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October 26, 1977

Samuel J. Chilk
Secretary
Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Florida Power & Light Company (St. Lucie Plant, Units No. 1 & 2), Docket Nos. 50-335A and 50-389A; Florida Power & Light Company (Turkey Point Plant, Units No. 3 & 4), Docket Nos. 50-250A and 50-251A.

Dear Mr. Chilk:

In the motion filed yesterday on behalf of Florida Cities there were certain errors and omissions. I enclose a corrected copy of the motion and request that it be substituted.

I regret any inconvenience this may cause.

Respectfully submitted,

Robert A. Jablon

Robert A. Jablon

Attorney for the Ft. Pierce Utility Authority of the City of Ft. Pierce, the Gainesville-Alachua County Regional Electric Water and Sewer Utilities, the Lake Worth Utilities Commission, the Utilities Commission of the City of New Smyrna Beach, the Orlando Utilities Commission, the Sebring Utilities Commission, and the Cities of Alachua, Bartow, Ft. Meade, Key West, Mount Dora, Newberry, St. Cloud and Tallahassee, Florida, and the Florida Municipal Utilities Association

RAJ:tb

Enclosure

cc: All parties to these proceedings

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

In the Matter of:

Florida Power & Light Company, (St. Lucie Plant, Unit Nos. 1 & 2)	)	Docket Nos. 50-335A 50-389A
Florida Power & Light Company, (Turkey Point Plant, Unit Nos. 3 &4)	)	Docket Nos. 50-250A 50-251A

MOTION TO LODGE DOCUMENTS

Pursuant to Rules 2.701, 2.714, 2.730 and 2.206 of the Commission's Rules of Practice and Procedure, the Ft. Pierce Utilities Authority of the City of Ft. Pierce, the Gainesville-Alachua County Regional Electric Water and Sewer Utilities, the Lake Worth Utilities Authority, the Utilities Commission of the City of New Smyrna Beach, the Orlando Utilities Commission, the Sebring Utilities Commission, and the Cities of Alachua, Bartow, Ft. Meade, Key West, Mount Dora, Newberry, St. Cloud and Tallahassee, Florida, and the Florida Municipal Utilities Association ("Cities"), intervenors in the above-captioned proceedings, respectfully request that certain documents be permitted to be lodged with the Commission and made part of the decisional record.

On behalf of this Motion, Cities state as follows:

At least since August 9, 1976, 1/ when they filed intervention

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1/ In the context of the South Dade units (Florida Power & Light Company (South Dade Plant), Docket No. P-636-A), these factual allegations were raised earlier (April 14, 1976). Relief was requested relating to these plants. However, Florida Cities hoped for some sort of preliminary settlement discussions before seeking further formal Commission action. "Joint Petition of Florida Cities For Leave to Intervene and Request for Conference and Hearing," Docket No. P-636-A, pp. 69-73. It was requested that this joint petition be filed in both Docket Nos. P-636-A and 50-389A.

petitions, Florida Cities have raised issues of serious antitrust abuse by FP&L in the above dockets. In Docket No. 50-389A, a licensing board has granted late intervention, but denied intervention in Docket Nos. 50-335A, 50-250A and 50-251A on grounds of want of authority. These rulings were affirmed by the Appeals Boards and are before the Commission on petitions for review. 1/ The fact is that serious claims of antitrust abuse of NRC licenses (or potential abuse of proposed NRC licenses) made well over a year ago still have not been addressed on their merits.

Florida Cities believe it would serve no useful purpose to attempt to generally supplement the record at this time to include a detailing of continued refusals to deal by FP&L.

However, on or about October 14, 1977, FP&L filed proposed wholesale rate tariffs at the Federal Energy Regulatory Commission, which they are obligated to call to the attention of the Commission. The tariff states

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1/ Florida Cities do not cite the full procedural record. The petitions before the Commission for review were filed in Docket No. 50-389A by FP&L on July 25, 1977, and in Docket Nos. 50-335A; et al. by Florida Cities on September 8, 1977. The petition in Docket No. 50-389A was granted by Order, October 19, 1977.

as follows:

"Sale for Resale Total Requirements Rate Schedule -- SR-2	Florida Power & Light Company, FPC Electric Tariff, Original Volume No. 1, Fourth Revised Sheet No. 5.

AVAILABLE:

To electric service presently being supplied at point(s) of delivery for total power requirements of electric utility systems for their own use or for resale. Such electric utility systems are Clay Electric Cooperative, Inc., Glades Electric Cooperative, Inc., Lee County Electric Cooperative, Inc., Okefenoke Rural Electric Membership Corporation, Peace River Electric Cooperative, Inc. and Suwannee Valley Electric Cooperative, Inc. This schedule shall not apply as substitute or replacement power to a generating utility system for which interchange power agreements are available or to which Sale for Resale Partial Requirements Rate Schedules PR is applicable." (Emphasis supplied).

"Sale for Resale Total Requirements Rate Schedule - PR	Second Revised Sheet No. 7.

AVAILABLE:

To electric service supplied to electric utility systems for their partial power requirements at any point of delivery to complement the insufficient generating capacity and/or firm power purchases of such systems for their own use or for resale. Such systems are Florida Keys Electric Cooperative Association, Inc., Utilities Commission of the City of New Smyrna Beach, Florida, and the City of Starke, Florida. This schedule shall not apply as substitute or replacement power to a generating utility system for which full service interchange power agreements are applicable." (Emphasis supplied).

Whatever the legality or acceptability of these proposed tariffs may be under the Federal Power Act, they conclusively show the following facts:

1) FP&L refuses to sell total requirements wholesale power to new customers.

2) FP&L refuses to sell wholesale power to systems having generation except to replace "insufficient capacity;" and

3) FP&L will not permit a "full service interchange power agreement" for systems purchasing wholesale power.

These tariff changes would prevent the potential sale of

wholesale electricity to nearly every municipal system in Florida.

For reasons stated in Cities' petitions to intervene, such refusals to deal plainly violate antitrust law and policy as well as historic service obligations. E.g., Otter Tail Power Co. v. United States, 410 U.S. 366 (1973). They present immediate concerns with regard to the responsibilities of the Nuclear Regulatory Commission. Under normal circumstances, it would be presumed that a licensee or proposed licensee of this Commission would at the very least disseminate the benefits of nuclear power through normal sales of electricity. See Atomic Energy Act, §3, 42 U.S.C. §2013. FP&L would deny such benefits to residents of municipal systems. Other documents demonstrate FP&L's policy is to sell firm power only where it can sell at retail, plainly an act of monopolization as well as an unlawful tie-in sale.

FP&L is using the economic advantages from its licensed and proposed nuclear plants to retain and expand its retail service market. Based upon its nuclear advantage, it actively seeks to take over the Vero Beach electric system, independent since 1922, and has suggested the sale of other systems. Yet by its FERC filing it would deny the sale of wholesale power, with the inevitable result of encouraging others to sell their systems as the only way to participate in nuclear benefits.

This issue is not abstract. The Ft. Pierce Utilities Authority has requested to purchase wholesale power at potentially great cost savings. FP&L refuses. Ft. Pierce, located adjacent to Vero Beach, has had discussions with FP&L concerning FP&L's purchase of its system. Moreover, the intervenor group has specifically requested the right to purchase wholesale power as part of a settlement proposal (which includes other terms).

Apart from any other allegations, intervenors respectfully submit that this new refusal to deal in basic services mandates Commission action.

Additional documents not previously available have come to light demonstrating FP&L's awareness that deprivation of nuclear availability to Florida Cities is hurtful to the Cities. In the context of Florida Power & Light Company, Federal Energy Regulatory Commission Docket No. E-9574, Florida Power & Light Company, applicant here, has made available to staff and parties certain documents relating to that proceeding, some of which have been proposed as exhibits. The documents show motivation by FP&L to limit Florida Cities' competitive opportunities, including access to nuclear power.

Florida Cities believe that they have fully supported a grant of intervention and hearing. They therefore request that the Commission review the proposed supplementary evidence only if it were inclined to deny intervention and hearing. They do believe that the abuse of NRC licenses and antitrust principles shown by these documents are so plain that the Commission must consider these documents and take ameliorative action as a result of this evidence, even it it were inclined otherwise to rule against Florida Cities.

Florida Cities gave FP&L advance notice of this motion. Florida Cities were requested not to lodge the documents referred to with the motion. Although Florida Cities know of no basis for FP&L's request, they refrain from lodging them, so as to allow time for Commission ruling, but respectfully request that the Commission allow the document to be lodged and made part of the record. Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (2d Cir. 1965), cert. den. sub nom. Consolidated Edison Company of New York v. Scenic Hudson Preservation Conference, 384 U.S. 941 (1966).

Examples of such documents include:

Document #280954, et. seq. This document provides an April 8, 1976 summary of major financial considerations for FPL in the development of cooperative nuclear power plants, showing anticompetitive intent. These considerations include the proposition that it would probably be best if FPL did not have any ownership interest in the plant. 1/

Document #280958, et. seq. apparently prepared in July, 1976, in relation to an FPL management meeting on implications for FPL of recent developments in competitive relations. As stated at page 10 of 13, FPL contemplated that a shift to coal would eliminate the Atomic Energy Act as a route to municipals' investment in generation,

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1/ The document should be read in conjunction with FP&L's contemporaneous March 30, 1977 letter refusing Florida Cities' participation in the proposed FP&L South Dade Nuclear Unit, but stating FP&L "would consider being part of a joint venture to construct a nuclear facility somewhere in the Central Florida area so as to be conveniently located for potential participants. Such a project would be a true joint venture from its initial inception through completion and would require full commitments of all participants commencing with the planning stages." Many Cities considered such project in good faith, but FP&L ultimately requested public funds be spent on the project without its being willing to consider or agree to discuss provision arrangements crucial to the economics of the unit, even including provision of nuclear fuel, transmission and back-up. Document #280954 indicates that from its inception, FP&L recognized the joint venture form of the proposal would make the project difficult to finance for the municipals, but it proposed that form anyway, while resisting support for legislation to allow for a joint agency.

thereby underscoring the major thrust of the document: that municipals should be prevented or limited from achieving practical access to nuclear generation. FP&L further designates the municipals-co-operative strategy to obtain statewide generation, planning, multiple-unit sharing, and full coordination. FP&L's response: FPL may not be able to compete if municipals and co-operatives can gain access to generation investment with their low-cost capital. Municipals presently having franchises with FPL will be encouraged to go public, showing its intent to limit competition.

Document #242627, a February, 1974 memorandum indicating a desire to limit wheeling access to the proposed 500 Kv line (between Florida and Georgia) to systems fully regulated by the FPSC (Florida Public Service Commission), thereby preventing or limiting transmission access to municipals.

Document #254384, et. seq., relating to interconnection negotiations between FP&L and Homestead in 1973. These documents reveal FP&L's desire to offset the demand for wheeling as well as avoid a long-term Firm Power commitment. (Document #270832).

Document #281505, et. seq., entitled Strategic Planning Department, Policy Planning - Background Paper, Strategic Issues in Inter-Utility Relations. Pages 13-14 of this document bear the headings Strategic Summary Interconnections - Joint Ventures. It shows specific intent to avoid the sale of wholesale power, thereby restricting nuclear benefits. 1/

1/ As stated above, FP&L has, for example, most recently responded negatively to proposals to purchase wholesale power by the Ft. Pierce Utility Authority.

Document #273006, a December 5, 1975 memorandum from FP&L Vice President E.L. Bivans to FP&L official K.S. Buchanan. The memo expresses Mr. Bivan's concern that proposed interconnections with Tampa Electric Company and Florida Power Corporation provide for wheeling power at 'universal postage stamp rates.'

Document #212164, et. seq., entitled Guidelines for Power Generation from Municipal Waste Systems. The principal value in FP&L's participation is said to include deter the competitive threat of municipal generation.

In prepared testimony filed on August 5, 1977, after reviewing the above-referenced documents, among others, in Florida Power & Light Co., FERC Docket No. E-9574, Dr. Gordon Taylor, Chief of the Division of Economic Studies in the Office of Policy Analysis of FERC, subjected FP&L's competitive practices to detailed analysis. Dr. Taylor summarized his conclusions as follows:

> "1. FP&L has generally refused to sell firm bulk power to municipals; now FP&L does not outright refuse but rather makes it extremely difficult for municipals to gain these types of services; FP&L has refused the request of Vero Beach to purchase firm bulk power.
>
> 2. FP&L has refused to wheel third party power and in fact has explicitly denied a request by the City of Vero Beach to obtain wheeling when the City wanted to bring power in from the Orlando Utilities Commission.
>
> 3. FP&L, although it says that it will wheel power, refuses to file a general wheeling tariff thereby making it extremely difficult, expensive, and time-consuming for any utility desiring wheeling to obtain service. This type of anti-competitive conduct by FP&L increases the transfer costs of customers attempting to obtain transmission services and is as effective as an outright refusal to wheel.

4. FP&L has refused in general to grant access to its nuclear power plants. Now FP&L finally is granting access to its fourth unit, St. Lucie II nuclear plant. FP&L, however, is not offering an equitable share to New Smyrna Beach and Homestead, the only systems offered an ownership share of the several that applied.

5. FP&L has insisted on territorial agreements before entering into any kind of bulk power marketing arrangements. Such tying agreements or conditions on sales are an example of the exercise of market power.

6. FP&L has insisted on a thirty year franchise agreements to those municipalities which it serves at retail. The effect of such long term franchises is to foreclose the retail market to other potential competitors.

7. FP&L has attempted to force the municipals to maintain an inefficiently large amount of generating capacity by insisting on interchange agreements rather than willingly selling firm wholesale bulk power.

8. FP&L has discriminated between the REA Co-ops and the municipals with regard to selling firm wholesale bulk power. Although FP&L is selling firm wholesale bulk power to the co-ops it has resisted doing the same to municipals. FP&L is in the wholesale bulk power business, but discriminates between customers it is willing to serve. I interpret this to mean that FP&L sees the potential competition from municipals to be much greater than from the REA Co-ops in the competition to serve at retail.

In summary, I conclude that FP&L has engaged in a series of anti-competitive acts demonstrating that it has market power and is willing to exercise it."

CONCLUSION:

In view of the passage of time and new evidence of anti-competitive activities, Florida Cities request permission to supplement their petition to intervene. Specifically, they request that this motion be considered as part of the records in these cases and that they be allowed to file 1) the above-referred to documents, including correspondence concerning

the Central Florida unit, refusals to deal with Ft. Pierce, and possible settlement, and 2) the testimony of Dr. Gordon Taylor.

Respectfully submitted,

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October 26, 1977

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon the following persons:

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Dated at Washington, D.C. this 26th day of October, 1977.

Robert A. Jablon