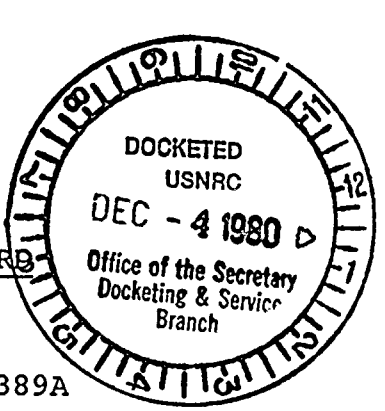

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket No. 50-389A
	)	
(St. Lucie Plant, Unit No. 2)	)	

3Dec 80

RESPONSE OF FLORIDA POWER & LIGHT COMPANY
TO FLORIDA CITIES' ANSWER TO JOINT MOTION

I. Background

On September 12, 1980, Florida Power & Light Company (FPL), the United States Department of Justice (Department) and the NRC Staff (Staff) filed a Joint Motion which apprises the Board that a settlement has been reached among these three parties and requests that the Board issue an order (1) immediately attaching certain license conditions in their entirety to the construction permit for St. Lucie Unit No. 2 without prejudice to the Board's authority to impose different or additional conditions after a hearing, and (2) directing the Intervenor Cities to set forth in writing with specificity any objections that they may have to any of the conditions and the legal and factual basis for each such objection.

On October 9, 1980, the Cities filed an Answer which opposes immediate implementation of the license conditions on the basis of objections advanced by the Cities to three provisions of the conditions. The Cities apparently do not oppose the procedures suggested in the Joint Motion, except they request that the Board convene a prehearing conference prior to submittal by the Cities of the further pleading

described in the Joint Motion. The Answer contains additional critical comments on the substance of the settlement license conditions, but these comments are not advanced as a basis for denial of the Joint Motion.[1/] Pursuant to leave granted by the Board, FPL submits this response to the Cities' Answer.

II. Legal Standards

This proceeding arises under Section 105c of the Atomic Energy Act of 1954, as amended (Act), which provides for the Board, after holding a hearing, to determine whether activities under the license would "create or maintain a situation inconsistent with the antitrust laws . . ." (42 U.S.C. § 2135(c)(5)). If such finding is made, the Board is authorized to impose upon the license "such conditions as it deems appropriate" (42 U.S.C. § 2135(c)(6)). The Cities are parties to the proceeding pursuant to Section 189a of the Act (42 U.S.C. § 2239(a)), and are entitled to a hearing under that provision.[2/]

1/ In some instances these comments pertain to interpretation of conditions, but for the most part they reflect Cities' view that the conditions are not sufficient to remedy the situation inconsistent with the antitrust law which the Cities allege exists. These arguments pertain to the merits of the controversy, which are not now before the Board. FPL sees no need to address these issues now since they do not bear on the relief requested in the Joint Motion.

2/ A "hearing" is, of course, conducted in accordance with the Commission's regulations, and an evidentiary hearing is required only as to issues that are pertinent under the statute and regulations and as to which genuine questions of material fact remain to be decided. 10 CFR § 2.749.

The Joint Motion does not request that the Board make any judgment on the merits of the controversy or that it decide whether the settlement license conditions are "appropriate" to remedy any situation inconsistent with the antitrust laws. Under the statute, the Board could not decide these questions prior to holding a hearing and making the findings prescribed in Section 105c(5). Indeed, the Joint Motion expressly recognizes that an order attaching the settlement license conditions must be without prejudice to this Board's authority to impose different or additional conditions after a hearing. The source of the Board's authority for attaching the settlement conditions is FPL's agreement that they may be attached in their entirety as part of a settlement among FPL, the Department and the Staff.

There is precedent for granting the request for immediate effectiveness of the settlement conditions. In similar circumstances a Licensing Board concluded that license conditions agreed upon as part of a settlement among the Department, the Staff and an applicant should be attached immediately to the license if the conditions "are a reasonable settlement of [differences among such parties] within the public interest." Duke Power Company (Catawba Nuclear Station, Units 1 & 2), LBP-74-47, 7 AEC 1158, 1159 (1974). In considering whether the settlement there was "within the public interest," the Catawba Board focused upon whether the

intervenors would be "improperly prejudiced or disadvantaged" by implementation of the settlement. It found that they would not be, and granted the motion for immediate attachment of the license conditions.

FPL submits that the Catawba standard is applicable here. The question now before the Board is whether the settlement is "within the public interest." It clearly should be found to be so unless the Cities can show that they would be "improperly prejudiced or disadvantaged" by immediate attachment of the conditions.

III. Immediate Implementation of the License Conditions Would Not Prejudice or Disadvantage the Cities

The Cities assert that three provisions of the settlement license conditions "could result in harm as a result of immediate implementation." (Cities' Answer, at 12).[3/] These provisions all relate to Section VII of the settlement conditions, which require FPL to offer to certain utilities ownership interests in St. Lucie Unit No. 2.[4/] Specifically,

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3/ Cities suggest that there should be "modification" of these provisions "before immediate implementation." As shown in the preceding section of this response, there is no legal basis at this stage for any proceedings concerning possible modification of the settlement conditions. Cities erroneously seek the benefit of findings favorable to them on the merits of the controversy. No such findings have been made, nor can they be made until and unless Cities succeed in proving their case at a hearing.

4/ Under the license conditions, FPL would be obligated to offer ownership interests in St. Lucie Unit No. 2 to sixteen utilities, only eight of which are represented by counsel for the intervenors. The interests of these non-intervening Cities, which could be prejudiced were the license conditions not to go into effect, must be kept in mind.

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Cities point to the provisions (1) specifying a timetable for action on FPL's offer of ownership interest (conditions, at 10-18); (2) permitting FPL to retain management control of the unit (conditions, at 19-20); and (3) qualifying FPL's commitment to arbitrate any dispute over the terms of a participation agreement with a proviso that the arbitrator shall approve the provsions proposed by FPL with respect to liability among the owners unless he determines that the provision proposed by FPL "constitutes an unreasonable proposal which renders meaningless the Company's offer of participation in St. Lucie Unit No. 2." (conditions, at 16).5/

The gist of the Cities' argument is that they might be unable to meet the timetable prescribed in the conditions or obtain acceptable financing under the conditions of participation prescribed in the license conditions and might then "irrevocably lose rights to nuclear participation . . ." (Answer, at 12). FPL believes, for the reasons given in a succeeding section of this response, that the timetable

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In addition, joining in the Answer are utilities which would not be entitled to an ownership interest in St. Lucie Unit 2 under the settlement license conditions. No harm can possibly result to these utilities from the provisions dealt within the Answer, since these provision have no effect whatsoever on them.

5/ The Cities object to a fourth provision which they claim "seeks to establish a cause of action by FPL" (Answer, at 18). However, they indicate that they would not oppose immediate implementation of the settlement conditions on this ground. (Id., at 19, n.1). In any event, the objection is without substance. No provision of the conditions purports to create a "cause of action" of any sort. Section VII(i) merely provides that the conditions do not preclude FPL from asserting any claim that may otherwise be available to it.

and other conditions complained of are reasonable and provide a fair opportunity for access to St. Lucie Unit No. 2. The decisive answer to the Cities' fear, however, is that immediate attachment of the condition will not in any way prejudice the right of Cities unwilling or unable to participate in St. Lucie No. 2 under the settlement conditions to pursue their claim of "rights" to participate under more favorable conditions.

An order attaching the conditions immediately does not impair the right of any intervenor to have its case heard on the merits and to avail itself of any different or additional conditions regarding participation in St. Lucie Unit No. 2 which might ultimately be ordered. Thus, the Cities' professed fear--that an intervenor which fails to participate in accordance with the settlement conditions would lose any opportunity for participation even if it prevailed on the merits and obtained different conditions--is groundless.6/

6/ A utility which enters into a participation agreement and acquires a share of St. Lucie Unit No. 2 under the settlement conditions obviously will not have found participation under such terms to be either impossible or unacceptable. Execution of the participation agreement does not prevent such a utility from continuing to litigate before this Board for such relief as may be available to it. The question of the NRC's authority to amend a participation agreement as a result of a hearing under Section 105c has not been considered by any tribunal, and FPL reserves its right to take any legal position on that question. In only one respect could the settlement conditions be said to specify the content of the participation agreements contemplated by section VII of the conditions, that being the "control" provision which is section VII (i) of the conditions. FPL is prepared to make the commitment recited on Appendix G regarding amendment of participation agreements entered into under the settlement conditions to comport with any final (and no longer appealable) NRC order mandating participation agreement provisions different from those prescribed in Section VII (i). This commitment is not intended to prejudice FPL's right to oppose the entry of any such order, both before the NRC and in any court proceeding.

On the other hand, immediate attachment of the conditions bestows substantial benefits upon all of the utilities which would be afforded participation opportunities under the conditions. They would enjoy an opportunity for participation without first subjecting themselves to the risks of litigation, and without being required to surrender any litigation rights. Moreover, those utilities which elect to participate under the settlement conditions will derive savings from substituting low cost municipal capital for higher cost FPL capital at a significantly earlier stage of the construction process. Additionally, the settlement conditions contain substantive provisions other than the provisions for participation in St. Lucie Unit No. 2, and immediate attachment of the conditions means that all of these commitments will take effect immediately. Under the settlement, the Cities may take immediate advantage of these provisions upon their attachment without prejudice to their right to seek additional relief by continuing to litigate before this Board.

Thus, immediate attachment of the conditions would substantially advantage the Cities, and it is difficult to perceive any prejudice or disadvantage to be balanced against this advantage. Accordingly, under the Catawba standard, the settlement conditions should be attached immediately.

IV. The Settlement Serves the Public Interest

Although Cities would like more (as would any litigant), they cannot and do not deny that FPL's agreement to a comprehensive set of policy commitments resolves many of the issues in dispute in this proceeding and generally serves the public interest. As noted previously, they point to only three provisions of the conditions as grounds for opposition to immediate attachment of the conditions, all of which provisions relate to Section VII of the conditions which concerns participation in St. Lucie Unit No. 2.

The provisions criticized by the Cities cannot be considered outside the context of the settlement as a whole, under which FPL agrees to offer ownership interests of more than 15% in St. Lucie Unit No. 2 on the conditions set forth in Section VII.[7/] However, the Cities' arguments that the specificity found in Section VII is unnecessary and that some of the conditions of participation are unreasonable are wholly without merit.

7/ This commitment is in addition to the 6% ownership share previously offered by FPL to Seminole Electric Cooperative, Inc. in accordance with existing license conditions.

A. Necessity for Specificity in the Timetable and Conditions of FPL's Offer

As of September 30, 1980, FPL had invested almost $500,000,000 in planning, construction and licensing of St. Lucie Unit No. 2, not including any allowance for funds used during construction or the investment of some $86,516,554.53 in facilities common to St. Lucie Units 1 and 2. FPL has been the source of all of this investment capital and alone bears the risks of non-completion (due to government action or other cause) and cost escalation. It is only fair that other utilities which are to become owners of St. Lucie Unit No. 2 begin to share these costs and risks as promptly as is practical. By the same token, municipal utilities which are genuinely interested in participation and prepared to shoulder their fair share of the risks will save money by substituting their cost of capital for that of FPL's as soon as possible.

Unfortunately, FPL has reason for believing that at least some of the intervening Cities are less than sincere in espousing interest in participation in St. Lucie Unit No. 2, and would pursue a strategy of prolonging negotiations over the terms of participation.

FPL was apprised of this strategy of delay as early as March of 1976 when George Spiegel, Esquire, an attorney for the Cities, advised a joint meeting of the Ft. Pierce Utilities Authority and Ft. Pierce City Commission as follows:

> Mr. Spiegel said the ideal situation is that you argue with Florida Power and Light up until the day the plant is ready to go into operation. At that time you finally get your contract. Once they decide to go ahead with you, they want to see your money as fast as possible. In any negotiations some people are pushing and some people are pulling. 8/

Mr. Spiegel's statement to Ft. Pierce together with other events--including unnecessarily prolonged negotiations with the City of New Smyrna Beach regarding the terms of a participation agreement for St. Lucie Unit No. 2, and FPL's unsuccessful efforts to interest the Cities in a nuclear joint venture in Central Florida--raised doubts about the sincerity of the Cities' professions of interest in participation in nuclear generating facilities. These doubts have been confirmed by pleadings and discovery responses received in the antitrust case which many of these cities have filed

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8/ The minutes of the March 26, 1976, Special Joint Meeting of the Fort Pierce Utilities Authority and the Fort Pierce City Commission are attached as Appendix A. The quoted language appears at page 4.

against FPL in the United States district court in Miami.[9/] These include the following.

(1) In moving to dismiss allegations in a counterclaim filed by FPL, the Cities hastened to point out that neither by their pleadings filed with the NRC nor by any other means have they actually expressed an intent to participate in St. Lucie Unit No. 2:

> It is the opportunity to decide to participate or not to participate that Cities have been denied. Never having alleged that they would necessarily elect to participate in any particular unit, their position cannot be a sham. [10/]

This should be compared with the statement at page 13 of the Cities' Answer that "Florida Cities sought nuclear participation rights in St. Lucie as early as 1976." The fine distinction now drawn between "participation rights" and participation itself has not previously been illuminated by the Cities.

(2) The City of Tallahassee intervened in this proceeding in 1976 and remains a party today. Presumably, it seeks the same "nuclear participation rights" mentioned at p. 13 of the Cities Answer. However, at a meeting of the Tallahassee City Commission on March 11, 1980, three of the

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9/ City of Gainesville, et al. v. Florida Power & Light Company, Civil Action No. 79-5101-CIV-JLK (S.D.Fla.)

10/ Id., Cities' Memorandum in Support of Motion to Dismiss, or for Summary Judgment of Florida Power & Light Company's Amended Counterclaim, at 23 (June 25, 1980). p. 23.

City's five Commissioners went on record as opposing the City's involvement by ownership in any FPL nuclear unit.[11/] A fair reading of the transcript of the meeting shows that the City Commissioners were persuaded not to adopt a resolution reflecting this sentiment only out of concern that such a resolution would adversely affect the course of litigation against FPL (Appendix B, at 5-7). FPL has no means of knowing at this stage whether other intervenors share Tallahassee's view but have simply not recorded this view publicly.

(3) Richard Hester, Deputy City Manager for Utilities of the City of Gainesville, states in an affidavit filed with the district court (Appendix C, at 3) that while Gainesville would give the opportunity for access in FPL's nuclear plants "full consideration," he "might find it necessary to recommend against participation in St. Lucie Unit No. 2. . ."

Thus, there exists basis for concern that at least some of the intervenors combine a lack of focused interest in participation in St. Lucie Unit No. 2 with a desire, due to tactical considerations of litigation or economic motives, to keep the issue open for as long as possible. These are sound reasons for fashioning license conditions which define with specificity the nature of the opportunity for participation which FPL is obligated to make available and prescribe a definite timetable for action on FPL's offer.

11/ The transcript of the March 11, 1980, meeting is attached as Appendix B. The handwritten changes reflect corrections made by Tallahassee City Manager Daniel Kleman during the course of his deposition by FPL attorneys on May 28, 1980.

B. Reasonableness of the Three Provisions Attacked by Cities

Section VII of the settlement conditions requires that FPL provide promptly to the utilities listed on page 8 a great deal of information about St. Lucie Unit No. 2, and requires that each of the utilities which desires to participate in the unit respond within 120 days with a commitment of its good faith intent to complete the contractual and financing arrangements necessary for asquisition of an ownership interest accompanied by an "earnest money" payment, which is refundable if the utility later elects not to enter into a participation agreement or is unable to obtain financing. 12/ After a commitment is made, another period of 120 days is provided for negotiation of a participation agreement. If a utility eligible for participation is dissatisfied with the result of that negotiation, it may demand arbitration (or, as noted above, walk away from the transaction with its deposit being refunded in full). The results of arbitration would bind FPL; the other utility retains the option of

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12/ Cities complain that FPL is not required to pay interest on refunded deposits. (Answer, at 19). That the deposit is refundable at all represents a substantial concession on the part of FPL, which continues alone to bear the risks of non-completion and cost escalation until a participant has made its final commitment. The effort to invoke the Cities status as "public bodies" is disingenuous (Id. n.2). The Cities cannot be heard as self-styled competing firms, who recoil at any mention of the privileges and exemptions from taxation and regulation which they enjoy, yet point to their public status as a basis for shielding them from the realities of the commercial world.

accepting the participation agreement as arbitrated or of rejecting the transaction, in which event its deposit would be refunded in full. Assuming an agreement is signed, NRC approval would be sought for the transfer, a process which will require at least an additional 120 days. A "closing" at which time an ownership interest would actually be purchased and paid for would take place 60 days after receipt of NRC approval.

The end result of this timetable is that no participant will be required to execute a participation agreement until at least 8 months after receiving FPL's offer or to produce the final 90% of the cost of its ownership share until at least 14 months after it receives the offer from FPL. Nevertheless, the Cities complain that the Florida Municipal Power Agency (FMPA) "probably cannot finance under the timetable as proposed." (Answer, at 13) The only reason given in the Answer is "various of the actions that the agency must take must be done sequentially and there is not sufficient time to validate bonds and close according the schedule . . ." provided in the conditions.

FPL has, however, engaged in discussions with officials of FMPA regarding the timing problems perceived by FMPA. FPL is agreeable to the one specific change in the conditions requested by FMPA, which is to change in Section VII (d)(2) of the conditions "the Florida Supreme Court" to read "a Florida

court." The effect of this change is to allow the participant additional time to complete state proceedings for validation of its bonds if bond validation proceedings are pending in any Florida court at the time that closing would otherwise be required.

FMPA's other timing concerns result from its initial desires to (1) delay completion of an engineering study until negotiation of a participation agreement has been completed, and (2) allow a significant period of time after completion of the feasibility study for member cities to consider and execute power supply agreements with FMPA. FPL and FMPA have discussed the possibility of FMPA's commencing its engineering feasibility studies at a much earlier stage in the participation process, and there is no reason why FMPA cannot do so as soon as it receives the information which FPL must provide pursuant to Section VII(b) of the conditions.13/

The other problem is one which FMPA must resolve with its members. As section VII (f) of the conditions makes clear,

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13/ The terms of the participation agreement which FPL will propose can be determined readily by reference to the executed agreement between FPL and Orlando.

a utility's right to transfer its participation rights to FMPA is conditioned upon FMPA's meeting the time schedule applicable to the transferor. What FMPA appears to seek is the opportunity to negotiate an arrangement with FPL and then, before committing itself, take that arrangement back to each member city for lengthy consideration, followed by acceptance or rejection. FPL welcomes the opportunity to work with FMPA as the power supply agent for individual cities, but FMPA must be prepared to act as the cities' agent, not as a mere broker between FPL and the cities. This means that the process of accord between FMPA and its member cities must proceed in tandem with FMPA's negotiations with FPL, so that upon completion of negotiations firm commitments are entered into without delay. There is no claim that individual cities are unable to meet the time schedule set forth in the conditions. The insertion of FMPA into the process is certainly no ground for finding that same schedule to be unreasonable. The individual cities and FMPA by cooperating with one another can easily meet the time schedule provided in Section VII. An inability to achieve such cooperation is no reflection on the reasonableness of the conditions.

The Cities also question the reasonableness of Section VII(i) of the conditions which permits the Company to retain management and operational control over St. Lucie Unit No. 2 notwithstanding the contemplated transfer of ownership

interests. The language in paragraph (i) is repeated verbatim from section 1.c of the antitrust license conditions which were accepted by FPL in 1974 and included in the construction permit for St. Lucie Unit No. 2 when it was issued intially in 1977. The Cities recognize that the executed participation agreement between FPL and the Orlando Utilities Commission (Orlando) contains provisions which protect the participant against the principal risks cited by the Cities, and they seek assurance that a participation agreement containing similar provisions will be offered by FPL under Section VII of the license conditions. It is FPL's intention to do so, and indeed to offer to the utilities listed in Section VII participation agreements substantially identical to the agreement with Orlando, except for the deletion of Section 42(a) which affords Orlando "most favored nation" status as regards subsequent participation agreements.14/

14/ In footnote 3 on page 15 of the Answer, Cities state their assumption that "reliability exchange and sell back provisions" contained in an agreement between FPL and the Ft. Pierce Utilities Authority would be available to them. Those provisions do not appear in any participation agreement offered by FPL to any utility, but rather in settlement agreements between FPL and Orlando and Ft. Pierce (the agreement with Ft. Pierce is currently in letter form) respectively. These agreements provide for settlement of all differences between FPL and each of these utilities, including issues in litigation in this proceeding and in the proceeding in the district court in Miami. Obviously, FPL makes no commitment to make the provisions of those settlement agreements available to any utility that does not become party to a settlement agreement with FPL, nor does it commit to offering to settle with other cities on the same basis as the settlements with Orlando and Ft. Pierce.

Hopefully, this clarification will lay to rest the objections to the Joint Motion to the extent that they are grounded on Section VII(i). In any event, the reasonableness of provisions permitting the owner of nearly 80% of a power plant to exercise complete management control over the project should not be open to serious question. To the complaint that "cities may be inhibited from participation or may be unable to arrange acceptable financing . . ." because of this provision (Answer, at 15), it is sufficient answer that Orlando has not been impeded by this provision from arranging financing under the participation agreement which it has executed.

Finally, the Cities complain of the provision in Section VII(e)(1) of the conditions which qualifies FPL's commitment to submit differences over the terms of the participation agreement to binding (on FPL if not on the participant) arbitration with a proviso that "the provisions proposed by the Company as to its liability to the other participants, and as to sharing the cost of discharging uninsured third party liability, . . . shall be approved by the arbitrator unless he determines that the provision proposed by the Company constitutes an unreasonable proposal which renders meaningless the Company's offer of participation in St. Lucie Unit No. 2."

The basis for this provision is FPL's conviction that the risks involved in construction and operation of a nuclear generating facility should be shared by the owners in proportion to their ownership shares, and not borne by

the operating utility alone, particularly where the operating utility has made ownership shares available at its cost and receives no fee for undertaking the responsibility for performing the construction and operating work associated with the facility. No rational firm would enter into a commercial arrangement which involves undertaking substantial potential liabilities without any prospect of profit, and surely any requirement to provide access to a nuclear facility would not imply an obligation to do so on commercially unreasonable terms. 15/

15/ Cities state that the liability provisions in the Florida Power Corporation Crystal River agreement and in an agreement for participation in Consumers Power Company's Midland plant are more favorable to participants than the comparable provisions in FPL's participation agreement with Orlando. Cities neglect to disclose that their ownership shares in the Crystal River facility were acquired at a price equal to 110% of Florida Power Corporation's cost. To FPL's knowledge the Midland arrangements have not been filed publicly. The commercial context in which the liability provisions in the Midland agreement have negotiated--i.e., the overall exchange of consideration between the parties--must be understood before the liability provisions can be read meaningfully.

Ordinarily utilities do not undertake liability to co-owners for negligent construction or operation of a nuclear generating facility where the utility performing the work does so without earning a profit. (See Boston Edison Company, Agreement for Joint Ownership, Construction and Operation of Pilgrim Unit No. 2, October 13, 1972; and Houston Lighting and Power Company, South Texas Project Participation Agreement, July 1, 1973, amended December 1, 1973.) Consistent with this principle, a participation agreement executed relatively recently between Duke Power Company and a municipal group North Carolina concerning the Catawba plant provides for Duke as the operator to assume certain liabilities for negligent operation, but limits the amount of such liability in any year to a percentage of the fee paid to Duke in that year in consideration of its performance of operating work. The applicable provisions of the Pilgrim, South Texas Project and Catawba participation agreements are attached as Appendix D.

Cities argue that the agreement with Orlando "shows how far FPL will go" and that the liability condition, which would permit FPL to include in other participation agreements language similar to that in the Orlando agreement, "will--seems designed to--inhibit participation and may preclude acceptable financing." (Answer, at 16, 18). These arguments fall of their own weight. Orlando's execution of an agreement containing these provisions after armslength negotiation demonstrates that the Cities' complaints are baseless.

V. Other Matters Raised in the Answer

As is noted at the beginning of this response, the only question before the Board at this time concerns action on the Joint Motion. Complaints about the adequacy of various conditions which are not asserted as grounds for denial of the relief requested in the Joint Motion are not relevant to that question, and FPL will not prolong this response by answering such complaints. However, it is incumbent upon FPL to respond briefly to two matters in the Answer which involve substantive omissions or mischaracterizations.

1. Attached to the Answer (as Appendix A) are numerous letters from counsel for the Cities to counsel for the Department and Staff. The stated purpose of bringing these matters to the Board's attention is to demonstrate Cities' exclusion from the negotiation process which led to the settlement among FPL, the Department and the Staff (Answer, at 2). In fact, these letters reveal that the Cities had

opportunities to express their views forcefully at the highest levels by the NRC and the Department of Justice before either government agency approved the settlement. However, two of these letters--one dated April 16, 1980, from George Spiegel, Esquire, to Howard K. Shapar and one dated April 18, 1980, from Robert A. Jablon, Esquire to Sanford M. Litvack, Esquire--contain material implying that FPL's actions in conducting settlement negotiations with the Ft. Pierce Utilities Authority were improper in some fashion. For some unexplained reason, the Answer does not disclose that those Cities which are plaintiffs in the suit in the district court in Miami brought these same complaints before United States District Judge James Lawrence King, who ruled that FPL's actions were proper in every respect. Judge King's order, dated July 3, 1980, is attached as Appendix D. It is disturbing that the Cities would attach to their Answer material raising these same allegations without also informing the Board of Judge King's action.

2. The Cities attach as Appendix E to their Answer a letter dated July 28, 1977, to Marshall McDonald, President of FPL, from Harry C. Luff, Jr. and Robert A. Jablon. This letter does not merit any consideration by the Board. First the Board has once ruled, in the context of discovery, that this letter constitutes a settlement proposal. (Memorandum and Order on Discovery, February 9, 1979, at 36-37) Accordingly, the letter could not be admitted into evidence in the proceeding under Rule 408, Federal Rule of Evidence.

Second, to the extent that this letter is put forward as an example of an "offer" by any of the Cities to participate in any FPL-owned generating facility, it clearly is not that. By its own terms the "proposal" is subject to numerous conditions, including obtaining approvals from the Cities' own governing bodies. 16/ Third, the "proposal" to purchase an interest in the nuclear units did not stand alone, and the numerous other terms reflected in the letter were so economically unattractive to FPL as to call into question the good faith with which the proposal was made (see FPL's responsive letter which is attached as Appendix F).

VI. Conclusion

For the reasons given in the Joint Motion and the foregoing sections of this response, FPL renews its request that the Board grant the relief requested in the Joint Motion.

16/ As indicated at pages 11-12 supra, such approvals are no mere formality. The fact is that a "proposal" made by an intervening City without even the approval of its own city council or commission is of no value.

Respectfully submitted,

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DATE: December 3, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
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FLORIDA POWER & LIGHT COMPANY	)	Docket No. 50-389A
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CERTIFICATE OF SERVICE

I hereby certify that copies of RESPONSE OF FLORIDA POWER & LIGHT COMPANY TO FLORIDA CITIES" ANSWER TO JOINT MOTION were served by hand * or by deposit in the U.S. Mail, first class postage pre-paid this 3rd day of December, 1980.

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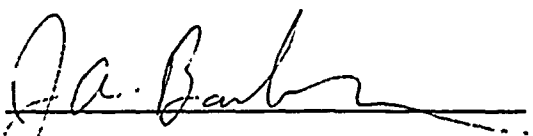

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APPENDIX A