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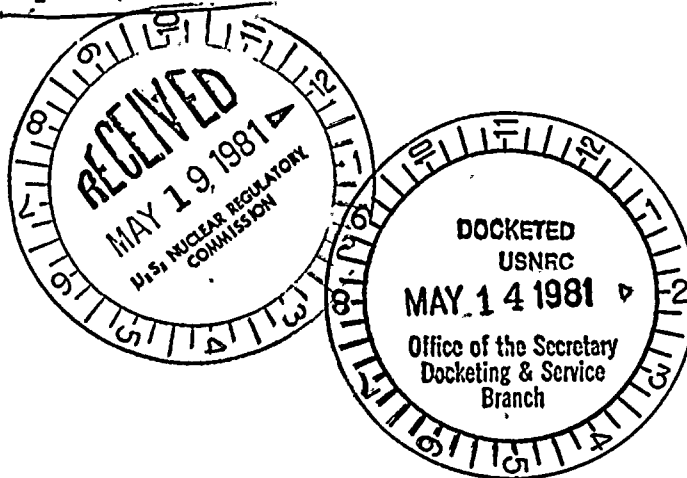
202-862-8400

May 13, 1981

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BY HAND

Ivan W. Smith, Esquire
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: In the Matter of Florida Power & Light
Company (St. Lucie Plant, Unit No. 2),
Docket No. 50-389A

Dear Chairman Smith:

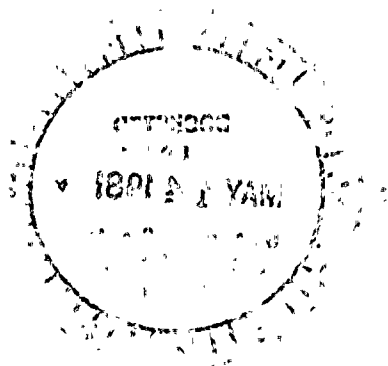
Late yesterday afternoon the undersigned, counsel for Applicant Florida Power & Light Company (FPL), received a copy of a letter from counsel for Parsons & Whittemore, Inc. (P&W) and its subsidiary Resources Recovery, Inc. (RRD), recent joint Petitioners for late intervention in the above-identified proceeding. The topic of the letter, insofar as it bears on this proceeding, is Petitioners' intention to respond to FPL's filing of May 9, 1981.* On that date FPL filed an Application for Issuance of Subpoenas which seeks

*/ Petitioners have filed two virtually identical petitions to intervene on antitrust grounds, the first in the operating license health and safety environmental proceeding (Docket No. 50-389 OL) and the other in the instant proceeding (Docket No. 50-389A). FPL has responded to the petition filed in the operating license proceeding, and has pointed out that that petition is deficient substantively, procedurally, and factually. Response dated May 7, 1981. Petitioners' letter states that Petitioners intend to file some undefined form of motion for extension of time in the operating license proceeding as well as in this case.

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Ivan W. Smith, Esquire

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to probe the basis of the principal factual representations upon which the late petition is predicated. The Application was accompanied by a Motion for Extension of Time to permit the subpoenas to be fruitfully executed. In counsel's letter, Petitioners now state that they will resist the discovery into the factual representations in their petition sought by FPL, and that they will move the Board for an extension of time to permit formulation of such an argument.*/ On this basis, the letter requests the Board to defer any action on FPL's Application for Issuance of Subpoenas or its accompanying motion.

Because this request is plainly counterproductive, and because Petitioners' letter is not clear on the procedures Petitioners apparently are following, FPL submits this brief response.

It is FPL's position that the requested subpoenas should be issued without delay. Under NRC rules subpoenas are ordinarily issued on an ex parte basis. 10 C.F.R. § 2.720. The rules provide procedures whereby parties may obtain protective orders against such subpoenas -- if they can be demonstrated to be unreasonable. Id. The process has two parts: (1) issuance of the subpoenas and (2) resolution of any motions for protection. The first stage ordinarily does and should proceed without delay. The second stage is ordinarily resolved in an expeditious fashion by the licensing tribunal. Petitioners now seek delay both in issuing the subpoenas and (via their motion for an extension of time) in addressing the question of whether the subpoenas are reasonable. Such two-staged delay would be without basis in any instance, but is particularly inappropriate here where it is sought in order to block factual inquiry into a patently untimely petition. For these reasons, FPL believes that the requested subpoenas should be issued forthwith.

When Petitioners file their motion, the Board may, in its discretion, set up expeditious procedures to deal with any request for protective orders that motion may contain. In the meantime, however, the subpoenas should issue and be served. In this way, if the Board concurs with FPL that the petitions should be disposed of on an informed record and does not accept

*/ The letter advised that the motion for such an extension of time would be filed late yesterday or today.

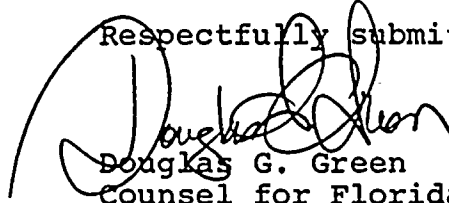
Ivan W. Smith, Esquire

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Petitioners' arguments to resist discovery, that discovery may proceed without delay.

Respectfully submitted,



Douglas G. Green
Counsel for Florida Power & Light
Company

DGG:lkf

cc: Service List

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of letter to Ivan
W. Smith, Esquire from Douglas G. Green were served by hand
delivery * or by deposit in the U.S. Mail, first class postage
prepaid this 13th day of May, 1981.

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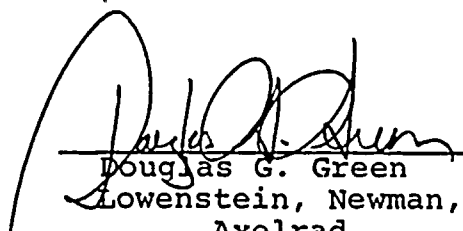
DATED: May 13, 1981

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