UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	No.
	)	
(St. Lucie Plant, Unit No. 2)	)	

REQUEST FOR ENFORCEMENT ACTION
AGAINST FLORIDA POWER & LIGHT COMPANY

Pursuant to the regulations of the Nuclear Regulatory Commission, 10 CFR §2.206, applicants Parsons & Whittemore, Inc. (P&W) and its wholly-owned subsidiary, Resources Recovery (Dade County), Inc. (RRD) request that the NRC institute a §2.202 enforcement proceeding to compel Florida Power & Light Company (FP&L) to abide by the antitrust license conditions imposed upon it in Docket No. 50-389A (St. Lucie Plant, Unit No. 2). The information available to applicants establishes beyond doubt that FP&L's continuing refusal to abide by those conditions is "willful" within the meaning of 10 CFR §2.202(f), necessitating the issuance of an immediately effective compliance order. Specifically, we submit that a finding of willfulness is required by FP&L's blatant and contumacious refusal to transmit electricity for RRD under the terms of a license condition that clearly requires it to do so. This refusal has impaired the

commercial viability of RRD and threatens to destroy it as a competitive threat in the Florida market, a consequence that would be advantageous to FP&L.

BACKGROUND

(1) Section 105 of the Atomic Energy Act, 42 U.S.C. §2135, directs the Commission to consider the antitrust implications of proposed licenses. When, in 1973, FP&L applied for a construction license, the Attorney General advised that its issuance would have "negative antitrust implications" which could be alleviated only by incorporating antitrust conditions as part of the license. Negotiations between the NRC staff, the Department of Justice and FP&L resulted in an antitrust settlement agreement by late summer of 1980. One condition agreed to by FP&L was that the utility would transmit to distant customers electricity generated by "neighboring entities" or by small power producers who qualify under the Public Utility Regulatory Policies Act of 1978 (PURPA). On September 12, 1980, the parties to the agreement jointly moved that it be made effective immediately, citing to the Licensing Board the benefits of having the conditions become operative before a final construction license or operating license were issued.[1/] On April 24, 1981, that motion was granted and the settlement conditions became

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1/ One of the cited benefits was the "assur[ance] that, effective immediately, FPL will be committed to deal with other electric utilities in conformance with the conditions" (Joint Motion to Approve and Authorize Implementation of Settlement Agreement, p. 2 (Sept. 23, 1980)).

effective, subject to the Board's right to impose different or additional conditions after a hearing.

(2) RRD has constructed and holds title to a resource recovery plant in Miami, Florida. The plant has a capacity of 77 megawatts of electricity, which it produces by burning fuel derived from refuse. The plant has been test operated at low load levels and is now ready for full-scale operation. Interconnection facilities, built to FP&L specifications, are in place to tie into FP&L's 240 kv lines from Turkey Point. RRD's plant, which is subject to regulation under the Federal Power Act, is a "neighboring entity" (see license condition ¶I(c)) as well as a qualifying small power producer under PURPA (id. at ¶X(a)(5)).

(3) On April 3, 1981, RRD asked FP&L to transmit its electricity "to potential customers other than FPL," in accord with the antitrust laws and the conditions of the NRC settlement agreement which, as of that date, had not been approved (App. A, infra). That request candidly apprised FP&L of RRD's intention to compete with the utility:

> As an alternative to the exclusive sale of electric energy to FPL, RRD wishes to explore competitive opportunities for sales to other electric utility entities.

On April 29, after the license conditions were approved by the Board, RRD renewed its transmission request "in accordance with the settlement agreement approved April 24, 1981" (App. B,

infra).[2/]

That same day FP&L refused, arbitrarily asserting that RRD was neither a neighboring entity nor a qualifying PURPA facility (App. C, infra). FP&L's refusal telex does not even invite discussion of RRD's transmission request, or of the utility's reasons for denying it; on the contrary, the peremptory tone of that message makes plain that, so far as FP&L is concerned, the issue is dead. As the telex stated:

> THIS REQUEST IS INAPPROPRIATE AND IS DENIED.

Two days later, on May 1, FP&L reaffirmed its "determination not to provide transmission service for [RRD] . . ." (App. D, infra). That letter suggested a meeting, but not to discuss transmission services. Rather, FP&L would agree only "to hear [RRD's] argument in support of the possible modification of the present contractual arrangements" concerning RRD's facility. FP&L's letter set informal discovery of RRD's economic records as a "precondition" to any meeting, and it closed with an overt threat:

> Augmentation of these activities [petitioning for intervention before the NRC] or launching new attacks on the company will not only eliminate the possibility of meaningful discussion, but could result in actions which go beyond simply meeting actions initiated by [RRD and P&W] . . . .

2/ Between those two requests, on April 24, RRD and P&W moved for leave to intervene and to participate in the antitrust hearing in Docket No. 50-389A. That motion is pending.

(4) FP&L's unfounded (and heavy-handed) refusal to deal with RRD is an unequivocal violation of the license conditions imposed by the Board's April 24 order. This violation threatens grave harm to RRD. To survive, RRD needs a market for its electricity. And, to sell its electricity to anyone, RRD must deal with FP&L. Allowing FP&L to destroy RRD as a potential competitor would flout the authority of the NRC and undermine the procompetitive policies of §105 of the Atomic Energy Act--policies that led to the consensual agreement that FP&L has chosen to boldly disregard.

ARGUMENT

I. FP&L HAS NO REASONABLE BASIS FOR DISPUTING RRD'S DUAL STATUS AS A NEIGHBORING ENTITY AND AS A QUALIFYING PURPA FACILITY ENTITLED TO TRANSMISSION OF ELECTRICITY UNDER THE NRC'S LICENSE CONDITIONS

The unambiguous language of the license conditions and PURPA establishes beyond question that RRD is entitled to transmission services under Section X of those conditions. RRD is both a neighboring entity and a qualifying facility. Yet, FP&L has taken it upon itself to decree, against all reason, that RRD is neither. This unilateral decision to avoid its transmission obligation to RRD is nothing more than a transparent attempt to force RRD to accede to FP&L's position in an ongoing contractual dispute among the utility, Dade County and RRD (see App. D, infra). FP&L's action is unfair, unjustifiable, and in willful violation of the NRC's license conditions.

A. NEIGHBORING ENTITY

The license conditions define the phrase "neighboring entity" to include any private corporation which "owns, contractually controls, or operates . . . facilities for the generation or transmission of electricity," if those facilities meet three criteria: (1) they are physically capable of interconnection with FP&L; (2) they are located within the "applicable area" designated in the settlement agreement; and (3) they are or will be, upon commencement of operation, subject to regulation as a public utility under the Federal Power Act.

RRD meets this definition. It is a private corporation which owns and operates a facility for the generation of electricity.3/ The facility is capable of interconnection with FP&L, having been built to the utility's specifications, and it is situated entirely within the applicable area. Furthermore, since it has a capacity in excess of 30 megawatts, the facility is subject to regulation as a public utility under the Federal Power Act. See 18 CFR §292.601.

3/ In a recent filing before the Federal Energy Regulatory Commission, FP&L has conceded that RRD owns and operates the Dade County facility. See FP&L's Protest, Petition for a Declaratory Order, and Petition to Intervene, FERC Dkt. QF-81-19-000, p. 4 (May 6, 1981). That pleading urges FERC to acknowledge FP&L's alleged right to require RRD, at some undetermined time in the future, to "transfer title" to the facility. Id. at pp. 1, 4. The pleading, however, never disputes RRD's present ownership of the facility.

B. QUALIFYING FACILITY

As defined by Section 201 of PURPA, 16 U.S.C. §796, and its implementing regulations, 18 CFR Part 292, a qualifying small power production facility must satisfy three specific and exclusive criteria:

(1) The facility's power production capacity cannot exceed 80 megawatts (18 CFR §292.204(a));

(2) The facility's primary energy source must be biomass, waste, renewable resources or any combination thereof (18 CFR §292.204(b)); and

(3) The facility cannot be owned by a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities) (18 CFR §292.206(a)).

RRD meets each criterion. As reflected in RRD's notice of qualification filed with FERC (App. E, infra), RRD's facility has an electric generation capacity of approximately 77 megawatts and uses biomass as its primary energy source. Neither P&W nor RRD is "primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities)" (18 CFR §292.206(a)). FP&L does not dispute these facts; indeed, it has acknowledged that RRD satisfies each definitional criterion for a qualifying PURPA facility.[4/]

4/ In its May 6, 1981, filing before FERC (referred to in fn. 3, supra), FP&L stated that it "will stipulate that the instant solid waste processing facility uses biomass or waste as a primary fuel and has an installed capacity less than 80 MW" (FP&L's Protest, p.2).

The above analysis is a simple and straightforward demonstration that RRD is a "neighboring entity" and a "qualifying facility" under PURPA. As such, it is plainly entitled to transmission services under Section X of the NRC's licensing conditions. FP&L's denial of RRD's status is indefensible.

II. THE ATOMIC ENERGY ACT AND ITS IMPLEMENTING REGULATIONS AUTHORIZE EFFECTIVE REMEDIAL ACTION TO COMPEL FP&L TO COMPLY WITH THE LICENSING CONDITIONS

The enforcement provisions of the Atomic Energy Act manifest a congressional intent that violations of licensing conditions be remedied quickly and effectively. Toward that end, the Act authorizes NRC to impose severe sanctions upon a recalcitrant licensee. Those sanctions include civil penalties of as much as $100,000 per violation (42 U.S.C. §2282, as amended)[5/]

5/ Section 2282(a) provides:

> (a) Any person who (1) violates any licensing provision of section 2073, 2077, 2092, 2093, 2111, 2112, 2131, 2133, 2134, 2137, or 2139 of this title or any rule, regulation or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or (2) commits any violation for which a license may be revoked under section 2236 of this title, shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed $100,000 for each such violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The Commission shall have the power to compromise, mitigate, or remit such penalties.

For purposes of this section, a construction permit is deemed to be a "license". See 42 U.S.C. §2235.

and the revocation of outstanding licenses or construction permits. 42 U.S.C. §2236.[6/]

When informed of a license condition violation, the Director of Nuclear Reactor Regulation and other NRC officials are authorized to institute "a proceeding to modify, suspend, or revoke a license or for such other action as may be proper." 10 CFR §2.202. The same officials are also empowered to commence proceedings for the imposition of civil penalties. Id. at §2.205. An enforcement proceeding may be initiated by the NRC sua sponte or at the request of "any person." Id. at §§2.202, 2.206.

The nature of the agency's enforcement action involving antitrust conditions is to be determined on a case-by-case basis. Proposed General Statement of Policy and Procedure for Enforcement Actions, 45 Fed. Reg. 66754 fn. 1 (Oct. 7, 1980). But remedial action of some kind is mandated whenever license conditions are violated. And the imposition of sanctions does not depend upon proof that the violation was intentional; scienter is not a requirement: In the Matter of Atlantic Research Corp., 11 NRC 413, 423-424 (1980). The central point of NRC sanctions is to

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6/ Section 2236 provides in pertinent part:

> (a) Any license may be revoked . . . for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this chapter or of any regulation of the Commission.

bring the violator's conduct into conformance with the licensing conditions. Even sanctions so harsh they could be viewed as punitive may be imposed so long as the aim is "to improve conduct" of the recalitrant license. Id. at 420.

FP&L's conduct clearly needs improvement. Only days after the Licensing Board effectuated the antitrust conditions to which FP&L had earlier consented, FP&L repudiated the first condition it was asked to comply with. The NRC has anticipated this kind of contumacy. Recognizing that once their immediate objective has been achieved some licensees might be tempted to disregard obligations earlier undertaken, the Commission has announced that "it expects licensees to adhere scrupulously to any informal obligations and commitments resulting from [its] processes and will not hesitate to issue appropriate orders to make sure that expectation is realized." Proposed General Statement of Policy and Procedure for Enforcement Actions, 45 Fed. Reg. at 66757 (Oct. 7, 1980). If licensees' informal obligations are to be strictly enforced, as they should be, the blatant violation of formal license conditions committed by FP&L surely demands swift, unequivocal and effective agency action.

III. FP&L'S WILLFUL VIOLATION OF THE LICENSE CONDITIONS WARRANTS IMMEDIATELY EFFECTIVE ENFORCEMENT ACTION

Section 2.202(f) of the regulations states that where the Director of Nuclear Reactor Regulation (among others) finds

a party in "willful violation" of NRC license conditions, "the order to show cause may provide, for stated reasons, that the proposed [enforcement] action be temporarily effective pending further order." Applicants submit that FP&L's conduct and assertions in refusing to transmit electricity on behalf of RRD evidence an intentional disregard of its obligations under Section X of the license conditions. This willful misconduct should not be allowed to continue during the NRC's adjudicative enforcement process, while RRD's facility sits idle and the Commission's authority is flouted. FP&L's recalcitrance should be ended immediately by the issuance of an order requiring it to afford transmission services to RRD forthwith.

Interpreting its enforcement responsibilities under the Atomic Energy Act, the NRC has found "enlightening" the "judicial interpretations of the statutory provisions of certain other agencies, namely . . . the Federal Trade Commission". In the Matter of Atlantic Research Corp., 11 NRC 413, 423 (1980).7/ The FTC's enforcement experience is particularly pertinent to the issue of willfulness. Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. §45(a), as interpreted by the courts, requires the FTC to determine whether a violation of its order was committed in good faith or in bad faith before a penalty may

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7/ In fact, the enforcement provisions of the AEA were "modeled after similar provisions" in the FTC Act and other federal statutes. Ibid.

be assessed. See United States v. Reader's Digest Ass'n, 494 F. Supp. 770 (D. Del. 1980). Judicial decisions reviewing findings of "bad faith" violations of FTC orders illuminate the concept of "willful" violations of NRC license conditions.

In United States v. Reader's Digest, for example, the respondent had mass-mailed simulated travel checks and bonds despite a consent order that prohibited it from "[u]sing or distributing simulated checks, currency, . . . or . . . any confusingly simulated item of value." Reader's Digest argued that it had determined, in good faith, that the order prohibited only mailings that were "likely to deceive consumers" and that its mailings were not deceptive. Id. at 777. The court rejected that argument and ruled that Reader's Digest had violated the order in bad faith.

The court held that "good faith . . . is to be determined, not by whether Reader's Digest believed that the [mailed items] were not deceptive, but by whether Reader's Digest attempted honestly to comply with the terms of the consent order." Id. at 777 (emphasis added). The court opined that the respondent should have asked itself whether the proposed mailings came within the scope of the consent order; and, "[i]f they appeared to come within the terms of the order, [Reader's Digest] was obliged not to distribute them, even if it believed them not to be deceptive." Id. at 776 (emphasis added). Accord, United States v. Bostic, 336 F. Supp. 1312, 1314 (D.S.C.), aff'd, 473 F. 2d 1388 (4th

Cir.), cert. denied, 411 U.S. 966 (1971); United States v. Ancorp. Nat'l Services, Inc., 367 F. Supp. 1221 (S.D.N.Y. 1973).

FP&L has violated that standard; there is no basis on which the utility may claim that its dealings with RRD evidence an honest effort to comply with the transmission terms of the licensing conditions. RRD's status as a "neighboring entity" and "qualifying facility" is so evident from the facts known to FP&L that RRD must have "appeared to [FP&L] to come within the terms of the [license conditions]." Readers' Digest, supra, at 776. FP&L has never offered an explanation of why it does not consider RRD to be a "neighboring entity." And, as pointed out earlier (p. 7), FP&L has conceded before FERC that RRD's facility meets the definitional criteria for a qualifying small power production facility."[8/] In short, FP&L has violated the license conditions without even asserting a plausible reason for doing so.

8/ In a June 10, 1981, letter to Secretary Chilk, FP&L asserted that RRD had "applied" for status as a qualifying facility but that FERC had not yet ruled. That is a serious mischaracterization of FERC's procedures and of RRD's actions. FERC rules provide a self-certification procedure for "qualifying facilities", a procedure which only requires that a Notice of Qualification be filed with the Commission and served upon the neighboring utility. As FP&L knows, RRD filed a valid notice of qualification for its Miami facility on March 13, 1981 and concurrently served FP&L with a copy. No further action is required by RRD or by FERC to confirm its qualifying facility status.

FP&L's June 10 letter and P&W's response are reproduced as Apps. F and G, infra. FERC's Federal Register notice of this dispute is reproduced as App. H, infra.

FP&L's May 1 response to RRD's request for transmission services may, however, reveal the utility's true motivation for denying that request. In that response, FP&L chose not to explain why it considered RRD's request "inappropriate." Instead, FP&L proposed a meeting to discuss "possible modifications of the present contractual arrangements governing the construction, ownership and operation of the waste processing and electric generating facility being constructed by your clients in Dade County" (App. D, infra).

FP&L contends that RRD is bound, in the future, to transfer title to the facility to FP&L and Dade County. RRD disputes that contention. Regardless of whose view ultimately is upheld in arbitration or in court (see Apps. F and G, infra), it is manifestly improper for FP&L to refuse RRD needed transmission services in an effort to force RRD to reach a favorable accommodation with FP&L as to these contract disputes.9/

In its May 1 letter, FP&L also chastises RRD and P&W for attempting to participate in the NRC licensing proceedings for St. Lucie Unit No. 2. FP&L even goes so far as to threaten that "[a]ugmentation of these activities . . . will not only eliminate the possibility of meaningful discussions, but could result in actions which go beyond simply meeting actions initiated by your

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9/ It is no secret to FP&L that RRD is suffering staggering financial losses ($83 thousand per day in interest alone on some $150 million in construction loans) as its facility stagnates unused. The extension of transmission services to RRD over FP&L's monopoly grid would alleviate the facility's economic bind.

clients and I hope that they will be governed accordingly" (App. D, infra (emphasis added)).

That effort to coerce RRD and P&W into abandoning their statutory right to intervene before the Construction Licensing Board would be outrageous in any context. When tied to the denial of transmission services, as it was, it eliminates any possibility that FP&L might have a good faith explanation for its conduct.

FP&L's breach of its transmission obligation so as to force P&W and RRD to concede contractual disputes and abandon intervention efforts must be viewed as "willful violations" if Section 2.202 of the NRC regulations is to have any meaning. Unless FP&L is ordered immediately to comply with its licensing conditions, RRD's facility will continue to lie dormant, and a source of competition which the conditions were intended to safeguard may well be destroyed. Allowing that to happen while FP&L's contumacy is being adjudicated would serve no just end. There is a strong public interest in preserving the competitive viability of RRD's facility. Activation of the immediately effective enforcement order authorized by Section 2.202 is warranted, indeed, required, to serve that public interest.

CONCLUSION

This Request for Enforcement Action against Florida Power & Light Company should be granted. A show cause order

should issue forthwith, and it should direct FP&L to interconnect with and transmit electricity on behalf of RRD pursuant to Section X of the construction licensing conditions in Docket No. 50-389A until further order of the Commission.

Respectfully submitted,

George R. Kucik

George R. Kucik

Ellen E. Sward

Ellen E. Sward

ARENT, FOX, KINTNER, PLOTKIN & KAHN
1815 H Street, N.W., Suite 900
Washington, D.C. 20006
(202) 857-6000

Counsel for Applicants

June 22, 1981

Arent, Fox, Kintner, Plotkin & Kahn

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Washington, D.C. 20006
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David J. Bardin
Counsel
(202) 857-6089

April 3, 1981

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

L. Christian Hauck, Esq.
Vice President, Legal Affairs
Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33152

Dear Mr. Hauck:

Our client, Resources Recovery (Dade County), Inc. (RRD) now owns and operates in Dade County, Florida, a qualifying small power production facility (QF), as noticed to the Federal Energy Regulatory Commission (FERC) and Florida Power and Light Company (FPL) on March 13, 1981. As an alternative to the exclusive sale of electric energy to FPL, RRD wishes to explore competitive opportunities for sales to other electric utility entities. To that end, RRD would have to turn to FPL for transmission services; since FPL is the monopoly owner of the transmission network in the area, we believe that the antitrust laws require FPL to provide such services.

More directly, we understand that upon approval of the proposed settlement agreement pending in NRC Docket No. 50-389A (St. Lucie Plant, Unit No. 2), the terms of that agreement, in the context of general law, will oblige FPL to transmit electricity on behalf of RRD to potential customers other than FPL. Please confirm our understanding, or advise us of any impediments that you see to full implementation of such obligation on behalf of RRD.

In order to exercise its rights, RRD also needs the following information (including copies of tariff, guideline or other documents as relevant):

1. Is FPL prepared to transmit the electric output of the QF for wholesale sales to one or more other entities?

2. What would be FPL's terms and conditions for such transmission service?

Appendix A

3. Under what tariff or other established provisions would FPL transmit the electric energy?

4. If RRD sells all of the electric output of the QF at wholesale to FPL or others--

a. under what existing rate schedule would FPL render retail service to the QF?

b. under what proposed rate schedule would FPL render retail service to the QF if the Public Service Commission approves FPL's pending proposals?

5. If the QF chose to purchase energy needed for internal use from FPL at retail, under applicable rate schedules, would FPL also require the QF to buy "back-up" or "maintenance" power? If yes, why?

6. Would FPL attempt to place any restrictions on its transmission services?

We would appreciate the favor of a reply within two weeks.

Very truly yours,

David J. Bardin

cc: Robert A. Ginsburg, Esq.
County Attorney
Dade County Court House
Room 1626
Miami, Florida 33130

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TWX 8108486898 FPL DCC MIA
ATTN: MR. CHRIS HAUCH

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DEAR CHRIS:

AS WE DISCUSSED BY TELEPHONE EARLIER TODAY, RESOURCE RECOVERY (DADE COUNTY) INC. (RRD) REQUESTS THAT FLORIDA POWER AND LIGHT COMPANY TRANSMIT ELECTRICITY ON RRD'S BEHALF IN ACCORDANCE WITH THE SETTLEMENT AGREEMENT APPROVED APRIL 24, 1981 BY THE ATOMIC SAFETY AND LICENSING BOARD OF THE NUCLEAR REGULATORY COMMISSION. UNDER THAT SETTLEMENT AGREEMENT, WHICH WAS MADE EFFECTIVE IMMEDIATELY, RRD IS A ''NEIGHBORING ENTITY'' WITHIN THE MEANING OF THE SETTLEMENT AGREEMENT AS WELL AS BEING A QF (QUALIFYING FACILITY) UNDER PURPA. WE PROPOSE TO START USING FPL TRANSMISSION SERVICE UNDER THE SETTLEMENT AGREEMENT IMMEDIATELY.

I LOOK FORWARD TO YOUR RESPONSE BY 4:00 P.M. TODAY.

FAITHFULLY,

DAVID J. BARDIN

NJNN

ACCEPTED
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Appendix B

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ZCZCDAVID J. HARDIN, ESQ
TLX392672 ARFOX USH
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YOU HAVE REQUESTED A RESPONSE TO YOUR TELEX 12:00:00 04/27/81 BY 4:00 PM EST TODAY. YOU REQUESTED TRANSMISSION SERVICE ON BEHALF OF YOUR CLIENT, RESOURCE RECOVERY (DADE COUNTY) INC. (RRD) PURSUANT TO TERMS OF OUR 04/24/81 NRC SETTLEMENT AGREEMENT. INASMUCH AS RRD IS NEITHER LAWFULLY A "NEIGHBORING ENTITY" AS THAT TERMS IS USED IN THAT AGREEMENT NOR LAWFULLY A "QUALIFYING FACILITY" UNDER PURPA, THIS REQUEST IS INAPPROPRIATE AND IS DENIED.

L. CHRISTIAL HAUCK
VICE PRESIDENT - LAW
FLORIDA POWER & LIGHT COMPANY
TWX 810 8486898
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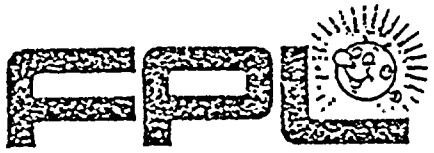
Appendix C

P.O. BOX 529100 MIAMI, FL 33152



FLORIDA POWER & LIGHT COMPANY

May 1, 1981

VIA EXPRESS MAIL

David J. Bardin, Esquire
Arent, Fox, Kintner, Plotkin & Kahn
Federal Bar Building
1815 H Street, N. W.
Washington, D. C. 20006

Re: Resource Recovery (Dade County), Inc./Parsons & Whittemore, Inc.

Dear Mr. Bardin:

This is further to our Telex to you of April 29, 1981 wherein we advised you of our determination not to provide transmission service for your client Resource Discovery (Dade County) Inc. as requested in your Telex of that date. This is also to confirm that, upon the agreement of Dade County, Florida Power & Light Company is willing to meet with your clients and the County to hear your argument in support of the possible modification of the present contractual arrangements governing the construction, ownership and operation of the waste processing and electric generating facility being constructed by your clients in Dade County.

We must establish that a precondition to such discussions will be an expression by your clients of a willingness to share with us and the County reliable and supportable data which clearly demonstrate (1) the improvidence of your clients' entering into the original agreement with the County and the inaccurate assumptions or other reasons underlying such actions, and (2) the economic infeasability of operating the waste processing equipment over its entire economic life based upon the present arrangements.

Should such an expression be forthcoming and should the County agree, we will meet as outlined and examine your clients' materials and discuss such possible alternate arrangements among the parties as the data might suggest to be appropriate.

Appendix D

You have indicated that your clients might wish to have all the materials furnished returned in the event satisfactory new arrangements do not result from these discussions. While this seems to suggest that the data might lack a certain reliability, we would be willing to consider a concrete, written proposal as to how we might proceed.

You have repeatedly raised the question of the willingness of FPL to meet with your client. We have studiously avoided any actions with the County which might jeopardize the rights of either the County or your clients and will continue to do so. We expect your clients to commence a course of conduct which will produce a climate within which discussions can occur. The manner and style of your clients' conduct has not created an environment which is conducive to cooperation and negotiation. Recent inaccurate and inflamatory statements about Florida Power & Light Company and its business arrangements with Dade County sponsored by your clients before the Florida Public Service Commission, and the Dade County Commission and the attempt to complicate our St. Lucie Unit No. 2 licensing activities before the Nuclear Regulatory Commission which we believe to have as a primary purpose to coerce the Company to give up its rights, have not provided such a climate. Augmentation of these activities or launching new attacks on the Company will not only eliminate the possibility of meaningful discussions, but could result in actions which go beyond simply meeting actions initiated by your clients and I hope that they will be governed accordingly.

We await your written reply to these suggestions.

Sincerely,

L. Christian Hauck
Vice President - Law

LCH:jmh

cc: Robert A. Ginsburg, Esquire
Dade County Attorney

BEFORE THE UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Resources Recovery (Dade County), Inc.) Docket No. QF-

NOTICE OF QUALIFICATION, PURSUANT TO 18 C.F.R. § 292.207(a), OF A RESOURCE RECOVERY FACILITY IN DADE COUNTY, FLORIDA, AS A QUALIFYING SMALL POWER PRODUCTION FACILITY

Resources Recovery (Dade County), Inc., owner and operator of a resources recovery facility in Dade County, Florida (the "Facility") hereby gives notice pursuant to 18 C.F.R. §292.207(a) that the Facility is a "qualifying small power production facility" within the meaning of Section 201 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. § 796, and 18 C.F.R. Part 292, 45 Fed. Reg.17959 (March 20, 1980), and is thereby entitled to the benefits conferred by Section 210 of PURPA, 16 U.S.C. §824a-3, and the regulations promulgated thereunder. In accordance with 18 C.F.R. §292.207(a), the following information is provided:

1) The name and address of the qualifying small power producer is:

Resources Recovery (Dade County), Inc.
P.O. Box 524056
Miami, Florida 33152

The facility is located in northeastern Dade County, Florida.

Appendix E

2) The Facility is a small power production facility which will process solid waste, recover recyclable material, handle up to 18,000 tons per week of solid waste, convert combustible materials into refuse-derived fuel ("RDF"), and burn the fuel to raise steam which in turn generates electricity. The Facility is the largest of its kind in the United States. The qualifying facility includes four boilers, four sets of mechanical cyclone dust collectors and four electric turbogenerators, two turbogenerators and condensers and all required auxiliary and control equipment. All equipment for combustion of the RDF and generation of electric energy and its delivery to the transmission network is included.

2) The primary energy source is biomass.

3) The Facility has an installed nameplate electric generation capacity of approximately 76 megawatts at 13.8 KV, 3 phs 60 cycles.

DATE: March 13,1981

RESOURCES RECOVERY
(DADE COUNTY), INC.

By _____
George E. Boyhan
Executive Vice President

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon:

Mr. Robert Tallon
Executive Vice President
Florida Power & Light Company
P.O. Box 529100
Miami, Florida 33152

in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedures.

Dated at Washington, D.C. this 13th day of March 1981.

Lewis E. Leibowitz
Counsel for Resources Recovery
(Dade County), Inc.