

LAW OFFICES
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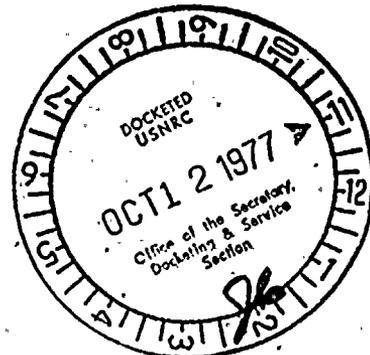
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RELATED CORRESPONDENCE

September 27, 1977



Matthew M. Childs, Esquire
STEEL HECTOR & DAVIS
Southeast First National
Bank Building
Miami, Florida 33131

In re: Florida Power & Light Company, FPC Docket Number E-9574; Florida Power & Light Company (South Dade Plant) NRC Docket Number P-636A; Florida Power & Light Company (Turkey Point Generating Units Number 3 and 4, St. Lucie Units Number 1 and 2), NRC Docket Numbers 50-250A, 50-251A, 50-335A and 50-389A.

Dear Mr. Childs:

Please find enclosed a revised version of my letter to you dated September 21, 1977, correcting certain errors in the original letter of September 21, 1977. These errors resulted from the press of time inasmuch as your representatives were demanding an immediate response, and communication between myself and Mr. Jablon was of necessity by telephone.

Sincerely yours,

JAMES W. VANCE
JAMES W. VANCE

JWV/sw
Enclosure

cc: Presiding Law Judge,
FPC Docket No. E-9574;
Atomic Safety & Licensing Board,
NRC Docket No. P-636-A,
50-250A, 50-251A, 50-335A
and 50-389A;
All parties to all above-referenced
proceedings.

LAW OFFICES
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September 21, 1977



Matthew M. Childs, Esquire
STEEL HECTOR & DAVIS
Southeast First National
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Miami, Florida 33131

In re: Florida Power & Light Company, FPC Docket Number E-9574;
Florida Power & Light Company (South Dade Plant) NRC
Docket Number P-636A; Florida Power & Light Company
(Turkey Point Generating Units Number 3 and 4, St. Lucie
Units Number 1 and 2), NRC Docket Numbers 50-250A, 50-
251A, 50-335A and 50-389A.

Dear Mr. Childs:

You have requested our Washington Attorney, Mr. Jablon, who has assisted me with this letter, that I write you concerning procedures under which you might obtain document review and retrieval, relating to matters at issue in the Federal Power Commission Vero Beach proceeding, FPC Docket Number E-9574. The Lake Worth Utilities Authority is prepared to cooperate with you in your obtaining such information.

As you are aware, Lake Worth and other cities (some through their respective utilities authorities) are involved in litigation with Florida Power & Light Company before the Nuclear Regulatory Commission in the above-referenced dockets. This litigation concerns economic rights which Lake Worth deems basic. In the South Dade proceeding, after weeks of negotiations, Florida Power & Light Company and the intervening cities, including ourselves, reached an agreement concerning both the scope of discovery and procedures for its implementation (see attachment A). At Florida Power & Light's request, NRC proceedings in South Dade were suspended. Subsequently, intervention was granted in St. Lucie II by the NRC Licensing Board established to rule on such petitions. With the support of Florida Power & Light, pre-trial proceedings have been postponed, pending resolution of Florida Power & Light's appeals of orders granting intervention.

Based upon the caption and statements in your September 4, 1977 letters, it appears that you are asserting the need for these documents in connection with the FPC Vero Beach proceeding to which Lake Worth is not a party. I am informed by our Washington counsel that in the Vero Beach proceeding you successfully urged expedited scheduling, thereby constraining the ability of other parties in that



Matthew M. Childs, Esquire

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case from obtaining adequate trial preparation. If the purpose of your documents request relates solely to this proceeding, I am surprised that you have not sought discovery against Lake Worth in this docket, where the FPC Presiding Law Judge can establish your need for documents and set fair procedures.

We are shocked that after successfully postponing the NRC proceedings and after limiting effectuation of discovery rights in the Vero Beach proceeding, attorneys for Florida Power & Light did not merely undertake additional discovery at this time (after the time designated for discovery in the Vero Beach proceeding has terminated), but would undertake a massive discovery without adequate notice to either Washington or Florida counsel, without giving any recognition to discovery procedures and rulings, either in the Vero Beach case for which discovery is ostensibly sought, or in the NRC cases in which Lake Worth's major interests are involved, and without any attempt to formulate your requests in a manner consistent with normal discovery procedures. In spite of this we are prepared to meet with you concerning your request. Lake Worth does not wish to delay or otherwise impede discovery to which you may be entitled. We do believe that Lake Worth is entitled -- particularly since issues concerning us are before two Federal tribunals -- to the protections of adequate notice, legal representation during discovery, and other procedures to minimize burden and possible injury. There should be at least some opportunity to consider mutual rights of discovery that Lake Worth may possess. Further, whatever your rights to documents may be under Florida law, the respect owed Federal tribunals would at least dictate a consideration of fair discovery procedures with reference to the NRC litigation and, I presume, the FPC litigation as well. Finally, I am assuming that your rights can be interpreted to ignore the context for which information is sought; reasonable procedures must be followed to protect the Authority and its ratepayers under Florida law.

1. NOTICE: Your discovery team arrived at Lake Worth Monday. No counsel received advance notice of this request. Indeed, since the Utilities Director was ill, he was not even informed of your request until the day following your arrival.

You are expected to know that claims of privilege may be raised by the Authority. For example, in the Vero Beach case, the Vero Beach city attorney asserted privilege regarding documents possessed by the city. Without objection from Florida Power & Light, the Presiding Law Judge sustained the objection (Tr. 474-475). Moreover, in the district court litigation between the Fuels Committee members and Florida Gas Transmission, since settled, your co-counsel, Vinson, and Elkins, agreed to two protective orders protecting certain documents from disclosure to Florida Power & Light or your firm. City of Fort Pierce, et al. v. FGT, SD Fla. Case No. 71-1494-Civ-CA; City of Tallahassee v. FGT, ND Fla. Case No. TCA 76-181.

I am especially concerned that by simply showing up and requesting documents, you would apparently foreclose my ability and that of Washington counsel to review documents for whatever claims of privilege the Authority may assert. This prevents me from even advising my clients of their rights to claim privilege, and even as to specific documents. Indeed, the manner of your approach is so wholly at odds with the spirit of openness and reasonable procedures contemplated by the Sunshine Laws as to raise serious questions of public policy concerning the enforcement of your request, which questions to my knowledge have never been decided by the courts. Absent adequate notice, there is no way I can protect the interest of Lake Worth and its residents, or even advise Lake Worth of its rights.

Further, regardless of whatever substantive rights Florida Power & Light may claim by not giving any advance notice, we could not even effectively assert correlative rights, including rights to obtain Florida Power & Light cooperation in assisting review of Florida Power & Light documents relating to the NRC proceedings. Such lack of notice appears to have constituted an attempt by you to cut off Lake Worth's ability to assert rights before Federal tribunals and create a fait accompli.

2. BURDEN: Further, it is now apparent that you contemplate what must be deemed a massive discovery effort. You are now requesting all files relating to the planning and operation of the Utilities Authority from 1960 to date. In the absence of any specific request defining the documents that you deem necessary, your broad and unexpected action would of necessity cause great disruption, burden and large expenditure of public funds. In sum, without regard to the ultimate merit of any request that you may have, there is little question that the manner in which they have been made creates excessive burdens compared to those which would result using reasonable procedures.

3. SCOPE: A most disturbing aspect of the way that you have handled this matter is that I cannot determine what information you seek. Had you made a specific request in advance, I could have reviewed documents responsive to your request for privilege and supplied you with those documents to which you were legally entitled.

Your September 14 letter suggests that you desire documents relating to proposed testimony in the Vero Beach case. However, yesterday you specifically requested a copy of the South Dade intervention file, negating any possible interpretation other than that your request is designed to circumvent NRC procedures. Subsequently, yesterday evening you sent an apparently superseding letter demanding all documents relating to the planning and operation of the Lake Worth electrical system since 1960. Absent great specificity it is almost impossible for me to assist you and at the same time attend to other Authority business. Moreover, I am perplexed that in your letter of late yesterday you appear to have substantially altered



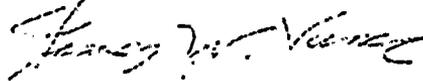
Matthew M. Childs, Esquire

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the terms of your request of the day before. In your letters received Monday, you specifically requested the services of Mr. Blaisdell (although in fact you simply appeared). These initial requests were referenced to Docket No. E-9574. Now you seem to base your broader request on Chapter 119.01 of the Florida Statutes without any reference to the docket. Whatever your rights to further documents under Chapter 119.01, you cite no basis under that law for obtaining the services of Mr. Blaisdell. It is apparent that you are trying to rehabilitate a request initially couched as a discovery request by now making a request for public records. However, in view of the vagueness of both requests, as well as discrepancies between them, I cannot determine the scope of what you want.

I am prepared to meet with you to cooperate in assisting your review of documents relating to the Vero Beach case, as you requested. I am prepared to consider any additional requests. Such meeting should include Washington counsel and attorneys from other cities similarly situated. I shall be prepared to discuss all of the factors listed above, including any rights that you may claim. In this way Lake Worth can cooperate to meet your needs in a reasonable manner contemplated by Chapter 119.01 of the Florida Statutes without interfering with Lake Worth's public needs, waiving its legal rights, or exposing its residents to public injury. Please telephone Robert Jablon of Spiegel & McDiarmid, or myself, to arrange for a mutually convenient time and place for such meeting..

Very truly yours,


JAMES W. VANCE

cc: Presiding Law Judge,
FPC Docket No. E-9574;
Atomic Safety & Licensing Board,
NRC Docket No. P-636A;
50-250A, 50-251A, 50-335A,
and 50-389A;
All parties to all above-referenced
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