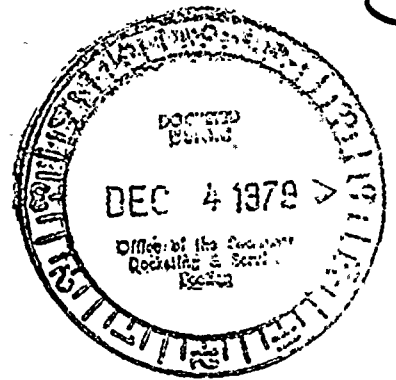


CA

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 FERC OPINION NO. 57-A

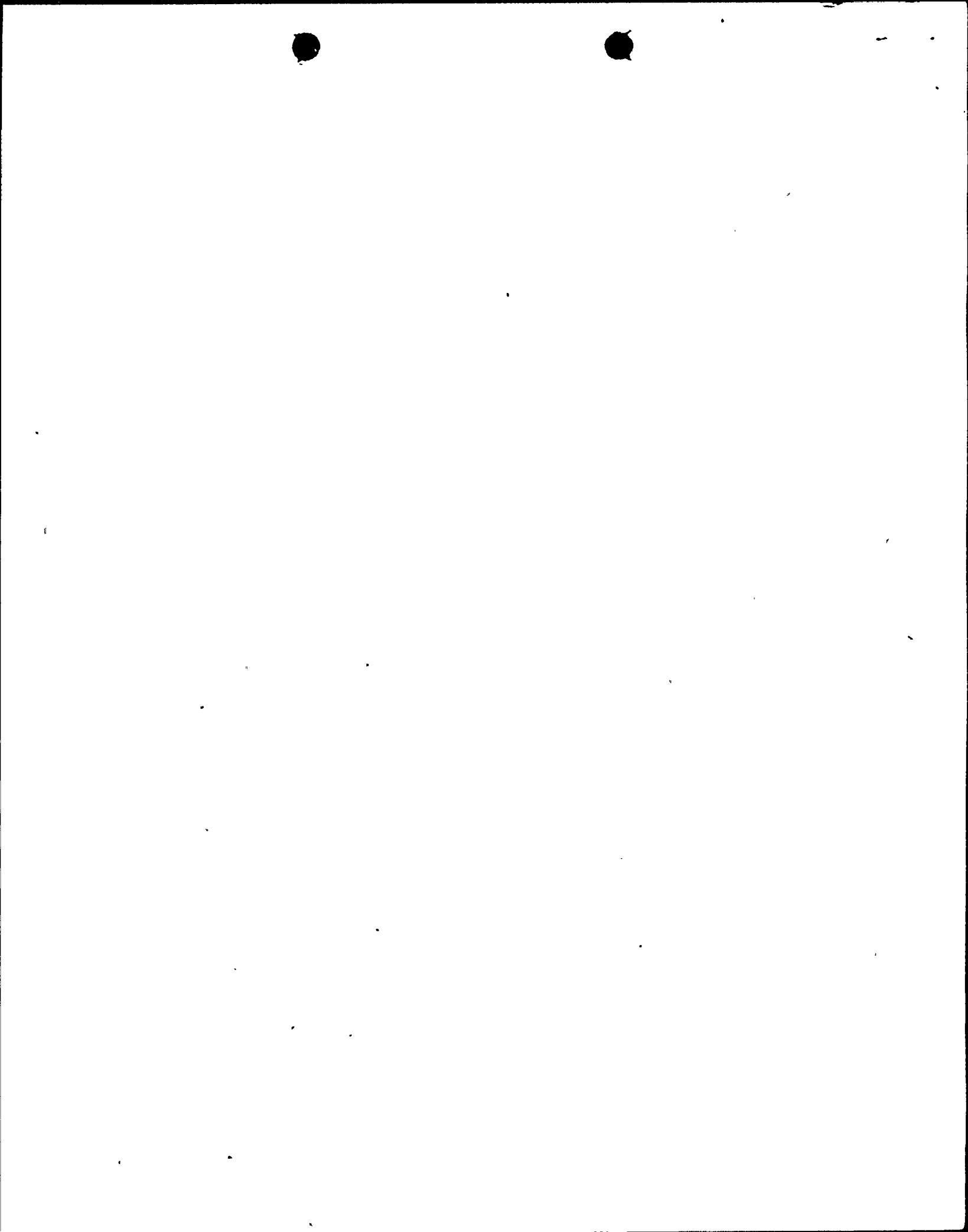
12/3/79

On November 16, 1979, the Cities moved to "lodge"
in these dockets FERC Opinion No. 57-A.^{1/}

FPL opposes this latest Motion and relies on the reasons set forth in its Response to Cities' Motion to Lodge filed in this matter on August 24, 1979. The denial of rehearing leaves Opinion No. 57 subject to judicial review and, further, does nothing to remedy the jurisdictional flaw in Cities' earlier motion: namely, that the FERC's findings concerning the justness and reasonableness of a tariff in no way relate to findings of antitrust violations by a court of competent jurisdiction, the predicate for any action under Section 105a of the Atomic Energy Act.

^{1/} The Cities moved on August 9, 1979 to lodge FERC Opinion No. 57. Opinion 57-A denies rehearing of Opinion No. 57. Under the Federal Power Act, rehearing must be sought before judicial review of an FERC order can be obtained. 16 U.S.C. §8251(a)

140
7912110 438 60
M



FPL requests that the Commission deny the Motion.

Respectfully Submitted,

Daniel M. Gribbon
Herbert Dym
Covington & Burling
888 16th Street, N.W.
Washington, D.C. 20006

J.A. Bouknight, Jr.
Lowenstein, Newman, Reis, Axelrad
and Toll
1025 Connecticut Avenue, N.W.
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John E. Mathews, Jr.
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Gobelman & Cobb
1500 American Heritage Life Building
11 East Forsyth Street
Jacksonville, Florida 32202

By:


J.A. Bouknight, Jr.

Attorneys for Florida Power & Light
Company

Dated: December 3, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission.

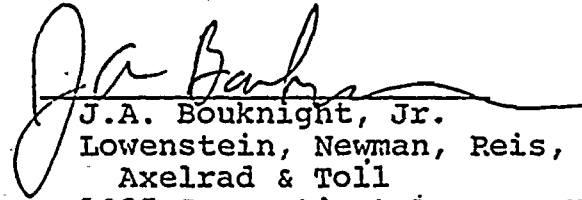
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(St. Lucie Plant, Unit No. 1))	
)	
Florida Power & Light Company)	Docket No. 50-250A
(Turkey Point Plant, Units 3)	50-251A
and 4))	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the following:

RESPONSE OF FLORIDA POWER & LIGHT TO CITIES' NOVEMBER 16
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 December 3, 1979.

By:


J.A. Bouknight, Jr.
Lowenstein, Newman, Reis,
Axelrad & Toll
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Attorney for Florida Power & Light
Company

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Office of the Commissioners
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Commissioner Victor Gilinsky
Office of the Commissioners
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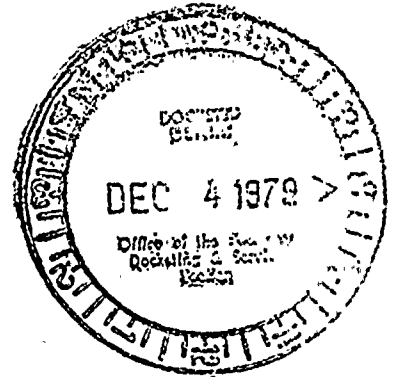
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Washington, D.C. 20555

Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

12/3/79



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

RESPONSE OF FLORIDA POWER & LIGHT
COMPANY TO CITIES' MOTION
TO LODGE FERC OPINION NO. 57-A

On November 16, 1979, the Cities moved to "lodge"
in these dockets FERC Opinion No. 57-A.^{1/}

FPL opposes this latest Motion and relies on the reasons set forth in its Response to Cities' Motion to Lodge, filed in this matter on August 24, 1979. The denial of rehearing leaves Opinion No. 57 subject to judicial review and, further, does nothing to remedy the jurisdictional flaw in Cities' earlier motion: namely, that the FERC's findings concerning the justness and reasonableness of a tariff in no way relate to findings of antitrust violations by a court of competent jurisdiction, the predicate for any action under Section 105a of the Atomic Energy Act.

^{1/} The Cities moved on August 9, 1979 to lodge FERC Opinion No. 57. Opinion 57-A denies rehearing of Opinion No. 57. Under the Federal Power Act, rehearing must be sought before judicial review of an FERC order can be obtained. 16 U.S.C. §8251(a)

FPL requests that the Commission deny the Motion.

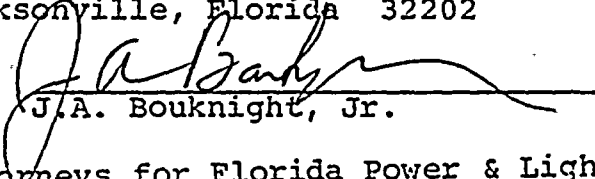
Respectfully Submitted,

Daniel M. Gribbon
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Jacksonville, Florida 32202

By:


J.A. Bouknight, Jr.

Attorneys for Florida Power & Light
Company

Dated: December 3, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

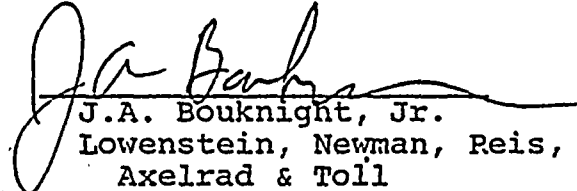
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RESPONSE OF FLORIDA POWER & LIGHT TO CITIES' NOVEMBER 16
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By:


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1025 Connecticut Avenue, N.W.
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Attorney for Florida Power & Light
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Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

11/16/79

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Florida Power & Light Company)	Docket No. 50-335A
(St. Lucie Plant, Unit No. 1))	
)	
Florida Power & Light Company)	Docket Nos. 50-250A
(Turkey Point Plant, Unit Nos.)	50-251A
3 & 4))	

FLORIDA CITIES' MOTION TO LODGE

On August 9, 1979, Florida Cities 1/ moved to lodge in the above-captioned dockets FERC Opinion No. 57 titled "Opinion and Order Reversing Initial Decision and Rejecting Tariff Availability Limitations and Notice of Cancellation," issued on August 3, 1979, in Florida Power & Light Co., Docket No. ER78-19 (Phase I).

In its August 24, 1979 Response to Florida Cities' Motion to Lodge, Florida Power & Light Company ("FP&L") objected because, among other reasons, FERC's Order was subject to reconsideration by that Commission. On September 4, 1979, FP&L applied for rehearing of Opinion No. 57. In Opinion No. 57-A issued October 4, 1979, the FERC denied FP&L's Application for Rehearing.

1/ Florida Cities include the Fort Pierce Utilities Authority of the City of Fort Pierce, the Gainesville-Alachua County Regional Electric Water and Sewer Utilities, the Lake Worth Utility Authority, the Utilities Commission of New Smyrna Beach, the Orlando Utilities Commission, the Sebring Utilities Commission, and the Cities of Alachua, Bartow, Fort Meade, Key West, Lake Helen, Mount Dora, Newberry, St. Cloud and Tallahassee, Florida, and the Florida Municipal Utilities Association.

For the reasons set forth in their August 9, 1979 Motion to Lodge, Florida Cities hereby respectfully move that FERC's Opinion and Order Denying Rehearing, issued on October 4, 1979 in Florida Power & Light Company, FERC Docket No. ER78-19 (Phase I), et al., a copy of which is attached, be lodged in the above-captioned dockets.

Respectfully submitted,

Robert A. Jablon
Robert A. Jablon
Attorney for the Fort Pierce
Utilities Authority of the City
of Fort Pierce, the
Gainesville-Alachua County
Regional Electric Water and
Sewer Utilities, the Lake Worth
Utility Authority, the
Utilities Commission of New
Smyrna Beach, the Orlando
Utilities Commission, the
Sebring Utilities Commission,
and the Cities of Alachua,
Bartow, Fort Meade, Key West,
Lake Helen, Mount Dora,
Newberry, St. Cloud, and
Tallahassee, Florida, and the
Florida Municipal Utilities
Association

Enclosure:

FERC Opinion and Order Denying
Rehearing dated October 4, 1979

November 16, 1979

Law Offices of:

Spiegel & McDiarmid
2600 Virginia Avenue, N. W.
Suite 312
Washington, D. C. 20037
(202)333-4500

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Florida Power & Light Company)	Docket No. 50-335A
(St. Lucie Plant, Unit No. 1))	
)	
Florida Power & Light Company)	Docket Nos. 50-250A
(Turkey Point Plant, Unit Nos.)	50-251A
3 & 4))	

AFFIRMATION OF SERVICE

DISTRICT OF COLUMBIA, ss:

I, SUSAN G. WHITE, being first duly sworn, affirm that copies of the foregoing FLORIDA CITIES' MOTION TO LODGE in the above-captioned proceeding have this 16th day of November, 1979, been served upon the following persons by deposit in the U. S. mail, first class, postage prepaid:

Chase Stephens, Chief
Docketing & Service Section
Nuclear Regulatory Commission
Washington, D. C. 20555

Lee Dewey, Esq.
Fred Chanania, Esq.
Dave Evans, Esq.
Office of the Executive
Legal Director
Nuclear Regulatory Commission
Washington, D. C. 20555

Ivan W. Smith, Chairman
Atomic Safety & Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

Robert Lazo, Esq.
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Jerome Saltzman, Chief
Antitrust & Indemnity Group
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Herbert Dym, Esq.
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Mildred Calhoun, Esq.
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Washington, D. C. 20555

Valentine B. Deale, Esq.
Atomic Safety & Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

Susan G. White

Subscribed and sworn to before me this 16th day of November, 1979.

Kudick B. Sker
Notary Public

My Commission Expires Jan. 31, 1982

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. Hail.

Florida Power & Light) Docket Nos. ER78-19
Company) (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.

Docket Nos. ER78-19
(Phase I) and ER78-81

-3-

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.