.

City Manager Gunn read a letter from Mr. Alan B. Wright, Vice President of Florid
Plant Co. in which they stated they regretted the City rejected their proposal to
electric plant and distribution system. They stated that they would be interested
negotiating for certain of the outlying areas of distribution of these facilities
be and provided some satisfactory procedure could be determined. They also sta
they do not have any arrangement to sell wholesale to municipalities on a long te
and they would not change their policy at this time. They stated that they will
abide by their agreement to furnish the City of New Smyrna Beach emergency power
needed during the coming winter.

City Manager Gunn read a letter from the Merchants Division of the Chamber of Com
which they requested that the merchants to be permitted to display suitable items a
of their business locations, so long as at least 75% of the width of th
left clear for pedestrian traffic and that no display is to be permitted which
a hazard to public safety or health, or is otherwise offensive. Also presented was
a complaint concerning any display is received by City officials, this should
be referred to the Chamber of Commerce and they will get in touch with the merchant
to they fail to accomplish this matter, it will then be referred to the Police De

FLORIDA POWER & LIGHT COMPANY

Daytona Beach
November 25, 1970

Mr J T Bensley, Director of Utilities
Utilities Commission
City of New Smyrna Beach
P O Box 519
New Smyrna Beach, Florida 32069

Dear Mr Bensley:

In response to your request and supplementing our letter of November 2, 1970 to your consultants, Smith and Gillespie Engineers, Inc., we submit the following:

We are agreeable to continue to sell power to the City to the extent of the capability which presently exists in the Edgewater Substation, which power will be made available to the maximum extent consistent with the satisfactory operation of our Company's system. This should not be interpreted in any manner as firm power but rather, as stated, on the basis of availability.

At the present time, in accordance with the capability of the Edgewater Substation, we could furnish approximately 10,000 kva over a tie line proposed for construction between our Edgewater Substation and the Smith Street Power Plant of the City of New Smyrna Beach. This would require a new feeder position and other additions in our Edgewater Substation and also the installation of a 10,000 kva, 13.2/23 kv autotransformer.

Our Company would be agreeable to construct that portion of the 23 kv tie line from the Edgewater Substation to the north city limits of Edgewater, furnish the necessary terminal facilities and additions in the Edgewater Substation and provide and install the 10,000 kva autotransformer - all on an annual rental basis which rent could be paid monthly. It is estimated that the annual rent would amount to approximately $20,000; however, this would be determined by the actual cost of the installation estimated to be $112,200. The rental charge would be 18% of this figure, or approximately $20,000 annually.

FLORIDA POWER & LIGHT COMPANY

The proposed route of the line which we have discussed certainly seems a logical one and we concur that the connection should be made at the city limits of the City of New Smyrna Beach and City of Edgewater.

Applicable Rate Schedule for this service would be Rate WE which is the same Schedule under which you now receive service. The annual rental charge for installation cost, however, is in addition to the rate charges and would be effective regardless of whether or not service is being used.

Upon your advice that the foregoing is satisfactory, we will immediately start the necessary engineering and assembling materials in order to complete this installation with the least possible delay.

Yours very truly,

Alan B Wright

Alan B Wright
Vice President

ABW-ic

Exhibit ___ (GT-15)
page 1 of 1

PL-1365

Daytona Beach
February 1 1955

Mr. J. T. Moore Division Manager LC Mr X X Fite

A X Wright

CITY OF STARKE - Request for Purchase of Power

This refers to your letter of January 28 and our subsequent telephone conversation yesterday concerning the City of Starke's desire to purchase wholesale power. Your meeting with Mr. Olson and other city councilmen and Mr. Johns, the City Clerk, certainly brought out some very interesting information and very clearly proves what happens in many cases to municipally operated plants where no reserve is built up. Just like the "one-horse shay", the whole thing is liable to collapse if not properly maintained.

Mr. Olson is correct in his understanding that we do not sell wholesale power to any community or municipality and certainly have no intention of changing our policy on this matter. As we previously discussed, our arrangement with the REA Cooperatives is very clearly spelled out under the "Application" clause of the Rate Schedule applicable to the co-ops.

The news item from Bradford County Telegraph of January 21 is also informative in that the City Council is apparently faced with an expenditure of some $600,000 to $700,000, and I can appreciate that this is liable to be quite a problem for them. The auditor's report ending September 30, 1954 indicates a transfer to the general city fund from the light and water fund of $27,500. This relatively small amount of return, based on present value of the plant, together with what is estimated should be spent, might evoke some interest on the part of the city on some type of lease or franchise with our Company.

Before discussing this any further with Mr. Olson we would like to give this some further study and I will advise you further within the next few days.

A Fite

LH mw

FLORIDA POWER & LIGHT COMPANY
INTER-COMPANY CORRESPONDENCE

LOCATION Daytona Beach
DATE February 1 1955

FL-644

COPIES TO

TO Mr. R. H. Fite President & Gen. Manager

FROM A B Wright

SUBJECT CITY OF STARKE - Wholesale Power

I am attaching copy of letter from Mr. J. T. Moore with attachments relative to a meeting which he and Mr. Dupre recently held with several city officials of the City of Starke. Also attached is my reply to Mr. Moore.

This request for a statement of our policy concerning the sale of wholesale power is similar to the one which we have received on several occasions at our meetings in Lake City. I feel our answer should be polite but definite that we do not sell, nor do we contemplate selling, wholesale to communities or municipalities.

Other than the possibility of encountering some problems in connection with our small commercial rates, I feel this would be a good time at least to feel out the attitude of the Starke officials as to a possible lease arrangement, and for that reason I have suggested to Mr Moore that he hold up any further conferences with Mr. Olson until he hears further from me. I will appreciate your suggestions.

A B Wright

ABW mhw
Attachments

Courtesy wins Friends

I-336

WS

Exhibit ____ (GT-26) 272046
page 1 of 1

FLORIDA POWER & LIGHT COMPANY

Daytona Beach
May 19, 1970

Mr James E McRae, Chairman
City Council
City of Starke
Starke, Florida

Dear Mr McRae:

In response to your request for emergency power we are willing to work out an arrangement whereby a connection would be made to the City's distribution facilities in the close proximity of our existing Starke Substation. This connection would provide approximately 1500 kw and would necessitate a 1500 kva 13.2/4 kv step-down transformer which we have available. The City would be required to pay the up-and-down costs of this temporary step-down station, with full credit for salvage. It is also anticipated that no land or right-of-way costs would be involved. The estimated cost of this station under conditions as aforementioned, would be approximately $6000.

It should be clearly understood that we are not in a position to supply firm power but that this connection will be strictly for emergency purposes and will be furnished by our Company if the power is available. Due to the relatively small amount of power which you will require normally, we would anticipate no real problem in supplying this.

Attached is copy of our Rate Schedule WH which would be applicable for this installation.

We will appreciate your response as early as possible since we all realize that time is of the essence in this matter.

Yours very truly,

Alan B. Wright

Alan B Wright
Vice President

ABW-fs

attachment:

FLORIDA POWER & LIGHT COMPANY

EXHIBIT ___ (GT-21) Page 1 of 2 120984 PV

West Palm Beach, Florida
November 28, 1967

City Commission of Vero Beach
Vero Beach, Florida

Attention: Mr. James Pryde, City Manager

Gentlemen:

It was a pleasure to meet with the officials of Vero Beach to discuss electrical problems. After the discussion, it was concluded that I would answer three important questions as soon as possible.

The first was about a territorial agreement. I am sure that this readily can be done and you requested Mr. Frank Phillips and Mr. F. C. Wallace to work with me. Approval by the Public Service Commission is necessary and we feel, and know that you will agree, that this territorial agreement must be concluded before either the City or our company can properly measure the problem and determine which further action would be in its best interest, which is, of course, its customers' best interest.

The second question was about an emergency tie with your system to furnish whatever power you may need in case of an emergency. Pending the development of a territorial agreement and further decisions to which we refer below, we will be in a position to make an emergency tie with your system. This will take the pressures of immediacy off both the City and our company and provide time for further study and discussion.

The third question involves wholesale power to the City and we are reluctant to go further into this at this time as we believe there are other alternatives which should first be fully studied. These will include:

(a) Similar arrangements for interchange of power between us such as we now have with the City of Jacksonville and Orlando Utilities Commission.

(b) The outright purchase of your present system by our company.

(c) A 30-year lease of your present system by our company for our operation.

EX ___ (GT-21) page 2 of 2

120985

We feel these alternatives should be given full and free discussion and deliberation by both groups before going into the matter of negotiating a wholesale power contract so that we all can be sure that the eventual determination is based on full understanding of all the facts..

Very truly yours,

R. D. Hill
Vice President

RDHimj

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Florida Power & Light Company) Docket Nos. ER 78-19,
ER 78-81 (Phase I)

INITIAL BRIEF OF FLORIDA CITIES

Daniel Guttman

Attorney for the Cities
of Homestead and Starke,
the Utility Authority of
the City of Ft. Pierce, and
the Utilities Commission of
the City of New Smyrna Beach,
Florida

April 7, 1978

Law Offices of:
Spiegel & McDiarmid
2600 Virginia Avenue, N.W.
Washington, D.C. 20037
202/333-4500

PART TWO

FP&L'S PROPOSAL TO ABANDON FIRM WHOLESALE SERVICE TO HOMESTEAD AND FT. PIERCE IS CONTRARY TO ITS EXPRESS CONTRACT AND TARIFF OBLIGATION TO THESE WHOLESALE CUSTOMERS.

As stated by FP&L Witness Abraham Gardner, 1/ the "quite narrow" issue in this case "is whether under present circumstances the wholesale tariff of Florida Power & Light should be confined to those customers presently being served by FP&L at wholesale . . ." As Mr. Gardner testified, "The utilities who are effected by this change in our tariff are utilities that we have never before served . . ."(Tr. 568) The fact is that Ft. Pierce is presently being served by FP&L at wholesale, and Homestead has been a wholesale customer since the wholesale tariff's inception.

Mr. Gardner acknowledged that Ft. Pierce is "an existing [wholesale] customer." (Tr. 1832) Mr. Gardner also testified that:

> "New Smyrna Beach's [use of FP&L] power and Homestead's use of [FP&L] power was more or less continuous during the 60's."

(Tr. 285)

> "Homestead has been served off and on by Florida Power & Light Company since, I would say the mid-50's . . ."

(Tr. 1813)

> "Homestead has been more or less continuously receiving service under rate SR-1 . . . (until the completion of the interconnection last fall)."

(Tr. 1813)

By the Company's own criteria, its proposal to preclude "new" customers cannot be applied to Homestead and Ft. Pierce.

The record shows that Ft. Pierce has continually sought wholesale service under the currently effective tariff. FP&L continually refused to provide such service.

1/ Tr. 1127 (emphasis added).

effective wholesale tariff on file with this Commission (SR-1). That tariff 1/ makes service generally available within FP&L's service territory, and FP&L has acknowledged that the tariff terms provide for service to Ft. Pierce.2/ Nonetheless, FP&L continually refused to provide service to Ft. Pierce, most recently during the course of examination in this very proceeding.3/ On March 24, 1978, however, FP&L offered to provide service to Ft. Pierce, and service began on March 27, 1978. As discussed below, the terms of FP&L's tariff — both current and proposed — contain a "term" provision which provides both a minimum (five-year) contract term and a two-year notice provision for termination of service. FP&L, however, states that it will terminate wholesale service to Ft. Pierce on June 1, 1978 -- i.e., two months after service was initiated. Such termination would be in clear violation of the Company's own tariff. FP&L, in sum, after unlawfully refusing to sell wholesale power to Ft. Pierce, would now terminate such service in violation of its own tariff.

I. FP&L'S PROPOSAL TO ABANDON FIRM WHOLESALE SERVICE TO HOMESTEAD IS CONTRARY TO FP&L'S OWN COMMITMENT AND WITHOUT REGARD FOR HOMESTEAD'S CONTINUED AND EXPRESS DESIRE TO THE CONTRARY.

FP&L's attempt to abandon firm wholesale service to Homestead here bears a striking resemblance to the tactics employed against Homestead in 1973, when FP&L last sought to deny wholesale service under the filed rate to Homestead. Then, as now, the Company sought to deny service under the claim that it lacked adequate capacity.

Company documents show that when FP&L and Homestead finally entered into an interconnection agreement, FP&L recognized that it would be obligated to continue to offer service at or below the filed wholesale rate upon the completion of the interconnection. Despite Homestead's continued expression of desire for such service, FP&L, unilaterally, and without advance notice to Homestead, has filed to abandon its commitment.

A. The 1973 Interconnection Negotiations Affirmed FP&L's Commitment to Provide Wholesale Service

In 1973, the Company and Homestead were engaged in negotiations for an interconnection agreement. The course of these negotiations is detailed in documents obtained from

---

1/ Without any limitations relevant here.

2/ See discussion infra.

3/ Tr. 611 ...

On March 27, 1978, however, FP&L initiated service under the wholesale tariff--although it has stated its intention to terminate service on June 1, 1978. In short, service to Homestead and Ft. Pierce does not represent service to "new customers." Moreover, FP&L's tariffs and policies contain no definition of "new customers" which might, in theory, apply to Homestead and Ft. Pierce. 1/ FP&L's contention that Homestead and Ft. Pierce are "new customers" for the limited purpose of its tariff filing, is preposterous and must be rejected.

Moreover, insofar as FP&L would terminate service (on June 1, 1978) to Ft. Pierce and Homestead, its actions would be in breach of express contractual and tariff obligations to these customers.

FP&L's effort to abandon firm wholesale service to Homestead is linked to the recent completion 2/ of an interconnection between Homestead and FP&L. Homestead was required by FP&L to bear the full cost of constructing the interconnection. Documents, from FP&L's own files, conclusively demonstrate that Homestead's entrance into the interconnection was conditioned on FP&L's recognition that the "key" to the agreement was the assurance that Homestead would -- following the interconnection's completion -- continue to be eligible for firm power priced at or below the wholesale rate on file with this Commission. FP&L, in the rebuttal testimony of Mr. Robert Gardner, concedes FP&L's express commitment to continue to make firm power available at or below the wholesale rate. FP&L, nonetheless, simply refuses to honor this commitment.

Since at least mid-1976, Ft. Pierce has sought to purchase firm wholesale power from FP&L. 3/ Ft. Pierce's efforts have included express requests for service under the currently

---

1/ As FP&L witnesses testified, the Company has no definition of "new customers." (See, e.g., Tr. 1172-73; 1358) Thus, FP&L's attempt to deem Homestead and Ft. Pierce "new customers" is not merely contrary to fact and logic, but is an arbitrary assertion that was apparently concocted solely to shore up the argument here.

2/ In October, 1977.

3/ See, generally, Exhibit 29 (RRR-AP), (RRR-AQ), (RRR-AR), (RRR-AX).

FP&L. 1/ These documents show (1) FP&L sought, then as now, to resist Homestead's request for firm wholesale power on the claim of lack of capacity (2) FP&L made Homestead bear the full costs of the interconnection; and (3) FP&L understood that the "key" to the interconnection agreement was "FP&L's willingness to commit to serve the City on Rate SR after the interchange is completed and in service."2/

In the context of the 1973 interconnection negotiations, Homestead requested firm power from FP&L.

As shown in Exhibit 29 (REB-AB), an August 20, 1973 FP&L memorandum, the Company's counsel suggested that Homestead be told that "you can't sell what you ain't got." Upon checking, however, counsel determined that Homestead was receiving SR power and therefore FP&L was legally obligated to serve Homestead under the (then current) SR tariff.

As the documents show,3/ the admonitions of counsel did not end FP&L's resistance to Homestead's efforts to obtain firm power. FP&L's ultimate decision to provide it was based on highly anticompetitive motivations. As Mr. Barber testified, "FP&L feared that continued denial of firm power would compel Homestead to seek wheeling." (Tr. 668-669)

"FP&L sought to preclude this alternative by combination of a sale of firm power with an attempt to encourage Homestead to build more generation." The basis for this strategy, as Mr. Barber explains 4/, was FP&L's understanding that small systems suffer from inability to obtain the economies of scale that FP&L can obtain.5/ "FP&L, by encouraging small systems to increase their generation — and refusing access to its own large nuclear projects — has sought to place small systems at further competitive disadvantage." (Tr. 669)

1/ Exhibit 29 (REB-AB) through (REB-AX).

2/ Exhibit 29 (REB-AE).

3/ Exhibit 29 (REB-AC). Moreover, as the exhibit shows, FP&L's counsel advised against the very type of argument that FP&L now invokes again — i.e., an attempt to claim that a customer receiving wholesale power under the wholesale tariff is not really a wholesale customer. Thus, counsel advised "that we have no argument in our contention that Homestead has been receiving emergency service but they have been historically receiving firm base power at committed (sic) intervals."

4/ Tr. 668-669.

5/ Mr. Gerber termed small self-generating utilities to be "an anachronism". (Tr. 1145)

As a condition to the agreement on the interconnection, FP&L required Homestead to bear the full costs of the interconnection. 1/ It did so on the contention that FP&L itself would receive little or no benefits from the interconnection. FP&L received thousands of dollars of benefits in the first months of the interconnected operation alone. (Exhibit 49)

FP&L here states that, upon the completion of the interconnection, firm service under the filed tariff will no longer be available to Homestead. As the Company's own documents show, however, this position is absolutely contrary to FP&L's own understanding of its commitment to Homestead. Thus, as recorded in a December, 1973 FP&L memorandum, written immediately prior to the presentation of the agreement to Homestead's City Council 2/:

> "In summary, the City's position is that they will build the switching station to FP&L specifications at their cost and maintain ownership. The City expects to be served on Rate SR over three existing ties until such time as the station is completed. At that time, they expect to continue to be served under Rate SR through the interchange facilities, as well as being able to take advantage of all available schedules under the interchange agreement. In other words, the City will be served under two contracts: SR and the Interchange Agreement."
>
> * * * *
>
> "The key to the signing of this agreement is FP&L's willingness to commit to serve the City on Rate SR after the interchange is completed and in service."
>
> "There is a question of whether or not to put such a commitment to the City in writing. (We choose this because we already have a

---

1/ Exhibit 29 (REB-AJ) and Tr. 670.

2/ Exhibit 29 (REB-AE).

contract to serve them on SR and the agreement does not necessarily prohibit such an arrangement to continue.)"

B. FP&L's Unilateral Decision to Abandon Wholesale Service to Homestead Flies in the Face of Homestead's Continued Expression of Desire for the Service.

In August, 1977 FP&L decided to exclude Homestead from the list of those eligible for service under the new tariff. (Tr. 1424) The record provides no indication that FP&L communicated this decision to Homestead until after the actual (October 14, 1977) filing of the new tariff. 1/ Upon receipt of the filing, Homestead protested the proposed abandonment of service. 2/

As shown by Exhibit 29 (HHS-AL), in the interim since the filing, Homestead has reiterated its desire for service under the filed wholesale rate. To be clear, Homestead would consider an alternative firm service if such service were available at a rate lower than the filed wholesale rate. Such alternative does not, as discussed infra, currently exist. As summarized in the February 23, 1978 affidavit 3/ of Mr. James Berry, Homestead's consulting engineer:

> "The City of Homestead desires to purchase SR power over the high voltage tie. The City of Homestead has always been willing to consider economic alternatives to SR power purchases, as Florida Power & Light Company has suggested from time to time. However, absent such alternatives being made available, it cannot agree to waive its entitlements to SR power and does not do so. Nor does it agree to a permanent termination of its rights to purchase SR power."

1/ According to Mr. Williams, the decision to exclude Homestead was made at the advice of FP&L's Ken Daniel. (Tr. 1426) FP&L did not offer Mr. Daniel as a witness, and there is no record evidence — documentary or otherwise — that suggests that Mr. Daniel informed Homestead (prior to the October filing) that FP&L intended to preclude it from wholesale service.

2/ See, Cities "Petition to Intervene, Protest, Motion to Reject, Or, in the Alternative, Request for Five Months Suspension, Expedited Hearing and Investigation, and Documents Request and Consolidation." November 7, 1977. Homestead similarly, by pleading of December 13, 1977 protested FP&L's notice of cancellation of service to Homestead in Docket No. ER78-41.

3/ Exhibit 29, HHS-AL, Item 3. As stated in the cover letter transmitting Cities' testimony, Mr. Berry was available for examination by FP&L. FP&L did not request his appearance. Nor did FP&L seek to challenge the affidavit through examina-

In sum, FP&L's abandonment of wholesale service to Homestead was a unilateral act taken in direct contradiction to Homestead's express desire and FP&L's commitment to Homestead.

C. FP&L's Testimony in this Case Concedes a Commitment to Homestead that it Chooses Not to Honor.

FP&L, through Mr. Gardner's rebuttal testimony, concedes that upon the October, 1977 completion of the interconnection FP&L was obligated to provide Homestead with firm power, and the "charges for such energy shall not exceed that of the Company's approved wholesale rate schedule in effect at that time." 1/

FP&L simply refuses to honor its own admitted commitment to Homestead. Instead, it refers to a February 10, 1978 offer of service under Schedule D of its interchange agreement with Homestead. 2/ This offer, as discussed in more detail in Part Three, infra, is nothing more than a sham afterthought.

Transmitted to Homestead months after the completion of the interconnection, it provides service that is neither as firm nor as long-term as service under the tariff, and is priced at the highest cost fuel (oil) used by FP&L. By contrast, service under the wholesale tariff is firm, long-term, and based on average system costs. It is preposterous to suggest, as Mr. Gardner's rebuttal testimony does, that "charges for energy" under Schedule D are at or below those under the wholesale rate. 3/

The unacceptability of Schedule D as a substitute wholesale service was testified to by Mr. Bathen, and further attested to by Mr. Berry, Homestead's consulting engineer. As Mr. Berry stated, the February 10, 1978 Schedule D offer is "neither firm nor equitable and also not comparable to, let alone more favorable than an equitable partial requirements rate, and was not even as satisfactory as the filed partial requirements rate."

1/ Tr. 209.

2/ Exhibit 16.

3/ Tr. 209.

Mr. Gardner is not an expert in power supply. (Tr. 1643) Neither he nor any other FP&L witness even purported to have studied the benefits to Homestead of wholesale power, including the comparative benefits of wholesale power and Schedule D. 1/ Nor did FP&L challenge Mr. Berry's statement, 2/ as quoted above, or question Mr. Barben on his analysis of Schedule D. Nonetheless, FP&L refuses to provide Homestead with firm wholesale power at a price at or below the filed rate.

Thus, the following exchange with Mr. Williams:

> Q: So if Homestead did a study and found out FR is the most economical alternative, it would not be able to gain access to that alternative under the present filed tariff, is that correct? [The transcript shows that the reference was to the restrictive tariff proposed here]
>
> A: That is the way the tariff reads. (Tr. 1715)
>
> * * * *
>
> Q: If they found it were a lower price they wouldn't be able to get it, would they?
>
> A: Not FR, as the filed tariff. (Tr. 1715-1716)

In sum, FP&L's proposal to preclude Homestead from service under the tariff is in violation of FP&L's commitment to Homestead — even when that commitment is defined in the terms of FP&L's choosing.

II. FP&L'S PROPOSAL TO ABANDON TARIFF SERVICE TO FT. PIERCE IS AN EFFORT TO GAIN APPROVAL OF ITS UNLAWFUL REFUSAL TO DEAL WITH FT. PIERCE.

Since at least mid-1976, Ft. Pierce has sought firm wholesale power from FP&L. Ft. Pierce's requests for such service have included express requests for power under the wholesale (SR-1) tariff. That tariff provides — without any qualification relevant here — that service is available to utilities in FP&L's service territory. 3/ FP&L has expressly

---

1/ Tr. 508-509; 1706; 1714. As Mr. Gardner put, in preparing his testimony, no study of power supply alternatives was done "particularly with regard to Homestead." (Tr. 1643)

2/ Exhibit 29 (RWB-A1), Item 3, paragraph number 10.

3/ The tariff states: "Available: In all territory served by the Company. Application: To electric service supplied to a municipal electric utility or to a cooperative non-profit membership corporation organized under the provisions of the

acknowledged -- most recently in this proceeding -- that Ft. Pierce is eligible for service under the terms of its SR-1 tariff. Nonetheless, FP&L continually refused to provide such service -- most recently through the testimony of Mr. Gardner in this proceeding.

On March 24, 1978, however, FP&L made service under the SR-1 tariff available to Ft. Pierce. Ft. Pierce is currently receiving power under the tariff. It is FP&L's express intent, however, to terminate service on June 1, 1978 (the effective date of the tariff revisions proposed here). This action, as discussed below, would violate the term and notice provision in FP&L's SR-1 and proposed FR tariff. In short, FP&L unlawfully refused to deal with Ft. Pierce. It now has begun to serve Ft. Pierce, but would abandon service in violation of the tariff.

A. FP&L Refused to Serve Ft. Pierce In Violation of its Tariff Obligation.

The history of FP&L's opposition to Ft. Pierce's requests (since 1976) for firm wholesale power is discussed in detail by Mr. Bathen. (Tr. 675-685, 714-716). FP&L did not choose to examine Mr. Bathen on that portion of his testimony.

As detailed by Mr. Bathen's testimony and (further revealed in accompanying exhibits) FP&L continually sought to resist and/or defer requests by Ft. Pierce for firm wholesale power. In April, 1976, Ft. Pierce's Utilities Director wrote to FP&L, asking whether FP&L would sell firm power. 1/ As an FP&L memorandum shows 2/, the Company did not offer firm power in response, but sought to change the subject to economy exchange -- which, as discussed in Part Three, Section IC, infra, is available only sporadically and cannot be deemed a substitute for firm tariff service. Again, by letter of December 28, 1976, Ft. Pierce wrote to FP&L expressing an interest in "immediately purchasing" power on a year round basis: 3/

FP&L's response to the December request reveals its clear understanding that Ft. Pierce was (and is) eligible for service under the current (SR-1) tariff. By letter of January 11, 1977, FP&L's W.E. Coe informed Ft. Pierce that its request was "outside the provisions of our present interchange contract" 4/ and was being referred to FP&L Senior Vice President, Ralph Mulholland. On February 2, 1977,

---

1/ Exhibit 29 (RBB-AP).

2/ Exhibit 29 (RBB-AQ).

3/ Exhibit 29 (RBB-AR).

4/ Exhibit 29 (RBB-AS).

Mr. Coe outlined to Mr. Mulholland a proposed reply to Ft. Pierce.1/ The Coe memorandum recognized that FP&L was obligated to serve Ft. Pierce under the SR-1 tariff — but suggested that other alternatives be stressed. The memorandum states in full (emphasis added):

> "As I mentioned to you, there seems to be other alternatives that should be stressed to Fort Pierce other than SR-1 power. Ken Buchanan has already forwarded his comments regarding economy purchases, and I believe this should be pointed out to them. I do not know of any other type of service we are obligated to offer them other than interchange and wholesale."

Mr. Mulholland's February 4, 1977 letter response 2/ to Ft. Pierce tracked Mr. Coe's advice. While Mr. Coe, in his January 11 letter, stated that Ft. Pierce's power requests were "outside the provisions" of the interchange agreement, Mr. Mulholland nonetheless responded by stressing the benefits of economy and emergency interchange. Mr. Mulholland made no reference to a possible sale of firm power under the interchange. The letter did state, however, that:

> "We might also point out we have on file with the Federal Power Commission a firm sale-for-resale rate schedule applicable to municipal electric systems (Schedule SR-1)."

But FP&L (Mr. Mulholland) concluded that:

> "We believe that we can accomplish your objectives by working within the existing framework of our interchange agreement. We would be happy to meet with you any time to discuss matters relating to our rendering service to you."

1/ Exhibit 29 (FPL-AM).

2/ Exhibit 28 (FPL-AM).

In sum, in early 1977, FP&L (a) told Ft. Pierce that its request for firm power could be provided for by the existing interchange agreement, (b) at the same time stated that the request was "beyond the provisions" of the interchange agreement, (c) recognized that FP&L was obligated to sell firm power under its filed wholesale tariff (SR-1) 1/ and (d) sought to deter Ft. Pierce's pursuit of firm power by suggesting that Ft. Pierce consider purchases under the (sporadically priced and sporadically available) economy energy schedule of the interchange.

Despite FP&L's efforts to deter such requests, Ft. Pierce continued to request firm wholesale power from FP&L. On April 29, 1977, Ft. Pierce wrote to Mr. Mulholland and stated that if the SR-1 rate "is intended to be the only means whereby you would offer to sell such capacity and energy, we are interested in pursuing this alternative. 2/

In August, 1977, Ft. Pierce presented to FP&L an

1/ In addition to FP&L's express recognition, as cited above, of Ft. Pierce's eligibility for service under SR-1, Cities also note Mr. Gardner's interesting suggestion in this proceeding. When asked if Vero Beach could have received SR-1 service in the past, Mr. Gardner responded by stating that "they knew that FPL would supply wholesale power because we intended (sic) service to Stark (sic) in the late fall of 1975 and early January 1976." (Tr. 319) Of course, if Vero Beach knew FP&L had initiated service to Starke, so did Ft. Pierce, as Mr. Gardner acknowledged. (Tr. 605). Thus, if Vero Beach should, according to Mr. Gardner's implication, have assumed the availability of service under SR-1, the same would apply to Ft. Pierce. In fact, of course, FP&L refused service to Ft. Pierce, and, as Mr. Gardner testified (Tr. 605) would now refuse service (under the current tariff) to Vero Beach as well. FP&L may not, perhaps, have been willing to provide Vero Beach with SR-1 even prior to the acquisition, as suggested by the above and Tr. 604.

2/ Exhibit 29 REB-AX, April 29, 1977 letter of Dwell E. Mange to R. G. Mulholland.

unambiguous and specific request for immediate service under the SR-1 tariff. On August 9, 1977, Ft. Pierce utility officials met with FP&L officials (including Mr. Gardner). At the onset of the meeting FP&L was told. 1/ that Ft. Pierce was seeking, inter alia, "purchase of power under the Company's filed SR-1 tariff for service to wholesale customers on file with the Federal Power Commission." Mr. Gardner asked Ft. Pierce: 2/

> "[W]hether the Authority was prepared to move forward with actual implementation of the alternatives.
>
> "Mr. Barben responded that it was the Authority's intention to move forward immediately with those alternatives . . . the Authority was in a position to make specific requests and specific commitments at this time on an immediate basis."

Following this statement, Mr. Barben "specifically requested on behalf of the Authority that FP&L begin service to the Authority under the SR-1 rate at the earliest date possible. Immediately, if possible." 3/

By letter of August 17, 1977 4/ to Mr. Gardner, Ft. Pierce summarized the August 9, 1977 meeting. As that letter stated: 5/

> "It was the consensus of the Authority's Staff and our consultants, R.W. Beck & Associates, that your response to this request amounted to a refusal to sell the Ft. 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."

By letter of September 12, 1977, 6/ Mr. Gardner again declined to respond affirmatively to Ft. Pierce's request

---

1/ Exhibit 29 FPC AX, "Notes of Meeting in the Offices of Ft. Pierce Utilities Authority, 11:00 a.m., August 9, 1977, p.2.

2/ Id., page 3 (emphasis supplied).

3/ Id., page 6 (emphasis supplied).

4/ Exhibit 29, FPC AX.

5/ Id., page 1.

6/ Exhibit 29, FPC AX.

for SR-1 power. 1/

On October 5, 1977, Ft. Pierce wrote to Mr. Gardner and asked FP&L to reconsider its refusal to sell SR-1 power to Ft. Pierce. 2/ The letter specifically addressed FP&L's alleged concern that service to Ft. Pierce would reduce the capacity available to FP&L's own customers. The letter made clear that this contention -- which FP&L has sought to resurrect in this proceeding -- is a red herring. Ft. Pierce, as FP&L was told, would replace any capacity it purchased from FP&L (under SR-1) with capacity of its own. 3/ Ft. Pierce stated:

1/ Mr. Gardner, to be sure, suggested that rather than calling FP&L's position "a refusal", "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."

2/ Exhibit 29, BEB AX. Letter of Ewell Menge to R.J. Gardner dated October 5, 1977.

3/ Cities find particularly irresponsible the claim, through Messrs. Williams and Bivans, that Ft. Pierce proposed to buy energy from FP&L at a low price and sell the same amount of energy back at a higher price. (Tr. 1313 and 798) First, neither of these gentlemen had studied Ft. Pierce's specific offers. (See, e.g., Tr. 819 and 1355). Second, the offers make clear that the capacity which Ft. Pierce would sell to FP&L was relatively, quite low priced, and could be used as reserve capacity. Thus, Ft. Pierce's August 17, 1977 letter quoted $1.10-1.50/kw prices. FP&L's proposed SR rate, by contrast, contains a $3.15-$3.50/kw demand charge. As both Messrs. Bivans and Williams had to acknowledge, reserve capacity uses far less fuel (for any given time period) than capacity that is used to generate energy for sale. (Tr. 838;1420-21) Thus, when Ft. Pierce offered to replace any capacity (committed to it by FP&L under SR-1) with its own capacity, it was not suggesting that FP&L buy energy which would be purchased by Ft. Pierce under the SR-1 rate. Ft. Pierce, to the contrary, was offering low-price capacity with which little energy generation need be associated. In short, Ft. Pierce was simply not suggesting that it buy energy from FP&L at FP&L's average fuel costs and resell an equivalent amount of energy to FP&L at Ft. Pierce's (potentially higher) fuel costs. Instead, it was offering FP&L, which purported to have a capacity shortage, a low-priced source of capacity.

> "In addition to selling back to you equivalent amounts of capacity that the Authority purchases under the SR-1 rate, the Authority has offered to sell Florida Power & Light existing surplus capacity. You have indicated that a possibility for agreement appears to exist in such sale to you.
>
> "We estimate the Authority's ratepayers could save $500,000 per year or more by purchasing SR-1 power at the level requested in my August 17th letter. In addition, the Authority would realize revenue from sale of capacity, and Florida Power & Light would presumably save considerable amounts on purchase of much needed capacity for your system. (Emphasis added).

Despite the October 5 letter, FP&L continued its refusal to deal. Incredibly, while seeking to belittle Ft. Pierce's proposal, none of FP&L's witnesses here professed to having studied Ft. Pierce's suggestion that the sale of excess capacity proposed by Ft. Pierce would "save considerable amounts" for FP&L. 1/

On March 17, 1978, in cross-examination during the course of the proceeding, Ft. Pierce reiterated its request of August, 1977 for firm power under the SR-1 tariff. Mr. Gardner reiterated FP&L's reluctance to provide service. In response to the Presiding Judge's dogged questioning, however, Mr. Gardner admitted that FP&L would not serve Ft. Pierce under the SR-1 tariff. 2/ (Tr. 612).

On March 24, 1978, during cross-examination of Lloyd Williams, FP&L again acknowledged that Ft. Pierce is eligible for service under the terms of the current tariff:

> Q. To summarize, if the tariff approved by the Commission -- if your proposal here is rejected and the Commission

---

1/ This task was apparently assigned to Mr. W. E. Coe (Tr. 827-829) FP&L did not present Mr. Coe as a witness. Nor did it offer any study done by Mr. Coe to contradict the conclusion that FP&L would benefit from purchase of Ft. Pierce's excess capacity. Mr. Gardner, the recipient of the offer, specifically acknowledged that he had not studied Mr. Menge's suggestion that FP&L would save money. (Tr. 1393) (To be sure, Mr. Gardner, who is not a power supply expert, said that no study was needed).

2/ Unless, of course, forced to do so by Commission or

said you have got to stick with your current availability clause, then your testimony would be -- you would be required to serve Ft. Pierce, Jacksonville and those other utilities you mentioned?

A. I think that would have been the Commission's interpretation of it. (Tr. 1717).

In sum, FP&L has continually refused to serve Ft. Pierce under a tariff that, on its face, and by FP&L's own admission, provides for service to Ft. Pierce. 1/

B. FP&L's Intent to Terminate Wholesale Service to Ft. Pierce on June 1, 1978 is in Violation of Its Current and Proposed Tariffs.

At or about 5:00 p.m. on March 24, 1978 (i.e., immediately after FP&L, as cited above, again admitted Ft. Pierce's eligibility for service under the current (SR-1) tariff), FP&L delivered to Ft. Pierce a new response (Tr. 1834 A-G) to the request for SR-1 service made by Ft. Pierce (through counsel) on March 17, 1978, in this proceeding. (Tr. 608-609). FP&L stated that Ft. Pierce's request would be honored, and supplied Ft. Pierce with a service agreement. The proposed service agreement, however, provided for the termination of service on June 1, 1978. On March 27, 1978, (Tr. 1834 E-K) Ft. Pierce accepted the offer of power -- but, by written transmittal to FP&L, expressly rejected FP&L's condition that service be terminated on June 1, 1978. As Ft. Pierce made clear, it accepted power under the terms of FP&L's tariff -- including notice and term provisions the tariff contains.

1/ Indeed, as shown by the record, despite Ft. Pierce's continued request for firm service, FP&L has never even suggested to Ft. Pierce that it was not eligible for service under the terms of the tariff. Nor has it sought to suggest here that the filed tariff (SR-1) does not provide for service to Ft. Pierce. (To be sure, in its March 24, 1978 offer to Ft. Pierce (Tr. 1834 A-C), Mr. Gardner stated (at Tr. 1834-C), that FP&L's offer was not "conceding in any way" availability of tariff service, but merely sought "to prevent even the suggestion of

As Ft. Pierce's acceptance stated:

> "This is in response to your letter of Friday, March 24, 1978. The Fort Pierce Utilities Authority accepts your offer to sell SR-1 power (or FR power, should the partial requirements tariff become applicable), pursuant to the rates, terms and conditions of your filed FERC tariff, pending formal ratification by the Fort Pierce Utilities Authority Board at a special meeting called for this purpose at 4:00 tomorrow afternoon. Your tariff provides for the sale of firm wholesale power, including a five years' initial term, with two years' written notice for termination. It makes no provision for a forced termination to take effect approximately two months after commencement of service. The Authority does not assent to the last paragraph of Exhibit A to your proposed service agreement, providing: 'Notwithstanding any other term of the service agreement dated to the contrary, service at this point of delivery will terminate on June 1, 1978 unless otherwise ordered by the Federal Energy Regulatory Commission.'" (Emphasis added)

Contrary to FP&L's suggestion in its prepared testimony proceeding, 1/ FP&L's wholesale tariff has a provision which both establishes a minimum term for service and provides for two years notice for the termination of service at any delivery point.

This provision states as follows:

> "10. TERM
>
> "The Contract for Service with respect to each delivery point shall remain in effect from the date of execution thereof until terminated by either party by giving the other party at least two year's written notice, specifying the point or points of delivery where service is to be terminated and specifying the date of termination as to each delivery

---

1/ See, e.g., Tr. 207, where Mr. Gardner asserts that wholesale customers "could use the service for a year, drop it for three or four years, use it again for a year, drop it, and so on without limitation under the present terms of SR." (emphasis added).

> point; provided, however, the initial term for service at a point of delivery shall be not less than five years from the effective date shown on the Exhibit A for such point of delivery. 1/

FP&L's filing here does not seek to revise or eliminate the above language. On the contrary, service under the proposed rates are expressly made subject to, inter alia, the "currently effective 'General Terms and Conditions' and contract agreements applicable to Rate Schedules under the FP&L Electric Tariff Original Volume No. 1" 2/

In sum, a customer taking service under either the current or proposed tariff is entitled to 3/ at least two years notice before termination of service, and a five-year contract term. Ft. Pierce is an existing customer under the SR-1 tariff. FP&L would deny Ft. Pierce these terms. FP&L, in sum, refuses to honor the term and notice requirement which FP&L itself chose to embody in both its current and proposed tariffs.

CONCLUSION

FP&L's proposal to preclude Homestead from wholesale service is clearly a breach of FP&L's contractual commitments to Homestead -- even when viewed by FP&L's own definition of these commitments. FP&L's proposal to terminate service to Ft. Pierce is (a) an effort to gain official approval of continual and unlawful refusals to deal, (b) in violation of the tariff terms under which Ft. Pierce is now being served. Finally, in both cases, FP&L would terminate service to existing customers. Such action would be absolutely inconsistent with FP&L's claim here that its sole intent is to limit service to new customers. If FP&L can be permitted to limit service by arbitrarily, and contrary to common sense and admitted fact, calling long-term and present customers "new customers," no customer on FP&L's system has adequate protection against arbitrary and unilateral termination of service.

1/ FP&L, FP&L Electric Tariff, Original Volume No. 1, Second Revised Sheet No. 13; Effective: December 14, 1976; Issued on August 15, 1977.

2/ See proposed FR tariff "Rules and Regulations", reprinted at Tr. 1323.

3/ Absent, of course, agreement to the contrary by the

201877

SUGGESTED LETTER FROM FLORIDA POWER AND LIGHT COMPANY TO FLORIDA 35 GLADES

FLORIDA POWER AND LIGHT COMPANY

MIAMI 1, FLORIDA

OP

EXHIBIT ____ (GT-5)
Page 1 of 2

Mr. W. B. Irby, Jr., Manager
Glades Electric Cooperative, Inc.
Moore Haven, Florida 33471

Dear Mr. Irby:

This letter will serve to confirm our arrangements for service to Glades Electric Cooperative, Inc., at the 138 kilovolt point of delivery near Clewiston.

The point of delivery is to be at the high voltage terminals of the Cooperative's 138-69 KV substation. The Company will construct, own and maintain all facilities on its side of the point of delivery necessary to perform such delivery, and the Cooperative shall construct, own and maintain all facilities on its side of the point of delivery required to receive such delivery for the service of its consumers.

Our Rate Schedule BU provides that electricity obtained from the Company shall not be resold or distributed by the Customer to any municipality or unincorporated community for resale. We recognize, however, that you were providing such service to Moore Haven and Clewiston at the time we first started serving you near Clewiston; and inasmuch as the U. S. Sugar Corporation was then supplying you with most of the power needed by these two communities, we will continue to waive our restriction for such sales for resale.

In consideration of the Company's waiving this restriction, and in order to compensate the company for special investment costs incurred in supplying energy for the cities of Moore Haven and Clewiston over and above the energy supplied for these purposes by the U. S. Sugar Corporation, it is understood that the Company will apply a special investment charge of $525.00 per month to cover the cost of providing this peaking power for resale. This special investment charge will apply over and above the charges provided in Rate BU and is not a part thereof.

When this letter becomes effective, it will cancel the modifications of the "Limitations of Service" and "Monthly Rate" sections of Rate BU contained in our letter of June 20, 1962.

201878

ex. ___ (GT-51)
page 2 of 2

If you are in agreement with the understandings set forth in this letter, please have it acknowledged by the Glades Electric Cooperative in the space indicated below, and return two acknowledged copies to us.

Yours very truly,

President
Florida Power and Light Company

President
Glades Electric Cooperative, Inc.

PRESENT
RATE SCHEDULE RC

PL-711

EXHIBIT "AA"

APPLICATION:

For power and energy supplied to cooperative non-profit membership corporations organized under the provisions of the Rural Electric Cooperative Law and distributing electric service primarily to rural homes, farms, commercial establishments, and such small businesses as are usually located in rural areas and not already receiving central station service. This rate schedule is specifically designed to aid such cooperatives in supplementing Company's efforts to encourage the maximum of rural electrification in those sections of the State of Florida served by them, and to contribute to the agricultural development of the State.

CHARACTER OF SERVICE:

Single or three phase, 60 cycles, and at the transmission or primary distribution voltage existing at the point of delivery. Customer will provide, install, operate and maintain all necessary lines, substations, transformers, voltage regulators and other equipment necessary to receive and utilize the electric power and energy delivered hereunder, including the switching and protective equipment at the point of delivery reasonably required to protect the system of Company and its service to other customers.

LIMITATION OF SERVICE:

All service required by Customer at each point of delivery shall be furnished through one meter. Neither the Company nor the Customer, unless ordered to do so by a properly constituted authority, shall distribute or furnish electric power and energy to a customer of the other. Electric power and energy delivered hereunder shall not be sold or distributed by Customer to any municipality or unincorporated community for resale by such municipality or unincorporated community. Power and energy sold hereunder shall be for use in the State of Florida. Standby service not permitted hereunder.

MONTHLY RATE, AT EACH POINT OF DELIVERY:

For service at distribution voltage:

.82¢ per kwh for the first 100 hours' use of Demand,
.77¢ per kwh for the next 150 hours' use of Demand,
.72¢ per kwh for all additional kwh.

When service is delivered from Company's 66,000 volt transmission line, the above charges will be reduced by .1C¢ per kwh.

Minimum Bill: $1.00 per kw of Demand.

Fuel Adjustment: Minus or plus .0183¢ per kwh for each whole 1¢ below 12¢ or above 18¢, respectively, in Company's cost per million British thermal units of fuel. For this purpose there shall be employed the weighted average delivered cost (including freight, storage, and handling costs) as shown by Company's books, of all fuel used during the next preceding month in the generating stations interconnected with Company's main transmission system.

Tax Adjustment: Plus the applicable proportionate part of any taxes and assessments imposed by any governmental authority in excess of those in effect January 1, 1952, which are assessed on the basis of meters or customers or the price of or revenues from electric energy or service sold or the volume of energy generated or purchased for sale or sold.

DEMAND:

The kw as determined from Company's demand meter for the 15-minute period of Customer's greatest use during the month, adjusted for power factor.

POWER FACTOR:

If Customer's power factor at any point of delivery shall average less than 85% lagging during any month then Company may adjust the readings taken to determine the Demand by multiplying the kw obtained through such readings by 85 and by dividing the result by the average power factor actually established during the current month. Such adjusted readings shall be used in determining the Demand.

TERM OF SERVICE:

Not less than one year.

RULES AND REGULATIONS:

Service under this schedule is subject to orders of governmental bodies having jurisdiction and to the attached provisions of the Company's "General Rules and Regulations for Electric Service".

CITY OF HOMESTEAD, FLORIDA

MEMBERS OF THE COUNCIL

December 13, 1967

PL-34

Florida Power & Light
4200 West Flagler
Miami, Florida

Attn: Mr. Robert Fitz,
Presidant

Dear Bob:

There has been some discussion here about the possibility of buying power from Florida Power & Light on a wholesale rate.

Please let me know if your Company has changed your policy in this respect and if so what we could expect in the way of rates.

Very truly yours,

C. W. Ivey
Supt. of Utilities

CWI:mlb

CITY OF HOMESTEAD, FLORIDA

OFFICE OF THE CITY MANAGER • SILAS R. PEARSON

ATTACHMENT
7-19-17

July 19, 1967

FPL-1244

Mr. Robert Fitz, President
Florida Power & Light Company
P. O. Box 3100
Miami, Florida 33101

Dear Mr. Fitz:

The City of Homestead is in receipt of the "Statement for the Record by Florida Power & Light Company in Response to Testimony by or on Behalf of Florida Municipalities at Senate Commerce Committee Hearings on S. 1368 on June 27-28, 1967."

Included in the text of the "Statement" is the following:

> "Florida Power & Light Company has never made any categorical statement of policy to the effect that it would not wholesale to municipalities as witness the examples above"

While the word "categorical" may encompass an intent not interpreted by this writer, I personally have been advised verbally on at least two separate occasions that Florida Power & Light would not consider wholesale power to the City of Homestead since such sale would not be in keeping with existing policy of Florida Power & Light Company.

In view of the aforementioned statement by Florida Power & Light Company before the Senate Commerce Committee, June 27-28, 1967, it would appear that Florida Power & Light Company would sell to the City of Homestead an agreed upon amount of power at wholesale rates.

In view of the aforementioned circumstances, I therefore, on behalf of the City of Homestead, Florida, request that Florida Power & Light Company sell to the City of Homestead at wholesale rates offered co-ops in the State of Florida, or at a similarly acceptable rate, blocks of power ranging from 5,000 KW to 10,000 KW in quantity.

In the event you or representatives of your organization wish to discuss this request with the City Council of the City

of Homestead, please advise this writer at your earliest convenience and such a meeting shall be arranged.

Your response to this communication would be deeply appreciated.

Very truly yours,

O. R. Pearson

O. R. Pearson
City Manager

ORP:ife

CITY OF HOMESTEAD, FLORIDA

PL-1245

July 19, 1967

The Honorable Warren G. Magnuson
Chairman
United States Senate Commerce Committee
Senate Office Building
Washington, D. C.

Dear Senator Magnuson:

The City of Homestead has received a copy of the Statement of Florida Power & Light Company made before the Senate Commerce Committee, relative to S. 1365, on June 27-28, 1967.

Please be advised that the City of Homestead has been told by representatives of Florida Power & Light Company, on various occasions, that it was not the policy of Florida Power & Light Company to sell wholesale power for resale to municipalities or other type consumers. That, as a matter of fact, this practice would be illegal. Upon noting the statements of Florida Power & Light Company, relative to the fact that they "have never made any categorical statement of policy to the effect that it would not wholesale to municipalities", the City of Homestead felt its position should be made clear to you.

I have forwarded the enclosed letter to Mr. Robert Fite, President of Florida Power & Light Company formally requesting the sale of electricity to the City of Homestead, at a wholesale rate. You will note that in my letter to Florida Power & Light Company I invited representatives of their company to meet with the Council concerning this subject.

I would also point out to you that the City of Homestead has operated its electric generating plant in areas that were not profitable enough for Florida Power & Light Company to extend service. Now that these areas are becoming populated it is Florida Power & Light Company's position that they have a county franchise and the City of Homestead is infringing on this franchise by extending to the county and by annexing territories into the corporate limits of the City of Homestead.

I would draw your attention to the fact that Homestead Municipal Electric Generating Utilities was in existance a good deal prior to the establishment of Florida Power & Light Company here in the State of Florida. This, of course, raises in our minds the question of who is infringing upon whom.

This communication is sent to you for your consideration and to assist you in your deliberations.

Very truly yours,

O. R. Pearson
City Manager

ORP:ft

Enc. (1)

TES OF A SPECIAL MEETING OF THE CITY COMMISSION OF THE CITY OF NEW SMYRNA BEACH, RIDA, HELD IN THE CITY HALL ON THURSDAY, JUNE 19, A. D., 1958, AT 1:00 P. M.

eeting was called to order by Mayor-Commissioner Robert L. Arnau with the follow: bers of the Commission present:

Commissioner Thomas E. Tipton	Present
Commissioner Julius B. Harris	Present
Commissioner F. L. Edwards	Present
Commissioner Fred R. Brannon, Jr.	Present
Mayor-Commissioner Robert L. Arnau	Present

present at the meeting were City Manager W. T. Slattery, City Auditor and Clerk E. ..., City Attorney R. Lee Freeman and Clerk Barbara Bond.

Jess Thomas of Reynolds, Smith and Hills appeared before the Commission as per the ...est of the Commission to discuss a maintenance program for the power plant in order ... the city would know what maintenance has to be done in order to get through the ne...

winter. Mr. Thomas stated that the summer maintenance program for the plant has ... already been started and that he has gone over the list of parts and things that have to ... be done with the superintendent. He estimated that it would cost approximately $15,000.0...)0 additional to cover everything that will be needed for the maintenance unless something b... ...ig should break. He stated that he thought with this maintenance program they should get t... ...through the winter without over 6 months on any one engine. Commissioner Edwards suggest... ...ed that Mr. Thomas check with Florida Power & Light Co. to see if the City could buy some ... power from them in case of an emergency. Mr. Thomas stated that unless the City was pl... ...anning to buy more generating equipment and informed Florida Power & Light Co. to that effe... ...ect, then they may not sell power for resale under normal circumstances. He stated that it ... would be better to create a state of emergency before asking them. Mayor Arnau asked Mr. ... Thomas if he thought we will be in a case of emergency. Mr. Thomas stated that if we have a n... ...ormal winter and the same rate of growth exists as before last winter then we should be ... able to get through this winter without any trouble. City Attorney Freeman suggested tha... ...t Mr. Thomas meet with him at some time to discuss the reserves.

Mr. Robert Matthews appeared before the Commission requesting that they give some ... ...deration to the possibility of selling water through a master meter to property ... developed just west of the west of the city limits owned by Ellison and Avery, In... stated that he wanted to find out if the city has the capacity to furnish this wa... what the rate will be.

City Attorney Freeman stated that there will be another request for the purchase ... water. He stated that he is now considering this matter in order that he can rep... the legality of this or determine whether it will present any problems for the Ci... that he has not completed his study on this.

The payroll for the month of June 1 through 15, 1958, in the following amounts wa... presented to the Commission for approval:

Regular Employees	$16,946.47
Lifeguards	1,213.00
Golf Course	369.48
Airport	223.45
	$18,752.00

Commissioner Brannon moved that the payroll and the new and terminated personnel ... by the payroll be approved. This motion was seconded by Commissioner Harris and ... ly carried.

Vouchers for the month of May in the amount of $48,992.97 were presented to the C... for approval.

AGENDA

PAYROLL MEETING OF UTILITIES COMMISSION
City Hall, 9:30 A.M., March 29, 1967
NEW SMYRNA BEACH, FLORIDA

1. APPROVAL of Payroll.

2. APPROVE Certifications For Payment:

   1. Reynolds, Smith & Hills (65144) No 67
      Water Improvements Program
      Meridith Corporation
      $6,480.47 (Partial payment)

   2. Reynolds, Smith & Hills (65144) - No. 68
      Water Improvements Program
      J. W. Meaders & Company
      $61,505.39 (Partial payment, 2-1-67 to 3-1-67)

3. REPORT from Mr. Gautier regarding additions to Enabling Act.

4. DISCUSSION of further plans for new Distribution Plant.

5. DISCUSSION of power generation situation.

6. COMPUTER program presentation by Burroughs Representative.

7. FINANCIAL REPORTS: Statements: Month of January 1967
   Nine Months-May 1966 thru Jan. 1967.

   Discuss repayment of loan to Library.

   Discuss interdepartmental City billing.

8. DISCUSSION of Emergency Ordinance regarding underground utilities installations.

9. Hunt Water Meters

MINUTES OF PAYROLL MEETING OF THE UTILITIES COMMISSION HELD AT CITY HALL, NEW SMYRNA BEACH, FLORIDA, 9:30 A.M., WEDNESDAY, MARCH 29, 1967

These present: J. C. Gillespie, Chairman
J. Carlyle Harvey, Vice Chairman
J. E. Tumblin, Secretary
John C. Deal
Claude E. Talley
E. W. Gautier, Attorney
J. V. Little, Director of Utilities

Chairman Gillespie called the meeting to order at 9:30 A.M.

In discussion of the payroll, Mr. Little pointed out that the night dispatcher had been terminated and with Commission's agreement he planned not to fill this position at this time but try having the regular crew at the Steam Plant take the night trouble calls; a savings of approximately $400.00 per month. Commissioner Talley moved that payroll be approved as presented. Commissioner Tumblin seconded motion which unanimously carried upon roll call vote.

Discussion of May 1, 1967, take over of sewer facilities by Utilities Commission: Mention was made of problems at the disposal plant which are in the process of being corrected. Mr. Little spoke of the possible need for additional staff at the time of taking over the sewer system; an Administrative Assistant to be considered after study of a financial statement on the sewer situation and a preliminary draft of our budget for the coming year. Commission agreed that Mr. Little should begin now to interview prospective applicants.

Certifications For Payment were read by Chairman Gillespie as follows:

1. Reynolds, Smith & Hills (65144) Certificate No. 67
Water Improvements Program
Meridith Corporation
$6,480.47 (Partial payment)

2. Reynolds, Smith & Hills (65144) Certificate No. 68
Water Improvements Program
J. W. Meaders & Company
$61,505.39 (Partial payment, 2-1-67 to 3-1-67)

After brief discussion, Commissioner Harvey moved to approve and recommend to City Commission for payment Certificate No. 67, Meridith Corporation, in the amount of $6,480.47 (partial payment) and Certificate No. 68, J. W. Meaders & Company, in the amount of $61,505.39 (partial payment). Commissioner Talley seconded motion which unanimously carried upon roll call vote.

Mr. Gautier reported as follows: Enabling Act - Three amendments to be added:
1. Public Hearings on Rate Changes.
2. Public Hearings on Revenue Certificate Issues.
3. Provision enabling membership in state-wide transmission net-work corporation.

Commission was asked and stated had nothing further to add. City Commission will be asked for additions, after which final draft will be prepared and sent to Legislature.

Mr. Gautier also reported: Easement for North Beach El-line has been obtained from Trustees of the Internal Improvement Fund of the State of Florida.

Mr. Little reported that plans for a new distribution plant will have to await future financing and that $150,000 should be included in the next financing program for a distribution building.

Burroughs Company representatives, Jim Ross and Cliff Evans, presented a detailed report of the B4000 computer which the Utilities Commission is considering purchasing. This report offered explanations and pictures of operation, costs, time and personnel for computerizing billing, payroll, budget accounting, etc. Commission thanked these Representatives and discussed the problems entailed in setting up such a system which, among other things, will require instructions to be issued for conformity of billing. Also, it was stated that the Utilities Commission would purchase computer equipment and charge the City for services performed on same.

The power generation situation was reported on by Mr. Little, who said no sums of money should be spent on existing facilities at this time other than required for routine maintanance; but, that Commission should begin now for study and plans for the addition to the Steam Plant which will be needed by 1969. Mr. Little stated there are two alternates: to try to buy firm power from Florida Power & Light, although their policy is to sell no firm power to municipalities, or to ask Orlando Utilities for a direct tie-in to their Indian River line. After discussion, Commissioner Harvey moved to authorize Mr. Little to set up a work session meeting for the Commissioners with representatives of Reynolds, Smith & Hills to proceed with preliminary plans for the addition to the Steam Plant. Commissioner Tumblin seconded motion which unanimously carried upon roll call vote.

The financial reports: Statement for month of January 1967, and nine months statement for May 1966 thru January 1967 were presented and it was agreed that the overall situation is sound, with the exception of the Water Department, and that a water rate schedule is needed, possibly after budget work is completed.

Interdepartmental City billing was discussed and it was shown that City accounts have been brought up to date, owing only for Christmas lighting and an over estimate of an advance payment.

Loan to Library: Mr. Little read the Ordinance and presented figures, worked up by Mr. Hoverter, on this "without interest" loan - "repaid within 20 years." After discussion, Commissioner Talley suggested that this should be discussed with City Commission and request re-negotiation whereby they would pay the interest on the loan - which we have to pay depositors of the meter fund.

Mr. Little presented pictures of the Kent water meters - residence wall installation, and the Kent Company's request for the Utilities Commission to sponsor a dinner meeting (all expenses assumed by the company) for all building and plumbing contractors in the area to present the Kent product. Commissioner Harvey moved approval to have this meeting. Commissioner Talley seconded motion which unanimously carried upon roll call vote.

City Clerk, Nell Michaelsen again presented the emergency ordinance which would provide for underground installation of utilities and stated that the ordinance is needed to enable the City to receive funds from the Government for the Beautification Program. It was felt that since it is the duty of the Utilities Commission to retain control of the operations of the utilities, Attorney Gautier will present at the next meeting a revision of this proposed ordinance which will provide for decisions regarding feasibility of situations calling for underground installation of utilities to lay with the Utilities Commission rather than City Commission or the Planning Board.

There being no further business, the meeting adjourned.

The above minutes approved at the regular meeting of the Utilities Commission held at the City Hall on _____, 1967, in New Smyrna Beach, Fla.

_____
Chairman

ATTEST:

_____
Secretary

APPENDIX VIC

FLORIDA POWER & LIGHT COMPANY
INTER-OFFICE CORRESPONDENCE

LOCATION West Palm Beach
DATE April 2, 1965
COPIES TO

TO Mr. R. C. Fullerton

FROM R. D. Hill

SUBJECT:

This is to confirm to you my visit to Fort Pierce on April 1st in response to their Resolution No. 65-89, a copy of which is attached.

At this meeting were:

Mayor William R. Dannahower (dentist)

Commissioners

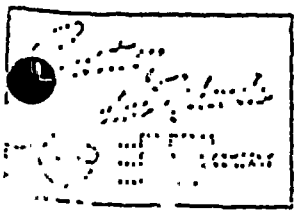
Lee Nelson (realtor)
Charles Castle (owner, Radio Station WARN)
Henry White (owner, Guidepost, newspaper)

Absent was Commissioner Milton Tucker, clothing store operator.

Also present were Al Harding, city manager; D. C. Huskey, city clerk and director of finance; and Bob Skinner, electrical engineer.

No member of their consulting firm was present, but the firm is Reynolds, Smith & Hills, Jacksonville.

I was asked if Florida Power & Light Company would be willing to furnish a connection capable of handling 10,000 Kw for a period to 1967. This naturally was then discussed. I told them there were considerable ramifications, both in engineering and the availability; that we did not desire synchronizing into their system; that we were in process of changing voltages in our transmission system; and that it would be desirable, before I could firmly answer this question, that a reasonable amount of time be given for study. This was agreed to.



The reason they desire this connection is that their generating capacity being 66,500 Kw (largest unit, 33,000 Kw - smallest, 500 Kw) and their demand being in the neighborhood of 25,000 Kw, the loss of their largest generator would create a serious situation in spite of the fact that they have a tie-line between their system and that of the City of Vero Beach with a capability of transfer of power in the neighborhood of 5,000 Kw.

They also said in their request that in 1967 they would approach us and ask for 20,000 Kw, the reason being they would like to defer as long as possible any plant additions.

I was then asked by Mr. White, one of the Commissioners, whether we were interested in purchasing the property; i. e., the plant and the distribution system. I told him that we were but that any recommendation from us would require study before any proposal could be presented.

This caused me to ask if this was general consensus of those commissioners present, and they nodded in agreement. There was some discussion "off-the-cuff" about how much 6% of revenue would amount to, 10% utility tax, etc.

Then the Mayor stated to me that a proposal would be of interest and that it was a question of whether we could prove a financial benefit to the city.

I was asked what would happen to the power plant and I advised this would be subject to proposal but it would probably be placed on standby for a reasonable amount of time. I was then asked about the employees, and I assured them this probably could be worked out.

I would like to let you know that the press; namely, the Miami Herald, the Fort Pierce Tribute, and, of course, the Guidepost, were present. The only question asked of me by the press was were we interested in purchasing the Fort Pierce electrical system and I advised them that we were.

I am sure that the charter in regard to purchase has to be reviewed and also the financial obligations, and I have made arrangements to receive copy of their charter and their last audit, which I will discuss or forward to you.

Regarding the tie, I know you will advise me as a result of my phone conversation with you yesterday.

In closing, the meeting was of a very friendly nature and I was pleasantly received. I feel we have a Commission that is friendly and one that we can work with.

FLORIDA POWER & LIGHT COMPANY
INTER-OFFICE CORRESPONDENCE

PL-38

LOCATION Miami, Florida
DATE May 24, 1965

COPIES TO Mr. R. D. Hill - WB

Mr. J. G. Spencer, Jr.

FROM H. V. Street,

SUBJECT: PRIMARY SERVICE TO CITY OF FORT PIERCE

In accordance with the verbal request of Mr. R. D. Hill, we have prepared an estimate of the cost to provide a 69/138 kv feeder position at our Fort Pierce Switching Station, and the cost of primary metering at the same location, as follows:

1.	69/138 kv terminal (relaying for non-parallel operation only)	$56,000
2.	Primary metering equipment at Fort Pierce Substation	18,000
	Total	$74,000

You will note that we have not provided relaying for parallel operation which means that the City of Fort Pierce would have to isolate a part of their system and serve it from the transmission line and substation which they would build.

HVS:JL

MAURICE H. CONNELL
CONSULTING ENGINEER

HARVEY F. PIERCE
CHARLES O. SHOOT

MAURICE H. CONNELL & ASSOCIATES
INC
Consulting Engineers
319 N. W. 27TH AVENUE
P. O. BOX 38726, RIVERSIDE STATION
CABLE ADDRESS "MACONAS"
MIAMI 35, FLORIDA

PL-97

JOB NO. 63-52
3/24/63

ELECTRICAL DISTRIBUTION
SYSTEM - EMERGENCY PROVISIONS

The following memorandum notes will record an informal meeting held in the office of Maurice H. Connell & Associates on this date at which the individuals named below were in attendance.

Mr. Gordon Ivey	Superintendent of Utilities for the City of Homestead
Mr. H. M. Stainton	Southern Division Sales Manager, Florida Power Light Company, Miami
Mr. Bob Denny	Distribution Engineer for the Florida Power Light Company
Mr. H. G. Mozealous & Mr. Clyde V. Booth	Maurice H. Connell & Associates

A one inch to 600 foot scale drawing originally prepared by the Florida Power and Light Company showing their lines in the area and amended by this office, was used as a reference drawing and posted on the tack board in the conference room. An additional drawing at a scale of approximately one inch equals fifteen hundred feet and block plans at one inch equals 300 feet were also used for reference in this discussion.

The discussion included two basic subjects, the first being the determination of the service area for the City of Homestead electric distribution system; and the second being the possible points for securing an emergency distribution circuit tie connection between the Florida Power & Light Company system and the City of Homestead electric distribution system which will be valuable during the 1963-1964 winter season peak load period.

It was recognized that this discussion must necessarily be very preliminary in nature, that the determination of the revenue and the number of KVA being given up and being acquired by each of the systems should probably be analyzed in detail and that the technical work involved in this consideration was all that was in question at this time. It was proposed that no accurate evaluation of the electric plant changes, that is, the actual appraisal of the lines, transformers, meters, etc., would be considered at this time and that a simpler formula for determining the value of the properties which were to be swapped, might include consideration only of the potential revenue of the customers swapped rather than an evaluation of the physical plant involved.

It was agreed that the City of Homestead would attempt to appraise the value of their revenue which is being given up and that the Florida Power & Light Company would also attempt to appraise the revenue of their customers being given up in this realignment of service areas.

In the detail discussion of the proposed limits of the service areas, it was generally agreed that the line dividing Florida City and the City of Homestead, that is, along South Eighth Street - Lucy Street beginning at Farm Life School Road and proceeding westward to Redland Road and the City limits of the City of Homestead, would be agreeable to both parties. This then requires reconnection of two small areas in the southwest portion of the area, which are not now a part of the City of Homestead and that now are served by the Florida Power & Light Company.

The western line of the City of Homestead in the irregular projection at the southwest corner of the City Area was agreed as a boundary line, and the northern line of this small projection was also agreed upon as a boundary for the electric service area. Therefore, beginning at SW 4th Street at Redland Road, the limit line of the electric service area would proceed north on Redland Road to Avocado Drive, from the intersection of Avocado Drive and Redland Road proceed easterly to Krome Avenue and then follow a general northeasterly direction between the areas now served by the City of Homestead and the Florida Power & Light Company to a point at the corner of Tennessee Road and Biscayne Drive. Proceed easterly from this point to the intersection of Biscayne Drive and Newton Road. Proceed southerly from the intersection of Biscayne Drive and Newton Road to Avocado Drive, thence proceed westerly to Farm Life School Road then southerly along Farm Life School Road to the point of beginning at Lucy Street and Farm Life School Road.

These limit lines as defined above, create five areas in which Florida Power & Light Company will be giving up certain distribution lines and customers. The first area as bounded by Lucy Street on the south, 4th Street on the north side, the Seaboard Airline Railroad tracks on the east side and the City limits on the west. This is an area of Dade County rather than an area of Florida City.

The second area is bounded on Lucy Street on the south side, Redland Road on the west side and consists of about ten acres of property lying northeast of the intersection of Lucy Street and Redland Road.

The third area is bounded on the west by Redland Road, on the east by the Seaboard Airlines Railroad, on the north by SW 304th Street and on the south by NW 11th Street of the City of Homestead or SW 306th Street as designated by Dade County.

The fourth area is an area lying south of Avocado Drive and immediately west of the Seaboard Airline Railroad consisting of a very small residential development of about ten acres.

The fifth area is one lying north of Avocado Drive and south of

Biscayne Drive, east of Tennessee Road and consisting of something like 120 acres of property.

The lines and customers to be taken over by Florida Power & Light Company from the City of Homestead would consist of the following: first, those customers lying west of Redland Road and served from the line along Mowry Street; secondly, two residential laterals in the vicinity of SW 317th Street and 317th Terrace immediately west of Redland Road.

Third, the residential area lying between SW 304th Street, 312th Street and lying west of Redland Road; extending over to approximately 190th Avenue.

Fourth, the area served by the City of Homestead from the feeder along Roberts Road north of Avocado Drive.

Fifth, the area north of Biscayne Drive in the vicinity of Tennessee Road including South Dade High School.

Sixth, the area lying along the Old Dixie Highway north of Biscayne Drive projected up to Waldin Drive which is now served at 2.4/4.16Kv.

Seven, the area lying north of Biscayne Drive and east of the main highway including the 13 Kv run along Highway A1 in the Township of Modello and the 2.4Kv single phase lateral which is served from the 100Kv transformer located at Waldin Drive and the main highway.

Eight, small laterals in the vicinity of 304th Street and Newton Road.

Ninth, the entire line that operates at 13Kv and runs to Homestead Bayfront Park beginning at Farm Life School Road and proceding east for the entire length including the migratory workers camp on Tallahassee Road or 137th Avenue.

It was agreed that Maurice Connell & Associates would prepare three maps at a scale of approximately one inch equals fifteen hundred feet designating the above limits and colored for convenient reference.

With respect to the potential ties from the Florida Power & Light Company to the City of Homestead distribution system, it was generally agreed that the requirements for a permanent tie to the bus at the Homestead Power Plant for purchase of energy on a long range basis would not be considered at this time, although this is the most desirable type of tie connection. Mr. Robert Fite has previously advised Mr. Ivey and Mr. Pearson of Homestead that the Florida Power & Light Company would extend their lines and make provisions to sell energy to the City of Homestead system. However, no definite technical provisions have yet been established nor agreed upon by either party for such a facility.

7

FLORIDA MUNICIPAL UTILITIES ASSOCIATION

PHONE: 686-5908 (A.C. 813) • P. O. BOX 2402 • LAKELAND, FLORIDA 33803

Office of
MAC H. CUNNINGHAM
Executive Secretary

26
6-2-66
20

March 4, 1966

Mr. Olaf R. Pearson,
City Manager
P.O.Drawer 429
Homestead, Fla. 33030

Dear Olaf:

Your letter on the possibility of an intertine between a private and municipal utility - the following are "in the works" now.

The City of Gainesville has filed with the Federal Power Commission, asking for a connection with the Florida Power Corporation.

The City of Clewston, has asked the Federal Power Commission for relief, with their present contract with the Glades Electric Coop. who buy wholesale from Florida Power and Light and resell to Clewston.

Mr. George Spiegel, Washington Attorney, represents both Gainesville and Clewston in these cases.

The Federal Power Commission wants interconnections between private power companies and municipals, regardless of the size of each.

Do not think any legislation is necessary at this time, and suggest we wait and see the outcome is in the two pending cases.

Trust you and your Council will attend our Annual Conference in Jacksonville on March 23-25, and looking forward to seeing you there.

Sincerly

Mac H. Cunningham

630657

8-

From Homestead Minutes

better off to draft a new contract.

Mayor Dickinson asked about the Purchasing Department and if they would require more room. Mr. Ivey said Purchasing is using a very small area and they could be placed in another area.

Motion carried.

Mr. Anderson suggested that while we are buying the two 720 RPM Generators we go ahead and get these two units and get a bond issue large enough to ask for a larger unit, like 8,000 KW and make it in one bond purchase.

Mrs. Campbell said we need a synchronized tie-in with Florida Power & Light Company and a feasibility study to go with this program. Mr. Anderson said we had a two hour shutdown and the tie-in with Florida Power & Light Company cost the city $8,000. If we had the tie-in it would have still cost us this amount. Mrs. Campbell reported that the tie-in we now have is manual and they can have trouble the same as we do.

Mr. Ross, Fiscal Agent for the City, was present to discuss the financing. He stated that at a meeting held on March 1st there was a discussion on the electric and water financing. He drew up a schedule at that time on a bond issue of $3,000,000, at an assumed interest rate of 5%.

1. How much money can the city borrow on a parity with outstanding bonds. While the interest rates are a little bit higher than they were at that time, a three million dollar loan could be marketed today and still meet parity.

Mr. Rhodes asked the approximate total cost of this improvement planned. Mr. Booth said just the engine generators is about $700,000. They have $600,000 for distribution, $10,000 for water distribution, $300,000 for water treatment plant. The electric generation completed would be One Million Dollars and the interconnection would be $900,000.

Mr. Ross said he felt the city could finance Three Million Dollars. He also took into consideration in that same projection, projected revenues through and determined there would be money left over after payment of debt service which would permit the city to utilize somewhere in the average of around $200,000 a year for renewals and replacements to keep the system up to date, out of current funds and also to continue to have about the same amount to pay into the general fund every year which has been done in the past.

The ability to authorize and sell bonds, which would be on equal lien with your outstanding bonds, and your ability to service those bonds out of the revenues you will have coming out of the system, including some projections showing increased revenues from increased facilities

As far as the bond market itself is concerned, we have just experienced the tightest money period in the past history. We had a very tight

one back in September of 1966, which was of rather short duration, when money rates peaked and interest rates peaked up almost to where they are now. It didn't effect the municipal bond market quite as much as it did some of the other markets but the last general deterioration, inflationary trends, etc., over the past couple of years we have just past, according to the indicators, the highest rates we have ever had, since perhaps the late '20s. Congress did enact the tax bill and has indicated they will reduce Federal spending.

Mr. Ross said their best advice is - as the Mayor mentioned there have been school bonds that did not sell and they feel there is many millions of dollars of municipal and corporate bonds sitting on the sidelines waiting to be sold when the money market is in a position to take them. There seems to be no drastic movement downward on interest rates but they are not likely to get any higher.

Mr. Wittkop asked if any bonds had been sold recently and Mr. Ross said they just sold Eight Million North Miami Water bonds at a 5% coupon at a discount which was about 5.26% interest.
The bonds that haven't sold are those that have had legal restrictions such as the state with 4-1/2% or some of the other unrated situations that are rather difficult to sell. Mr. Ross said he certainly thought the city could sell the bonds but would be looking at a rate somewhere in the neighborhood of 5-1/4%.

Mr. Rhodes asked if we were to let this contract two or three weeks from now would Fairbanks Morse work on that contract upon the assumption that we would sell the bonds or would they not move on it until we sell the bonds.

Mr. Booth said Fairbanks would agree to take the order on the same basis that they did on the last one and they awaited the sale and approval of the bonds prior to assuming they had a firm contract.

Mayor Dickinson said he felt if the city is not going to work on the interconnection then they should go to work on the large unit. He doesn't want to go through the first stage unless we go through with the second stage.

Mr. Locke said our Washington Attorney advised the council to go ahead with the synchronized tie. Mr. Wittkop said at the last meeting the suggestion was to negotiate with Autrey and they were supposed to come down. Mr. Rhodes said it was his understanding that we would go ahead with the peaking units and in the meantime the city would negotiate with Florida Power & Light Company for a synchronized tie.

Mr. Booth said the time schedule is important here. The time schedule to make an interconnection with the necessary sub-station, as required, is in the order of up to 2 to 3 years. The timing required to secure base load addition in the power plant is about the same magnitude.

Equipment that they would favor for base load equipment in the plant is not yet out of the shakedown period so to speak and hasn't had the two years of satisfactory experience that would be desirable to have on any new unit. Mr. Booth said it was his understanding that the city authorized call for bid that the council would continue to negotiate and that the peaking units were intended to carry the plant through for a period of time satisfactory to consummate this negotiation. This period of time is slipping away. Mr. Booth said their general recommendations were to be effective about the fall or winter of 1967, some action should be taken to determine what the city wanted to do and this was done not too long after that. If the city were to buy the peaking units now, and 9 or 10 months to get them in, they would be adequate to handle the peaking requirements on top of what is anticipated this summer, through about the early summer of 1972. The City doesn't have much time beyond the time the city is buying with the peaking units before the city will have to come to the decision as to inter-connection or an additional base load unit in the plant.

Mr. Booth stated if the peaking units are installed the city would have bought not more than two or three years of time with them, as the present rate of growth.

Mr. Turner asked Mr. Booth if the anticipation of growth related in anyway to the service area agreement. Over the long range planning, Mr. Booth said, the city does have a restrictive area.
Mr. Turner said at the hearing before the Supreme Court, Justice Ervin was opposed to the agreement and two others were favorable to us. It no doubt will be referred to the full court for a decision because there will be a split decision with the five men, and these five men must reach a unanimous decision. Mr. Turner said there is no way of knowing at this time when the decision will be handed down.

Mr. Anderson said relative to the tie-in with Florida Power & Light Company, that it seemed to him the city won't get a tie that will benefit the city and in his opinion it would be best not to have to tie on to anything.

Mayor Dickinson said it has been the recommendation of most of the people in this deal that eventually throughout the entire country there will be a complex of nuclear plants whereby municipalities will be able to buy through these plants.

Mr. Anderson said he didn't feel that now is the time to negotiate. Mr. Rhodes said we would stay here all night and talk about what is good and bad. Mr. Wright asked if anyone had thought about if this agreement doesn't go through we don't even need the peaking units. Mr. Booth said this was not a valid statement. What we have outside the service area limits that you established is actually incidental to the peak load. Mr. Wright said he was talking about outside the city limits. Mr. Booth said this was a different statement and he misunderstood.

Mrs. Campbell said if it wouldn't be going off on a tangent, what about the gas line. Mayor Dickinson said he understood they were working on the pipe line to Turkey Point and are as far as Cutler Ridge. He further stated he felt the council should do what is most economically feasible and the cheapest for the city. If it is cheaper to buy power than we can produce it for, then we should buy it.

Mr. Pearson asked Mr. Booth, irregardless of the move that is made, is it economically feasible from an engineering standpoint to recommend the purchase of these two engines at this time. Mr. Booth said he gave a dissenting opinion in the Committee in terms of the choice of the what the committee recommended. Mr. Pearson asked about from the standpoint of RPM and all other things being equal do we need these units at this time. Mr. Booth said in his opinion he would strongly urge the city to buy them. They could be a part of the negotiation since at this time the city does not have the strength to negotiate with FP&L.

Mrs. Campbell said at one time Mr. Booth recommended a gas turbine engine. did he still think the same way. Mr. Booth said this was in terms of a 10,000 KW unit. He stated he felt the proposals they have now are the best at this time.

Item #2

Mr. Turner said before he reads this ordinance he would like to say he happened to be at the Courthouse today and happened to look at the County Commissioners Chambers and the Water and Sewer Board was meeting. The item being discussed as he walked in was Florida City - they were asking for an area to be given them to the South and East, as a service area to supply water and expand their system outside their city limits.

Mr. Turner said he merely brought this up because he is of the opinion that the city has failed to make plans for expansion of the water system outside the corporate limits and one time, say ten years from now, in a much worse position because Rex Utilities will be taking over the unincorporated areas and supplying water at a considerable profit to them and the city of Homestead will be unable to expand their water system.

Motion by Mrs. Campbell, seconded by Mr. Locke, that Ordinance #68-06-12 be read for the first time in full. Motion carried.
Ordinance No. 68-06-12, pertaining to Lot Clearing, was read in full for the first time by Mr. Turner.

Motion by Mr. Anderson, seconded by Mr. Wittkop, that Ordinance No. 68-06-12 be read for the second time by title only. Motion carried.
Read by Mr. Turner.

SMITH AND GILLESPIE ENGINEERS, INC.
POST OFFICE BOX 1048
JACKSONVILLE, FLORIDA 32201

February 26, 1972

Mr. Henry C. Peters
Director of Utilities
City of Homestead
43 North Krome Avenue
Homestead, Florida 33030

Subject: Interconnection - City of Homestead and
Florida Power and Light Company
File No. 7002

Dear Sonny:

The City Council of the City of Homestead, as the policy making body for the City, needs the best and most complete information that can be furnished to them, so that their decisions can be based on the best information available.

Neither you, as Director of Utilities, nor I, as the Consulting Engineer, would try to formulate policy, because this is not our proper position. If we were to fail to keep the Council fully informed, either directly or through the City Manager, we would not be properly discharging our responsibility, because failure to provide information could affect the determination of policy. Specifically, it is my belief that alternatives should be reviewed fully, so that, when a course of action is determined, it can proceed as rapidly and as completely as possible in carrying out that course of action.

In the information that we have furnished thus far, it is obvious that we are discussing a contingency situation. There is no way of knowing, at this time, whether or not the City Council will wish to explore the alternative of interconnection. If they do elect to explore it, there is no way of establishing, at this time, whether or not, or under what conditions, the interconnection can be effected.

If the interconnection can not be made on the basis that is fully satisfactory, economically advantageous, and with adequate safeguards for the City of Homestead, then no further action need be taken. The matter should be dropped.

The problem is, past history tells us little in regard to this question; therefore, there is no way of knowing at this time what alternatives will be available to the City in the way of interconnections, unless we negotiate with the Florida Power and Light Company.

I don't believe that there is any doubt that, if the Florida Power and Light Company had their way, they would not, under any circumstances, interconnect with the City of Homestead. The circumstances are such, however, that the entire pattern of utility operation has changed. No longer is the decision entirely in the hands of the Florida Power and Light Company.

This is the part that is most difficult to explain, impossible to explain in public where your words can be carried to those who will listen with unfriendly ears, but it is perhaps the most important consideration of all.

The City of Homestead has, in fact, become dependent, to a degree, upon the Florida Power and Light Company, to the extent of 6,000 kw.

The City of Homestead has got to overcome this deficit.

Mr. Ivey, while he was Director, exercised good judgment and took the only avenue opened at the time, and made the emergency ties. The problem is, that these emergency ties are available only at the option of the Florida Power and Light Company. If the Florida Power and Light Company feels the need of terminating these connections, it is within their prerogative to do so. Granted that they are going to exercise considerable discretion in cutting you loose; they are going to ask you to break away rather than make the break themselves, if at all possible. But the whole operation is dependent to a degree, at peak times, on this 6,000 kv. emergency tie. We have installed, and by this summer will have running, 10,350 kw., and this summer we should be able to operate without calling at all, upon this emergency tie. This is one reason why, this year, when we have capacity, we should enter into this negotiation, if we are going to enter into it at all, because we will not be buying on the emergency connection, or will not be, by the time summer comes.

Because of the fact that we were approximately 6,000 kw. "in the hole," the time the 10,350 kw. will buy, will be shortened. What is most important to note is, that this 10,350 kw. is the most capacity that we could buy for the amount of money we could spend, and this is the crux of the whole matter. The only way that we can get more money to spend is to have a more efficient operation and to extend the time between sales of Revenue Certificates.

We are not using our existing plant to its greatest efficiency when we carry 6,000 kw., or whatever amount we carry, on the interconnection, when we do have some available capacity in the plant. But, as previously discussed, you can't fully control how much you have on the emergency tie and how much you have on the plant. Switching flexibility is not that great.

If, on the other hand, you are operating interconnected, then your interconnected operation would permit you to use the plant to the best possible advantage, taking into account the cost of produced power vs. the cost of purchase power.

There is no way under a properly designed interconnection agreement that purchase power can supplant produced power. In the first place, the agreement should stipulate a maximum amount that you could purchase at any time. A reasonable figure for this is approximately 50 percent of your total demand.

But you may well ask, if we are going to purchase power anyway, why not continue to purchase it under the present agreement. Let's see what the interconnection offers that the present agreement does not.

Under a properly designed interconnection agreement, assuming that this is the type of agreement that can be obtained, and we would not recommend signing anything less, your interconnection with the Florida Power and Light Company would provide you, first of all, with a regulated rate. At the present time, the rate that we are having to pay is negotiated between the City and the Power Company; while I believe that the rate that you have is the published rate for this particular type of service, it does not provide you with the same degree of protection that you would have with a rate schedule under an interconnection. The interconnection also would permit you to use as much of, or as little of, whatever your agreed amount was as you choose to use. Perhaps most important of all, assuming that the interconnection was a meaningful one and this again, this would be a requirement for the tie, is that you would be able to buy firm power, scheduled power, emergency power and secondary or economy energy, depending upon the name used.

It would be important that the possibility of firm power be a key matter in the negotiations. Not at the first, but as you move to about mid-point, where everyone has reached a tacit agreement in principle, the purchase of firm power must be established and would mean that, if the Florida Power and Light Company committed 6,000 kw. to the City of Homestead. Even under peak

Mr. Henry C. Peters
Director of Utilities
Homestead, Florida
File No. 7002
February 26, 1972

conditions they would not be able to interrupt this power; they would have to maintain the service to this connection, the same as to any other connection. I am using the term 6,000 kw., because this corresponds to what we now have; whether or not we ever enter into this particular agreement, I have no way of knowing.

In the long run, so that the City can achieve the maximum degree of benefit, I believe that, if the City Council determines that this is the best course of action, the tie should be made at 138 kv. As an interim measure, and while we are trying to build up our capability to return power, as well as to take power, I believe that the interconnection should be explored at distribution level.

At distribution, we can make the interconnection at nominal cost, both to ourselves and to the Florida Power and Light Company. That way, no one suffers any financial inconvenience, and the City of Homestead conserves its capital so that it can go into the next stage of development with the majority of its resources still intact.

This, Henry, is the key to the whole matter. Use what we have to the best advantage and defer investment for as long as we can, without jeopardizing the safety and integrity of the system.

It is not a matter, however, that I am trying to sell; it's simply a concept that I think you, as Director of Utilities; Mr. Pearson, as City Manager; and I, as Consulting Engineer, have the responsibility to bring to the attention of the City Council. If Council decides that the interconnection should not be explored, this will end the matter, as far as I am concerned; but I did wish for them to have the background information on which to make a decision.

Yours very truly,

SMITH AND GILLESPIE ENGINEERS, INC.

James J. Berry
Vice President

JJB:mmr

120865 PV

FLORIDA POWER & LIGHT COMPANY
INTER-COMPANY CORRESPONDENCE

LOCATION West Palm Beach
DATE July 17, 1968

COPIES TO Mr. R. C. Fuller

TO MEMO TO FILE

FROM R. D. Hill

SUBJECT: Meeting with City of Vero Beach Officials

A meeting called by the Mayor of Vero Beach was held at 4:00 p.m. on Monday, July 15, 1968, to discuss the electric power situation and the contract submitted by Florida Power & Light Company relating to it.

Those attending on the part of the City were:

Mr. J. Noble Richards, Mayor
Mr. Fred Prestin, Commissioner
Mr. Taylor C. Simpson, Commissioner
Mr. James Pryde, City Manager
Mr. William Lucas, Chairman, Utility Study Committee
Mr. Larry Finegan, Utility Study Committee
Mr. Elmer Lekso, Utility Study Committee

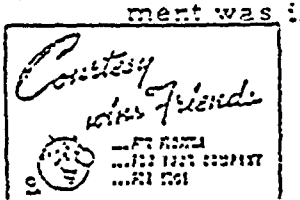
Representing Florida Power & Light Company by invitation of the Mayor were:

Mr. R. D. Hill
Mr. Ray D. Cox

Those representing the City sought to clarify certain points and parts of the agreement which FP&LCo. had submitted for their approval covering the following:

1. Territorial Agreement which is the basic agreement
2. Firm Power Interchange Service
3. Emergency Power Interchange Service
4. Scheduled Power Interchange Service

The question was posed asking if all or any part of the agreement could be executed. It was answered that it could provided the basic agreement was included.



The question regarding the meaning of the capacity requirement of 120% of peak loadings was answered to the effect that all capacity would be included whether generated or purchased or any combination.

A study which had been submitted by the City's Consulting Engineers indicated a need for 10,000 Kw additional capacity by 1971. Mr. Hill questioned the basis for this figure in consideration of their present generating capacity with an anticipated additional need of 2,000 Kw. Mr. Lucas pointed out that the engineers were proposing to retire 8,000 Kw in diesel generating equipment. He further contended that this retirement was unnecessary but rather should be retained as standby equipment to satisfy their commitments in this respect and purchase the remainder of their peak load requirements from FP&LCo.

The question was asked if the City purchased firm power from FP&LCo. on an annual basis for a number of years and then discontinued its use for any reason, would there be a cost or penalty to the City. The answer here was that when they ceased using this class of service on this basis, there would be no billing and the agreement for this schedule of service would become suspended and held in abeyance according to the intent of the agreement which had been submitted at the City's request.

There followed a minor discussion of the engineer's report and rates.

All City people present appeared satisfied and pleased with the answers and clarifications received and expressed their appreciation for the attendance of FP&LCo. members.

RDH/RDC:mj

VP

121194

City of Vero Beach
1053 - 20th PLACE
VERO BEACH, FLORIDA - 32960

May 9, 1968

Mr. Robert H. Fite
President & General Manager
Florida Power & Light Company
P. O. Box 3100
Miami, Florida 33101

Dear Mr. Fite:

The City of Vero Beach desires, at an early date, to reach a firm decision on the question of an interconnection agreement with your Company. Since the City must take decisive action by July 1, 1968 with respect to the purchase of new generating equipment, we respectfully request that you submit a firm, detailed written proposal, to the City of Vero Beach, for furnishing the types of service outlined below by June 10, 1968, if you are interested in an interchange agreement.

The City is not interested in proposals for selling or leasing any part of its system. We desire to enter into only such agreement as would provide long-term mutual benefits and we would also be interested in your proposal to purchase any excess power and energy that would be available if we install new generating equipment.

Our consultants, Black & Veatch, are available and are authorized to discuss with you any and all aspects of the interconnection agreement and will work with you towards formulating an agreement which would be mutually beneficial and acceptable to all parties.

The types of service we wish specific proposals for are as follows:

A. Firm Interchange Service. A commitment for supplying power and energy on a firm basis and in accordance with a predetermined schedule as to quantity and time.

B. Emergency Interchange Service. A commitment for supplying power and energy under emergency conditions to the extent it is available.

C. Schedule Interchange Service. A commitment for supplying power and energy for use during periods of scheduled maintenance.

121195

Mr. Robert H. Fite - continued

D. Economy Energy Interchange Service. A commitment for supplying economy energy which you could produce and would sell at your incremental cost.

Your proposal should specify such elements as:

1. Maximum amount of power you could make available at the interconnection point. (Assume this point to be immediately adjacent to your 69 kv line along King's Highway near SR 60).

2. Delivery voltage now and at some specified future date.

3. Extent of interconnection facilities to be provided by the City.

4. Point of metering if a transformer is required for the interconnection.

5. Amount of reserve generating capacity you would require the City to maintain.

6. Minimum demand, energy and time period required for each schedule. Also length of time you would keep each rate in effect.

7. Treatment of unintentional interchange.

8. Rates for demand (kw) and energy (kwh).

9. Adjustment clauses for fuel commodity and taxes, including extent to which Federal Income Tax adjustments would be applicable.

10. Determination of billing demand and minimum bills, where applicable.

It is our sincere desire that we continue our mutual efforts toward reaching a working agreement between your system and ours. We must, however, observe the time schedule prescribed above and urge you to work with our consultants with this goal in mind.

J. Noble Richards, Mayor
CITY OF VERO BEACH, FLORIDA

cc: Black & Veatch
R. C. Fullerton, Vice Pres., Miami
R. D. Hill ✓ West Palm Beach

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

GAINESVILLE UTILITIES DEPARTMENT
and CITY OF GAINESVILLE, FLORIDA,

Plaintiffs,

Civil Action
No. 68-305-Civ.J

-vs-

FLORIDA POWER CORPORATION and
FLORIDA POWER AND LIGHT COMPANY,

Defendants.

ANSWER OF DEFENDANT FLORIDA POWER AND LIGHT COMPANY TO PLAINTIFFS' INTERROGATORIES - FIRST SET.

Defendant, FLORIDA POWER AND LIGHT COMPANY, for answer to the First Set of Interrogatories propounded by the Plaintiffs to this Defendant, in addition to the answers filed herein on the 18th day of July 1969, and subsequent to the ruling of the Court on objections to interrogatories by Orders dated September 26, 1970 and February 15, 1970, say, as to each numbered interrogatory, as follows, subject to the explanations hereinafter set forth.

EXPLANATIONS

A. There is attached hereto and made a part hereof, an alphabetical list of each of the present and former officers, agents, employees and other persons acting, or purporting to act, on behalf of Florida Power and Light Company or its subsidiaries or predecessors, giving the present or last known address, the present or last known position or business affiliation and each of the positions held during the

A contract for interchange service between Florida Power & Light Company and the City of Fort Pierce was signed on April 15, 1970, but its terms have not been implemented. Florida Power & Light Company does maintain an emergency service connection with the City of Fort Pierce pursuant to an oral agreement pending implementation of the aforementioned interchange contract. The City of Fort Pierce is therefore listed in Answer to Interrogatory Number 10. as well as in this Answer.

Not included in the above Answer are utility systems to which sales are made by Florida Power & Light Company for resale, but see Answer to Interrogatory Number 10. below.

2. The only interconnection that Florida Power & Light Company has had with another utility system for the interchange of power, other than those listed in the Answer to Interrogatory Number 1., was with Hudson Pulp and Paper Corporation during the period from January 8, 1948, to May 15, 1961. The terms of the interconnection were negotiated by:

Charles S. Coomes
Robert H. Fite
George C. Kinsman
Henry W. Page
James G. Spencer, Sr.
C. Bruce Vick
Alan B. Wright
Possibly others

The reason for discontinuance of the aforementioned interconnection was that improvements were made in both systems which made the interchange of power no longer necessary for either company under normal operating conditions.

During the period when the foregoing agreement was in effect, Hudson Pulp and Paper Corporation was classified in the Florida Power & Light Company Annual Reports to the Federal Power Commission, Form No. 1, "Other Non-Utilities" under the caption of "Interchange Power."

3. (a) City of New Smyrna Beach.

On August 16, 1968, J. V. Little, Director of Utilities for the City of New Smyrna Beach, directed an oral request to Alan B. Wright of Florida Power & Light Company for a conference to discuss an interconnection. A conference was held on August 21, 1968. Those attending for Florida Power & Light Company were: Alan B. Wright, Robert W. Wall, Jr., Harry V. Street and Charles S. Coomes. Those attending for New Smyrna Beach were: J. V. Little and Hugo Raushe.

Documents on file relating to this inquiry are as follows:

1. Robert W. Wall, Jr.'s inter-office correspondence of August 16, 1968, to Harry V. Street.
2. Alan B. Wright's inter-office correspondence of September 13, 1968, to Richard C. Fullerton, with enclosures.
3. Evert A. Young of Reynolds, Smith and Hills letter of September 13, 1968 to J. V. Little.

4. J. V. Little's letter of September 19, 1968, to Alan B. Wright.
5. Alan B. Wright's inter-office correspondence of September 25, 1968 to Charles S. Coomes.
6. Alan B. Wright's letter of October 8, 1968, to J. V. Little.
7. John M. S. Griffin's letter of March 6, 1969, to Alan B. Wright.

(b) City of Vero Beach

On January 5, 1966, John DuMars, City Manager of Vero Beach, wrote to Robert H. Fite of Florida Power & Light Company concerning the feasibility of establishing an interconnection. James G. Spencer, Jr. and Richard D. Hill of Florida Power & Light Company responded to this inquiry.

Documents on file relating to this inquiry are as follows:
1. F. C. Wallace of Black & Veatch letter of January 4, 1966 to John DuMars, City Manager of Vero Beach.
2. John DuMars letter of January 5, 1966, to Robert H. Fite.
3. James G. Spencer, Jr.'s letter of January 11, 1966, to John DuMars.
4. Richard D. Hill's inter-office correspondence of January 14, 1966, to James G. Spencer, Jr.
5. James G. Spencer, Jr.'s memo to file of March 18, 1966.
6. F. C. Wallace's letter of April 19, 1966, to The Mayor and City Council of Vero Beach.
7. Frank Phillips, Acting City Manager's, letter of April 20, 1966 to Robert H. Fite.
8. James G. Spencer, Jr.'s letter of May 2, 1966, to Frank Phillips.
9. James G. Spencer, Jr.'s inter-office correspondence of June 2, 1966, to Robert H. Fite.

On May 9, 1968, Mayor J. Noble Richards of Vero Beach requested by letter to Robert H. Fite that Florida Power & Light Company submit a proposal for inter-connection of the two systems. Robert H. Fite, Richard C. Fullerton and Richard D. Hill responded to this inquiry.

Documents on file relating to this inquiry are as follows:
1. Mayor J. Noble Richards' aforementioned letter of May 9, 1968, to Robert H. Fite.
2. Robert H. Fite's letter of May 15, 1968, to Mayor Richards.
3. Draft contract for Interchange Service between Florida Power & Light Company and City of Vero Beach, Florida.
4. Draft of Territorial Agreement relating to aforementioned interchange contract.
5. Charles S. Coomes' memorandum of June 7, 1968, to Richard C. Fullerton.
6. Richard D. Hill's letter of June 10, 1968, to Mayor Richards.
7. Charles S. Coomes' memorandum of June 10, 1968, to Richard C. Fullerton.
8. Revised draft of contract for Interchange Service, between

Florida Power & Light Company and Vero Beach, Florida, dated June 10, 1968.

9. F. C. Wallace's letter of June 11, 1968, to Charles S. Coomes.

10. Richard C. Fullerton's inter-office correspondence of June 12, 1968, to Richard D. Hill.

11. Harry V. Street/Ernest L. Bivans' inter-office correspondence of June 19, 1968, to Richard C. Fullerton.

12. Richard C. Fullerton's letter of June 21, 1968, to Mayor Richards transmitting proposed Territorial Agreement and Contract for Interchange service between Florida Power & Light Company and City of Vero Beach, Florida.

13. Letter of Fred J. Prestin, Chairman, Electrical Study Committee of Vero Beach, dated June 28, 1968, to Mayor Richards, with attachments.

14. F. C. Wallace's analysis of Florida Power & Light Company's proposal of June 21, 1968, dated July 9, 1968, addressed to The Honorable Mayor and City Council of Vero Beach.

15. Mayor Richards' letter of July 12, 1968, to Richard D. Hill.

16. Richard D. Hill's memo to file of July 17, 1968.

17. F. C. Wallace's letter of July 31, 1968, to Richard C. Fullerton.

On September 21, 1970, F. C. Wallace of Black & Veatch, Consulting Engineers for the City of Vero Beach, addressed a letter to Richard C. Fullerton of Florida Power & Light Company, requesting that the possibilities of establishing an interconnection between the two systems be explored. Mr. Fullerton responded by letter of September 30, 1970.

Documents on file relating to this inquiry are:

1. The aforementioned letter of F. C. Wallace to Richard C. Fullerton dated September 21, 1970.

2. City Manager James F. Pryde's letter of September 17, 1970 to F. C. Wallace.

3. Richard C. Fullerton's letter of September 30, 1970 to F. C. Wallace.

4. Draft of "Territorial Agreement and Contract for Interchange Service between Florida Power & Light Company and City of Vero Beach, Florida," dated October 8, 1970.

5. F. C. Wallace's letter of October 8, 1970 to Richard C. Fullerton.

6. F. C. Wallace's letter of October 29, 1970 to Richard C. Fullerton.

7. Richard C. Fullerton's letter of November 3, 1970 to F. C. Wallace.

8. F. C. Wallace's letter of November 10, 1970 to Richard C. Fullerton.

(c) City of Lake Worth.

By letter of September 6, 1968, to Richard D. Hill, Lake Worth City Clerk Eleanor J. St. Louis requested an interchange proposal from Florida Power & Light Company. Mr. Hill responded.

Documents on file relating to this inquiry are:

1. The aforementioned letter of Eleanor J. St. Louis to Richard D. Hill, dated September 6, 1968.

2. Richard D. Hill's memo to file of September 27, 1968.

3. Charles S. Coomes' inter-office correspondence of October 21, 1968, to Richard D. Hill.

4. Clipping from the October 24, 1968 issue of The Miami Herald.

5. Richard D. Hill's letter of October 23, 1968, to Lake Worth City Manager Carl L. Kopp.

6. Article I and Article II relating to a Territorial Definition, undated, by unknown author.

7. Description of City of Lake Worth Electric Distribution Boundary, by K. C. Mock & Associates, Inc., dated December 6, 1968.

8. List of persons attending conference in Lake Worth on January 3, 1969, by unknown author.

9. John B. Waddell's letter of January 15, 1969 to Richard D. Hill.

10. C. C. Blaisdell, Jr. 's letter of January 23, 1969 to Richard D. Hill.

11. Charles S. Coomes' inter-office correspondence of January 23, 1969 to Richard D. Hill.

12. Fred E. Anderson's inter-office correspondence of January 24, 1969 to Richard D. Hill.

13. Proposed Territorial Agreement and Contract for Interchange Service between Florida Power & Light Company and City of Lake Worth.

14. Print of City of Lake Worth Electric Distribution Area, dated November 5, 1968, by Robert G. Webb.

C. C. Blaisdell, Jr., Utilities Director, City of Lake Worth, proposed an interconnection and territorial agreement by his letter of November 27, 1970, to James L. Breedlove of Florida Power & Light Company. Mr. Blaisdell's letter is the only document on file relating to this inquiry.

(d) City of Gainesville.

Plaintiffs have inquired as to the possibility of an interconnection with this defendant, but plaintiffs have as much information relating to such inquiry as does the defendant.

4. In addition to those identified in the answers to Interrogatories Nos. 1, 2 and 3, the following:

Joseph M. Argo
Robert S. Bostwick
Louis P. Browning
Kenneth S. Buchanan
Betty Crocker
Alpheus M. Davis
George English
James S. Greene
Loys B. Hicks
Sidney S. Hoehl
William E. Houser
William H. Johnson
J. Wylly Keck
Malcolm B. McDonald
Frank A. Mergen
Fred R. Millsaps
John E. Moore
John T. Moore
Isaac I. Moody
Breck L. Porter
Alfred D. Schmidt
Kenwood W. Shotwell
Alfred O. Wickham
W. Leroy Williams
Albert J. Zinni
Possibly others

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

GAINESVILLE UTILITIES DEPARTMENT and CITY OF GAINESVILLE, FLORIDA, Plaintiffs, vs. FLORIDA POWER CORPORATION and FLORIDA POWER AND LIGHT COMPANY, Defendants.	No. 68-305-Civ-J

- - - - - -

DEPOSITION OF:	ROBERT H. FITE
TAKEN:	Pursuant to notice by counsel for plaintiffs
DATE:	September 25, 1972
PLACE:	Florida Power and Light Office Miami, Florida
TIME:	10:45 o'clock a.m.
BEFORE:	Gerald N. Eichar, Jr. Notary Public State of Florida at Large

Would I be correct in assuming for the titles of the jobs you have had with Power and Light that you have had some responsibilities and work in the area of developing inter-connection of utilities?

A Well, I don't know whether you can or not. To begin with, we've never, during my experience with the company, sought a lot of inter-connections. We have never actually tried to develop these inter-connections because we have a policy of not serving cities wholesale. That existed for a long time.

In cases where there was some occasion for an inter-connection or some inquiry or where we were trying to purchase the distribution system of some municipal operation or some company's distribution center, either MacGregor Smith or I would probably be in charge of the activity.

You would have to cite the specific case to develop it. It wasn't restricted just to Smith and me. We had other people working on these matters if and when they arose.

Q Do you know approximately or precisely how many other electric utility systems Florida Power and Light was inter-connected with on the date of your retirement?

A Well, no. I don't know exactly. I guess I

of our own situations, and this has been going on for some time. So we haven't got any to sell.

Q I'm not sure I made my question clear. We're talking about sales to other investor-owned utilities.

A Yes, sir.

Q We have already passed the REA's.

A Yes, sir. I'm talking about investor-owned utilities. There may have been an exception, but I can't think of what it was at the moment.

Q Going back to Florida Power and Light's inter-connections with other power companies, regardless of the nature of their ownership, you testified, I believe, that Florida Power and Light has not sought to make inter-connections.

A I think that's generally true; yes, sir.

Q How then did the inter-connections that do exist come about, if you know?

A Well, I think in two ways -- maybe there are some exceptions to what I just testified to, in that some of these inter-connections came about because we sought to purchase or to lease municipal distribution systems. That would be in the case in New Smyrna Beach; might be the case in Homestead.

Most of the other inter-connections, like Fort Pierce and, I believe, you could characterize

Vero Beach in this classification, came to us for inter-connections. Just like Gainesville wrote me a letter --

Q I'm not sure I understand the early part of your answer.

How would Florida Power and Light attempt to lease or buy a system by bringing about an inter-connection?

A By negotiations with the City Commission; elections on the question of a lease.

Q Did the inter-connection come about because you were successful in getting a lease?

A No.

Q That is my question. How do you get from a discussion of lease or purchase over into negotiating an inter-connection?

A Well, it comes about this way: In some cases a city such as Lake Worth, I believe, was a case in point, wanted to buy power wholesale -- that was the case with Homestead -- and our policy was not to sell wholesale, as I testified.

So we then tried to work out a lease of their system and take over the whole thing. In the case of some of these towns the City Commission or some of them thought that would be a good thing, but none of them

ever materialized and became effective.

In the meantime, if they had emergencies we tied in to them. One case we agreed to supply electricity for a year or so while we could negotiate and try to work out the lease or the purchase of the distribution system.

Q Do you see any benefits to Florida Power and Light in having inter-connections with other systems in Florida?

A Well, you can't answer that question generally. It depends on what the other system is; how much power it's got; how the contract reads; what the rates are and so forth.

Q Are there any benefits to Florida Power and Light in being inter-connected with Florida Power Corporation?

A Yes, I think there are.

Q What are those benefits, in your opinion?

A Well, the benefits are that Florida Power Corporation and others like it, Jacksonville, Orlando, Tampa, maintain or try to maintain adequate reserves so that if we get in trouble we've got some place to go to get some emergency power, and vice versa.

It also reduces the amount of spinning reserve that you have to put on the inter-connected system to

APPENDIX VID

Exhibit ___ (GT-9) p.1
82

FLORIDA POWER & LIGHT COMPANY

February 25, 1971

Mr. L. K. Wiley
Director Engineering
Jacksonville Electric Authority
220 East Bay Street
Jacksonville, Florida 32202.

Dear Ken:

With reference to your letter of January 27, and our telephone conversation of February 22, we have carefully considered your request to use our transmission system for dealing with a third party. We are strongly opposed to this as expressed to you in December, when you first brought up the matter, and again expressed to you and Lou Winnard in Jacksonville by the writer and Al Wright on January 20.

We can readily understand your concern about power supply for the summer of 1971. The situation will be tight in peninsular Florida, but we stand ready to help you as we have always done in the past. We feel that you should make a request to us to obtain power for you from any source available to us. This is the way we have always supplied you.

In the summer of 1970, which was a close one for all of us, we supplied you with requested power on 29 days, and in quantities of up to 155 megawatts. During this period you had various outages involving Northside 1, Southside 5, Kennedy 7, and Kennedy 10. The record shows that except for one short period you were able to maintain some spinning reserve, and I understand that you did not curtail any customers. In order to supply you, we purchased power from Orlando Utilities Commission, from Florida Power Corporation, and from Tampa Electric Company - some of Tampa's power came from the City of Lakeland. This assistance was given you in spite of the fact that we had record peaks of our own.

We expect to back you up in the same way this next summer, and it will only be through close cooperation that we can expect to get through the tight situations each of us fully expects to encounter. We have a great interest in the power supply situation in Jacksonville, particularly since our operations in North Florida are closely integrated with your system - a condition which has existed ever since at Jacksonville's request we jointly built the second interconnection on the east side of the St. Johns River.

We do not feel that it is appropriate for you to trade against the free flowing power situation which now exists at Robinwood and Normandy. As you know, there was a time when the Randall Street tie (later Lane Avenue, and still later Normandy) was the only tie between us. It was strengthened a

251727

number of times and we had plans to strengthen it still further, and at the same time bolster the supply to our load in the area west of Palatka. It was in your interests that the second tie was made at Robinwood, and you were willing to agree that you would loop Jacksonville to serve your own system and at the same time support our area west of Palatka while we supported you at Robinwood. It was thought, at the time, that another 240 kv interconnection with FPL would eventually be made on the west side of your system, probably at Normandy. We are now extending our 240 kv system from Palatka to Starke for operation this summer, and of course, this could go on into Normandy. However, for several years now JEA has indicated a desire to tie with Florida Power Corporation. This is good and we hope that you do, since it will help all of us. Jacksonville also contracted to make another interconnection with FPL at Yulee since our plans for transmission in the west were changed by the Robinwood decision. Such an interconnection is now being made. We will admit that it is not a true interconnection in the initial phase of its operation, and will not be until a 115 kv line section is in service between Yulee and Callahan. If you feel that there should be some renegotiation on this point, we will be glad to discuss it with you. We are also willing to discuss the Doctors Inlet situation if you find it appropriate. We do not feel that any of these matters should be traded in seeking a solution for your 1971 problems.

Ex. (GT-9) P. 2 of 2

Since your search for a small block of power for this summer stems from the desire to meet your obligations to the Florida Group in the matter of spinning reserve, perhaps you should consider a plan now being studied by the Florida Operating Committee for use next summer. I refer to the plan whereby any of us lacking our share of spinning reserve may raise under-frequency relay settings as a substitute for all or part of our spinning reserve allocation. Jacksonville could save money by utilizing this procedure, and any surplus power in peninsular Florida would still be available for backup in the event of an emergency.

We will be glad to discuss all of these matters either by telephone or in another meeting at your convenience.

Sincerely,

H. W. Page
Manager Power Supply

HWP:ebd

P.S.

Since the above was written, Messrs. Fite, Spencer and I talked by telephone with Mr. Winnard, who indicated that JEA would like to negotiate for 50 mw firm from us this summer if we can arrange to obtain it. We are going to work on this and will be back in contact with you next week.

CC: Mr. L. H. Winnard

bcc: Messrs: R. C. Fullerton
R. H. Fite
J. G. Spencer
Loftin Johnson
A. B. Wright

EXHIBIT ____ (GT-44)
Page 1 of 2
231788

City of Lake Worth

TELEPHONE 533-1371 — 414 LAKE AVENUE

LAKE WORTH, FLORIDA
33460

Office of
Utilities Director
114 College Street

November 27, 1970

Florida Power and Light Company
P. O. Box 31
West Palm Beach, Florida 33402

Attention: Mr. J. L. Broadleve, Division Manager

Re: Proposed Interconnection Agreement

Gentlemen:

We request consideration be given to an interconnection between the Lake Worth Municipal Electric System and Florida Power and Light Company's system.

The agreement for the interconnection would be based upon the agreement previously prepared in 1968, covering both a territorial agreement and a contract for interchange service. Under the interchange service, we would include the following: firm interchange service; emergency interchange service; scheduled interchange service; and an interchange service for transmitting power over your transmission system to and from other electric systems in the State of Florida.

Firm interchange service is not needed or desired at this time, but we wish to include this item for needs in future years.

The transmitting of power over your transmission system has not been previously discussed, but we desire to include this item in the negotiations of an agreement.

The proposed point of interconnection of the systems would be our existing substation located at 16th Avenue North and the F.E.C. Railroad and Florida Power and Light's new station on Norton Avenue, which is now under construction. Operating voltage for the interconnection would be 13817, with a proposed intertie capacity of 35 to 50 MVA, initially. It would be our intent to increase this capacity in future years.

Ex____ (GT-44)
p. 2 of 2

231789

Florida Power and Light - 2 - November 27, 1970

Enclosed are three (3) copies of aerial maps showing the land owned by the City of Lake Worth, marked in Yellow. Presently, there is a substation on Lots 4 and 5 operating at 13.2KV. This substation, as well as all others in our system, will be converted to 26.4KV in early 1971.

The addition of one or two lots would provide us with sufficient land to terminate a 138KV line. The 138KV would be transformed to 26.4KV for transmission throughout our system. Our 26.4KV transmission system from this substation would have to be increased to handle the proposed tie capacity.

We appreciate your considering this request for an intertie agreement and are ready to meet with you at your convenience, or furnish any additional information.

An early response to this request will be appreciated so that we may proceed with the planning. A target date of August 1973 has been tentatively set for operation of this intertie.

Very truly yours,

C. C. Bladsdell, Jr.

C. C. Bladsdell, Jr.
Utilities Director

Enclosure: 3 Maps

cc: E. A. Young, Reynolds, Smith and Hills w/enclosure
R. D. Pedersen, PSCF
J. B. Waddell, City Attorney
R. D. Hill, Vice President, FP&L

CCB,Jr./mar

RECEIVED
DEC 1 1970
L L BREEDLOVE

FLORIDA POWER & LIGHT COMPANY

INTER-COMPANY CORRESPONDENCE

231793

LOCATION West Palm Beach, Florida
DATE February 17, 1971

COPIES TO

TO MEMO TO FILE

FROM J. L. Breedlove

SUBJECT: MEETING REGARDING INTERCONNECTION BETWEEN LAKE WORTH MUNICIPAL ELECTRIC SYSTEM AND FLORIDA POWER & LIGHT COMPANY

Date of Meeting: Wednesday, February 17, 1971
Place: 310 Okeechobee Road - Div. Managers' Office
In Attendance: C. C. Blaisdell, Jr. - Utilities Dir.-City of L.W.
E. Barrow - Supt. of Line Department "
R. D. Pedersen - Reynolds, Smith & Hills
Mr. Majem - Reynolds, Smith & Hills
R. D. Hill - FPL
L. P. Browning - FPL
C. H. Alexander - FPL
J. L. Breedlove - FPL

---

ll of the above met in my office on this date to discuss an inter-connection between the Lake Worth Municipal Electric System and lorida Power & Light Company's System.

r. Blaisdell stated that he would like to have the contract for emer-ency power only to be connected in 1973. The purpose for wanting h signed agreement between the two utilities as early as possible s to start negotiations for financing of the necessary equipment nd lines to make the connection in 1973.

told Mr. Blaisdell and the other gentlemen that we were perfectly illing to diligently try to work on a territorial agreement and a ontract for interchange service. I further stated that I was sure hat something could be worked out.

t this point I asked Mr. Blaisdell to define his paragraph in the atter of November 27th, where he made reference to transmission of wer over our system. He then stated that his interpretation of heeling power was that if he needed five or ten megawatts, that he uld contact Vero Beach or Fort Pierce and purchase it from them, d letting it over our lines. At this point, I advised him that we d not and did not make such contractual agreements. I said, that ferred to, if necessary, buy the power from Vero Beach or..

Fort Pierce and sell it to the City of Lake Worth. I said we prefer to be the agent and not merely a carrier. I explained to him that this is the way we have been operating and plan to continue on the same course. There was no further discussion along these lines, however, I am sure that Mr. Blaisdell would like to pursue it further.

As to the location of the substation site, this will be mutually agreed upon, the type of connection, and type of operation. The City seems to be most anxious to sign a formal contract and would like to have something further to talk about by the middle of March. I informed them that we may have additional information and a starting point by that time, but we did not feel that we were in a position to promise a signed contract by this date.

Mr. Blaisdell stated that their target date for the new 32KW generator was in early June. Their winter peaks were still exceeding their summer load.

I feel that the City will sign a territorial agreement along with the interconnection agreement.

The location of their substation would be approximately 3/4 mile south of the Lake Worth Canal, which divides the City of West Palm Beach and the City of Lake Worth, and immediately west of the F.E.C. Railroad.

They indicated that they would be satisfied with a radial 138KV line into the substation to which they would have a loop of 26KV connect and long range plans for 138 transmission through the City of Lake Worth. They were told by Mr. Browning that we preferred a 138 loop system from our Norton Substation west to Military Trail and the Purdy Lane Substation, with the necessary appertinences in between.

The discussion was ended by both parties agreeing to review the old contract and insert the necessary changes, and then to regroup sometime the first week of March for further discussion.

JLB/ca

FLORIDA POWER & LIGHT COMPANY
INTER-OFFICE CORRESPONDENCE

290181

Memo To File

LOCATION Naranja, Florida
DATE September 12, 1972

Frank Thompson

COPIES TO

EXHIBIT ____ (ET-43)
Page 1 of 1

SUBJECT: DISPLACEMENT OF POWER REQUEST
City of Key West / Florida Keys Electric Co-op / Florida Power & Light Company / City of Homestead

Al Adomat referred the ~~enclosed~~ ATTACHED memo to Ken Beasley in Fort Lauderdale for his comments. Ken called me and said he agreed with my opposition to this proposal and suggested that we delay giving any answer to Jim Berry or to the City of Homestead as long as possible. We have had similiar requests in the past and are fearful that the Federal Power Commission may rule in the future that we must participate in this type of scheme. We are, however, going to hold up just as long as possible.

Frank Thompson

FFT/jaa

CO

Memo from FRANK THOMPSON

TO Bogie DATE 12-19 1972

271261

Attached is the information on the City of Homestead Displacement of Power ("Wheeling") request. I need to discuss this with Al and/or Gene before the meeting on 1/10/73.

Frank

INTER-OFFICE CORRESPONDENCE 221980

FEB 15 1973

OP

LOCATION Naranja, Florida
DATE February

GENERAL ENGINEERING

To File

Thompson - South Dade

COPIES TO Mr. F. E. Autrey
To All Those Present

INTERCHANGE - CITY OF HOMESTEAD

A meeting was arranged today at the request of Mr. Peters through Mr. Page. The following people were present:

CITY OF HOMESTEAD.

Olaf Pearson, City Manager.
Herman "Sonny" Peters, Electric Utility Manager
Jim Berry, Consulting Engineer, Smith & Gillespie

FLORIDA POWER & LIGHT CO.

Harry Page, Senior Vice President
Loftin Johnson, Operating Vice President
Reid Culberson, Chief Engineer
Frank Thompson, South Dade

A general discussion was held on the City's future power requirements and generating capabilities. The City Council last night approved the installation of two additional 6000 KW diesel generating units at the Homestead Plant. These units will probably be installed by the winter of 1974 and will bring the total plant generating capacity to approximately 45,000 KW. Plans call for a 50,000 KW steam generating plant to be built and in service by 1978 or 1979. Demands on the Homestead System will probably surpass their capacity by 1976 and they are planning alternative methods of obtaining the additional capacity required.

Mr. Page explained the rules of Interchange and reviewed our agreement with the City of Vero Beach. He explained that some quality must be involved in order for a true Interchange agreement to function.

It was tentatively agreed that the logical location for a metering station (point of service) would be at the S. W. corner of S.W. 162 Avenue and 312 Street. Mr. Page explained

Continued.....

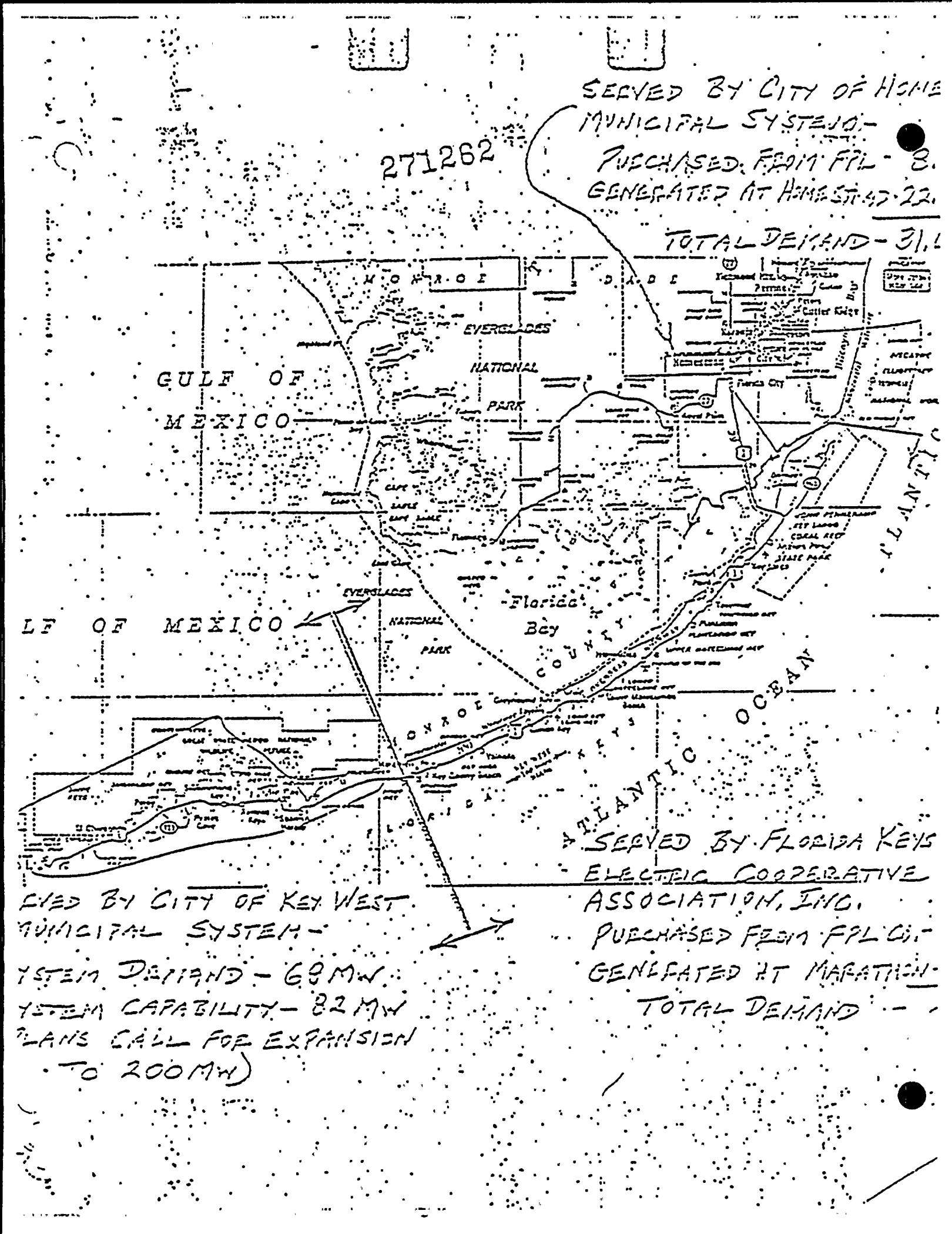
that the Municipalities have built these switching stations in the past and Florida Power & Light operates them and does the routine maintenance. No agreement was reached on the size or ownership of the switching station.

The subject of "Wheeling" or "Displacement" was raised by Mr. Berry and Mr. Page explained that we have only been involved in border to border contracts such as was established between the City of Lakeland, Tampa Electric, Florida Power & Light and the Jacksonville Electric Authority in 1971. Mr. Berry stated that he would like to explore this type of agreement some time in the future. The probable municipal systems having excess generating capacity are Key West and an unnamed municipality to the north.

They requested copies of the Vero Beach and Fort Pierce Agreements and I will present these to them in a few days after reviewing them with Mr. Page. We also agreed to give them a couple of examples of our production operating and maintenance costs along with the agreements so that they will have some idea of the cost of Interchange Power.

Frank Thompson

FRT/jaa


271262
SERVED BY CITY OF HOME
MUNICIPAL SYSTEM.-
PURCHASED FROM FPL - 8.
GENERATED AT HOMESTEAD-2.
TOTAL DEMAND - 31.
GULF OF
MEXICO
EVERGLADES
NATIONAL
PARK
Florida
Bay
ATLANTIC OCEAN
SERVED BY FLORIDA KEYS
ELECTRIC COOPERATIVE
ASSOCIATION, INC.
PURCHASED FROM FPLC.-
GENERATED AT MARATHON-
TOTAL DEMAND
SERVED BY CITY OF KEY WEST
MUNICIPAL SYSTEM -
SYSTEM DEMAND - 69 MW
SYSTEM CAPABILITY - 82 MW
PLANS CALL FOR EXPANSION
TO 200 MW)

SMITH AND GILLESPIE ENGINEERS, INC.
POST OFFICE BOX 1648
JACKSONVILLE, FLORIDA 32201

August 16, 1972

270721

Mr. H. Frank Thompson
District Manager
Florida Power and Light Company
P. O. Box 2128
Naranja, Florida 33030

Subject: Interconnection - Cities of Key West and Homestead with Florida Power and Light Company and Florida Keys Electric Cooperative Association, Inc.
File No. 7002

Dear Mr. Thompson:

I am sorry I missed you last week, but I understand that Mr. Pearson had an opportunity of speaking briefly with you earlier concerning the arrangement now under consideration by the Cities of Key West and Homestead.

Although identified as an interconnection, it is anticipated that the primary operation would be a displacement whereby the City of Key West would supply power to the Florida Keys Electric Cooperative Association, Inc., which would unload the transmission line from the Florida Power and Light Company to the Florida Keys Electric Cooperative Association, Inc., and, assuming that satisfactory mutual agreements can be negotiated, the City of Homestead would take like amounts of power from the Florida Power and Light Company at a mutually agreeable terminal and voltage.

It is recognized that the multiple participants in this arrangement make it necessary for all parties to explore alternatives and satisfy themselves as to circumstances that would exist if the interconnection is negotiated.

The Cities of Key West and Homestead have met and established that there is a mutual interest between the two Cities.

Mr. H. Frank Thompson
District Manager
Florida Power and Light Company
Naranja, Florida
File No. 7002
August 16, 1972

270722

Representatives of the Utility Board of the City of Key West have the responsibility of contacting the Florida Keys Electric Cooperative Association, Inc. Smith and Gillespie Engineers, Inc., on behalf of our client, the City of Homestead, have the responsibility of contacting the Florida Power and Light Company. We look forward to the opportunity of discussing this with you. We hope that the possibility of unloading the transmission line connecting Florida Power and Light Company to the Florida Keys Electric Cooperative Association, Inc., and thereby prolonging the useful life of this facility, and other considerations may provide an area of interest to the Florida Power and Light Company.

I will look forward to the opportunity of discussing this with you upon your return.

Yours very truly,

SMITH AND GILLESPIE ENGINEERS, INC.

James J. Berry
Executive Vice President

JJB:nmr

c.c.: Mr. F. E. Autrey
Mr. K. R. Beasley
Mr. O. R. Pearson
Mr. H. C. Peters

CLIPPING SHEET

Mail to Adv. & Pub. Dept.
Refer To:
1.
2.
3.
Adv. & Pub. Dept.

271265

City MIAMI
Paper MIAMI NEWS
Date 8-4-72 Page Sect.
Office Mailed From SOUTH DADE

COPIES
White—Office Circulatio
Blue—Permanent Record
Canary—Special File

Miami News 8/4/72

Homestead seeks Key power loan

By CONNIE STANDISH
Miami News South Dade Bureau

Faced with an overburdened electrical power system, Homestead city officials today met with the Key West Utility Board to work out arrangements to borrow power from the Key West power plant.

Homestead Mayor William Dickinson described the power situation in Homestead as "critical". The Homestead Lights and Water Department has more than 7,200 electric customers.

Dickinson said the city has been purchasing blocks of power from Florida Power & Light Co. when the city's system is overloaded.

But FP&L is also having trouble meeting demands.

Three new electric generators were scheduled to be in operation in Homestead by mid-summer. They have been rescheduled to start operation by Sept. 1.

City Manager Olaf Pearson said it is entirely possible the Sept. 1 deadline might not be met. "We could have real trouble when school starts, and people return to Homestead for the winter," he added.

A preliminary study of a power link between Key West and Homestead shows about 8 miles of line work will be needed. The rest of the link would be supplied by the Florida Keys Electric Cooperative Association.

Key West Power Company expects to have a new generating plant in full operation later this month, which will give the city an excess of electricity.

FLORIDA POWER & LIGHT COMPANY
INTER-OFFICE CORRESPONDENCE

271263

LOCATION Naranja, Florida
DATE August 31, 1972

Mr. E. A. Adomat

COPIES TO

Frank Thompson - South Dade

SUBJECT: DISPLACEMENT OF POWER REQUEST
City of Key West / Florida Keys Electric Co-op / Florida Power & Light Company / City of Homestead

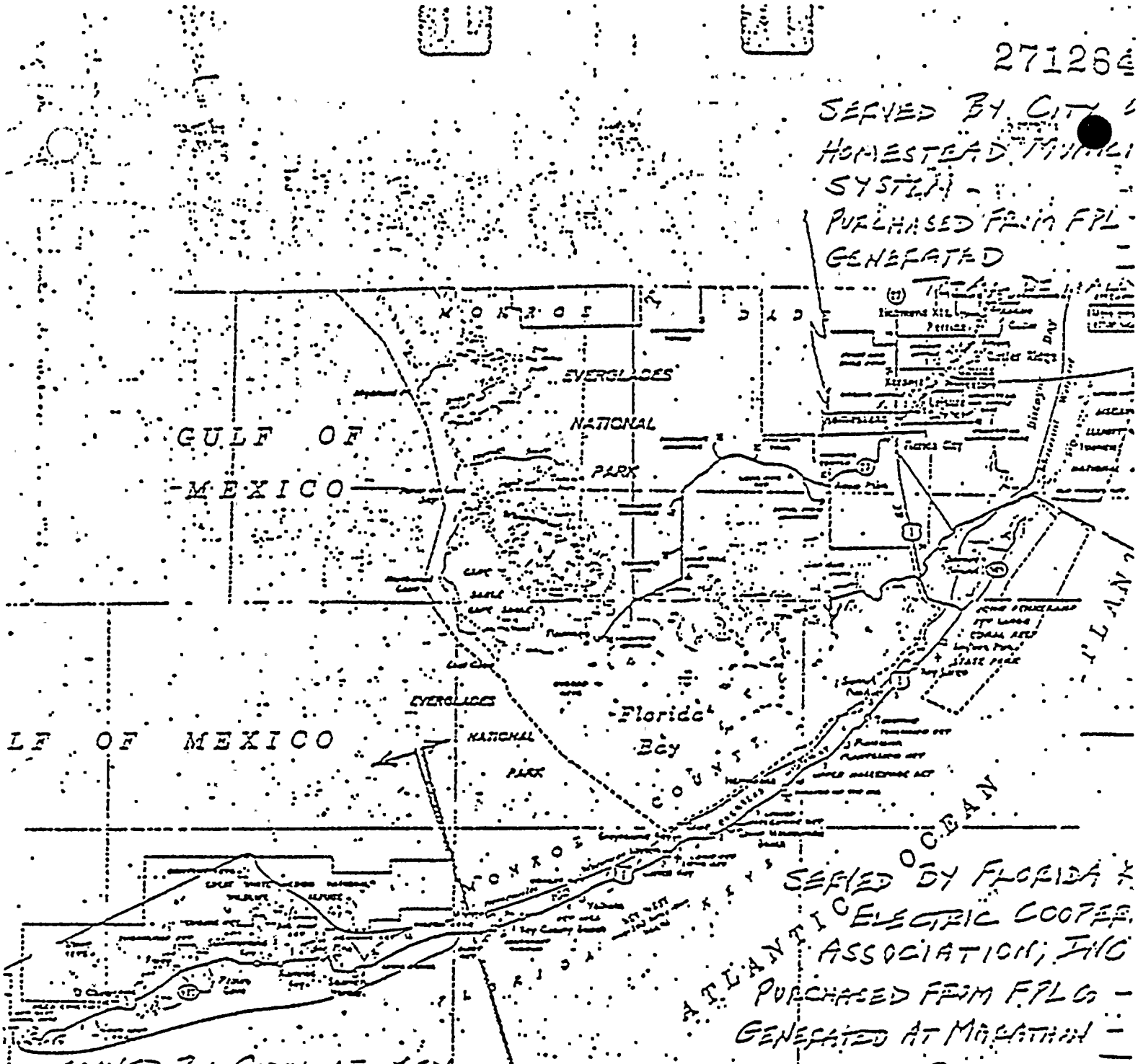
We have been requested by the Consulting Engineer for the City of Homestead to consider a scheme whereby the City of Homestead would take advantage of the excess power plant capacity presently existing at the City of Key West. The City of Key West Municipal Power System would generate approximately 11 Mw of surplus power and serve the south end of the Florida Keys Electric Co-op area thus relieving the Florida Power & Light Company of the "burden" of transmitting this 11 Mw from our Florida City Substation to the Keys Co-op. The Florida Power & Light Company would then serve the City of Homestead with 11 Mw of power "generated" at the City of Key West Plant. Attached is a copy of the letter from the engineer and a copy of a newspaper article concerning this plan.

I am opposed to our participation in this proposed plan even if the monumental electrical and mechanical problems could be solved. Please give me your thoughts.

Frank Thompson

FFT/jaa

Attachments



271264

SERVED BY CITY
HOMESTEAD MUNICI
SYSTEM -
PURCHASED FROM FPL
GENERATED

EXHIBIT ____ (GT-39)
Page 1 of 2

FLORIDA POWER & LIGHT COMPANY

May 23, 1975

231582

Mr. John R. Kelly
Director of Utilities
Utilities Commission
City of New Smyrna Beach
P. O. Box 519
New Smyrna Beach, FL 32069

Dear Mr. Kelly:

Florida Power & Light Company is in receipt of your letter dated April 28, 1975 whereby you have requested this Company to transmit power and energy from the Crystal River nuclear unit to your system.

As you know, the recent history of FPL has been one of increasing problems in meeting both the generation and transmission requirements caused by the rapidly increasing demand within our own system. As a result, FPL has not hitherto been in a position to offer transmission services of the nature generally referred to as "wheeling" or displacement. We are aware of evolutionary changes within the electric utility industry of Florida and are cognizant of transmission services necessitated by your proposed participation in the Crystal River nuclear unit.

This Company is presently assessing its policy regarding rendition of transmission services in light of your request and our capacity, both present and future, to comply with it. The decision on your request cannot be made in isolation but must be made in the context of other similar requests as well as the facts and circumstances arising out of participation by other systems in our proposed nuclear unit at St. Lucie (St. Lucie II) and future additions to our nuclear generation capacity. Likewise, we are sure you understand the necessity on our part of studying appropriate rate schedules and analyzing the costs of service involved in providing transmission services for other utilities.

In addition, we are attempting to assess our overall position in light of our legal obligations under the Florida Energy Grid Law and the somewhat uncertain requirements of the U.S. Department of Justice in the nuclear licensing procedures. Our decision will be made consistent with proper management objectives of maintaining our system integrity, protection of our own customers and stockholders, and the obligations imposed upon us by federal and state law as well as the appropriate regulatory agencies. We will proceed in our assessment on the premise that any discussion of furnishing transmission services is predicated only on available capacity within our system in excess of our own reasonable present and future needs as determined from our system forecasts.

Ex. ____ (GT-39)
P. 2 of 2

231583

We will, as soon as practicable in light of the above factors, transmit a more definitive response to your letter. Meanwhile, we solicit any proposals which you may have which are consistent with our obligations to our own customers as well as neighboring utility systems, other than yourself, and which proposals are also consistent with the policies of the State of Florida as stated in the above referred to Energy Grid Act.

Yours very truly,

R. G. Mulholland
Group Vice President

RGM/dw

cc: Messrs. E. L. Bivans
W. E. Coé
T. Danese
J. N. Daniel
E. L. Williams

bc: Messrs. Lon Bouknight
R. T. Hall, III
J. E. Mathews, Jr.
H. A. Poth

Exhibit ___ (GT-11) page 1 of 2

COMM - EXEC

JUL 29 1976

FLORIDA POWER & LIGHT COMPANY

INTER-OFFICE CORRESPONDENCE

100310

TO Memo to File

LOCATION Miami, Florida

DATE May 12, 1976

FROM W. E. Coe

COPIES TO (J. K. Daniel on 7/23/76)

SUBJECT: Vero Beach Economy Interchange
Meeting of May 11, 1976

An interconnection contract was signed between FPL and CVB on November 1, 1971. The actual final interconnection was completed on January 23, 1974. In January 1975, FPL and CVB, by mutual consent, started engaging in economy interchange, mostly during off-peak hours and weekends. In the first five months of 1975, CVB's share of the savings in the economy transactions amounted to $17,561. Economy transactions between FPL and CVB were stopped during the summer due to the price of available capacity. CVB did not request any further economy interchange in 1975. Thus far in 1976, there have been economy interchange transactions on only one day, February 24, when FPL sold to CVB 14,000 kwh at an average price of 20.3 mills/kwh.

A meeting was held in Vero Beach on May 11, 1976, at Mr. John Little's request. Those in attendance were:

Messrs: John Little - City Manager of Vero Beach
Fred Gossett - Plant Manager of Vero Beach
Schuller Massey - Asst. Plant Manager of Vero Beach
C. N. Whitmire - Manager - System Operations - FPL
K. S. Buchanan - Staff Consultant - Power Supply - FPL
W. E. Coe - Director - Power Supply - FPL

During the course of the meeting, Mr. Little reported an offer that had been made to him by OUC to sell non-firm power at 19 mills/kwh, and would FPL deliver that energy across our system. It was pointed out to Mr. Little that FPL had no filed rate for such a delivery, and in the second place, FPL would be able to sell energy during many hours of the day at a rate equal to or lower than 19 mills/kwh.

A review of the economy transactions with JEA, OUC, Lake Worth, and Ft. Pierce over the past few months pointed out that our production costs were between 16-21 mills/kwh. It was pointed out that with CVB having production costs in the range of 23-26 mills/kwh, their purchase cost would range between 19.5-23.5 mills/kwh. Therefore, the cost of economy energy would be less than the 19 mills/kwh energy from OUC plus appropriate delivery charge.

Exhibit ___ (GT-11) p. 2 of 2 pg 100341

It was again pointed out that FPL has been doing economy interchange with JEA, OUC, Lake Worth, and Ft. Pierce in varying amounts for the past year, but that CVB had not wanted nor requested energy on an economy basis per their operating personnel during the past year.

The conclusion of the meeting was that Messrs. Gossett and Massey would, as time permitted, calculate their incremental production costs at various levels of generation and contact FPL as to the availability of economy energy. It was generally felt that with the new capacity being installed on the FPL system, that economy energy at a reasonable rate would be available.

K A Buchanan

for W. E. Coe
Director of Power Supply

WEC/ays

Exhibit ____ (GT-12) page 1 of 2 7/28/76 JKD

100295

FPL'S RESPONSE TO "REFUSAL TO WHEEL FOR VERO BEACH"

FPL representatives had conversation with Mr. Little of Vero Beach in the latter part of March or early April at which time Mr. Little indicated he could possibly obtain some "dump" power on an "if or when available" basis from Orlando Utility Commission (OUC) and questioned what provisions and at what costs could FPL utilize its transmission lines to transmit such power.

It was explained that FPL is under the jurisdiction of the Federal Power Commission and that any agreement concerning such transaction would have to be filed with the FPC and receive their approval and this could be a time consuming process. Moreover, in order to arrive at the basis for costing such service, studies would have to be conducted to assure that reasonable charges would prevail. Again, these studies would be time consuming.

As put to FPL the request was for an almost immediate response which would have been impossible. FPL suggested since there was an existing agreement between Vero Beach and FPL for the interchange of power under various situations that possibly Vero Beach could receive the needed energy.

Ex. ____ (GT-12) p. 2 of 2

FPL'S RESPONSE TO "REFUSAL TO WHEEL FOR VERO BEACH

100296

at comparable costs under this agreement and not be subject to the added costs associated with transmission service. FPL further suggested that representatives from FPL would be glad to meet with Vero Beach to determine what would be the most appropriate arrangements to provide such service. Three representatives from FPL's Power Supply Department met with Mr. Little and two Vero Beach Power Plant representatives in May. At this meeting it was verified that FPL could supply the requested energy at comparable costs to those previously quoted. Vero Beach representatives indicated they would make some calculations relative to their operating costs and contact FPL if they wish to pursue the suggested arrangements.

FPL did not receive any official request for transmission of power from OUC, nor to my knowledge receive any indications that Vero Beach wished to pursue FPL's suggested alternative.

EXHIBIT ——— (ST-8)

LAKE WORTH UTILITIES AUTHORITY

CITY OF LAKE WORTH
114 COLLEGE STREET
LAKE WORTH, FLORIDA 33460

TELEPHONE 305-582-2371 EXT. 33
CLIFFORD C. BLAISDELL JR.
UTILITIES DIRECTOR

NOV 4 '77

October 31, 1977

Mr. B. L. Taylor
Manager, Systems Operations
Florida Power and Light Company
P. O. Box 013100
Miami, Florida 33101

Dear Mr. Taylor:

On October 6, 1977, Florida Power and Light Company denied a request by the Lake Worth Utilities Authority to transport (wheel) power that is agreed to purchase from the Fort Pierce Utilities Authority. This interchange transaction, had it been allowed to proceed, could have resulted in significant economic savings for the Lake Worth system.

The premise for the refusal to "wheel" power between the two systems, as explained by a Florida Power and Light Company official, was because of the lack of a "Transmission Service Rate Schedule" on the part of Florida Power and Light Company. The absence of such a rate greatly restricts the ability of the Lake Worth Utilities Authority in taking advantage of acquiring for its customers electrical energy at the most economical rate possible.

Therefore, the Lake Worth Utilities Authority would request that a fair and equitable "Transmission Service Rate Schedule" be developed by Florida Power and Light Company, and filed with the Federal Power Commission and the Florida Public Service Commission, that would grant Lake Worth access to economical energy sources when and as they become available throughout the State of Florida.

Very truly yours,

LAKE WORTH UTILITIES AUTHORITY

C. C. Blaisdell, Jr.
Utilities Director

cc: J. C. L'Engle, Chief Engineer
Robert Jackson, Electrical Engineer
Robert Jablon, Spiegel & McDiarmid,
Washington, D. C.

CCBJr/pc

REYNOLDS, SMITH AND HILLS
ARCHITECTS · ENGINEERS · PLANNERS
INCORPORATED

[illegible]
PAUL M. HUGGLESTON, A.S.C.E.
WALTER B. SCHULTZ, A.I.A.
JAMES F. SHIVLER, JR., M.S.P.E.
NORMAN L. BRYAN, M.S.P.E.
ALFRED N. LANOE
RALPH W. HEIM, I.E.E.E.
WILLIAM J. WEBBER, A.I.A.
ROBERT F. DARBY, A.I.A.
C.I. HARDING, PH. D., A.I.A.E.E.
BOB ALLIGOOD, A.I.I.E.

GEORGE B. HILLS, A.I.C.E.
CONSULTANT

Utilities Authority
114 College Street
Lake Worth, Florida 33460

November 6, 1970

Attention: Mr. C. C. Blaisdell, Jr.
Utilities Director

City of Lake Worth, Florida
Interconnection with
Florida Power and Light Company
Engineer's Project No. 70241

Gentlemen:

Representatives of the Lake Worth Utilities Authority and our firm met with representatives of the Florida Power and Light Company at their office in West Palm Beach on October 28, 1970, to discuss the proposed interconnection of the two electric systems. Included were discussions on the types of service offered in the 1968 draft of the interconnection agreement.

The Company representatives indicated that they are not at the present in a position to provide firm power and, therefore, could not include the Firm Power Schedule. They did indicate a readiness to adapt the Emergency Power and Scheduled Interchange Agreements.

As a conclusion to the meeting, it was suggested that the Authority write the Company indicating the types of service agreement requested and the desired location of the interconnection. Accordingly, we make the following recommendations for your consideration:

1. Formally request an interconnection agreement with the Florida Power and Light Company. That agreement to provide for firm power, emergency power and scheduled interchange of power. In addition, the agreement should provide a "wheeling" arrangement whereby Lake Worth could buy from or sell to some power system other than Florida Power and Light Company, but use the Florida Power and Light Company lines to transmit the energy.

2. The desired geographical point of interconnection between the systems should be set forth in the formal request.

3. Lake Worth should require a positive and receptive response to the request for interconnection within a reasonable time. Thirty to forty-five days should be the limit.

4. At this time, it appears probable that firm power service will not be offered. Without purchased firm power, the basis for the economic analyses and the recommendations made in the 1968 and 1969 reports for system additions to meet expected growth after the installation of unit S-4 are no longer valid. If Florida Power and Light Company cannot offer a firm power agreement, we recommend that we be authorized to prepare an interim report on the electric system with particular emphasis on forecasted peak loads, system capability including additional capacity to meet these loads, cost estimate of the interconnection and additional capacity and the financial feasibility of the program.

   That report should include the data on the up-coming winter loads and would, therefore, be submitted after April 1, 1971. The preliminary technical work on the interconnection and the administrative work on the interconnection agreement could be carried on concurrent with the report preparation so as not to lose valuable time.

5. Because the presently projected retirement date of the stationary diesel units may be affected, a hard look at the ability of each unit to provide firm reserve power is recommended. This would include, among other things, determining by actual operating test the maximum capability of each unit.

These recommendations are important to your electric system and worthy of your earnest consideration.

Very truly yours,

REYNOLDS, SMITH AND HILLS

Evert A. Young
Project Manager

EAY:em

LAW OFFICES
SPIEGEL & McDIARMID
2600 VIRGINIA AVENUE, N.W
WASHINGTON, D.C. 20037

September 14, 1973

GEORGE SPIEGEL
ROBERT C. McDIARMID
SANDRA J. STREBEL
ROBERT A. JABLON
JAMES N. HORWOOD
JAMES CARL POLLOCK

TELEPHONE (202) 333-8660

Florida Power & Light Company
4200 Flagler Street
P. O. Box 3100
Miami, Florida 33101

Attention: Mr. Mulholland

Gentlemen:

Enclosed is the proposed contract for the interconnection and electric service between the Utilities Commission of the City of New Symrna Beach, Florida and Florida Power & Light Company.

This proposed contract has been prepared pursuant to the understandings reached at our meeting in Miami on July 5, 1973. We are of the opinion that the proposed interconnection agreement can be executed by both parties subject only to the development of Exhibit A setting forth the description of the physical interconnection and point of delivery.

With respect to the utilization of the various schedules which are part of the enclosed contract, the Utilities Commission contemplates purchasing the various services provided for in the service schedules from time to time, all of which will be made pursuant to the contract in accordance with letters of commitment to be executed by both parties. We have not set forth rates for various services, since these are subject to negotiation. We are working separately on rate proposals not provided in the schedules.

We hope that these scheduled rates can provide a basis for settling rate case issues before the Federal Power Commission.

We would appreciate your early consideration of this proposed agreement and a statement from you of your proposed rates under the various schedules.

Very truly yours,

Robert A. Jablon

Robert A. Jablon
Attorney for New Symrna Beach, Florida

Enclosure

CONTRACT FOR INTERCONNECTION AND ELECTRIC SERVICE
BETWEEN
UTILITIES COMMISSION OF THE
CITY OF NEW SMYRNA BEACH, FLORIDA
AND
FLORIDA POWER & LIGHT COMPANY

SECTION 0.1 THIS CONTRACT, made and entered into this _____ day of _____, 1973, by and between the UTILITIES COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, herein referred to as "CITY"; and FLORIDA POWER & LIGHT COMPANY, a private corporation organized and existing under the laws of the State of Florida, herein referred to as "COMPANY".

WITNESSETH:

SECTION 0.2 WHEREAS, the parties hereto deem it desirable that this arrangement be made for the interconnection of the generating and electric system of CITY with the generating and electric system of COMPANY at the point (or points) established as herein provided and,

SECTION 0.3 WHEREAS, each party desires to establish the terms and conditions of the interconnection arrangement for its respective system:

SECTION 0.4 NOW, THEREFORE, in consideration of the foregoing and of the mutual benefits to be obtained from the covenants herein, the parties hereto do hereby agree as follows:

ARTICLE I - TERM OF CONTRACT

SECTION 1.1 - Term: The term of this CONTRACT shall commence on the

_____ day of _____, 1973, and shall continue in effect for an initial period of seven (7) years, and thereafter shall automatically be extended for succeeding periods of three (3) years each, except that this CONTRACT may be cancelled by either party at the end of said initial period or any time thereafter upon written notice to the other party three (3) years prior to the end of any period, or as provided in SECTION 9.1.

ARTICLE II - INTERCONNECTION POINTS

SECTION 2.1 - Interconnection Points: CITY and COMPANY agree to construct, maintain and continue in operable condition facilities to effectively use the interconnections described in Exhibit A, which Exhibit is a part of this CONTRACT. The parties further agree to cooperate in studies and negotiations to determine the most desirable timing, location, voltage, size and associated equipment of additional transmission interconnections, or abandonment of established interconnections. Future interconnection points shall be added to Exhibit A and shall clearly identify respective ownerships. Each successive point shall be numbered chronologically as A, B, C, etc.

SECTION 2.2 - Delivery Point: The point of delivery for each interconnection shall be the metering point and shall be located in accordance with Exhibit A.

Section 2.3 - Accessory Facilities: The parties hereto will provide communication, telemetering, load-control, and frequency-control equipment and such other facilities for load dispatching purposes and for control of power flow and flow of reactive KVA as is now or may hereafter reasonably be required in accordance with good, modern practice, as determined by the Committee

provided for in SECTION 3.1.

SECTION 2.4 - Parties Responsible: Each party hereto shall provide, operate, and maintain at its own cost and expense such of the equipment and facilities as may be constructed pursuant to the foregoing provisions of this ARTICLE II.

ARTICLE III - OPERATION

SECTION 3.1 - Administrative Committee: Each party shall appoint a member to an Administrative Committee. The duties of this Committee shall include those mentioned elsewhere in this CONTRACT and, but not limited to, the following:

(1) Coordination of the parties' generation and transmission planning, construction and protection arrangements.

(2) Planning of automatic load relief procedures for system reliability.

(3) Exchange of information on actual and forecasted loads, capabilities of generating facilities, programs of capacity additions, and capability of bulk power interchange facilities.

(4) Negotiations for short and supplemental long term firm interchange service and power transmission electric service under Service Schedules D, E and F respectively.

(5) General supervision of the matters and duties of the Operating Committee.

The Administrative Committee shall also perform such other duties as may

be conferred upon it by mutual agreement of the parties hereto. Each party shall cooperate in providing to the Administrative Committee all information required in the performance of its duties. If the Administrative Committee is unable to agree unanimously on any matter falling under its jurisdiction, such matter shall be referred by the members of the Administrative Committee to their Principals for decision. Failure of the Principals to agree on any matter referred to them shall not constitute a basis for cancellation of this CONTRACT. All major commitments or agreements made by the Committee shall be evidenced in writing.

SECTION 3.2 - Operating Committee: CITY and COMPANY shall each appoint a member to the Operating Committee. Each representative shall be a responsible person working with the day-to-day operations of his system. This committee shall represent the parties in all matters arising under this CONTRACT which may be delegated to it by mutual agreement of the parties hereto. Each party shall cooperate in providing to the Operating Committee all information required in the performance of its duties. Such duties shall include preparation of operation and maintenance schedules, control and operating procedures, and supervision of accounting functions. If the Operating Committee is unable to agree on any matter falling under its jurisdiction, such matter

shall be referred by the members of the Operating Committee to the Administrative Committee for decision. All major commitments or agreements made by the Committee shall be evidenced in writing.

SECTION 3.3 - Parallel Operation: Systems of CITY and COMPANY shall normally be operated in parallel with the circuits closed at the interconnection points set forth in Exhibit A hereof, except as may be otherwise mutually arranged by the Operating Committee. It is recognized, however, that neither party should be burdened by circumstances created by the other party. It is, therefore, appropriate that each party shall reserve the right to seek operational relief if the electrical integrity of its system is threatened. However, in such event, every attempt shall be made by the parties to effectively resolve the problem through the Operating Committee described under SECTION 3.2.

SECTION 3.4 - Reactive KVA: Each party shall endeavor to supply the reactive KVA required on its own system, except as otherwise mutually agreed between the parties from time to time. Neither party shall be obligated to supply reactive KVA to the other party when to do so would interfere with service

on its own system, would limit the use of interconnection facilities, or would require operation of generating equipment not otherwise required.

SECTION 3.5 - Transfer of Power and Energy Through Other Systems: Since the systems of the parties hereto may in the future be indirectly interconnected through other systems, it is recognized that because of the physical and electrical characteristics of the facilities involved, there may be flows of power from one party through other systems to the other party, or from other systems through one party to the other party, and in any such cases, and particularly wherever the transfer of firm power is involved, the parties hereto agree to schedule such deliveries or transfers so as to result in net inter-system deliveries being equal to scheduled power transfers.

Each party, whether buyer or seller, shall use its best efforts to maintain, at all times, satisfactory arrangements with other systems to which its respective system is interconnected.

SECTION 3.6 - Regulation of Transfer of Power and Energy: The parties hereto agree that it is the responsibility of each party to operate its power supply facilities so as to supply its own system load at all times, except as may otherwise be provided for herein or as mutually agreed, and to hold deviations from scheduled deliveries to a minimum.

ARTICLE IV - ELECTRIC SERVICE

SECTION 4.1 - Electric Service: It is recognized that transfer of various specific classes of service and the rates applicable to each class of electric service must necessarily depend upon the conditions existing from time to

time. The sale and purchase of specific classes of electric service and the terms, arrangements and rates applicable thereto are set forth in various Service Schedules, which Schedules have been executed by the parties hereto and which are a part of this CONTRACT. These Service Schedules are respectively referred to as:

Service Schedule A - Emergency Electric Service

Service Schedule B - Scheduled Electric Service

Service Schedule C - Energy Interchange Electric Service

Service Schedule D - Short Term Firm Electric Service

Service Schedule E - Supplemental Long Term Firm Electric Service

Service Schedule F - Power Transmission Electric Service

SECTION 4.2 - Inadvertent Transfer of Electric Energy: Inadvertent transfer of energy is a transfer of energy between the systems of the parties hereto at variance with the scheduled delivery as a result of the inherent physical and electrical characteristics of the systems, limitations in the equipment used to control the flow of power between the systems, or limitations in the operation of such equipment, or as a result of temporary arrangements for testing purposes. It shall be the responsibility of the Operating Committee, provided for in SECTION 3.2, to establish practices with respect to (a) holding deviations from scheduled deliveries to a minimum; and (b) the manner and times of scheduling compensating deliveries.

ARTICLE V - METERING PROVISIONS

SECTION 5.1 - Metering: Necessary metering equipment to permit determination

of the amounts of electric power and energy transmitted over the interconnections shall be installed as described in Exhibit A hereof. All meters pertaining to billing shall be sealed and shall, except in an emergency or as provided below, be opened only in the presence of authorized representatives of both parties hereto. The meters and associated equipment shall be tested and inspected annually, unless otherwise mutually agreed. If any test or inspection shows any meter to be inaccurate by more than one per cent (1%), fast or slow, an adjustment in billing between the parties shall be made during the following month for a preceding period of not more than thirty (30) days to adjust for the amounts by which the meters are shown to have been in error; and the meter or other equipment found to be inaccurate or defective shall promptly be repaired, adjusted, or replaced.

SECTION 5.2 - Meter Reading: For billing purposes, all meter readings shall be recorded at 2400 (12 midnight) on the last working day of each month, or as near thereto as practical, and at such other times deemed necessary by the parties hereto. Copies of recordings, KWHR consumptions and maximum KW demands shall be assembled for billing and record purposes.

ARTICLE VI - ELECTRIC GENERATING CAPACITY

SECTION 6.1 - Electric Generating Capacity to be Provided: CITY agrees that it will own or provide net generating capacity resources equal to or greater than 115 per cent (115%) of the sum of the CITY's estimated annual net peak

hour demand less receipts by the CITY from the COMPANY, if any, of supplemental long term firm electric service under Service Schedule E, both expressed in kilowatt-hours per hour. It is expressly understood that deliveries under Service Schedule B shall not be used in calculating the aforementioned reserve capacity requirements. Generating capacity resources of CITY taken out of service because of a forced or scheduled outage shall not constitute a deficiency in reserve capacity obligations under this SECTION.

SECTION 6.2 - Generating Capacity Additions: It is mutually agreed that both parties may schedule generating capacity additions to be as large and economical as may independently be determined.

ARTICLE VII - BILLING AND PAYMENT

SECTION 7.1 - Presentation and Payment: Each of the parties shall submit to the other, as promptly as possible after the first of each month, written bills for the respective amounts due it under the terms of this CONTRACT for the preceding calendar month and all such bills shall be due and payable within twenty (20) days.

SECTION 7.2 - Disputed Bill: In case any portion of any bill be in bona fide dispute, the undisputed amount shall be payable when due; and the remainder, if any, upon determination of the correct amount shall be paid promptly after such determination.

ARTICLE VIII - FORCE MAJEURE AND INDEMNIFICATION

SECTION 8.1 - Force Majeure: In case either party hereto should be delayed

in or prevented from performing or carrying out any of the agreements, covenants, and obligations made by and imposed upon said parties by this CONTRACT, including all covenants and obligations made in the attached SERVICE SCHEDULES, by reason of or through strike, stoppage in labor, failure of contractors or suppliers of materials, riot, fire, flood, ice, invasion, civil war, commotion, insurrection, military or usurped power, order of any Court granted in any bona fide adverse legal proceedings or action, order of any civil or military authority either de facto or de jure, explosión, act of God or the public enemies, or any cause reasonably beyond its control and not attributable to its neglect; then, and in such case or cases, both parties shall be relieved of performance under this agreement and shall not be liable to the other party for or on account of any loss, damage, injury, or expense resulting from or arising out of such delay or prevention; provided, however, that the party suffering such delay or prevention shall use due and practical diligence to remove the cause or causes thereof; and provided, further, that neither party shall be required by the foregoing provisions to settle a strike except when, according to its own best judgment, such a settlement seems advisable.

SECTION 8.2 - Responsibility and Indemnification: Each party hereto expressly agrees to indemnify and save harmless and defend the other against all claims, demands, costs, or expense for loss, damage or injury to persons or property, in any manner directly or indirectly connected with or growing out of the generation, transmission, or use of electric capacity and energy on its own

side of the point of ownership hereunder, unless such claim or demand shall arise out of or result from the negligence or wilful misconduct of the other party, its agents, servants, or employees; provided, however, that neither party hereby assumes responsibility for damage or injury to employees of the other party.

ARTICLE IX - MISCELLANEOUS

SECTION 9.1 - Regulation: The provisions of this CONTRACT, as they affect COMPANY are subject to such regulatory authority of the Florida Public Service Commission and the Federal Power Commission as may exist, and filing with and acceptance for filing by the Commissions of this CONTRACT shall be a prerequisite to its validity. In the event this CONTRACT is changed or modified by any regulatory agency or authority, either party, if adversely affected to a material extent, shall have the right to negotiate for the necessary relief to alleviate said adverse affects brought on by either the changes or the modifications so imposed. If the parties are unable to obtain the necessary relief after a reasonable period of negotiation, either party shall have the right to terminate this contract on six months written notice to the other party.

SECTION 9.2 - Waivers: Any waiver at any time by any party hereto of its rights with respect to the other party with respect to any matter arising in connection with the CONTRACT shall not be considered a waiver with respect to any subsequent default or matter.

SECTION 9.2 - Successors and Assigns: This CONTRACT shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns, and shall not be assignable by either party without the written consent of the other party except as to a successor in the operation of its properties by reason of a merger, consolidation, sale or foreclosure where substantially all such properties are acquired by such a successor.

SECTION 9.4 - Notices: Any notice, demand or request required or authorized by this CONTRACT shall be deemed properly given if mailed, postage prepaid, to Florida Power & Light Company, Miami, Florida, in a case of COMPANY and to the Utilities Commission of the City of New Smyrna Beach, Florida, in the case of CITY; or to such other person as may be designated by COMPANY or by CITY. The designation of the person to be notified or the address of such person may be changed by COMPANY or CITY at any time, or from time to time, by similar notice.

SECTION 9.5 - Tax Adjustment: To the demand (when applicable) and energy charges of all Service Schedules shall be added the applicable proportionate part of any taxes and assessments (except State or Federal Income Taxes), imposed by any governmental authority in excess of those in effect as of the date of the CONTRACT which are assessed on the basis of meters or customers, or the price of or revenue from electric energy or services sold, or the quantity of energy purchased or generated for sale or sold. In the event either party pays a gross receipts tax to the State of Florida under SECTION 203.01, Florida Statutes, in respect to interchanges

hereunder, the party making such tax payment shall be fully reimbursed in such manner by the party purchasing the electric energy.

IN WITNESS WHEREOF, the parties hereto have caused this CONTRACT to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

FLORIDA POWER & LIGHT COMPANY

Attest: By _____
President

_____
Secretary

UTILITIES COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLORIDA

Attest: By _____

_____

SERVICE SCHEDULE A

EMERGENCY ELECTRIC SERVICE

IT IS AGREED this Service Schedule A will be effective under, and a part of, the CONTRACT dated _____, 1973, for interconnection and electric service supplied between the UTILITIES COMMISSION of the CITY OF NEW SMYRNA BEACH, FLORIDA, and FLORIDA POWER & LIGHT COMPANY, hereinafter referred to as the "CONTRACT".

SECTION A 0.1 - Term: The term of this Service Schedule A shall be concurrent with and identical to the term stipulated in SECTION 1.1 of the CONTRACT.

SECTION A 0.2 - Emergency Electric Service: Emergency electric service, for the purpose of this Schedule, shall mean emergency power supplied to either party, to the extent able, for use under emergency conditions, when such party is temporarily unable to supply its required power and energy from normally available sources. It is agreed that a condition of deficiency in the power supply of either of the parties hereto occasioned by shortage of system facilities, water, fuel or other supplies, which has resulted from failure to follow recognized good engineering or operating practice, shall not be considered an emergency condition for the purpose of this Service Schedule A.

It is understood and agreed that the power and energy received by either party under emergency conditions when the period of such receipt of power and energy is less than sixty (60) minutes shall be classified as

inadvertent interchange of energy and shall be treated as set forth in SECTION 4.2, ARTICLE IV, of the CONTRACT, of which this Service Schedule A is a part.

If the taking hereunder of power and energy during an emergency shall be for a period of sixty (60) minutes or more, all of the power and energy taken during the emergency shall be treated as emergency electric service, as provided for under this Service Schedule A.

It is also understood and agreed that the duration of emergency electric service, as provided for under this Service Schedule A, shall not exceed thirty (30) consecutive days for any single emergency after which power and energy, if available, will be supplied under another Service Schedule.

SECTION A 0.3 - Supplemental Emergency Electric Service: In the event CITY requests emergency interchange service under this Schedule, and COMPANY is unable to furnish the requested service from its own system, COMPANY shall make every effort to purchase the requested capacity and energy from all available sources with which COMPANY is interconnected to the extent that, in the sole judgment of COMPANY, such purchase and delivery will not jeopardize service to the customers of COMPANY.

SECTION A 0.4 - Payment for Emergency Electric Service: Payment for emergency electric service received by either party shall, at the option of the party supplying such service, be either by return of equivalent energy or by payment by the buyer at one of the following rates:

(a) An energy charge per KWH equal to the seller's average

fossil fuel cost per net KWH for the second preceding calendar month, plus ten per cent (10%). If, in order to supply the emergency interchange needs of the buyer, the seller is subjected to abnormally high costs, such as for operation of combustion turbines or for special situations requiring high starting, banking, or shutdown cost, then buyer shall be advised and mutually agreeable adjustments to the rate shall be determined by the Operating Committee.

(b) The charge for emergency electric service provided under SECTION A 0.3 shall be COMPANY's purchased power cost plus one (1) mill.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule A to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

FLORIDA POWER & LIGHT COMPANY

Attest:

By _____
President

_____
Secretary

UTILITIES COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLORIDA

Attest:

_____

_____

SERVICE SCHEDULE B

SCHEDULED ELECTRIC SERVICE

IT IS AGREED this Service Schedule B will be effective under, and a part of, the contract dated _____, 1973, for interconnection and electric service supplied between the UTILITIES COMMISSION of the CITY OF NEW SMYRNA BEACH, FLORIDA, AND FLORIDA POWER & LIGHT COMPANY, hereinafter referred to as the "CONTRACT".

SECTION B 0.1 - Term: The term of this Service Schedule B shall be concurrent with and identical to the term stipulated in SECTION 1.1 of the CONTRACT.

SECTION B 0.2 - Scheduled Electric Service During Maintenance of Facilities: Scheduled service for the purpose of this Schedule shall mean the power and energy supplied by one party (Seller) to the other party (Buyer) for use during periods of routine or emergency overhaul and maintenance of facilities, and the power and energy supplied to the Buyer during short term periods of deficiency on the Buyer's system due to causes beyond control of the Buyer and under circumstances where, in the opinion of the Seller, the Buyer has, through prudent and diligent efforts, intended to provide adequate firm power. A commitment to deliver scheduled energy shall be considered firm. It is intended that the parties hereto will schedule maintenance of facilities in advance and, insofar as possible, during off-peak periods, and the parties will reasonably coordinate their respective maintenance periods to their mutual convenience so that reliable service on both systems can be assured.

SECTION B 0.3 - Scheduled Electric Service Commitments: Each scheduled electric service commitment shall be evidenced by duplicate copies of a letter of commitment, which document shall provide appropriate space thereon for acceptance.

SECTION B 0.4 - Payment for Scheduled Electric Service: Payment for scheduled electric service hereunder shall be as follows:

(1) CITY shall pay for scheduled electric power and energy monthly at the following daily charges:

DEMAND - $ .05 per KW for each KW of scheduled demand,

PLUS

ENERGY - At the Seller's average fossil fuel cost per KWH for the second preceding month plus 10%.

(2) COMPANY shall pay for scheduled electric power and energy monthly at the following daily charges:

DEMAND - $ .05 per KW for each KW of scheduled demand,

PLUS

ENERGY - At the Seller's average fossil fuel cost per KWH for the second preceding month plus 10%.

If, in order to supply the scheduled interchange needs of the Buyer, the Seller is subjected to abnormally high costs, such as for operation of combustion turbines or for special situations requiring high starting, banking, or shutdown costs, the Buyer shall be advised and mutually agreeable adjustments to the rate shall be determined by the Operating Committee.

SECTION B 0.5 - Billing Demand: Billing demand hereunder shall mean the single maximum 60-minute integrated demand, expressed in kilowatt-hours per hour, which the Seller agrees to furnish and the Buyer agrees to pay for in accordance with this Service Schedule B. The time intervals for determining the 60-minute integrated power demand shall be between the clock hours. It is agreed telemetered reading may be used for this purpose. Until otherwise adjusted, the billing demand will be the Scheduled Electric Service Commitment between the parties hereto, in accordance with SECTION B 0.3.

If at any time the Buyer is receiving power under the provisions of this Service Schedule B and the actual supply of power to the Buyer exceeds the scheduled billing demand because of limitations of the control system to accurately control the flow of power to the exact amount scheduled, no demand charge for such excess power flow shall be made.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule B to be executed by their duly authorized officers, and copies delivered to each party as of the day and year first above stated.

FLORIDA POWER & LIGHT COMPANY

Attest:

_____

_____
President

_____

UTILITIES COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLORIDA

Attest:

_____

_____

SERVICE SCHEDULE C

ENERGY INTERCHANGE ELECTRIC SERVICE

IT IS AGREED this Service Schedule C will be effective under, and a part of, the contract dated _____, 1973, for interconnection and electric service supplied between the UTILITIES COMMISSION of the CITY OF NEW SMYRNA BEACH and FLORIDA POWER CORPORATION, hereinafter referred to as the "CONTRACT".

SECTION C 0.1 - Term: The term of this Service Schedule C shall be concurrent with and identical to the term stipulated in Section 1.1 of the CONTRACT.

SECTION C 0.2 - Energy Interchange Service: The purpose of this Service Schedule C is to provide for non-firm energy interchange between the CITY system and the COMPANY system, and to establish the terms and conditions of such energy interchanges.

The types of energy interchange provided for will be (a) that commonly known as economy interchange, and the energy so interchanged shall mean electric energy which is surplus at the time to the needs of the selling party and which is economically useable on the system of the buyer; and (b) other energy interchange transactions made on a quoted price basis.

It is understood and agreed that a party is entitled to receive energy hereunder only to the extent that such party has alternate dependable capacity concurrently available to it that could otherwise be used.

ARTICLE I - ECONOMY INTERCHANGE

SECTION C 1.1 - Information on Economy Interchange: Each party will, upon request of the other party, furnish information with respect to generating capacity and energy which might be available for economy interchange supply. This information will include (a) the cost, as later defined, of economy energy it can make available; and (b) the value, as later defined, of economy energy it can utilize. Such information may be furnished by communication between operating representatives of the parties.

SECTION C 1.2 - Cost: For any economy interchange transaction hereunder, the cost of economy energy shall mean the incremental expense as determined by the selling party which it would incur in supplying economy energy hereunder. This incremental expense shall reflect both the incremental expense of generating the energy or obtaining the energy from another source, including such cost, if any, of placing plants or units in operation and of the incremental increase or decrease in system transmission losses attributable to the transaction.

SECTION C 1.3 - Value: For any economy interchange transaction hereunder, the value of the economy energy shall mean the incremental expense as determined by the buying party which it would incur if the economy energy were not to be received. This incremental expense shall reflect both the incremental expense of generating or obtaining the energy from another source, including the cost, if any, of placing plants or units in

operation, and of the incremental increase or decrease in system transmission losses attributable to the transaction.

SECTION C 1.4 - Annual Review: From time to time, but not less than once each year, the Operating Committee shall review the methods and basis used by each party to determine the above costs and values. Each party shall be the judge of the capacity available to supply economy energy from its system, and of commitments to other systems which may have priority over the economy energy supply hereunder.

SECTION C 1.5 - Supply: Each party will, upon request, supply economy energy up to the capacity of the power sources available for such supply, subject to conditions in the judgement of the selling party that (a) will not result in impairment of or jeopardy to service in its system; and (b) adequate transmission capacity is available in system interconnections, and in affected internal transmission, after allowing for other transactions simultaneously scheduled over the same transmission system.

SECTION C 1.6 - Basis for Settlement: The standard basis of settlement for economy energy hereunder shall be agreed upon by the operating representatives prior to commencement of delivery of such economy energy, and shall be at the rate determined by them to be one-half (0.5) the sum of (a) the cost incurred in supplying such energy per SECTION C 1.2; and (b) the value to the buying party of such energy per SECTION C 1.3.

SECTION C 1.7 - Confirmation: Economy energy transactions shall be

scheduled by the operating representatives of the parties. Each transaction shall be documented by the buying party within twenty-four (24) hours via teletype or telegram confirmation of date, time span, quantity, price, and negotiating representatives of each party.

ARTICLE II - OTHER ENERGY INTERCHANGE

SECTION C 2.1 - Quoted Price Energy: The Operating Committee may agree that certain specific energy interchange transactions will be made and settled for at a price as quoted and offered by the selling party and accepted by the buying party; or, upon request of the buying party, at a specific price which is accepted by the selling party.

SECTION C 2.2 - Confirmation: Each transaction of this ARTICLE shall be documented by the buying party within twenty-four (24) hours via teletype or telegram confirmation of date, time span, quantity, quoted price, and negotiating representatives of each party.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule C to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

FLORIDA POWER & LIGHT CO.

Attest:

By_____
President

_____
Secretary

UTILITIES COMMISSION OF THE
CITY OF NEW SMYRNA BEACH, FLORIDA

Attest:

By_____

_____

SERVICE SCHEDULE D

SHORT TERM FIRM ELECTRIC SERVICE

IT IS AGREED this Service Schedule D will be effective under, and a part of, the CONTRACT dated _____, 1973, for interconnection and electric service between the UTILITIES COMMISSION of the CITY of NEW SMYRNA BEACH, FLORIDA, and FLORIDA POWER & LIGHT COMPANY, hereinafter referred to as the "CONTRACT".

SECTION D 0.1 - Term: The term of this Service Schedule D shall be concurrent with and identical to the term stipulated in SECTION 1.1 of the CONTRACT.

SECTION D 0.2 - Short Term Firm Electric Service: Short term firm electric service shall mean capacity and the accompanying energy whereby one party (Seller) shall deliver to the other party (Buyer) after commitment certain quantities of capacity and the accompanying energy. The Buyer will normally supply to the Seller during the commitment period an advance daily schedule of capacity and accompanying energy to be delivered hereunder. The Seller shall make every effort to conform with the Buyer's daily schedules up to the amount of the short term firm electric service commitment.

SECTION D 0.3 - Short Term Firm Service Commitments: Each party will

determine its needs for an availability of short term firm interchange service from time to time and will negotiate with the other party for such service. To the extent that such service is requested by one party and is desired to be made available by the other party, a commitment shall be made between the parties hereto for such service.

Each short term firm interchange service commitment shall not exceed a maximum term of thirty-six (36) months, nor be less than a minimum term of twelve (12) months, although the Seller, in any given instance, may agree at its option to enter into such a commitment for a lesser period of time. Any such commitment shall be evidenced by duplicate copies of a letter of commitment from the Buyer to the Seller and signed by the Buyer, which documents shall provide appropriate space thereon for acceptance by the Seller and which shall be signed in duplicate by the Seller within 30 days as evidence of such acceptance and one copy thereof returned to Buyer.

SECTION D 0.4 - Payment for Service: For short term firm electric service made available from one party to the other, the Buyer shall pay to the Seller each month an amount for capacity demand and energy computed at the following monthly charges:

A. DEMAND

The demand charge shall be negotiated for each short term firm electric service commitment and such charges shall be set forth

in the letter of commitment referred to in SECTION D 0.3.

B. ENERGY

The energy charge shall be negotiated for each short term firm electric service commitment, and such charges shall be set forth in the letter of commitment referred to in SECTION D 0.3.

Billing demand hereunder shall be the short term firm electric service capacity commitment in kilowatts (KW), unless modified as set forth in SECTION D 0.5. Actual hourly demand shall be recorded by appropriate meters, and is defined as the kilowatt hours per one (1) hour, as determined by the differences between consecutive hourly readings of the billing kilowatt hour meter. It is agreed telemetered readings as received in the Dispatching Offices may be used for this purpose. The time intervals for determining the sixty (60) minute integrated power demand shall be between the clock hours.

SECTION D 0.5 - Billing Demand Adjustments Within Contract Period: If at any time the Buyer is receiving power under the provisions of SECTION D 0.2, and the actual supply of power to the Buyer exceeds the scheduled billing demand because of limitations of the control system to accurately control the flow of power to the exact amount specified, no demand charge for such excess power flow shall be made.

In the event the parties have reached an agreement upon the terms

of a commitment under this Service Schedule D and the Buyer requests the Seller to deliver power up to the amount of the then established billing demand, which power, after reasonable notice (minimum of 8 hours) from the Buyer to the Seller, Seller fails to make available for reasons other than the uncontrollable forces as defined in SECTION 8.1, ARTICLE VIII, of the CONTRACT, or malfunction of system facilities as herein provided, the billing demand for that month shall be adjusted downward to a lesser figure representing the quantity which the Seller is willing and able to make available.

It is the intent of the parties that malfunctions of system facilities shall be considered reasonably beyond the control of either party. In the event of such malfunctions to the Seller's equipment during the term of a short term firm electric service commitment, if, within four (4) hours after such malfunction, the Seller is unable to deliver power up to the amount of the short term firm electric service commitment by using all the remaining facilities available, then the billing demand for that current month shall be adjusted downward to a lesser figure representing the quantity which the Seller is able to make available. If, within four (4) hours after a malfunction, the Seller is able to resume delivery of the full amount of the short term firm electric service commitment, then there shall be no adjustment to the billing demand.

If, in any month during the term of a short term firm electric service

commitment, there are circumstances to cause more than one adjustment to the billing demand, that circumstance which results in the lowest billing demand shall be the one upon which the billing demand adjustment shall be based.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule D to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

FLORIDA POWER & LIGHT COMPANY

Attest:

By_____
President

_____
Secretary

UTILITIES COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLORIDA

Attest:

By_____

_____

SERVICE SCHEDULE E

SUPPLEMENTAL LONG TERM FIRM ELECTRIC SERVICE

IT IS AGREED this Service Schedule E will be effective under, and a part of, the Contract dated _____, 1973, for interconnection and electric service between the UTILITIES COMMISSION of the CITY OF NEW SMYRNA BEACH, FLORIDA, and FLORIDA POWER & LIGHT COMPANY, hereinafter referred to as the "CONTRACT".

SECTION E 0.1 - Term: The term of this Service Schedule E shall be concurrent with and identical to the term stipulated in SECTION 1.1 of the CONTRACT.

SECTION E 0.2 - Supplemental Long Term Firm Electric Service: Supplemental long term firm electric service shall mean capacity and the accompanying energy whereby Company shall deliver to City, after commitment, certain quantities of capacity and the accompanying energy to supplement the City's other power supply resources. City will normally supply to the Company during the commitment period an advance daily schedule of capacity and accompanying energy to be delivered hereunder. Company shall conform with City's daily schedules up to the amount of the supplemental firm capacity service commitment.

SECTION E 0.3 - Supplemental Long Term Firm Service Commitments: City will determine its needs for supplemental long term firm electric service for each year of the succeeding five-year period and will inform Company of such needs at least one year in advance of such needs. To th

extent that such service is requested by City, a commitment shall be made between the parties hereto for such service.

Each supplemental long term firm interchange service commitment shall be for a minimum term of sixty (60) months and shall specify the amounts of capacity to be delivered by the Company to the City for each year of the commitment term. The Company, in any given instance, may agree at its option to enter into such a commitment for a lesser period of time. In addition to its own generation, power purchases under Service Schedule D of the CONTRACT and other firm power sources, the City shall purchase sufficient supplemental long term firm electric service to meet its electric generating capacity obligations under Section 6.1 of the CONTRACT. The City shall have the option of revising its requirements for supplemental long term firm interchange service each year for the remainder of the commitment period, and such revised estimates will be the amounts delivered by the Company to the City hereunder. Any such commitment shall be evidenced by duplicate copies of a letter of commitment from the City to the Company and signed by the City, which documents shall provide appropriate space thereon for acceptance by the Company and which shall be signed in duplicate by the Company within thirty (30) days as evidence of such acceptance and one copy thereof returned to City.

SECTION E 0.4 - Payment for Service: For supplemental long term firm electric service made available from Company to the City, the City shall pay to the Company each month an amount for capacity

demand and energy computed at rates to be negotiated taking into consideration the load characteristics for the service to be rendered, provided however that if agreement as to rates is not reached prior to the date when service is to commence, then the rate to be applied for such service, until agreement is reached or a proper rate for supplemental firm power service has been adjudicated, shall be the Company's then currently effective wholesale for resale rate. If these wholesale for resale rates are later determined to be excessive, appropriate refunds, including interest, shall be made to City.

Billing demand hereunder shall be determined monthly and will be based upon the peak amount of supplemental long term firm

electric service capacity actually received. Actual hourly demand shall be recorded by appropriate meters and is defined as the kilowatt-hours per one (1) hour, as determined by the differences between consecutive hourly readings of the billing kilowatt-hour meter. It is agreed telemetered readings as received in the Dispatching Offices may be used for this purpose. The time intervals for determining the sixty (60) minute integrated power demand shall be between the clock hours.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule E to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

FLORIDA POWER & LIGHT COMPANY

Attest:

By_____
President

_____
Secretary

UTILITIES COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLORIDA

Attest:

By_____

_____

SERVICE SCHEDULE F

POWER TRANSMISSION ELECTRIC SERVICE

IT IS AGREED this Service Schedule F will be effective under, and a part of, the CONTRACT dated _____, 1973, for interconnection and electric service supplied between the UTILITIES COMMISSION of the CITY OF NEW SMYRNA BEACH, FLORIDA, and FLORIDA POWER & LIGHT COMPANY, hereinafter referred to as the "CONTRACT".

SECTION F 0.1 - Term: The term of this Service Schedule F shall be concurrent with and identical to the term stipulated in SECTION 1.1 of the CONTRACT.

SECTION F 0.2 - Power Transmission Electric Service: This Schedule is to provide for the firm transmission of bulk power (capacity and energy) over the system of one party (Transmitting Party) to, or from, the system of the other party (Contracting Party) from, or to, the system(s) of one or more other entities (Third Party) with which the Transmitting Party is interconnected, on terms that will fully compensate the Transmitting Party for the use of its existing system and for the addition of any new or enlarged facilities required to provide this service.

In order to minimize costs and electrical burdens, both parties shall keep each other informed of their plans and needs for transmission service so that these requirements may be included in the party's respective transmission planning and construction programs.

SECTION F 0.3 - Power Transmission Electric Service Commitments:

Each party will determine its needs for power transmission electric service from time to time and will negotiate with the other party for such service. If the other party's transmission system has adequate capacity, as determined by the Transmitting Party, to provide the requested service, a commitment shall be made between the parties hereto for such service.

It is recognized that voltage levels and reactive power flows may seriously affect the performance of this bulk power transmission service. The Contracting Party shall be responsible for providing the reactive KVA to support each commitment, so that no burden is placed upon Transmitting Party.

Each commitment for power and energy to be wheeled by the Transmitting Party shall specify the capacity, the length of time of each commitment, and insofar as possible, the point(s) of receipt and/or delivery on the Transmitting Party's system. Any such commitment shall be evidenced by duplicate copies of a letter of commitment from the Contracting Party to the Transmitting Party and signed by the Contracting Party, which documents shall provide appropriate space thereon for acceptance by the Transmitting Party and which shall be signed in duplicate by the Transmitting Party within 30 days, and one copy returned to Contracting Party.

If either party determines it does not have adequate capacity to provide the requested service, it will notify the other party in writing, giving a

detailed explanation of the inadequacy. The matter will then be submitted to the Administrative Committee for joint study. The parties will negotiate an agreement setting forth any special charges to Contracting Party which may reasonably be required in order to enlarge Transmitting Party's transmission capability so as to effect the service requested. When agreement is reached, a commitment shall be made between the parties for such service.

SECTION F 0.4 - Definition of Transmission Facilities:

A.) Bulk Power Transmission Facilities: Bulk power transmission facilities are defined as follows:

1) All transmission facilities, except as hereinafter specifically excluded, which are connected in a grid network and which are capable of moving power and energy in bulk between points of supply and major load centers.

2) All interconnection facilities with electric generating systems.

Specifically excluded from such bulk power transmission facilities are those facilities which are used to connect the output of Transmitting Party's generating plants into its system, and those facilities defined as subtransmission facilities in Subsection B.) below.

Attachments I and II will be prepared by the Administrative Committee and attached hereto, summarizing the bulk power transmission systems of

both parties as of October 1, 1973. These summaries shall be updated on an annual fiscal year basis by the Administrative Committee.

B.) Subtransmission Facilities: Subtransmission facilities are defined as those transmission facilities operating that meet any of the following criteria:

1) Are used preponderantly to service ultimate customers.

2) Are not required to provide system-wide transmission service for the delivery of power to load centers.

3) Do not materially contribute to system-wide transmission service.

4) Are radial transmission facilities.

SECTION F 0.5 - Payment for Service:

A.) Rates: The rates charged for electric power transmission service shall be negotiated upon request by either party. COMPANY shall provide a rate schedule within 30 days after receipt of such request. No request shall be made by either party prior to October 1, 1973.

B.) Non-discriminatory Rates: COMPANY and CITY recognize this Schedule F is in accordance with their obligation to provide electric power transmission service. Further, the parties mutually agree that neither party will make available to any third party any other transmission rate, exchange rate,

displacement energy rate, or any other similar rate, with terms more advantageous than those established in this Service Schedule F, without immediately making this more advantageous rate available to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule F to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

FLORIDA POWER & LIGHT COMPANY

Attest:

By_____
President

_____
Secretary

UTILITIES COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLORIDA

Attest:

By_____

_____

October 16, 1973

Mr. R. G. Mulholland
Florida Power & Light Company
P.O. Box 3100
Miami, Florida 33101

Re: New Smyrna Beach - Florida Power & Light Interchange Negotiations and Florida Power & Light Rate Proceeding, FPC Docket No. E-8008.

Dear Mr. Mulholland:

This in response to Mr. Brewer's letter of October 10, 1973.

Thank you for having sent me the Fort Pierce contract form. We are studying the differences between this form and our proposals. However, I believe that it may provide a useful vehicle to use in negotiations. I do note that New Smyrna Beach is requesting the availability of transmission services, which are not provided at all in the Fort Pierce agreement.

Both Homestead and New Smyrna Beach would like to have the opportunity to consider whether either can purchase a portion of the St. Lucie Plant or unit power from it. The "proposed licensed conditions" that you refer to provide a suitable outline for discussion, although they need not be discussed as part of the interchange negotiations. I do point out that these are similar to AEC license conditions that have been agreed to by other utilities.

As I have mentioned to you previously, we represent the New Smyrna Beach Utilities Commission. We do not represent the City Commission. I do not see any conflict between the

negotiations of an interchange agreement on behalf of the Utilities Commission and any purchase or lease offer which Florida Power and Light may choose to make to the City. Of course, should the City determine to accept a proposal from Florida Power and Light to purchase its system, after the purchase is consummated Florida Power and Light would no longer be selling or buying interchange power from New Smyrna Beach. However, both for interim periods in any event and subsequently should such purchase or lease not be accepted by the City, New Smyrna Beach would be dealing with Florida Power and Light. Since I would assume that Florida Power and Light would want the City to have knowledge of the alternates available to it, I can see no possible conflict between the negotiations for an interchange arrangements and any proposal which the company may choose to present to the City.

I am hopeful that we can reach agreement with respect to a suitable interconnection, a contract form and appropriate levels. Since I understand from Jim Berry that there will be a meeting with Florida Power and Light October 25, concerning the Homestead negotiations, I suggest an October meeting date. Of course, if such date is not possible for you, I suggest that we meet on the earlist mutally date.

Very truly yours,

Robert A. Jablon

RAJ/ln
CC: Harry Both, Esquire
Mr. Jack Bensley
Mr. Robert Bathen

R. W. BECK AND ASSOCIATES

ANALYTICAL AND CONSULTING ENGINEERS

PLANNING
DESIGN
RATES
ANALYSES
EVALUATIONS
MANAGEMENT

1510 EAST COLONIAL DRIVE
POST OFFICE BOX 6817
ORLANDO, FLORIDA 32803
TELEPHONE 305-896-4911

SEATTLE, WASHINGTON
DENVER, COLORADO
PHOENIX, ARIZONA
ORLANDO, FLORIDA
COLUMBUS, NEBRASKA
BOSTON, MASSACHUSETTS

FILE NO. FF-5149-EP1-MB

January 25, 1974

Mr. John E. Matthews, Jr.
1530 American Heritage Life Building
Jacksonville, Florida 32202

Dear Mr. Matthews:

Attached is a copy of Service Schedule F which was made a part of the interchange agreement between Florida Power Corporation and the City of Gainesville, Florida, as of July 2, 1973.

Also attached is a copy of the proposed Service Schedule F that New Smyrna Beach transmitted to Mr. Mulholland in connection with the City's interconnection and interchange proposal.

Very truly yours,

R. W. BECK AND ASSOCIATES

Robert E. Bathen

Robert E. Bathen
Manager, Orlando Regional Office

REB/ebf

Enclosures

cc Mr. Ralph Mulholland
Mr. Harry Poth
Mr. R. A. Jablon

SERVICE SCHEDULE F

POWER TRANSMISSION ELECTRIC SERVICE

IT IS AGREED this Service Schedule F will be effective under, and a part of, the CONTRACT dated July 2, 1973, for interconnection and electric service supplied between CITY of GAINESVILLE, FLORIDA, and FLORIDA POWER CORPORATION, hereinafter referred to as the "CONTRACT".

SECTION F 0.1 - Term: The term of this Service Schedule F shall be concurrent with and identical to the term stipulated in SECTION 1.1 of the CONTRACT.

SECTION F 0.2 - Power Transmission Electric Service: This Schedule is to provide for the firm transmission of bulk power (capacity and energy) over the system of one party (Transmitting Party) to, or from, the system of the other party (Contracting Party) from, or to, the system(s) of one or more other entities (Third Party) with which the Transmitting Party is interconnected, on terms that will fully compensate the Transmitting Party for the use of its existing system and for the addition of any new or enlarged facilities required to provide this service.

In order to minimize costs and electrical burdens, both parties shall keep each other informed of their plans and needs for transmission service so that these requirements may be included in the party's respective transmission planning and construction programs.

SECTION F 0.3 - Power Transmission Electric Service Commitments: Each party will determine its needs for power transmission electric service from time to time and will negotiate with the other party for such service. If the other party's transmission system has adequate capacity, as determined by the Transmitting Party, to provide the requested service, a commitment shall be made between the parties hereto for such service.

It is recognized that voltage levels and reactive power flows may seriously affect the performance of this bulk power transmission service. The Contracting Party shall be responsible for providing the reactive KVA to support each commitment, so that no burden is placed upon Transmitting Party.

Each commitment for power and energy to be wheeled by the Transmitting Party shall specify the capacity, the length of time of each commitment, and insofar as possible, the point(s) of receipt and/or delivery on the Transmitting Party's system. Any such commitment shall be evidenced by duplicate copies of a letter of commitment from the Contracting Party to the Transmitting Party and signed by the Contracting Party, which documents shall provide appropriate space thereon for acceptance by the Transmitting Party and which shall be signed in duplicate by the Transmitting Party within 30 days, and one copy returned to Contracting Party.

If either party determines it does not have adequate capacity to provide the requested service, it will notify the other party in writing, giving a detailed explanation of the inadequacy. The matter will then be submitted to the Administrative Committee for joint study. The parties will negotiate an agreement setting forth any special charges to Contracting Party which may reasonably be required in order to enlarge Transmitting Party's transmission capability so as to effect the service requested. When agreement is reached, a commitment shall be made between the parties for such service.

SECTION F 0.4 - Definition of Transmission Facilities:

A.) Bulk Power Transmission Facilities: Bulk power transmission facilities are defined as follows:

1) All transmission facilities, except as hereinafter specifically excluded, which are connected in a grid network and which are capable of moving power and energy in bulk between points of supply and major load centers.

2) All interconnection facilities with electric generating systems.

Specifically excluded from such bulk power transmission facilities are those facilities which are used to connect the output of Transmitting Party's generating plants into its system, and those facilities defined as subtransmission facilities in Subsection B.) below.

Attachments I and II will be prepared by the Administrative Committee and attached hereto, summarizing the bulk power transmission systems of both parties as of October 1, 1973. These summaries shall be updated on an annual fiscal year basis by the Administrative Committee.

B.) Subtransmission Facilities: Subtransmission facilities are defined as those transmission facilities operating that meet any of the following criteria:

1) Are used preponderantly to serve ultimate customers.

2) Are not required to provide system-wide transmission service for the delivery of power to load centers.

3) Do not materially contribute to system-wide transmission service.

4) Are radial transmission facilities.

SECTION F 0.5 - Payment for Service:

A.) Rates: The rates charged for electric power transmission service shall be negotiated upon request by either party. CORPORATION shall provide a rate schedule within 30 days after receipt of such request. No request shall be made by either party prior to October 1, 1973.

B.) Non-discriminatory Rates: CORPORATION and CITY recognize that this Schedule F is in accordance with their obligation to provide electric power transmission service. Further, the parties mutually agree that neither party will make available to any third party any other transmission rate, exchange rate, displacement energy rate, or any other similar rate, with terms more advantageous than those established in this Service Schedule F, without immediately making this more advantageous rate available to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule F to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

ATTEST:

D. E. Hope
City Clerk

CITY OF GAINESVILLE, FLORIDA

By: James G. Richardson
James G. Richardson
Mayor-Commissioner

ATTEST:

Assistant Secretary
J. H. Joyce

FLORIDA POWER CORPORATION

By:
Andrew H. Hines, Jr.
President

FLORIDA POWER CORP.
LEGAL DEPT.
APPROVED
Date 6/27/73
By

Approved as to form and correctness

By
Oscar Paxton, Attorney
City of Gainesville, Florida

SERVICE SCHEDULE F

POWER TRANSMISSION ELECTRIC SERVICE

IT IS AGREED this Service Schedule F will be effective under, and a part of, the CONTRACT dated _____, 1973, for interconnection and electric service supplied between the UTILITIES COMMISSION of the CITY OF NEW SMYRNA BEACH, FLORIDA, and FLORIDA POWER & LIGHT COMPANY, hereinafter referred to as the "CONTRACT".

SECTION F 0.1 - Term: The term of this Service Schedule F shall be concurrent with and identical to the term stipulated in SECTION 1.1 of the CONTRACT.

SECTION F 0.2 - Power Transmission Electric Service: This Schedule is to provide for the firm transmission of bulk power (capacity and energy) over the system of one party (Transmitting Party) to, or from, the system of the other party (Contracting Party) from, or to, the system(s) of one or more other entities (Third Party) with which the Transmitting Party is interconnected, on terms that will fully compensate the Transmitting Party for the use of its existing system and for the addition of any new or enlarged facilities required to provide this service.

In order to minimize costs and electrical burdens, both parties shall keep each other informed of their plans and needs for transmission service so that these requirements may be included in the party's respective transmission planning and construction programs.

SECTION F 0.3 - Power Transmission Electric Service Commitments:

Each party will determine its needs for power transmission electric service from time to time and will negotiate with the other party for such service. If the other party's transmission system has adequate capacity, as determined by the Transmitting Party, to provide the requested service, a commitment shall be made between the parties hereto for such service.

It is recognized that voltage levels and reactive power flows may seriously affect the performance of this bulk power transmission service. The Contracting Party shall be responsible for providing the reactive KVA to support each commitment, so that no burden is placed upon Transmitting Party.

Each commitment for power and energy to be wheeled by the Transmitting Party shall specify the capacity, the length of time of each commitment, and insofar as possible, the point(s) of receipt and/or delivery on the Transmitting Party's system. Any such commitment shall be evidenced by duplicate copies of a letter of commitment from the Contracting Party to the Transmitting Party and signed by the Contracting Party, which documents shall provide appropriate space thereon for acceptance by the Transmitting Party and which shall be signed in duplicate by the Transmitting Party within 30 days, and one copy returned to Contracting Party.

If either party determines it does not have adequate capacity to provide the requested service, it will notify the other party in writing, giving a

detailed explanation of the inadequacy. The matter will then be submitted to the Administrative Committee for joint study. The parties will negotiate an agreement setting forth any special charges to Contracting Party which may reasonably be required in order to enlarge Transmitting Party's transmission capability so as to effect the service requested. When agreement is reached, a commitment shall be made between the parties for such service.

SECTION F 0.4 - Definition of Transmission Facilities:

A.) Bulk Power Transmission Facilities: Bulk power transmission facilities are defined as follows:

1) All transmission facilities, except as hereinafter specifically excluded, which are connected in a grid network and which are capable of moving power and energy in bulk between points of supply and major load centers.

2) All interconnection facilities with electric generating systems.

Specifically excluded from such bulk power transmission facilities are those facilities which are used to connect the output of Transmitting Party's generating plants into its system, and those facilities defined as subtransmission facilities in Subsection B.) below.

Attachments I and II will be prepared by the Administrative Committee and attached hereto, summarizing the bulk power transmission systems of

both parties as of October 1, 1973. These summaries shall be updated on an annual fiscal year basis by the Administrative Committee.

B.) Subtransmission Facilities: Subtransmission facilities are defined as those transmission facilities operating that meet any of the following criteria:

1) Are used preponderantly to service ultimate customers.

2) Are not required to provide system-wide transmission service for the delivery of power to load centers.

3) Do not materially contribute to system-wide transmission service.

4) Are radial transmission facilities.

SECTION F 0.5 - Payment for Service:

A.) Rates: The rates charged for electric power transmission service shall be negotiated upon request by either party. COMPANY shall provide a rate schedule within 30 days after receipt of such request. No request shall be made by either party prior to October 1, 1973.

B.) Non-discriminatory Rates: COMPANY and CITY recognize this Schedule F is in accordance with their obligation to provide electric power transmission service. Further, the parties mutually agree that neither party will make available to any third party any other transmission rate, exchange rate,

displacement energy rate, or any other similar rate, with terms more advantageous than those established in this Service Schedule F, without immediately making this more advantageous rate available to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Service Schedule F to be executed by their duly authorized officers, and copies delivered to each party, as of the day and year first above stated.

FLORIDA POWER & LIGHT COMPANY

Attest:

By_____
President

_____
Secretary

UTILITIES COMMISSION OF THE CITY OF NEW SMYRNA BEACH, FLORIDA

Attest:

By_____

_____

November 19, 1970

MEMORANDUM

To: C. H. Stanton, Executive Vice President

From: H. C. Luff

Subject: Firm Power Sale - Summer 1971

After our telephone conversation Tuesday on the J.E.A. request for firm power purchase next summer, I called Maurice Hebb to determine F.P.C. interest, and they are definitely interested in purchase for this period. I made it clear to Hebb that he should not consider our conversation a firm commitment because this would have to be decided by you and the Commission. For the time being he understands we are deferring the decision on any definite commitment. I also advised Ken Wiley at J.E.A. of this.

Stone and I agree that the situation is just right for exploring possibilities of a direct sale to J.E.A. by wheeling through FP&L system. J.E.A. will probably need capacity in 1973 and 1974 when we will have it available. A direct sale precedent between noninterconnected municipal operations would, in our opinion, be quite valuable to O.U.C. and the entire municipal group. We don't need to worry about selling this capacity next summer. You can be sure everyone but TECO would love to have it.

After thinking over what happened on the stay-put bill last session, we don't have real strong feelings about committing to Power Corp. if a deal with J.E.A. is truly in the best interest of the Commission. Ken Wiley says that he and Winnard will start negotiating with FP&L on this within a week after we give them the approval to go ahead.

Let's talk about this next week after you have had a chance to think this through.

Harry

HCL:vc

cc: Mr. L. E. Stone

12-21-70

Call From Ken Wiley - J.E.A.

Ken says F.P.&L. wants loss charge and wheeling charge related to transmission system investment on direct sale of bulk energy by O.U.C. to JEA. Ken does not feel wheeling charge is justified where transmission involvement is mutual.

Ken also mentioned that Louis Winnard had talked to Maurice Hebb on this whole thing and Hebb is sympathetic to the cause of improving the system operation. He has no hard feelings about the capacity sale going east.

Harry Page told Ken present O.U.C - FP&L contract provisions prohibit O.U.C. sales in summer 1971 because of 130% reserve requirement. Mentioned this to C.H.S and he advises placing top priority on signing new contract with FP&L as soon as possible. O.U.C. F.P&L. contract negotiations are essentially complete.

Stone & Reedy both advised on this date of priority to sign new contract with F.P&L.

2-8-71

I-4-A

Call from Ken Wiley J.E.A.

Advises Allen Wright & Harry Page visited J.E.A. late January to discuss problem of wheeling energy from O.U.C. To J.E.A. Wiley has submitted an agreement on transmission arrangement to F.P.&L and Page promises a reply to Wiley this week. Wiley is pleased with progress of negotiations and is hopeful we will have an answer on this soon. A multilateral agreement on sale of the capacity to J.E.A. by O.U.C. will be next step.

Wiley says definite arrangement between J.E.A and F.P. Corp. made for 80 mile transmission line between J.E.A. Normandy Sub. and F.P.C. Silver Springs Sub. Line to be constructed for 500 KV and operated initially at 230 KV. Will go into service in 1974.

F.P.&L. has been advised of this and invited to tie in at Stark. This would improve network in northern area.

March 31, 1971

MEMORANDUM

To: C. H. Stanton, Executive Vice President

From: H. C. Luff

Subject: Bulk Sales Summer 1971

You are now free to make a decision on bulk power sales for summer 1971. Here are a few of my thoughts about this:

Because of higher demand and energy charges in the new Florida Power & Light contract (than we have in the Florida Power Corporation contract), a deal with them may give us more revenue than a deal with Power Corp., although Power Corp., who approached us first, has indicated a full six-months take which might give nearly the same revenue as a shorter-term deal with Florida Power & Light. Negotiations will give us this information on short-term economic benefit.

Indications are that future significant bulk sales will not be made with FP&L, nor will there be any chance to sell to J.E.A. through FP&L. Power Corp., however, has indicated interest in purchasing in 1973 and may be tied to J.E.A. in 1974, which offers a chance for a Wheeling or indirect sale deal to J.E.A.

From a system security standpoint, Power Corp. has more to offer us than FP&L because they are tied out of state to Southern Company should we get into trouble during any bulk sale period.

Considering future sales potential, system security, and our historical bulk sales record, it would seem we might favor Power Corp. on the summer 1971 sales if the short-term economic benefit doesn't weigh too heavily against them.

We have not commented on political considerations as you know more about this than we do. We also appreciate that this outweighs the economic and engineering considerations sometimes.

We should probably decide in the near future on whether to sell our excess to Power Corp., FP&L, or perhaps half to each, as hot weather is fast approaching.

HCL:vc

APPENDIX VIE

FEDERAL POWER ACT - [illegible] AMENDMENTS (PROPOSED):

The City of Gainesville

"The University City"

FL-931

State of Florida

June 14, 1965

Mr. Robert Fitz, President
Florida Power & Light Corporation
Miami, Florida

Dear Mr. Fitz:

It was a pleasure to visit with you in Washington at the recent hearings on S-218. It occurred to me inasmuch as you testified that Florida Power & Light was not engaged in any power pooling in Florida that you might be interested in two items: (1) the enclosed thermofax copy of an advertisement of the Florida Power Corporation which appeared in the May issue of the Florida Municipal Record, and (2) a manuscript from the Florida Public Utilities Commission Docket #7767-EU, Florida Power Corporation, pages 1, 66, 69-72.

I apparently do not understand pooling, or else misunderstood your testimony, because this advertisement and the testimony of Mr. Clapp clearly indicates that there is pooling as I understand it. If I am in error, I would appreciate your bringing it to my attention. As I understood your testimony before the Senate Commerce Committee, it is completely at variance with Mr. Clapp's testimony before the Florida Public Service Commission.

Sincerely,

James G. Richardson
City Commissioner

JGR:jsw
ENC

ATTACHMENT
1-14.6

FL-932

FLORIDA MUNICIPAL RECORD

In this issue...

- Goodwill Tour To Europe
- Eustis Outlines Accomplishments
- Kissimmee Solves Problems
- Madeira Beach Dedicates Municipal Building
- Winter Park Adopts Code of Ethics

MAY, 1958

YOUR ELECTRICITY CAN'T BE STORED!

THAT'S WHY FLORIDA'S INVESTOR-OWNED ELECTRIC COMPANIES "POOL" POWER RESOURCES.

THE RESULT...ABUNDANT, DEPENDABLE SERVICE AT REASONABLE RATES.

Electricity must be used as it is generated. You'll never see a warehouse full of kilowatts.

Florida's "power pool" is an interconnection of generating facilities enabling participating companies to plan ahead, work together, install larger generating units which produce electricity at lower unit cost. The "pool" also means extra service dependability for customers of investor-owned electric companies throughout Florida.

Interconnection and power pooling are examples of the imaginative use of resources and investment by business-managed electric companies to keep electric rates a bright spot in your budget. Florida Power customers pay less per kilowatt hour for their electricity today than ever before.

The Power to Progress

FLORIDA POWER CORPORATION

10 AUG 1965

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Gainesville Utilities Department and City of Gainesville, Florida	)	
v.	)	Docket No. E-
Florida Power Corporation	)	

APPLICATION FOR INTERCONNECTION
AND
COMPLAINT AGAINST UNLAWFUL ACTIONS

1.

Comes now the Gainesville Utilities Department and the City of Gainesville, Florida ("Gainesville") and makes application to the Federal Power Commission ("Commission") for an order directing Florida Power Corporation ("F. P. Corp.") to establish physical connection of its transmission facilities with the facilities of Gainesville and to sell and exchange energy with Gainesville under the same terms and conditions at which it sells and exchanges energy with other electric utilities.

2.

Gainesville further complains that F. P. Corp. is acting unlawfully for the reasons that its rates, charges, rules and regulations are not just and reasonable, that it is granting undue preferences and advantages

to other electric utilities and subjecting Gainesville to undue prejudice and disadvantage, and that it is maintaining unreasonable differences in rates, charges, services, facilities and in other respects as between Gainesville and other localities and as between classes of service. Gainesville accordingly seeks an order from the Commission requiring F. P. Corp. to cease and desist from its unlawful acts and directing it to interconnect physically with Gainesville, and to sell electricity to and exchange electricity with Gainesville under just and reasonable rates, charges, classifications, rules, regulations, practices and contract.

3.

Gainesville further complains that F. P. Corp. has attempted to or has entered into combinations, agreements, arrangements or understandings to limit the output of electrical energy, to restrain trade, or to fix, maintain or increase prices for electrical service. Gainesville accordingly seeks an order directing F. P. Corp. to cease and desist from such unlawful action.

4.

This application and complaint are brought under the following sections of the Federal Power Act: 10, 202, 205, 206, 207, 306, 307, 308, 309, 316 and 317. In connection with each cause of action set forth above, Gainesville requests that the Commission take such further action

as is appropriate under Sections 316 and 317 of the Act if, after investigation, it concludes that F. P. Corp. unlawful acts were wilful and knowing.

In support of this application and complaint Gainesville respectfully shows:

a.

The exact legal names of the applicants are Gainesville Utilities Department with its principal place of business at 555 S.E. 5th Avenue, Gainesville, Florida, and the City of Gainesville, Florida, with its principal place of business at 117 N.E. 1st Street, Gainesville, Florida.

b.

The names, titles, and post office addresses of the persons to whom correspondence in regard to this application and complaint shall be addressed are as follows:

John R. Kelly
Director of Public Utilities
555 S.E. 5th Avenue
Gainesville, Florida

George Spiegel, Esq.
Goldberg & Spiegel
1250 Connecticut Avenue
Washington, D.C. 20036

c.

The person named in the application, which is a public utility subject to the Act, is Florida Power Corporation, a Florida corporation,

101 Fifth Street South, St. Petersburg, Florida. F.P.Corp. is also a "licensee" within the meaning of Part I of the Act.

d.

(i) The Gainesville Utilities Department is a department of the City of Gainesville which owns and operates a generating, transmission, and distribution electric system for the sale of energy wholly within Alachua County in the State of Florida. As an electric utility it serves practically all electric consumers within the corporate limits of the City of Gainesville and many electric consumers located outside said limits.

(ii) F.P.Corp. is an electric utility which operates within the following 32 Florida Counties: Alachua, Bay, Citrus, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hardee, Hernando, Highlands, Hillsborough, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Orange, Osceola, Pasco, Pinellas, Polk, Sumter, Suwannee, Taylor, Volusia, Wakulla. It sells electric energy at retail and at wholesale in interstate commerce for resale by other electric utilities.

(iii) F.P.Corp. is one of five electric systems that comprise the Florida Operating Committee ("Florida Pool"). The Pool consists of three operating companies, F.P.Corp., Florida Power & Light Company ("FPL"), and Tampa Electric Company ("TEC"), together with two other

electric utilities which have been invited to meetings and are considered associate members, Orlando Utilities Commission ("Orlando") and City of Jacksonville ("Jacksonville"). F. P. Corp. is interconnected with transmission lines of Georgia Power Company and Gulf Power Company over which interstate energy flows across the Florida-Georgia State boundary pursuant to an agreement between F. P. Corp. and Southern Services, Inc. (on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company). F. P. Corp. thus interchanges power and energy with the other members of the Florida Pool and with the power companies represented by Southern Services, Inc.

(iv) F. P. Corp. owns and operates transmission and distribution lines within Alachua County and the City of Gainesville, over each of which F. P. Corp. transmits electric energy in interstate commerce.

(v) F. P. Corp. makes sales of electric energy for resale in interstate commerce under rates filed with and subject to the Commission's jurisdiction to 12 municipalities and 9 rural electrification cooperatives financed by Rural Electrification Administration. These rates have been accepted for filing, but the Commission has never approved these rates and contracts as meeting the regulatory standards of the Act. The contracts under which these sales are made contain unlawful restrictions upon the wholesale customers, the effect of which is to attempt to prevent (a) interconnections between such customers and a municipal system

which, like Gainesville, generates its own requirements, and (b) the engaging in mutually beneficial sale, purchase, and exchange arrangements. Similarly, it is believed that F. P. Corp. has similar restrictive agreements with other members of the Florida Pool which attempt to prevent Gainesville from interconnecting with them.

(vi) The intent and effect of these contracts is to attempt to force Gainesville to operate as an isolated system which can obtain the benefits of interconnection only by paying whatever price F. P. Corp. asks.

e.

Gainesville proposes to interconnect initially with F. P. Corp.'s 69 kv lateral serving the Rochelle Substation of Clay Electric Cooperative along Payne's Prairie. This will require installation of up to 30,000 kw of 69/12 kv transformation in the Gainesville switchyard and an oil circuit breaker tied to Gainesville's 12 kv bus, as well as 2.65 miles of new 69 kv transmission line. The costs are shown in Exhibit A-1 hereto, and the proposed location of interconnecting facilities on Exhibit B. Gainesville proposes ultimately to interconnect with F. P. Corp.'s Fort White-Archer-Silver Springs 230 kv transmission line. This will require construction of a 15-mile 115 kv line with a 230/115 kv auto transformer at the interconnection and a 115/12 kv transformation back at the Gainesville switchyard. The timing and initial capacity of this facility will depend upon the adequacy of the 69 kv facilities to carry out the initial and developing power exchanges. The

costs of the 230 kv interconnection are shown on Exhibit A-2, and the proposed location of interconnecting facilities on Exhibit B.

f.

The proposed interconnection will be in the public interest for the following reasons:

(i) The proposed interconnection will enable Gainesville to exchange economy energy, and pool its reserves, exchange capacity and coordinate construction of generation, with F. P. Corp. as well as potentially with the interconnected Florida Pool and Southern Services Pool.

(ii) The proposed interconnection will advance the objectives of the National Power Survey by enabling the investor-owned and publicly-owned utilities to obtain efficient, orderly planned growth benefiting consumers of both utilities.

(iii) Gainesville is now operating as an isolated electric system with a load growing at the rate of 15% compounded annually. Its 1964 peak was approximately 43,000 kw and the 1965 peak is expected to be 50,000 kw. Gainesville has an installed generating capacity of 101,310 kw to meet this load. The largest generator is the 1965 Unit No. 8 44,000 kw steam turbine with surface condenser, which operates at a pressure of 1250 psia. On the basis of the largest-unit-down approach, Gainesville's firm generating capacity would be considered 57,310 kw. Thus, in a short time Gainesville must install additional generation if it continues as an isolated system, and such generation capacity would be of relatively small capacity unless it builds a large efficient generator far in advance of local load requirements. The only way Gainesville can obtain relief from these circumstances is by interconnecting with another system and arranging a power

transaction which will enable Gainesville to postpone installation of the next unit of generation, thereby saving Gainesville the expenditure of fixed charges and enable it to size its next generator at the most efficient feasible level.

(iv) F. P. Corp. is the closest large utility with which Gainesville can interconnect, and, indeed, due to F. P. Corp.'s unlawfully restrictive agreements, it is the utility with which, as a practical matter, it is forced to connect.

(v) The proposed interconnection between F. P. Corp. and Gainesville will provide substantial economic and financial benefits, which can be shared between both parties, as follows:

a. The purchase, sale or interchange of temporarily surplus energy on a seasonal, dump or economy flow basis.

b. The exchange of capacity and energy in emergencies.

c. The sharing of spinning reserve, thus reducing the operating expenses of each system.

d. The stabilization of operating conditions even with minor energy flow.

e. Joint planning in the construction of generating plant. Both construction costs and operating expenses decrease as unit sizes increase. One party to an interconnection can overbuild with respect to its own needs when it can dispose of temporarily excess capacity to another party to the interconnection. Conversely, it can safely defer construction of power plant capacity until a more economical unit can be built if it is assured of interim, added capacity from its interconnected neighbor.

f. The increase in service reliability by the establishment of an interconnection when the alternative would be additional transmission line construction.

g. The sharing of operating economies as a result of joint load dispatching to take advantage of the most efficient units on each system.

h. The sharing of capacity investment economies as a result of seasonal load diversities between the systems.

(vi) Through the proposed interconnection with F. P. Corp. Gainesville will be able, potentially, to negotiate agreements with the Florida Power Pool and the Southern Services Pool for the sharing of benefits as specified in subpar. (v), supra, to the extent circumstances make such transactions feasible.

(vii) An order by the Commission requiring F. P. Corp. to interconnect with Gainesville, and to exchange energy and capacity, to pool reserves, and to coordinate construction of generation on a just, reasonable, non-discriminatory and non-preferential basis will eliminate the unlawful actions set forth in paragraph 2, supra, insofar as they may affect Gainesville.

(viii) An order by the Commission requiring F. P. Corp. to interconnect with Gainesville, and to exchange energy and capacity, to pool reserves and to coordinate construction of generation on a fair basis, without the imposition of unreasonable limitations on Gainesville's operations and growth, will eliminate the unlawful actions set forth in paragraph 3, supra, insofar as they may affect Gainesville.

(ix) No undue burden will be placed upon F. P. Corp. if it is required to establish physical connection with Gainesville and to sell energy to and exchange energy with Gainesville.

(x) F. P. Corp. will not need to enlarge any generating facilities if required to connect with, sell energy to and exchange energy with, Gainesville, nor would such requirement impair F. P. Corp.'s ability to render adequate service to its customers.

g.

Gainesville has taken every possible step to secure voluntary interconnection under the provisions of Section 202(a) of the Act.

Gainesville and F. P. Corp. were interconnected during World War II by means of a 69 kv line from a point outside the City limits on the Archer Road (SR-24) to the municipal power plant, and power and energy were exchanged between the parties. The connection was severed in 1955, although a portion of the transmission line is still in place within the City limits.

Gainesville has for a number of years requested F. P. Corp. to interconnect with it, but F. P. Corp. has refused because of an asserted company policy not to serve any additional municipalities except at retail. On January 13, 1965, Gainesville wrote a letter to the Commission Chairman which was treated as an informal complaint. F. P. Corp. in reply of February 10, 1965, stated in effect an unwillingness to interconnect for various reasons stated, none of which, in Gainesville's view, justified F. P. Corp.'s position. The Commission Staff invited both Gainesville and F. P. Corp. to a conference in Washington to discuss the matter. Gainesville came, but F. P. Corp. declined to attend. Nonetheless, Gainesville

has held five conferences with F. P. Corp. in an unsuccessful effort to reach agreement. In the course of these conferences, F. P. Corp. indicated that in any event there would be no interconnection unless Gainesville accepted severe restrictions on its territorial growth, including a limitation upon its ability to serve all loads within its present corporate boundaries. Gainesville cannot accept as a condition for interconnection limitations upon the reasonable and balanced growth of its total system of public utility services which is provided within the City boundaries and the developing urban area surrounding the City. Nor, as a governmental agency, may it accept proposals which it considers to be an effort to unlawfully restrain trade.

h.

Section 202 of the Federal Power Act and the Commission's National Power Survey recognized the substantial public interest in the interconnection and coordination of public utility facilities, both publicly and privately owned. Such interconnection and coordination produce large economies in the cost of electricity. F. P. Corp. is itself the beneficiary of such regional-wide interconnection and coordination, but it is seeking to deprive Gainesville of its legitimate share of such benefits. Rather, it seeks to misuse its massive economic power, derived in large part from such interconnection and coordination, by artifically restricting the growth of Gainesville's electric system, and by forcing a series of territorial and

other restrictive agreements with other electric utilities, it seeks to limit the ability of publicly-owned electric utilities throughout a large area of Florida to themselves develop in accordance with the economic needs of their growing communities. It thus seeks to restrain competition and establish an area monopoly in a manner which violates law and ignores the public interest. Proper utilization and conservation of the region's natural resources requires that Gainesville be entitled to the economic benefits of interconnection and coordination.

WHEREFORE, Gainesville prays (i) that the Commission will by order direct Florida Power Corporation to establish physical connection between the Company's 69 and 230 kv transmission lines and Gainesville's transmission facilities as requested herein, and to sell and exchange energy with Gainesville on just, reasonable, non-discriminatory terms and free of unlawful contractual restrictions; and, in the event the Commission deems a hearing necessary, (ii) that the Commission instruct its Staff to make a complete investigation of the facts and circumstances set forth herein and an independent engineering study of the feasibility and desirability of the proposed interconnection; (iii) that the Commission set this matter down for expeditious pre-hearing conference and such hearings as may be necessary; and (iv) that the

Commission take such further actions as it may deem proper in the circumstances of this case.

Respectfully submitted,

GAINESVILLE UTILITIES DEPARTMENT
and CITY OF GAINESVILLE, FLORIDA

By John R. Kelly
John R. Kelly
Director of Public Utilities
City of Gainesville, Florida

George Spiegel
George Spiegel
Attorney for Gainesville Utilities
Department and City of Gainesville,
Florida

Goldberg & Spiegel
1250 Connecticut Avenue
Washington, D.C. 20036

STATE OF FLORIDA)
) ss:
COUNTY OF ALACHUA)

John R. Kelly, being first duly sworn, on oath says that he is the Director of Public Utilities of the City of Gainesville, Florida; that he signs and verifies the foregoing Application and Complaint for the Gainesville Utilities Department and the City of Gainesville, Florida; that he has read said Application and Complaint and knows the contents thereof, and that the same are true to the best of his knowledge and belief.

John R. Kelly

Sworn to before me and subscribed in my presence this 10 day of November, 1965.

Notary Public

My commission expires:

NY COMMISSION EXPIRES
JUNE 12, 1966

FL-1132

FLORIDA POWER & LIGHT COMPANY

HELPING BUILD FLORIDA

P.O. BOX 3100
MIAMI, FLORIDA 33101

July 19, 1966

The Honorable John R. Kelly
Director of Public Utilities
City of Gainesville
Gainesville, Florida 32601

Dear Mr. Kelly:

Thank you for your letter of July 7 and for the official copy of the deposition in the case of Gainesville Utilities Department versus Florida Power Corporation. We are, of course, interested in your case and have been following it closely, so I am glad to have an opportunity to read the transcript in detail.

There must be some misunderstanding about what you believe our representatives have said concerning an intertie with Gainesville. I don't know of anyone around here who disregards the public interest. It is my belief, in fact, that what is in the public interest will eventually come about, regardless of how any of us might feel.

Our nearest transmission lines to Gainesville are twenty miles away. The building of a line to close this gap, plus the reinforcing of our existing lines to make available an adequate amount of power for Gainesville, would cost at least $4,500,000.

Florida Power Corporation, on the other hand, now has facilities at Gainesville and if a contract could be worked out, a tie with Florida Power Corporation would be much less expensive. It is for this reason that we believe any tie with Gainesville should necessarily be one with Florida Power.

Clerk Exh #25
10/6/72 mlp

The additional money spent, were we to make the interconnection, would be ultimately charged to the customers -- either yours or ours. We feel these additional expenditures should be avoided, particularly at a time when we are receiving requests from the Administration, including President Johnson himself, urging us to hold down capital expenditures to an absolute minimum. These requests from the Administration are, of course, in the interest of avoiding inflation and certainly this is for the benefit of the public.

I am fully aware of your interest in making an intertie with the interconnected system in Florida and since I understand that negotiations are continuing between Gainesville and Florida Power Corporation, I sincerely hope they will be successful and that you will arrive at a mutually satisfactory contract.

In the meantime, while we could open negotiations with you as you suggest, I can't see how you could afford a tie with us when Florida Power Corporation can do the job so much cheaper.

Sincerely yours,

Robert H. Fite
President & General Manager

RHF:bjc

Copies to: B. H. Fuqua
J. G. Spencer
R. C. Fullerton
Alan Wright
Richard Emory (Baltimore)
Bill Clapp
Dick Merriman
Harry Poth

With a copy of Mr. Kelly's letter

APPENDIX VIF

TABLE III

MUNICIPAL INTERVENORS
PRELIMINARY ESTIMATE OF SAVINGS FROM OWNERSHIP IN ST. LUCIE NO. 2

Line No.	City		1993	1994	1995	1996	1997	1998	1999	2000	Total 1983-2000
1	Alachua	- $000	174	197	214	233	253	274	296	321	2941
2		- Mills/kWh	2.20	2.37	2.43	2.53	2.61	2.71	2.79	2.92	
3	Bartow	- $000	889	1005	1093	1187	1289	1396	1512	1636	15005
4		- Mills/kWh	2.61	2.82	2.94	3.05	3.18	3.31	3.44	3.58	
5	Fort Meade	- $000	174	197	214	233	253	274	296	321	2941
6		- Mills/kWh	2.56	2.77	2.89	2.99	3.12	3.22	3.36	3.49	
7	Fort Pierce	- $000	1831	2070	2251	2445	2653	2875	3113	3367	31163
8		- Mills/kWh	2.27	2.43	2.52	2.60	2.70	2.79	2.90	3.01	
9	Gainesville	- $000	4812	5441	5917	6426	6975	7557	8183	8851	64938
10		- Mills/kWh	2.60	2.79	2.88	2.98	3.08	3.20	3.32	3.44	
11	Homestead	- $000	959	1084	1179	1281	1390	1506	1631	1764	16324
12		- Mills/kWh	2.77	2.99	3.11	3.23	3.37	3.50	3.64	3.79	
13	Key West	- $000	1587	1794	1951	2119	2300	2492	2698	2918	27500
14		- Mills/kWh	2.26	2.90	3.05	3.20	3.35	3.50	3.66	3.82	
15	Kissimmee	- $000	1621	1833	1994	2165	2350	2546	2757	2983	28105
16		- Mills/kWh	1.92	2.01	2.04	2.07	2.12	2.18	2.25	2.33	
17	Lake Helen	- $000	70	79	86	93	101	110	119	128	1179
18		- Mills/kWh	3.04	3.29	3.31	3.44	3.61	3.79	3.84	4.00	
19	Lake Worth	- $000	1621	1833	1994	2165	2350	2546	2757	2983	28105
20		- Mills/kWh	3.20	3.47	3.62	3.77	3.93	4.09	4.25	4.42	
21	Mount Dora	- $000	349	394	429	466	505	548	593	641	5885
22		- Mills/kWh	2.41	2.72	2.65	2.73	2.82	2.91	3.03	3.14	
23	Newberry	- $000	87	99	107	116	126	137	148	160	1470
24		- Mills/kWh	1.55	1.60	1.60	1.61	1.64	1.67	1.72	1.78	
25	New Smyrna	- $000	941	1065	1158	1257	1365	1478	1601	1732	16029
26		- Mills/kWh	2.34	2.49	2.56	2.62	2.70	5.79	2.58	3.00	
27	Saint Cloud	- $000	680	769	836	908	986	1068	1156	1251	11787
28		- Mills/kWh	3.82	4.13	4.31	4.50	4.70	4.88	5.07	5.28	
29	Sebring	- $000	994	1124	1222	1327	1440	1561	1690	1828	17049
30		- Mills/kWh	3.10	3.29	3.36	3.44	3.54	3.65	3.77	3.91	
31	Starke	- $000	262	296	322	349	379	411	445	481	4455
32		- Mills/kWh	3.05	3.29	3.43	3.53	3.68	3.84	3.97	4.15	
33	Tallahassee	- $000	7358	8319	9047	9826	10664	11554	12512	13534	127530
34		- Mills/kWh	2.53	2.71	2.80	2.89	2.99	3.09	3.20	3.32	
35	ANNUAL TOTAL	-$000	24409	27599	30014	32596	35379	38333	41507	44899	402406
36	CUMULATIVE TOTAL	-$000	152079	179678	209692	242288	277667	316000	357507	402406	

PRIVILEGED AND CONFIDENTIAL

APPENDIX VIG

Jacksonville Electric Authority

220 EAST BAY STREET • JACKSONVILLE, FLA. 32202

July 15, 1969

Mr. Harry Luff, Assistant Director
Orlando Utilities Commission
Orlando, Florida

Dear Mr. Luff:

Coordination of Future Generation.

This will confirm our telephone conversation of July 14 regarding future discussions of the installation of generating plant additions.

We have presently on order a 300 MW turbine generator for operation in June 1971. In addition, an engineering study is in progress and we expect that this report will be presented to us about August 1. After our review of the report, we would be most willing to sit down and discuss any possibilities regarding future generating installations that could be mutually beneficial.

As I indicated I have sent out some feelers regarding the possibility of establishing a Committee to investigate power pooling in Florida. Early information indicates that it would not be appropriate to try to establish such a Committee at this point and time. I am hopeful, however, that I will be able to get a start on this worthwhile objective later on during the year.

It appears that Florida is the only area in the United States that does not have some type of power pooling and I, personally, feel that if we do not do this on a voluntary basis it will be done through State or Federal legislation. It would certainly be very difficult to argue against such legislation if a major step in the direction of pooling has not been made.

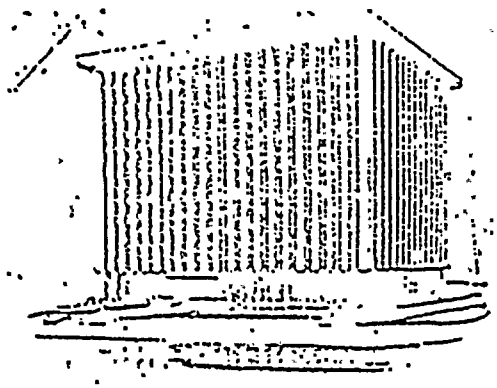
I enjoyed our conversation and will be in touch with you after we have received the report from our Consulting Engineers.

Very truly yours,

Louis H. Winnard
Managing Director

LHW:ks

cc: Mr. R. L. Thompson
Mr. R. L. Gittings



Orlando Utilities Commission

500 SOUTH ORANGE AVENUE
P.O. BOX 3193 • ORLANDO, FLORIDA 32802 • TELEPHONE 305/841-1230

SAM G. WILKINS, PRESIDENT
HENRY T. MEINER, FIRST VICE PRESIDENT
GROVER C. BRYAN, SECOND VICE PRESIDENT
CARL T. LANGFORD, MAYOR
DICK SIMPSON, COMMISSIONER

CURTIS H. STANTON
EXECUTIVE VICE PRESIDENT
AND
GENERAL MANAGER

September 13, 1973

Mr. Marshall McDonald, President
Florida Power & Light Company
P. O. Box 3100
Miami, Florida 33101

1973

Dear Marshall:

This letter relates to your membership on the Florida Energy Committee and your request for suggestions that could be used in a program for development of a reliable energy supply in Florida.

The questions associated with generating capacity, adequate transmission lines, and fuel supply are fairly well defined, and power industry members are actively engaged in study and resolution of these problems. We would like to suggest your consideration of a question which we believe should also be given serious attention.

We believe that formation of a power pool in Florida would greatly benefit the cause of reliability and economy in our state. The benefits of pool operation are well known to you and your associates and are evidenced by successful pool operations in almost every other area of the country, so we will not outline these benefits here.

Successful formation of a power pool in Florida depends almost entirely on the desire of the major investor-owned companies to adopt the pooling concept. One of the major companies has stated a willingness to move in this direction. We can only hope the others will follow. Smaller companies will participate once the larger companies set the example.

We sincerely believe that the time has come for the formation of the Florida Power Pool, and we hope you can include this in your recommendations to the Florida Energy Committee.

Very truly yours,

C. H. STANTON

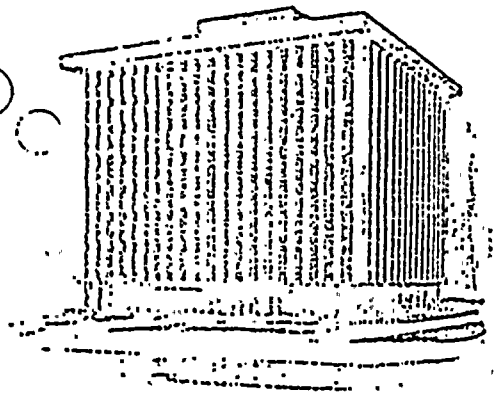
Executive Vice President
Orlando Utilities Commission

CES/bp

cc: Mr. H. L. Culbreath, Tampa Electric Company
Mr. Michehl R. Gent, Florida Coordinating Group

bc: Mr. H. C. Luff

Orlando



Orlando Utilities Commission
500 SOUTH ORANGE AVENUE
P.O. BOX 3193 • ORLANDO, FLORIDA 32802 • TELEPHONE 305/841-1230

May 22, 1973

Mr. James Yontz
Generation Engineering
Florida Power & Light Company
P. O. Box 3100
Miami, Florida 33101

Subject: Study Group Joint Plant

Dear Jim:

This is in response to your letter which we received in May of this year requesting OUC capacity addition requirements in the latter part of this decade.

Basically, the Orlando Utilities Commission is interested in minimizing fuel as well as capital costs in the expansion of its production facilities. We believe that this can best be realized through the joint development of large power plants and the use of nuclear capacity at the earliest time feasible.

We assumed the units of Plan III to be nuclear.

OUC's Joint Capacity Requirements are:

Plan I -

1979 - 100 MW, Fossil
1980 - 100 MW, Fossil

Plan II -

1980 - 100 MW, Fossil
1981 - 100 MW, Fossil

Plan III -

1981 - 200 MW, Nuclear
1982 - 200 MW, Nuclear

If there are any questions with regard to these assumptions or our capacity requirements in these plans, please give us a call.

Very truly yours,

H. C. Luff
Assistant General Manager

HCL:DEM:jb

cc: Mr. C. H. Stanton
Mr. E. L. Bivans
Mr. M. F. Hebb, Jr.
Mr. J. K. Wiley

bc: Mr. D. E. Moore

Jacksonville Electric Authority

220 EAST BAY STREET • JACKSONVILLE, FLORIDA 32202

June 28, 1973

Mr. James Yontz
Florida Power & Light Company
P. O. Box 3100
Miami, Florida 33101

JUL 1973

Subject: Study-Group-Joint-Plant

HCE

Dear Jim:

The Jacksonville Electric Authority has examined how it might participate in a joint plant site project as outlined in your May 1, 1973, letter. As you well realize, our comments on participating under any of the three plans being considered is based on certain timely decisions being made by a joint effort.

Assuming timely decisions, the JEA would propose that its possible participation would be in the following degree:

	Plan I	Plan II	Plan III
1979	100 MW, Fossil		
1980	100 MW, Fossil	0 MW, Fossil	
1981		100 MW, Fossil	125 MW, Nuclear
1982			125 MW, Nuclear

As soon as all the information is tabulated, we would appreciate receiving a status of how all companies plan on participating in such a joint venture. Let us know if we need to be more specific on our reply.

Yours very truly,

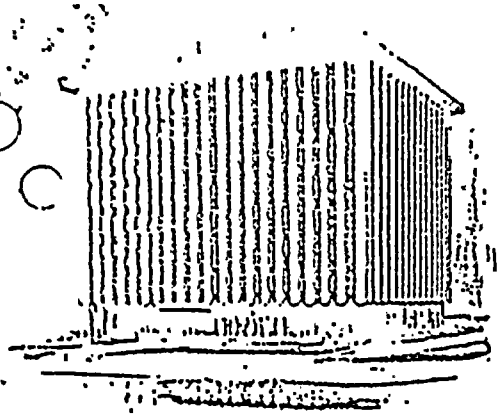
Ken

J. K. Wiley
Director of Engineering

JKW/njl

cc: Mr. Harry Luff ✓
Mr. E. L. Bivans
Mr. Maurice Hebb
Mr. R. C. Kuether

7-2-73
Copies to Stratton Moore



Orlando Utilities Commission

500 SOUTH ORANGE AVENUE
P.O. BOX 3193 • ORLANDO, FLORIDA 32802 • TELEPHONE 305/841-1230

May 4, 1973

ORLANDO UTILITIES COMMISSION

MAY 7 1973

By Hcl

Mr. E. C. Windisch
Black & Veatch
P. O. Box 8405
Kansas City, Missouri, 64114

Dear Earl:

It looks as though the joint generation development has finally gotten off the ground, as you can see from the letter from Jim Yontz to Harry. (Attachment 1)

We have developed three generation expansion plans based on the unit additions as indicated in Yontz's letter. It has been assumed that the 1200 MW units are nuclear units and that additional nuclear capacity will be available in 1985. Each plan begins with the addition of peaking capacity in 1978 to raise the percentage of peaking to 20-25% of the total capacity - the optimal range.

Plan I provides 100 MW in 1979 and 1980 from the 800 MW units and 400 MW in 1982 and 1985 from the 1200 MW units. Peaking capacity is added in 1984 to raise the peaking percentage and to allow for delays. (Attachment 3)

Plan II provides 100 MW in 1980 and 1981 from the 800 MW units and 400 MW in 1982 and 1985 from the 1200 MW units. Peaking capacity is added in 1984 for the same reason as stated before. (Attachment 4)

Plan III provides 400 MW in 1982 and 1985 from the 1200 MW units. Peaking capacity is added in 1979 and 1980 to fill the gap between Indian River 3 and the 1200 MW unit in 1982. (Attachment 5)

You may wish to develop several coordination plans

around the attached cases.

When you have opportunity to mull this over, we would like any thoughts you may have in regard to this matter.

Respectfully,

Don

D. E. Moore
Director
System Planning

DEM:GFE:jb
Attachments

10-11-72

OUC - FP&L Miami Meeting 10-12-72

Tentative Outline

1. Indicate interest in continued coordination and possible joint development of facilities.

2. Hear FP&L proposal on possible joint development of Bunnell unit by FP&L, JEA and OUC as indicated to Irving Reedy by Ernie Bivans.

3. Express primary interest in nuclear capacity but willingness to explore economics of fossil unit joint development.

4. Indicate OUC desire for long-term "life of generating unit" capacity commitments rather than short-term purchases.

5. Discuss high voltage transmission participation as it may relate to capacity joint development.

6. Talk about any interest FP&L may have in OUC ownership of facilities.

7. If time permits and more detailed discussion seems in order, talk about types of joint capacity development.

   a. OUC capacity purchase concept.
   b. Joint ownership as tenants in common.
   c. Any other ideas.

APPENDIX VII

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

JUN 1 [illegible] 1979

Docket No. 50-335

Dr. Robert E. Uhrig
Vice President, Advanced Systems
and Technology
Florida Power & Light Company
P. O. Box S 29100
Miami, Florida 33152

Dear Dr. Uhrig:

This letter concerns the activities at the Unit 1, St. Lucie Plant regarding the training of those individuals that apply for operator and senior operator licenses.

From October of 1975 to January of 1978, we administered twenty-one (21) operator and thirty-eight (38) senior operator examinations. All applicants passed the examinations except for one operator and two senior operators. Both senior operators subsequently passed their reexamination. These results supported the view that the facility licensee appreciated its responsibility to provide well trained and competent operating staff members at the facility.

However, in the recent examinations of April 1979, four of the seven operators and three of the five senior operators failed their examinations.

Under 10 CFR Part 55, an application for a license must include evidence that the applicant has learned to operate the controls in a competent and safe manner. The Commission may accept as proof of this, a certification of the facility licensee; this has been our practice for the Unit 1, St. Lucie Plant applicants.

As the data above indicates, the most recent certifications have been, in large part, invalid. The performance of Unit 1, St. Lucie Plant has been highly unsatisfactory, both in providing the requisite training for applicants and in determining whether an acceptable level of competence has been achieved. This has resulted in significant expenditure of non-productive effort by our staff, as well as yours.

We request that you, or members of your staff, and Unit 1, St. Lucie Plant management meet with members of the Division of Project Management to discuss our concerns regarding the training programs and certification of license

applicants. Specifically, we suggest the following agenda:

1. Discussion of the applicants' deficiencies as reflected in results of the written examinations.

2. Discussion of the applicants' deficiencies as reflected in results of the operating tests.

3. A review of the means employed by management to certify applicants, including a review of pre-licensing examination results, evaluations and recommendations of individuals involved in conducting and evaluating the associated training programs.

4. A review of the station's future training programs, including the details of course content, duration and specific criteria for determining that a prospective applicant has successfully completed the training programs and has learned to operate the controls in a competent and safe manner.

We suggest that the meeting be held in our office and the items enumerated above be resolved prior to the administration of any future examinations at the Unit 1, St. Lucie Plant. Please contact Mr. Paul F. Collins, Chief, Operator Licensing Branch, to make the necessary meeting arrangements.

Sincerely,

Donald J. Skovholt, Assistant Director
for Quality Assurance & Operations
Division of Project Management

Enclosure:
10 CFR Part 55

cc: w/enclosure

Robert Lowenstein, Esquire
Lowenstein, Newman, Reis & Axelrad
1025 Connecticut Avenue, N. W.
Washington, D. C. 20036

continued on page 3

cc: w/enclosure

Norman A. Coll, Esquire
McCarthy, Steel, Hector & Davis
14th Floor, First National Bank Building
Miami, Florida 33131

Mr. Jack Shreve
Office of the Public Counsel
Room 4, Holland Bldg.
Tallahassee, Florida 32304

Indian River Junior College Library
3209 Virginia Avenue
Fort Pierce, Florida 33450

Bureau of Intergovernmental Regulations
660 Apalachee Parkway
Tallahassee, Florida 32304

Mr. Hamilton Oven, Jr., Administrator
Florida Department of Environmental Reg.
Power Plant Siting Section
Montgomery Building
2562 Executive Center Circle
Tallahassee, Florida 32301

Mr. Weldon B. Lewis
County Administrator
St. Lucie County
2300 Virginia Avenue, Room 104
Fort Pierce, Florida 33450

Director, Technical Assessment Division
Office of Radiation Programs
(AW-459)
U. S. Environmental Protection Agency
Crystal Mall #2
Arlington, Virginia 20460

U. S. Environmental Protection Agency
Region IV Office
ATTN: EIS COORDINATOR
345 Courtland Street, N. E.
Atlanta, Georgia 30308

Administrator
Department of Environmental Regulation
Power Plant Siting Section
State of Florida
Montgomery Building
2562 Executive Center Circle, E.
Tallahassee, Florida 32301

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
Florida Power & Light Co.	)	NRC Docket No. 50-389A
(St. Lucie Plant Unit No. 2	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served on the following by deposit in the United States mail, first class, postage prepaid, this 7th day of April, 1981.

Ivan W. Smith, Esq., Chairman
Atomic Safety & Licensing Board
Nuclear Regulatory Commission
Washington, D.C. 20555

Michael A. Duggan, Esq.
College of Business Administration
University of Texas
Austin, Texas 78172

Robert M. Lazo, Esq., Member
Atomic Safety & Licensing Board
Nuclear Regulatory Commission
Washington, D.C. 20555

Jerome Saltzman, Chief
Utility Finance Branch
Nuclear Regulatory Commission
Washington, D.C. 20555

Thomas Gurney, Sr., Esq.
203 North Magnolia AVenue
Orlando, Florida 32802

J.A. Bouknight, Jr., Esq.
E. Gregory Barnes, Esq.
Lowenstein, Newman, Reis & Axelrad
1025 Connecticut Avenue N.W.
Washington, D.C. 20036

Atomic Safety & Licensing Board
Nuclear Regulatory Commission
Washington, D.C. 20555

Tracy Danese, Esq.
Vice President for Public Affairs
Florida Power & Light Company
P.O. Box 013100
Miami, Florida 33101

Jack W. Shaw, Jr., Esq.
John E. Mathews, Jr., Esq.
Mathews, Osborne, Ehrlich, McNatt, Gobelman & Cobb
1500 American Heritage Life Bldg.
11 East Forsyth Street
Jacksonville, Florida 32202

William H. Chandler, Esq.
Chandler, O'Neal, Avera, Gray, Land & Stripling
P.O. Drawer 0
Gainesville, Florida 32602

Robert E. Bathen
Fred Saffer
R.W. Beck & Associates
P.O. Box 6817
Orlando, Florida 32853

William C. Wise, Esq.
Suite 500
1200 18th Street N.W.
Washington, D.C. 20036

Daniel M. Gribbon, Esq.
Herbert Dym, Esq.
Joanne B. Grossman, Esq.
Covington & Burling
888 16th Street N.W.
Washington, D.C. 20006

Peter G. Crane, Esq.
Office of General Counsel
Nuclear Regulatory Commission
Washington, D.C. 20555

Donald A. Kaplan, Esq.
Robert Fabrikant, Esq.
U.S. Department of Justice
Washington, D.C. 20530

Janet Urban, Esq.
Department of Justice
P.O. Box 14141
Washington, D.C. 20044

Daniel Guttman

Attorney for the Gainesville Regional Utilities, the Lake Worth Utilities Authority, the Utilities Commission of New Smyrna Beach, the Sebring Utilities Commission, and the Cities of Alachua, Bartow, Fort Meade, Homestead, Kissimmee, Mount Dora, Newberry, St. Cloud, Starke, and Tallahassee, Florida