

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

NRC PUBLIC DOCUMENT ROOM



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

APPLICANT'S MEMORANDUM CONCERNING  
DISCOVERY

Florida Power & Light Company (the "Applicant" or "Company") submits this memorandum pursuant to the Board's Memorandum and Order on Discovery dated February 9, 1979.

The Company Disputes Many of the Cities'  
Assertions of Fact

The Company disputes many of the assertions of fact contained in the intervenor Cities' Response to Applicant's Objections to Interrogatories and Motion for a Protective Order (filed December 22, 1978). The Cities' purported justification for their Request No. 7, to which the Board directed its attention in this regard, is but one example of the jumble of allegations the Cities have made which the Company believes are misleading and entirely unfounded. In addition, the Company disputes the relevance of many of the assertions contained in the Cities' pleading.

The Board has stated that the Cities' allegations were not accepted for any purpose except to determine whether a request might reasonably be expected to lead to admissible

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evidence. (Memorandum and Order, pp. 29-30.) In light of this and the other considerations cited by the Board, the Company believes that no useful purpose would be served by litigating its pervasive factual disputes with the Cities at this time and in this context. Accordingly, the Company does not move the Board to reconsider any of its rulings on discovery, even though some of them may have been influenced by allegations that the Company believes are untrue and will be disproven during the course of this proceeding.

The Board Should Clarify the Cutoff Date for Applicant's Discovery Requests to the Cities

Upon Applicant's objections to the time periods spanned by a number of the Joint Requests and Cities' Requests, the Board set 1965 as the general cutoff date for discovery. The Board did allow a number of specific requests that reached back before 1965, principally where it believed the requests related to the basic structure of the industry in the relevant market. (Memorandum and Order, p. 12.) In addition, the Board allowed certain requests where it appeared that responsive data could easily be produced. (Id., p. 13.)

The Cities did not interpose objections to any of Applicant's discovery requests on the basis of the period of time covered. Moreover, the Board has stated,

"In the trial of this litigation the parties relying upon evidence, either defensively or in their respective cases in chief, which pre-dates the 1965 cutoff date, must be prepared to allow the other parties to follow the evidentiary trail." (Memorandum and Order, pp. 8-9.)

Accordingly, Applicant moves the Board to clarify that the general 1965 cutoff date does not relieve the Cities of their obligation to respond to discovery requests concerning periods prior to 1965 that deal with the same general subjects as to which the Board allowed pre-1965 discovery of the Applicant. Set forth in the Appendix is a table containing a list of those general subjects, the interrogatories and document requests of the Applicant that deal with such subjects, references to comparable Joint Requests or Cities' Requests allowed by the Board to extend back before 1965, and the exact time period authorized by the Board with respect to each general subject. Applicant submits that the same cutoff dates should apply to all discovery requests dealing with similar subjects, no matter which party propounded them.

Discovery Concerning Natural Gas in This Proceeding

The Staff, the Department of Justice and the Applicant have discussed Joint Requests Nos. 79-82, which generally deal with Applicant's natural gas supplies. All three parties accept the principles set forth on pages 32 to 35 of the Board's Memorandum and Order on Discovery.

Applicant withdraws its objections to Joint Requests Nos. 79-82 on the understanding that the Staff and the Department of Justice share its view that while matters which are relevant to issues in this proceeding should not be excluded from discovery in this proceeding simply because they also relate to issues

pending before another forum, matters not otherwise relevant to issues in this proceeding should not be subject to discovery in this proceeding merely because they relate to issues arising under the Natural Gas Act. These three parties also share the view that discovery in this proceeding should not be undertaken for the principal purpose of obtaining material to be used in another forum.

\* \* \*

Applicant is unwilling to withdraw its objections to Cities' Requests Nos. 57-59 and 72-73, which also purport to deal with Applicant's natural gas supplies. Applicant believes that all information of conceivable relevance to issues properly before the Board on this general topic will be produced in response to Joint Requests No. 79-82. It submits that the additional materials sought by the Cities in Requests Nos. 57-59 and 72-73 should not be discoverable here merely because they relate to possible violations of the Natural Gas Act -- which is their obvious focus -- and that the Cities' apparent effort to utilize the NRC discovery process to obtain information for use before other federal agencies should not be countenanced.

\* \* \*

The Cities are attempting to make the inadequacy of their existing natural gas supplies an issue in this proceeding (Cities' Response to Applicant's Objections, dated December 22, 1978, pp. 18-28). They have alleged that the

Company contributed to their present difficulties, intentionally or at least under circumstances in which the Company should have known the consequences that would befall the Cities.

To the contrary, the Company contends that the Cities' current shortages of natural gas are due entirely to their own lack of foresight. At the time the Company negotiated long-term guaranteed gas supply contracts, the Cities opted for cheaper, interruptable gas supply contracts.

The Company understands that the studies and negotiations which led to execution of the Cities' interruptable gas contracts occurred during the mid-1950's and early 1960's. Accordingly, if this matter is to become an issue in the proceeding, the Cities should be required to respond to Applicant's Requests Nos. 136, 142, 142A, 142B, 142C, 142D, 142E and 313-314, which concern the Cities' gas contracts, for a period that begins earlier than the general 1965 cutoff date. Applicant submits that a 1950 cutoff as to these discovery requests would be appropriate.

#### Conclusion

For the foregoing reasons, Applicant submits that the Board should 1) establish cutoff dates for Applicant's requests to the Cities that are comparable to the cutoff dates it ruled should govern requests directed to the Applicant;

2) sustain Applicant's objections to Cities' Requests Nos. 57-59 and 72-73; and 3) set a 1950 cutoff date for Applicant's requests to the Cities concerning their natural gas supplies.

Respectfully submitted,

  
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Daniel M. Gribbon  
Herbert Dym  
Joanne B. Grossman  
Covington & Burling  
888 Sixteenth Street, N.W.  
Washington, D.C. 20006  
(202) 452-6000

J.A. Bouknight, Jr.  
E. Gregory Barnes  
Lowenstein, Newman, Reis & Axelrad  
1025 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 862-8400

John E. Mathews, Jr.  
Jack W. Shaw, Jr.  
Mathews, Osborne, Ehrlich, McNatt  
Gobelman & Cobb  
1500 American Heritage Life Building  
11 East Forsyth Street  
Jacksonville, Florida 32202  
(904) 354-0624

Attorneys for  
Florida Power & Light Company

March 2, 1979

APPENDIX

Comparable Pre-1965 Time Periods For  
Discovery Requests

<u>General Subject</u>	<u>Applicant's Requests Nos.</u>	<u>Comparable Requests Allowed By Board</u>	<u>Time Period</u>
Territorial Allocations	196-206, 218 392, 418.	JR 29, CR 12, 10, 16, 31	1950 <u>*/</u>
Franchise Acquisitions	168, 176, 185-193, 397	JR 30, 48	1950 <u>**/</u>
Development Nuclear Capacity; Participation in Nuclear Units	101-104, 112, 121	JR 26, CR 22	1955 <u>***/</u>
Coordination; Pooling; Bulk Power Supply	13, 35, 36A, 79-80, 82-4, 90-1, 373-4, 398, 419	JR 8, 24, 25, 33, 39, 41, CR 9	1955 <u>****/</u>
Wholesale Policy; Competition	60, 67-72A, 162-4, 173-4, 194, 388-9, 407, 409-12	CR 5, 6	1955
Easily Available Information; Peak Load Projections	30, 40-1 346	JR 2, 12	1955 <u>*****/</u>

\*/ 1955 for Cities' Request Nos. 10 and 31.

\*\*/ 1955 for Joint Request No. 48.

\*\*\*/ 1960 for Cities' Request No. 22.

\*\*\*\*/ 1960 for JR 39.

\*\*\*\*\*/ 1960 for JR 12.

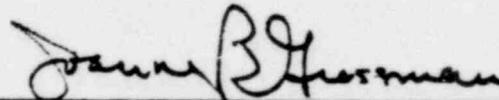
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the following:  
Applicant's Memorandum Concerning Discovery have been served  
on the persons shown on the attached list by hand delivery \*  
or deposit in the United States mail, properly stamped and  
addressed on March 2, 1979.



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Joanne B. Grossman  
Covington & Burling  
888 Sixteenth Street, N.W.  
Washington, D.C. 20006

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SERVICE LIST

Ivan W. Smith, Esq. Chairman, Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	* Melvin G. Berger, Esq. Mildred L. Calhoun, Esq. Department of Justice P.O. Box 14141 Washington, D.C. 20044
Valentine B. Deale 1001 Connecticut Ave., N.W. Washington, D.C. 20036	* Robert A. Jablon, Esq. 2600 Virginia Avenue, N.W. Washington, D.C. 20037
Robert M. Lazo, Esq. Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Jerome Saltzman Chief, Antitrust & Indemnity Group U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Docketing and Service Section Office of the Secretary U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Mr. Robert E. Bathen R.W. Beck & Associates Post Office Box 6817 Orlando, Florida 32803
* Lee Scott Dewey, Esq. Frederick D. Chanania, Esq. David J. Evans, Esq. Office of Executive Legal Director U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Dr. John W. Wilson Wilson & Associates 2600 Virginia Avenue, N.W. Washington, D.C. 20037