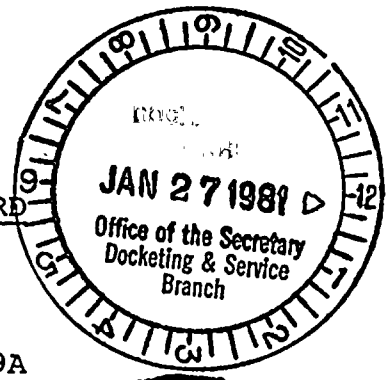
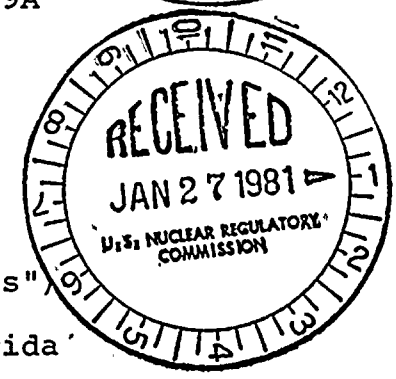
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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))



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

On January 8, 1981, the intervening Cities ("Cities") filed a pleading in reply to the Response filed by Florida Power & Light Company (FPL) on December 3, 1980.[1/] The new pleading by the Cities reiterates their opposition to approval of the Joint Motion filed on September 12, 1980, by FPL, the Department of Justice (Department) and the NRC Staff (Staff). FPL respectfully requests that the Board consider this Answer, which addresses briefly arguments not previously advanced by the Cities.

I

Cities wrongly assert that FPL seeks to avoid having the Board determine whether the settlement among FPL, the Department and the Staff is in the public interest. The Board should consider whether the settlement serves the public interest, but that does not equate with a determination of whether the settlement provides relief which is "appropriate" (Atomic Energy Act, Section

---

1/ FPL's Response was filed with the permission of the Board. The Cities sought no permission for their January 8, 1981, filing.

105c(6)) to remedy the situation alleged by the Cities, a determination that can be made only after a hearing. The Board can conclude that the settlement serves the public interest by finding that it provides other electric systems legal rights in addition to those which they have now, without unduly prejudicing or disadvantaging the intervenors. The record amply supports such findings. The Cities persist in their view that the Board should accept their allegations and characterizations as correct and approve the settlement only if it finds the settlement appropriately responsive to that alleged situation. Their view is simply wrong as a matter of law, for the reasons given in pleadings previously filed by FPL, the Department and the Staff.

II

The settlement license conditions provide for FPL to make a firm offer of participation to the entities listed in the conditions. Each such entity has the option of accepting that offer, or of rejecting it, but in either event the entity can seek modification of the license conditions in this proceeding. Cities argue that immediate implementation of the conditions would be prejudicial because cities which accept FPL's offer under the conditions will not be free at a later date to discard their contractual commitments.[2/] They contend that the "prejudice" is particularly acute, because a number of cities are likely

---

2/ In fact the Cities would be free to contend that they are not bound by their contractual commitments, a position with which FPL does not agree.

to accept FPL's offer in preference to chancing that they will succeed in persuading the Board to require a different offer of FPL at some later date.

The answer is that no city which finds the terms of FPL's offer unacceptable need accept that offer or surrender any right which it now has to seek through litigation an opportunity for participation on what it deems more favorable terms. What Cities seem to fear most from immediate implementation of the settlement is that for many of their number the offer of participation under the settlement conditions will be acceptable. Those cities will, as Orlando did, successfully acquire and finance an ownership share of St. Lucie Unit No. 2 on terms similar to those found in the agreement between FPL and Orlando.[3/] As a result the ranks of the intervenors may well be thinned, but that does not amount to "prejudice" to the remaining parties in any legal sense.

The complaints found throughout the Reply about the burden and delay involved in litigation together with the suggestion that FPL has sought delay in this proceeding are ironic. It is FPL which has settled its differences with the two government parties, and it is the Cities who now oppose even partial settlement of the case. Were FPL bent merely on delay, it would not have pressed its settlement discussions with the government

---

3/ FPL formally transferred an ownership share to Orlando on January 12, 1981, at which time Orlando made an initial payment of over $45,000,000, which it borrowed without difficulty in the marketplace.

parties through to successful conclusion. The Cities are free to oppose any settlement and, regardless of any settlement reached among other parties, to insist on a plenary hearing under Section 105c, but they cannot plausibly lay elsewhere the responsibility for the time and resources consumed as a result of their following this course.

III

Cities argue that the contract between FPL and Orlando, which would serve as the model for FPL's offer under the settlement license conditions, contains liability provisions which are unreasonable and contrary to public policy.4/

Cities misstate the liability provisions contained in FPL's agreement with Orlando. FPL does not seek to absolve itself from liability to members of the public or other third parties which may arise from operation of St. Lucie Unit No. 2. FPL merely seeks to have its partners in the plant share in that liability in proportion to their ownership shares, just as they intend to share in whatever economic benefits are derived from the plant's operation. In the absence of intentional wrongdoing in which the management of the operating company is implicated, the risks that errors by construction or operating personnel may cause damage to the plant or result in liability to third parties should be shared among the owners

---

4/ The complete participation agreement between FPL and Orlando is enclosed with this pleading for the information of the Board. FPL believes that all other parties have copies of this agreement, and, accordingly, copies of the agreement are not enclosed with other copies of this answer. FPL will promptly provide a copy of the agreement with Orlando upon the request of any party.

as risks of the project.

The claim that the liability provisions of the Orlando agreement deprive FPL of incentive to construct and operate the plant carefully and safety ignores FPL's own ownership interest of more than 75%, even after all transfers contemplated by the settlement license conditions have been completed. FPL stands to lose most from any damage to or loss of use of St. Lucie Unit No. 2 as well as from any liability assessed against the owners of St. Lucie Unit No. 2, not to mention that, aside from economics, FPL has compiled a long record of constructing and operating its nuclear facilities with a conscientious regard for the health and safety of the people of Florida. The differences between FPL and the Cities concern not the public policy favoring safe operation of nuclear generating facilities, but revolve around the Cities' desire to enjoy all of the benefits of ownership of nuclear capacity without sharing in the potential economic risks.[5/]

That FPL's position is consistent with that embodied in the great majority of nuclear plant participation agreements is further indication that FPL's position is far from unreason-

---

5/ It is clear that firms involved in constructing nuclear generating facilities may exculpate themselves from liability to the owners of the plant without offense to public policy. Portland General Electric Co. v. Bechtel Corporation No. 79-103 (D.Ore. June 4, 1980).

able.[6/] Several agreements provide that no liability will be incurred by the operating company to co-owners of the plant and that liability to third parties will be shared among all owners.[7/] Other agreements provide for no liability except in circumstances

---

6/ In any review of the terms of an offer of participation made pursuant to license conditions imposed by the NRC, the question would not be whether the terms of the offer are those thought best by the NRC, but whether the terms of the offer are so unreasonable as to constitute violation of the condition requiring that an offer be made in good faith. The NRC's role is that of enforcer of its license conditions, not arbitrator of the terms of the participation agreement. The settlement conditions commit FPL to accept binding arbitration of any dispute over the terms of the participation agreement, a commitment without precedent in NRC license conditions, that is, the context in which the liability provision (Section VII (e)(1)) was also included in the conditions -- as a parameter of the compulsory arbitration required by the conditions, not as a declaration of NRC policy as to the most desirable content of a participation agreement.

7/ See for example the Pennsylvania Power & Light Company, Tenancy in Common Participation Agreement for Susquehanna, March 18, 1977; Georgia Power Company, Alvin W. Vogtle Nuclear Units, Operating Agreement, August 27, 1976 (except in the event action is taken whereby Participants are placed at a disadvantage vis-a-vis Georgia Power). The applicable provisions of these agreements are attached as Appendix A.

more limited than those in the St. Lucie Unit No. 2 agreement.[8] Still others, including FPL's agreement with Orlando, provide for sharing of all risks except where harm results from "willful action" or "willful misconduct" on the part of the utility performing the work. While the definitions provided in these agreements for willful action or willful misconduct vary (in many instances the definition is drafted in light of case law in the state in which the agreement was executed), the thrust is the same - to share the risks of unintentional errors in construction and operation of the plant among the owners.[9]

Cities, on the other hand, refer to two nuclear plant participation agreements which provide for less than proportionate sharing of risks among the owners. We can but speculate as to the reasons why utilities such as these two would agree to

---

8/ See for example the Public Service Company of New Hampshire, Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units, May 1, 1973; Boston Edison Company, Agreement for Joint Ownership, Construction and Operation of Pilgrim Unit No. 2, October 13, 1972; the South Texas Project Participation Agreement, July 1, 1973, amended December 1, 1973; and Connecticut Light and Power Company, Sharing Agreement for 1979 Connecticut Nuclear Unit, September 1, 1973. The applicable provisions are attached as Appendix B.

9/ See for example the Participation Agreement between the Detroit Edison Company and Northern Michigan Electric Cooperative, Inc. and Wolverine Electric Company, Inc., Enrico Fermi Nuclear Power Plant Unit No. 2, February 1977; Arizona Public Service Company, Arizona Nuclear Power Project Participation Agreement, August 23, 1973; Southern California Edison Company, San Onofre Units 2 3, Participation Agreement (1977); Operating Agreement (1977). The applicable provisions are attached as Appendix C.

shoulder those risks themselves; the possibilities include offsetting economic considerations (a markup of the purchase price above book cost as in the case of Crystal River), financial distress, and simple naivete. The fact is that the overwhelming majority of utilities participating in nuclear plants have recognized that it is appropriate for them to share with the operators of the plants the risks of construction and operating error. The equity of such risk-sharing is even more obvious in light of the Three Mile Island incident, which demonstrates that the costs which can result from errors by operating personnel can be staggering.

IV

The Cities reiterate their opposition to the provisions of the settlement license conditions which permit FPL, as owner of more than 75% of St. Lucie Unit No. 2, to retain full control over the project. Again, the Cities combine misstatement of the issue with a position on the merits which cannot withstand even cursory analysis.

First, the agreement between FPL and Orlando commits FPL to perform the construction and operating work in connection with St. Lucie Unit No. 2 in accordance with generally accepted utility practice.[10/] Should a participant

---

10/ Agreement, p. 103.

believe, for example, that FPL employs operating personnel who have not been trained in accordance with generally accepted utility practice, the participant could seek correction of the problem by enforcing the participation agreement.

The practical significance of control of the project concerns technical/economic decisions, such as whether to incur large overtime labor costs in order to expedite the construction schedule or whether to delay refueling at the expense of optimal fuel management practices in order to have the unit available at a particular time.[11/] That these decisions should be within the province of the owner of more than 75% of the plant and only owner with experience in managing nuclear projects seems an obvious enough proposition.

The Cities respond that they will be satisfied either to control all decisions themselves -- or else to be placed

---

11/ Cities do not acknowledge in their Reply that FPL's agreement with Orlando contains numerous provisions for the participant's protection, including: (i) a right to contribute additional capital and acquire additional ownership interests in order to keep construction on schedule if FPL is forced by financial exigencies to delay the schedule; (ii) an option for the participants to purchase FPL's share of the plant upon FPL's decision to cancel or retire it, (iii) a right to buy replacement energy at the St. Lucie Unit No. 2 cost if FPL shuts down the plant or reduces its output because of FPL's having access to lower cost energy; (iv) an option for any participant to reduce its ownership share in lieu of contributing to the costs of certain capital improvements. Added to these is the practical protection that St. Lucie Unit No. 2 represents a massive investment for FPL itself, which has every incentive to maximize the benefits of operating the plant.

in the same economic position as if the decision most favorable to them had been made. The logical vacuity of this argument is so apparent that perhaps it was advanced tongue-in-cheek. Clearly, the right to make technical/economic decisions, such as deciding when the plant should be refueled, includes the right to have the consequences of those decisions follow.

V

Cities maintain that FPL's failure to make available to them certain arrangements which have been made available to two cities which have entered into comprehensive settlement with FPL constitutes improper discrimination and is, therefore, somehow violative of the Atomic Energy Act.

We will not dwell long on these contentions. There is no "discrimination" provision in the Atomic Energy Act. Moreover, such provisions as are found in the Federal Power Act and similar regulatory schemes prohibit "undue" discrimination.[12/] FPL is confident that no court or agency will consider it undue per se to make distinctions among litigants who settle and those who do not. To hold that no consideration can be offered to a party in settlement which

---

12/ Federal Power Act, Section 205 (b), 16 U.S.C. 824d(b).

is not simultaneously made available to similarly situated parties which do not settle is to preclude the possibility of individual settlements.

We would add a word on the subject of "sellbacks." The Cities' contention that they are entitled to purchase a portion of St. Lucie Unit No. 2 additional to that provided in the license conditions and sell the output of that back to FPL at a substantial profit conveys the flavor of their position on all aspects of participation in the unit. This proposal appears (p. 23) only 14 pages after a passage which rages at the thought of FPL's deriving some profit from selling an ownership share in or providing management services for St. Lucie Unit No. 2 (p. 9). This one-sidedness pervades the intervenors' views of commercial transactions, provides the basis for many of their present positions, and goes far toward explaining the difficulty which the government parties as well as FPL have experienced in seeking a settlement of this case which includes all parties.

VI

As a practical matter, FPL is satisfied to have before the Board the 1977 exchange of correspondence between the intervenors and FPL described at p. 43 et seq. of the Reply. That exchange illustrates the extreme and unreasonable character of the intervenors' demands of FPL, even where the demands are advanced in the clothing of a settlement proposal.

However, the reasoning advanced by the Cities in justification for placing these settlement communications before the Board should not be accepted even implicitly, now or at any subsequent stage of this proceeding. Eseentially, Cities contend that while an offer of compromise may not be admitted into evidence against the offeror without its consent, the offeror may choose to treat a rejection of its settlement proposal as a commercial refusal to deal which provides the basis for a claim under the antitrust laws. The Cities quote the first sentence of Rule 408 of the Federal Rules of Evidence and reason that: "The policy behind Rule 408 is to encourage settlements, not to encourage flat refusals of settlement offers." (Reply, pp. 44-45).

The second sentence of Rule 408 is dispositive: "Evidence of conduct or statements made in compromise negotiations is likewise not admissible." Moreover, it is apparent that furtherance of a policy favoring settlements requires that parties be encouraged to respond forthrightly to settlement proposals which they receive. FPL urges that the Board not permit this proceeding to be broadened to include litigation about the propriety of conduct or statements by one party or the other in the course of settlement negotiations. 13/

13/ The relevance of discussion at pages 47-53 of the Reply escapes FPL. Cities do not seek to introduce these settlement materials for "another purpose," in the language of Rule 408. Their admitted purpose is to seek relief on the basis of FPL's having rejected their settlement offer. They advance the remarkable proposition that an antitrust case can be made out by proving that the defending party rejected an offer to settle that case during its pendency.

For the reasons given here and in its previous pleadings, FPL urges that the Board grant the relief requested in the Joint Motion which was filed on September 12, 1980.

Respectfully submitted,

Herbert Dym by JAB
Herbert Dym
Covington & Burling
888.16th Street, N.W.
Washington, D.C. 20006

J.A. Bouknight, Jr.
Lowenstein, Newman, Reis & Axelrad
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for Florida Power & Light Company

DATED: January 27, 1981

APPENDIX A

Pennsylvania Power & Light Company, Tenancy in Common Participation Agreement for Susquehanna (March 18, 1977).

Article V: Completion of Construction, p. 18

B. PL shall have the sole and absolute authority and discretion to design, construct, control and manage Susquehanna without challenge to such authority and discretion by AE. . . . Any other provision, term, condition or Article to the Contrary notwithstanding, the rights of PL as set forth in this Article V shall not furnish a basis for the assertion by AE of liability against PL.

Article XVI: Sharing of Risks, p. 52.

Except as contemplated in Article XXXI of this Agreement, */ anything contained in this Agreement or the Operating Agreement, or any other written document whether written prior to, during, or subsequent to the execution of this Agreement, and any oral statement whether made prior to, during, or subsequent to the execution of this Agreement, to the contrary notwithstanding, PL and AE shall share in proportion to their respective undivided ownership interests as contemplated in this Agreement, any and all responsibility and any and all risks of any nature whatsoever in respect of Susquehanna (other than responsibilities resulting from the failure of one Party to perform a financial duty to the other Party under this Agreement or the Operating Agreement) which responsibility and risks shall include, but shall not be limited to the following: (a) the financial success or failure of Susquehanna, (b) all liability sounding in tort, strict liability, contract, or otherwise in respect of Susquehanna . . . .

---

*/ [which concerns compliance with certain environmental standards imposed by law]

Alvin W. Vogtle Nuclear Units, Operating Agreement among Georgia Power Company, Oglethorpe Electric Membership Corporation, Municipal Electric Authority of Georgia and the City of Dalton, Georgia, August 27, 1976.

Standard of Liability, § 4.(d)

4.(d) In the event GPC, in its performance as agent for the other Participants, incurs any liability to any third party, other than liability resulting from its failure to comply with the provisions of Section 4(a)*/ or in the event GPC as agent takes any action or fails to take any action by which it intends to put any other Participant at a disadvantage in relation to GPC, any reasonable amount paid by GPC on account of such liability shall be considered an Operating Cost and apportioned among the Participants pursuant to Section 3(j) hereof. Regardless of fault, OEMC, MEAG and Dalton shall indemnify and hold GPC harmless against any claim for personal injury or death made by any of their respective employees, officers, agents or other representatives, or their heirs, or representatives successors and assigns which may be based upon or arise out of the presence of such employee, officer, agent or other representative at the site of Plant Vogtle while acting within the course and scope of his

---

*/ [which provides for no adverse distinction]

§ 4.(d), continued

employment. For purposes of this Section 4(d), employees, officers, agents or other representatives of the Rural Electrification Administration shall be considered representatives of OEMC.

Public Service Co. of New Hampshire, Agreement for Joint Ownership, Construction and Operation of New Hampshire Nuclear Units, May 1, 1973

Insurance and Liability of Participants, § 10

10.2 Any uninsured loss, damage, or liability and any expenses arising out of any such loss, damage, or liability shall be borne by the Participants in accordance with their Ownership Shares.

10.3 For and in consideration of the fact that PSNH pursuant to this Agreement is undertaking to design, engineer, procure, install, construct, operate and maintain the Units for and on behalf of itself and the other Participants as their respective interests appear without any compensation or charge other than the recovery of PSNH's actual costs and expenses for such service, no Participant shall be entitled to recover from PSNH for any damages resulting from error or delay in the design, engineering, procurement, installation, or construction of either of the Units, or for any damage thereto, any curtailment of power, or any other damages of any kind, including consequential damages occurring during the course of the design, engineering, procurement, installation, construction, operation, or maintenance of the Units or otherwise arising out of the performance of this Agreement, unless such damages shall have resulted from a deliberate violation of this Agreement occurring pursuant to authorized corporate action by PSNH.

Boston Edison Company, Agreement for Joint Ownership, Construction and Operation of Pilgrim Unit No. 2 (October 13, 1972)

Standard of Liability, § 14

No Owner shall be entitled to recover from Edison any damages resulting from error or delay in the design, engineering, procurement, installation or construction of the Unit or for any damages to the Unit, any curtailment of power, or any damages of any kind, including consequential damages occurring during the course of the design, engineering, procurement, installation, construction, operation, maintenance, shutdown, demolition or disposal of the Unit or otherwise arising out of the performance of this Agreement, unless such damages shall have resulted from a deliberate violation of this Agreement occurring pursuant to authorized corporate action by Edison.

Standard of Care, § 11

Edison shall have sole responsibility for, and is fully authorized to act for the Owners with respect to operation and maintenance of the Unit in accordance with good utility operating practice for the benefit of all Owners, the objectives being to operate and maintain the Unit as efficiently, economically and reliably as feasible. In furtherance of such responsibility Edison shall select, hire, control and discharge (when deemed appropriate by Edison) such personnel as are required, which personnel when hired, shall be employees solely of Edison, unless otherwise determined by Edison. Owners shall share risks of employee negligence and other risks of operation and maintenance in accordance with each Owner's Ownership Percentage.

Houston Lighting and Power Company, South Texas Project Participation Agreement (July 1, 1973), amended, (December 1, 1973).

Liability of Participants to Each Other, § 21.1

21.1 Participants shall have no remedies against another participant for tortious conduct arising out of the ownership of the South Texas Project, or any portion thereof, or out of Preconstruction Work, Construction Work or Station Work except when the claim results from Willful Action.

Willful Action, § 4.31:

4.31.1 Action taken or not taken by a Participant at the direction of its governing body or board (that is, its managing Board or governing body in the case of San Antonio, or its Board of Directors in the case of Central or Houston), which action is knowingly or intentionally taken or not taken with intent to cause injury or damage to another.

4.31.2 Action taken or not taken by an employee of a Participant, which action is intentionally taken or not taken with intent to cause injury or damage to another and which action or non-action is subsequently ratified by the Participant employing such employee at the direction of its said governing body or board.

Connecticut Light and Power Company, Sharing Agreement, 1979 Connecticut Nuclear Unit, September 1, 1973

Insurance and Liability of Participants, § 10

A. Any uninsured loss, damage or liability and any expenses arising out of any such loss, damage or liability shall be borne by the Participants in accordance with their Ownership Shares.

B. No Associate Participant shall be entitled to recover from the Lead Participants any damages resulting from error or delay in the design, engineering, procurement, installation or construction of the Unit, or for any damage to the Unit, any curtailment of power, or any other damages of any kind, including but not limited to consequential damages, occurring during the course of the design, engineering, procurement, installation, construction, operation or maintenance of the Unit or otherwise arising out of the performance of this Agreement, unless such damages shall have resulted from a deliberate violation of this Agreement occurring pursuant to authorized corporate action by one or more of the Lead Participants.

9.1.4 EDISON shall have no liability to NORTHERN or WOLVERINE for any loss, damage or expense suffered by NORTHERN or WOLVERINE or for any damage to their interests in FERMI 2 or any portion of FERMI 2 arising out of or resulting from any action taken or failed to be taken by EDISON or any employee of EDISON pursuant to this Section 9.1, unless such loss, damage or expense results from the willful misconduct of EDISON or any of its employees.

9.1.5 In the event EDISON, in performance of its duties within the scope of its agency, incurs any liability to any third party for which the Parties are liable under this Section 9, any amount paid by EDISON on account of such liability shall be considered Cost of Construction or Operating Costs (as charged after the Commercial Operation Date) and apportioned among the Parties in accordance with their ownership interests, taking into account any amounts paid directly to the third party by either EDISON, NORTHERN or WOLVERINE.

Arizona Public Service Company, Arizona Nuclear Power Project Participation Agreement (August 23, 1973)

21. Liability

21.1 Except for any judgment debt for damage resulting from Willful Action and except to the extent any judgment debt is collectible from valid Project Insurance, each Participant hereby extends to all other Participants and all of their directors, officers and employees, its covenant not to execute on any judgment obtained against any of them for direct or consequential loss from physical damage to its property, which results from the performance or nonperformance of the Project Agreements.

21.3 Except for work liability resulting from willful action and except as provided in § 21.5 hereof, the costs and expenses of discharging all work liability imposed upon one or more of the Participants for which payment is not made by Project Insurance, shall be allocated among the Participants in proportion to their Generation Entitlement shares.

21.5 Except for liability resulting from Willful Action, any Participant whose electric customer shall have a claim or bring an action against any other Participant for any death, injury, loss or damage arising out of or in connection with interruptions to or curtailment of electric service to such customer caused by the oepration or failure of operation of ANPP or any portion thereof shall indemnify and hold harmless such other Participant, its directors, officers and employees, from and against any liability for such death, injury, loss or damage.

3.56 Willful Action:

3.56.1 Action taken or not taken by a Participant at the direction of its directors, officers or employees having management or administrative responsibility affecting its performance under any of the Project Agreements, which action is knowingly or intentionally taken or failed to be taken with conscious indifference to the consequences thereof or with intent that injury or damage would result or would probably result therefrom. Willful Action does not include any act or failure to act which is merely involuntary, accidental or negligent.

3.56.2 Action taken or not taken by a Participant at the direction of its directors, officers or employees having management or administrative responsibility affecting its performance under any of the Project Agreements, which action has been determined by final arbitration award or final judgment or judicial decree to be a material default under any of the Project Agreements and which occurs or continues beyond the time specified in such arbitration award or judgment or judicial decree for curing such default or, if no time to cure is specified therein, occurs or continues thereafter beyond a reasonable time to cur such default.

3.56.3 Action taken or not taken by a Participant at the direction of its directors, officers or employees having management or administrative responsibility affecting its performance under any of the Project Agreements, which action is knowingly or intentionally taken or failed to be taken with the knowledge that such action taken or failed to be taken is a material default

3.56.3 continued

under any of the Project Agreements.

3.56.4 The phrase "employees having management or administrative responsibility" as used in this Section 3.56 means employees of a Participant who are responsible for one or more of the executive functions of planning, organizing, coordinating, directing, controlling and supervising such Participant's performance under any of the Project Agreements.

Southern California Edison Company, San Onofre Units 2 and 3, Participation Agreement (1977); Operating Agreement (1977)

Liability and Insurance Construction Agreement, § 10

10.4 Riverside and Anaheim hereby release Edison and San Diego from any and all liability to Riverside and Anaheim or either of them resulting from damage to or loss or use of Units 2 and 3 which is caused by or is a result of the construction, operation or maintenance of Unit 1, the Edison Switchyard, the San Diego Switchyard, the Interconnection Facilities, or any Additional Generating Units. Edison and San Diego hereby release Riverside and Anaheim from any and all liability to Edison and San Diego or either of them resulting from damage to or loss of use of Unit 1, which is caused by or is the result of the construction, operation or maintenance of Units 2 or 3, or any Additional Generating Units. Except as otherwise provided in Section 9.3/ of the Construction Agreement, the terms of this Section 10.4 are not applicable where a Party has committed Willful Action as defined in Section 4.33 of the Construction Agreement.

4.33 Willful Action: Action taken or not taken by a Company at the direction of its directors, officers or employees having management or administrative responsibility affecting its performance under any of the Project Agreements, which action:

/ [concerns damage arising from a Nuclear Incident]

4.33.1 is knowingly or intentionally taken or failed to be taken with conscious indifference to the consequences thereof, or with intent that injury or damage would result or would probably result therefrom;

4.33.3 is knowingly or intentionally taken or failed to be taken with the knowledge that such action taken or failed to be taken is a material default under any of the Project Agreements.

Willful Action does not include any act or failure to act which is merely involuntary, accidental or negligent.

Operating Agreement, § 16.1 - 16.5, pp. 61-65

16. LIABILITY

16.1 Each Company shall be responsible for the consequences of its Willful Action, and shall indemnify the other Company from the consequences thereof.

16.2 Except for any loss, damage, cost, charge, or expense (hereinafter collectively referred to as "Damage") resulting from Willful Action, and except to the extent of any Damage covered by valid and collectible Unit 1 Insurance, no Company (First Company) . . . shall be obligated to discharge any liability to the other Company (Second Company) for any direct,

16.2 continued

indirect or consequential Damage of any kind or nature incurred by the other Company (Second Company) resulting [whether or not from the negligence of a Company (First Company)] from (i) the ownership, operation, maintenance or use of the San Onofre Nuclear Generating Station, or (ii) the performance or non-performance of the obligations of a Company under any of the San Onofre Agreements.

"Willful Action" is defined the same as in 4.33 above.

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)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of ANSWER OF FLORIDA POWER & LIGHT COMPANY TO CITIES' REPLY CONCERNING JOINT MOTION were served by hand * or by deposit in the U.S. Mail, first class postage prepaid this 27th day of January, 1981.

* Ivan W. Smith, Esquire, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

* Robert M. Lazo, Esquire, Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

* Michael A. Duggan, Esquire, Member
College of Business Administration
University of Texas
Austin, Texas 78712

Docketing and Service Station
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Jerome Saltzman, Chief
Antitrust & Indemnity Group
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Thomas Gurney, Sr., Esquire
203 North Magnolia Avenue
Orlando, Florida 32802

Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Robert E. Bathen
Fred Saffer
R.W. Beck & Associates
P.O. Box 6817
Orlando, Florida 32803

* Robert A. Jablon, Esquire
Alan J. Roth, Esquire
2600 Virginia Avenue, N.W.
Washington, D.C. 20037

William C. Wise, Esquire
Suite 500
1200 18th Street, N.W.
Washington, D.C. 20036

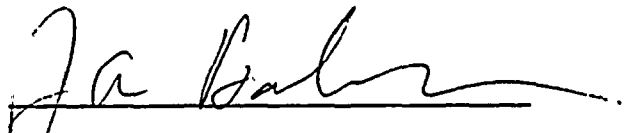
William H. Chandler, Esquire
Chandler, O'Neal, Avera,
Gray & Stripling
Post Office Drawer 0
Gainesville, Florida 32602

Donald A. Kaplan, Esquire
* Janet R. Urban, Esquire
John S. Caragozian, Esquire
Robert Fabrikant, Esquire
George M. Pond, Esquire
Antitrust Division
U.S. Department of Justice
P.O. Box 14141
Washington, D.C. 20044

Joseph Rutberg, Esquire
* Lee Scott Dewey, Esquire
Fredric D. Chanania, Esquire
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Charles R.P. Brown, Esquire
Brown, Paxton and Williams
301 South 6th Street
P.O. Box 1418
Fort Pierce, Florida 33450

Richard S. Salzman, Esquire
Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



J.A. Bouknight, Jr.
Lowenstein, Newman, Reis & Axelrad
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

(202) 862-8400

DATED: January 27, 1981