

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Charles B. Curtis, Chairman;
Don S. Smith, Georgiana Sheldon,
Matthew Holden, Jr., and George R. Hall.

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

ORDER TO SHOW CAUSE

(Issued June 12, 1978)

On November 7, 1977, the City of Homestead, the Fort Pierce Utilities Authority, the City of Starke and the Utilities Commission of New Smyrna Beach (hereinafter collectively referred to as Florida Cities), all situated within the State of Florida, filed a petition to intervene, inter alia. In their petition, Florida Cities alleged, inter alia, that Florida Power & Light Company (hereinafter referred to as FP&L) has violated its existing SR-1 tariff. Florida Cities averred that FP&L continually refused to sell wholesale power service to the Fort Pierce Utilities Authority (hereinafter referred to as FPUA or Fort Pierce) under the SR-1 tariff, despite repeated requests for such power and notwithstanding the clear commands of FP&L's existing SR-1 tariff.

On December 1, 1977, FP&L answered Florida Cities' petition. FP&L's answer denied that it has excluded municipalities which can qualify from wholesale power purchases under the tariff. In addition, FP&L asserted that the language of the Federal Power Act and the history of the legislative proceeding surrounding it indicate that the Act imposes no public utility service obligation similar to that at common law on companies under its jurisdiction. Rather, FP&L states that the Act recognizes that a contract between a utility and its wholesale customers provides the basis for service to the customer.

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

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On January 24, 1978, the Commission issued an order in this docket instituting investigation and designating officers which directed the Commission Staff to undertake an inquiry to determine whether the alleged acts or omissions raised by Florida Cities constituted a violation of the filed tariff, the Federal Power Act, or any order, rule or regulation promulgated thereunder. The Commission Staff deposed representatives of FP&L and FPUA in Miami, Florida, during the week of February 27, 1978 and Staff filed its investigation report with the Commission on April 7, 1978. ^{1/} The Commission order instituting investigation delineated certain issues for review and the Staff's findings and conclusions regarding those issues are as follows:

- (1) That after August 9, 1977, the FP&L engaged in a refusal to provide service to FPUA pursuant to the filed SR-1 tariff;
- (2) That the refusal to serve FPUA violates the filed SR-1 tariff and Section 205 of the Federal Power Act;
- (3) That were it not for FP&L's commencement of service to FPUA under the filed SR-1 tariff (Docket No. ER78-282), the Staff would have recommended that the Commission order FP&L to immediately commence service to FPUA under the filed SR-1 tariff and that the Commission seek other civil remedies such as injunctive relief, inter alia.

Our review indicates that the investigative Staff's findings and conclusions are supported by substantial evidence. Thus, we are inclined to adopt and affirm the Staff's conclusions in all respects. Before undertaking this measure, however, we deem it appropriate to permit FP&L and Florida Cities an opportunity to respond to those findings and conclusions in writing.

The Commission finds:

In light of the foregoing, Florida Power & Light Company is directed, and Florida Cities are permitted to show cause in writing why the Commission should not find and determine:

- (1) That after August 9, 1977, FP&L engaged in a refusal to provide service to FPUA pursuant to the SR-1 tariff;

^{1/} The Investigative Report was made available to the public on May 24, 1978.

(2) That the refusal to serve FPUA violates the filed SR-1 tariff and Section 205 of the Federal Power Act.

The Commission orders:

(A) Within 30 days from the issue of this order, FP&L shall respond to the Staff Investigation Report through an answer as provided in Section 1.9(c) of the Commission's Rules of Practice and Procedure, 18 CFR 1.9(c) showing cause, if any there be, why the Commission should not find and conclude that FP&L has violated its existing SR-1 tariff and the Federal Power Act for having refused to provide service to Fort Pierce.

(B) Within 30 days from the issue of this order, Florida Cities may respond to the Staff Investigation Report through an answer as provided in Section 1.9(c) of the Commission's Rules of Practice and Procedure, 18 CFR 1.9(c).

(C) The Secretary is hereby ordered to cause prompt publication of this order in the Federal Register.

By the Commission.

(S E A L)

Kenneth F. Plumb,
Secretary.

Attachment 6

Florida Cities v. Florida Power & Light
Company, FERC Docket No. EL78-1, "Staff
Investigation Report", April 7, 1978