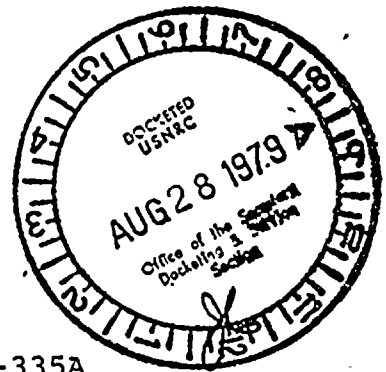


August 24, 1979

CF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission



| | | |
|-------------------------------|---|--------------------|
| In the Matter of: |) | |
| |) | |
| Florida Power & Light Company |) | Docket No. 50-335A |
| (St. Lucie Plant, Unit No. 1) |) | |
| |) | |
| Florida Power & Light Company |) | Docket No. 50-250A |
| (Turkey Point Plant, Units 3 |) | 50-251A |
| and 4) |) | |

RESPONSE OF FLORIDA POWER &
LIGHT COMPANY TO CITIES
MOTION TO LODGE

On August 9, 1979, 1/ the Cities moved to "lodge" a decision of the FERC in FERC Docket No. 78-19 which concerns Florida Power & Light Company (FPL). 2/ FPL opposes the motion. Section 105a of the Atomic Energy Act authorizes the Commission to act on the basis of a finding "by a court of competent jurisdiction" that a licensee has violated the antitrust laws " in the conduct of the licensed activity." The FERC is not a court of competent jurisdiction, and it did not, by the terms of its decision, determine the existence of any violation of the anti-trust laws. Moreover, a decision concerning the justness and reasonableness of a tariff provision submitted in 1977 (and which never took effect) cannot conceivably have any relevance to the

1/ Due to a clerical error, counsel for FPL was not served with the Motion and did not receive it until August 24. Counsel for the Cities has authorized FPL's counsel to represent that the Cities have no objection to filing of this response out of time.

2/ The decision of the FERC is subject to reconsideration and judicial review. FPL intends to request reconsideration.

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question before this Commission -- whether certain findings by the United States Court of Appeals for the Fifth Circuit concerning events which took place before 1970 establish a violation of the antitrust laws "in the conduct of the licensed activity" which warrants initiation of proceedings by this Commission.


The FERC decision, which was issued on the basis of an expedited hearing schedule which did not permit adequate discovery into or consideration of the truth or falsity of antitrust allegations, does not purport to determine antitrust issues. The decision is subject to reconsideration by the FERC and to judicial review, and is, therefore, by no means final. Moreover, it is not relevant to any of the issues pending here. The Motion seeks only to prejudice the Commission's consideration of the matters properly before it. FPL requests that it be denied.

Respectfully Submitted,

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By: 
J.A. Bouknight, Jr.
Counsel for Florida Power & Light
Company

August 24, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of:)

Florida Power & Light Company)
(St. Lucie Plant, Unit No. 1))

) Docket No. 50-335A

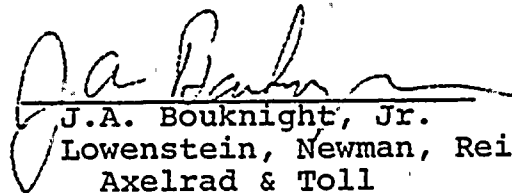
)
)
Florida Power & Light Company)
(Turkey Point Plant, Units 3)
and 4))

) Docket No. 50-250A
) 50-251A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the following:
RESPONSE OF FLORIDA POWER & LIGHT COMPANY TO CITIES MOTION
TO LODGE have been served on the persons shown on the attached
list by deposit in the United States Mail, properly stamped and
addressed on August 24, 1979.

By:



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Counsel for Florida Power & Light
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