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June 11, 1981

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dear Mr. Chilk:

Yesterday, counsel for Florida Power & Light Company filed with you a letter accusing our client, Parsons & Whittemore, Inc., of dishonesty. In his zeal to protect FP&L's interest, counsel seems to have forgotten that civility is compatible with vigorous advocacy. That oversight alone, however, would not have provoked this response. I answer FP&L's letter not to quarrel with its harsh language, but to refute its erroneous statement of "facts".

The NRC litigation between P&W and FP&L concerns the transmission of electricity from a resource recovery plant that was built by P&W at a cost exceeding $150,000,000. FP&L argues that P&W has no standing to seek the requested transmission because P&W does not hold title to the plant (p.1). As FP&L sees it, "Dade County is entitled to own and use the solid waste processing part of the facility," and "FPL has the legal right to the [electric] generating facility" (p. 2). What is more, FP&L argues, "[a]ll that would be necessary for the plant to begin generating electricity would be for P&W to comply with its commitments to transfer possession of the plant to Dade County and FPL so that it can be operated" (p. 3).

FP&L's neat syllogism omits a premise of central importance: payment to P&W of the $150,000,000 construction cost. Neither FP&L nor Dade County has contributed one cent toward the plant; the entire cost has been borne by P&W alone. When that fact is considered, FP&L's "standing" argument is revealed as the frivolity it truly is.

Appendix G

Knowing that title cannot pass from P&W to it or to Dade County free of charge, FP&L strains to create the erroneous impression that P&W has been paid. That is the clear import, for example, of the following sentence from footnote two on page three of its letter:

> [T]he County, which has dedicated to the project $128 million, the virtual entirety of its solid waste disposal funding, now fears that it has fruitlessly "exhausted all the funds available and set aside for provision of necessary waste treatment."

Yet, none of the funds "dedicated to the project" has been remitted to P&W. FP&L does not mention that fact.

FP&L's June 10 letter cannot be read without realizing that the Dade County-FP&L-P&W contractual dispute has evoked strong feelings on all sides. The issue before this agency, though, is a simple and unemotional one: whether that dispute and the seven years of business dealings which spawned it are relevant areas for exploration in NRC Docket No. 50-389A. We think not; FP&L disagrees. The Board's resolution of this question of law is not aided, I submit, by FP&L's characterization of our position as meaning that "the Board should grant [P&W's] petition to intervene whether its assertions are true or not" (p. 3).

The truth is that P&W wants FP&L to transmit the electricity generated by the resource recovery plant to potential customers who cannot be reached except over FP&L's transmission grid. FP&L is obligated to do so under conditions imposed by the Licensing Board. But FP&L has refused, preferring to have the facility sell no electricity and produce no revenue while the parties' contractual dispute wends on and P&W continues to pay $83,000 per day in interest on its construction loans. That is why we are now in litigation before the NRC. And that is why FP&L seeks to broaden that litigation to encompass the irrelevant contractual disputes. Wasted time runs in favor of FP&L and against P&W.

There should be no misunderstanding of what is at stake in the NRC litigation. P&W is fighting to make the facility economically viable until the parties' contractual disputes are resolved. FP&L, if it had its way, would bankrupt the facility. There is no public interest to be served by denying P&W the benefits of owning the plant while it is strapped with the burden of paying for it. It would appear that FP&L knows this too, for otherwise why would the utility obscure the truth about the $150,000,000 <u>precondition to</u> the passage of title?

Mr. Landegger's May 29 letter specifically stated that the appropriate papers to enforce the transmission condition of FP&L's construction license would be filed by P&W's counsel. Those papers are being prepared; they should be filed shortly.

Sincerely,

George R. Kucik

George R. Kucik
Attorney for Parsons & Whittemore, Inc.

cc: Service List
Mr. Merritt Stierheim, County Manager
Dade County, Florida
Enclosure: May 29, 1981, letter
to Chairman Hendrie
from George F. Landegger,
President of P&W