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UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

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E-9574

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Before Commissioners: James G. Watt, Acting Chairman;  
Don S. Smith, and John H. Holloman III.

Florida Power and Light Company ) Docket No. E-9574

ORDER ACCEPTING FOR FILING AND DENYING MOTION TO REJECT  
APPLICATION, GRANTING INTERVENTION, PROVIDING FOR HEARING

(Issued February 7, 1977)

Florida Power & Light Company (FP&L) submitted for filing on November 26, 1976, an application seeking, pursuant to Section 203 of the Federal Power Act, an order authorizing it to acquire the fixed assets constituting the electrical system owned and operated by the City of Vero Beach, Florida. In its application FP&L states that it will pay a sum of up to \$39,057,000 in exchange for the assets, subject to adjustments at the time of closing.

Vero Beach is a municipally owned system and the sale of the facilities is not subject to Commission jurisdiction. FP&L is a "public utility" under the Federal Power Act and the acquisition of the Vero Beach power system is subject to Commission jurisdiction.

Notice of the application was issued by the Commission December 9, 1976, with comments, protests, or petitions to intervene due on or before January 10, 1977. On January 10, 1977, a timely "Protest, Petition to Intervene and Motion to Reject Application" was filed by John B. Dawson, Eugene Lyon, and Fred Gossett. Dawson, Lyon and Gossett subsequently filed an "Errata Sheet" on January 19, 1977, making minor revisions of their original filing. Dawson claims to be a resident and taxpayer of the City of Vero Beach,

Florida and an electric purchaser from the municipal power system. Lyon alleges that he is an electric purchaser from the municipal system although not a resident of Vero Beach. Gossett avers that he is an electric purchaser of FP&L although neither a resident of Vero Beach nor an electric purchaser from the municipal system.

Staff Counsel filed an "Answer To Protest, Petition To Intervene and Motion to Reject of John B. Dawson, Eugene Lyon, and Fred Gossett" on January 13, 1977, a copy of which was served on all parties of record in the proceeding. Staff Counsel recommended (1) that the motion to reject FP&L's application be denied and that FP&L's application be accepted for filing; (2) that the petitioners Dawson, Lyon, and Gossett be granted permission to intervene and be made full parties to the proceeding; and (3) that a formal investigation and hearing be held in these proceedings.

On January 10, 1977, within the time prescribed for intervention in this proceeding, the Attorney for the City of Vero Beach filed a letter with the Commission in support of the application of FP&L. The Attorney for the City sent a letter to Staff Counsel dated January 21, 1977, which was received on January 25, 1977, requesting that the prior letter be considered a petition to intervene.

FP&L filed an Answer to the Dawson, et al. Protest, Petition and Motion on January 25, 1977, and suggested that all three petitions for intervention should be denied, that the motion to reject the application was meritless and should be denied, and that a hearing in this proceeding would be adverse to the public interest.

Petitioners Dawson, et al. raise substantial objections to the proposed acquisition, including the possibility of anti-competitive practices by FP&L in its dealings with the City of Vero Beach, the failure of the City to adequately assess (a) the true value of the municipal system, (b) the effect that the sale would have on the City's future credit position, and (c) other viable alternatives to outright sale to FP&L. They also question the timing of FP&L's announcement of a retail rate increase request, only a few days prior to the September 7, 1976, citywide referendum on the proposed acquisition.

FP&L responds that the proposed retail rate increase was adequately explained to the City by means of a full page advertisement in the City newspaper prior to the voting day. It also avers that the sale is supported by the Vero Beach City Council and was overwhelmingly approved by the City electorate. Further, it alleges that the sale will result in lower retail rates for the present customers of the municipal system. In sum, FP&L maintains that the sale is in the public interest and that a hearing is neither mandated by Section 203 of the Federal Power Act nor is it necessary in this proceeding. 1/

It is true that the standard to be applied in determining whether the Commission should approve a merger is whether the merger comports with the public interest. In Commonwealth Edison Company and Central Illinois Gas and Electric Company 36 FPC 927, 931 (1966), the Commission announced:

In other words, the ultimate determination in passing upon a merger application is not whether in the Commission's judgment merger is the only technique by which the companies involved could accomplish the over-all objectives of the Act; rather, it is enough if, upon our analysis of all the relevant factors, we conclude that the merger, in the particular circumstances of the applicants, is consistent with the public interest. (emphasis supplied)

The Commission again addressed itself to the issue of the standard to be applied in deciding to authorize a merger of electric utilities in its Order Authorizing Merger, issued May 25, 1976, Central Maine Power Company, Docket No. E-9547. At page 8 of the Order the Commission stated:

the mere existence of benefits, in the form of lower rates or otherwise, will not in itself justify a merger resulting in substantial restraint of competition.

Petitioners Dawson, et al., have made allegations of possible substantial anti-competitive practices.

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1/ Answer of FP&L to Dawson et al., filed January 25, 1977.  
Page 8.

It is the view of the Commission that a formal investigation is required to resolve the allegations of restraint of competition before a merger can be authorized.

Furthermore, the Commission agrees with the position taken by Staff that a hearing would be required if only due to the magnitude of the proposed merger involved in this proceeding.

In Commonwealth Edison Company, supra, at page 930, the Commission restated its intention (from a prior order) <sup>2/</sup> "to require public hearings in the future on all applications requesting approval of the merger or consolidation of two or more Class A electric utilities." Although Vero Beach is a municipal system and, therefore, cannot be categorized as a Class A electric utility, its annual electric operating revenues are in excess of the \$2.5 million needed to attain Class A status.

The Commission finds:

(1) Good cause exists to accept for filing FP&L's application for an order authorizing the purchase of the electric facilities of the City of Vero Beach, and to deny the motion of petitioners Dawson, Lyon, and Gossett to reject the application.

(2) Good cause exists to grant the petition of Dawson, Lyon, and Gossett to intervene and each to be made a full party to the proceeding by virtue of his status as an electric customer of either FP&L or the City of Vero Beach system and the fact that it may be in the public interest.

(3) Good cause exists to grant the petition of the City of Vero Beach, Florida to intervene and be made a full party to the proceeding as it may be in the public interest.

(4) It is necessary and in the public interest that an evidentiary hearing be held in this Docket in order for the Commission to discharge its statutory responsibilities under Section 203 of the Federal Power Act.

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<sup>2/</sup> Order Providing for Hearing, Commonwealth Edison Company, 35 FPC 872 (1966).

(A) That FP&L's application, filed November 26, 1976, is hereby accepted for filing and the motion by Dawson, Lyon and Gossett to reject the application is hereby denied.

(B) That the petition to intervene of Dawson, Lyon, and Gossett is hereby granted as to each and each will be made a full party to the proceeding; provided, however, that participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and provided, further, that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) That the petition to intervene of the City of Vero Beach, Florida, is hereby granted and the City is made a full party to the proceeding; provided however, that participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and provided, further, that the admission of such intervenor shall not be construed as recognition by the Commission that he might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(D) An evidentiary hearing on the application of FP&L, commencing with a prehearing conference before an Administrative Law Judge on March 1, 1977, at 10 A.M. in a hearing room at the Federal Power Commission, 825 North Capitol St., N.E. Washington, D.C. 20426.

(E) That a Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (see Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in the Commission's Rules of Practice and Procedure.

(F) That nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure.

(G) That the Secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

( S E A L )

Kenneth F. Plumb,  
Secretary.