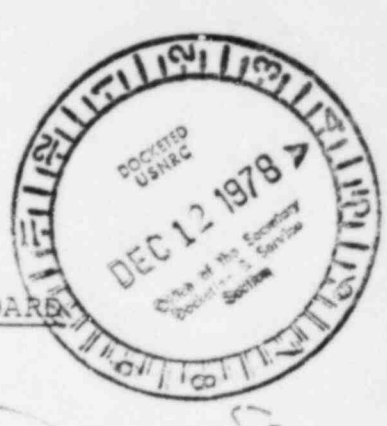

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

50-389
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12/11/78

APPLICANT'S OBJECTIONS TO DISCOVERY REQUESTS AND MOTION FOR A PROTECTIVE ORDER

In accordance with the Board's Order of November 14, 1978, Florida Power & Light Company (the "Applicant" or "Company") hereby submits its objections to the interrogatories and document requests contained in the First Joint Request by the NRC staff, the Department of Justice and the Intervenors (the "Joint Request") and in the Intervenors' separate Initial Request (the "Cities' Request"). In connection herewith, Applicant also moves for entry of a protective order.

As is demonstrated below, several of the discovery requests fail to conform to established standards of discovery.*/ These requests would require unreasonably burdensome

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*/ Since the filing of discovery requests by each of the parties, counsel have conferred in an attempt to resolve difficulties and accommodate each party's legitimate needs for discovery. Agreement has been reached to narrow the scope of or defer a number of requests (see the Memorandum of Understanding among the parties, being filed with the Board today), and Applicant now objects only to those interrogatories and requests as to which agreement has not been possible and the response to which would impose substantial and unreasonable search burdens or invade its protected interests.

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searches for information of dubious relevance, at best, to what should be the central issue in this proceeding -- the existing and prospective competitive implications of activities under the license for Unit No. 2 of the St. Lucie Plant. The many charges that Intervenors have leveled against the Company in other forums -- many of which involve "ancient history" -- and the Company's replies and countercharges, have no place in this proceeding to the extent that they relate to other matters, and such charges cannot properly form the basis of discovery requests here.

In brief, Applicant objects to (a) the scope of the time period covered by the requests, to the extent it reaches back before 1972 -- the year in which the Company first gave consideration to construction of Unit No. 2 of the St. Lucie Plant as presently constituted -- on the basis of irrelevance and burden; (b) discovery requests concerning its activities regarding proposed legislation, as such activities are entitled to protection from discovery under the Noerr-Pennington line of authorities as recently amplified by the Supreme Court; and (c) requests that are plainly overbroad and seek large quantities of irrelevant material, and the response to which would impose substantial and unreasonable search burdens. In addition, Applicant respectfully requests that the Board enter a protective order limiting the uses to which confidential and proprietary information or

trade secrets produced by any party may be put and the persons to whom they may be disclosed. Applicant would be forced to object to discovery of much of the information called for in the Joint Request and Cities' Request absent entry of such an order.

I. The Time Period Covered By Many Requests Is Overbroad; Responses Would be Irrelevant And Impose Substantial Search Burdens.

Although the prefatory paragraphs of the Joint Request and Cities' Request set 1965 and 1970, respectively, as the beginning of the relevant periods for production, 14 of the 89 items of discovery sought in the Joint Request*/ and 21 of the 75 items sought in the Cities' Request**/ relate to periods that begin well before those dates. All told, 14 requests seek discovery of events as far back as 1950 -- some 28 years ago -- and 11 more reach back to 1955 -- some 23 years ago. Applicant objects to all requests that seek information for time periods prior to January 1, 1972, as 1972 is the year in which the Company first gave consideration to construction of Unit No. 2 of the St. Lucie Plant as presently constituted. It submits that any requests concerning an

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*/ Joint Request Nos. 24, 25, 29, 30, 33, 41, 56 and 76 seek information created as early as 1950; Joint Request Nos. 2, 8, 26 and 48 as early as 1955; and Joint Request Nos. 12 and 39 as early as 1960.

**/ Cities' Request Nos. 5, 6, 12, 16, 17 and 20 reach as far back as 1950; Cities' Request Nos. 9, 10, 14, 21, 24, 31 and 40 as far back as 1955; Cities' Request Nos. 8, 11(a), 22, 39 and 42 as far back as 1960; and Cities' Request Nos. 58, 60 and 72 as far back as 1965.

earlier period should be tendered to the Board in the form of a separate motion specifying the relevance and good cause for each such request. The alternative is a substantial and unreasonable search burden on the Company and inquiry into what will inevitably be largely irrelevant matters.

Two years ago, in the South Dade proceeding, Florida Power & Light Company (South Dade Nuclear Units), Docket P-636A, the Board determined that a 1965 cutoff date was appropriate for discovery concerning issues and allegations substantially similar to those raised here. Id., Second Prehearing Conference Order (February 23, 1977). (The Company had urged a 1970 cutoff date.) The instant proceeding, instituted by the Intervenors (comprising largely the same intervening parties involved in the South Dade proceeding), raises few if any issues or allegations not raised in the South Dade proceeding, and none of them concerns conduct of the Applicant that was unknown at the time of the prior proceeding.*/ Thus, this is not a case of newly

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*/ Counsel for the parties have conferred concerning the addition in this proceeding of several Issues in Controversy to those agreed upon in the South Dade proceeding. None of these appears to rest on new factual allegations.

discovered facts.*/

Applicant performed a substantial amount of work in responding partially to the requests directed to it in the South Dade proceeding. Much of this work, conducted in reliance on the Board's South Dade ruling, would have to be repeated if an earlier cutoff date were adopted in this proceeding.**/ Moreover, a general file search conducted

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*/ Indeed, the only intervening events with any conceivable significance to this proceeding have been the Fifth Circuit's reversal in part of a jury verdict in favor of the Company in litigation commenced by one of the intervenors in 1968, Gainesville Utilities Dept. v. Florida Power & Light Co., 573 F.2d 292 (5th Cir. 1978), cert. denied, ___U.S. ___, 47 U.S.L.W. 3329 (November 14, 1978), and issuance of an initial decision by an Atomic Safety and Licensing Board in Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), LRP-77-24, 5 NRC 804 (1977), containing references to the Southeastern Electric Reliability Council (SERC) which have prompted certain parties to wish to explore FPL's relationship with SERC. Certainly Gainesville's allegations were well-known by 1977, when the Board ruled on the South Dade discovery requests. The SERC allegations are no different in kind than those previously raised, and, in any event, very few of the requests to which Applicant objects on the basis of the time period covered involve such allegations.

**/ In fact, in 14 instances requests have been redrawn to reach back earlier than cutoff dates originally set by the requesting parties themselves in their South Dade discovery requests. For example, Cities' Request Nos. 5(c) and 17 originally sought information as far back as 1960. They now seek the same information as far back as 1950. See also Cities' Request Nos. 6 and 20 and Joint Request Nos. 12, 24, 25, 26, 29, 30, 33, 41, 56 and 76. This is so despite the Board's subsequent ruling in South Dade that 1965 was the appropriate cutoff date for discovery.

in response to requests which extend back to the dates proposed by the Intervenors, the Staff and the Department would be a massive task. All this would be expensive and time consuming.

No justification for such an effort is apparent. The burden of such a search would not be offset by the probative value of any documents produced. The very opposite would result -- documents of little if any probative weight would be revealed.

Section 105c of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2135(c), requires that the Board's findings in a proceeding of this nature relate either to an existing or a prospective situation inconsistent with the antitrust laws which would be maintained or created by activities under the license.*/ Whether a situation inconsistent with some provision of the antitrust laws might have existed twenty, thirty or even five years ago is not an issue in this proceeding. When requests reach back more than a quarter of a century, their relevance simply cannot be assumed.

Nevertheless, Cities' Request No. 20, for example, seeks documents since 1950 pertaining to each wholesale

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*/ In pertinent part, section 105c provides that the Commission

> "shall make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws . . . ."

electric customer of the Company or municipality with which the Company is interconnected. Cities' Request No. 6 seeks all documents since 1950 concerning the Company's position on furnishing bulk power to new or existing municipal or cooperative systems. Cities' Request No. 12 seeks all documents since 1950 relating to wholesale or retail service area allocations. But, documents authored more than a quarter of a century ago are of dubious relevance at best to issues in this proceeding.*/

The effort to expand the relevant time period is unlikely to produce a fuller picture of the competitive situation. It becomes difficult to develop fully the facts about particular events which took place far back in time. Memories dim and necessary witnesses are unavailable.

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*/ This proceeding is not a damage action between private parties on account of past practices, and discovery in this proceeding should not be governed by rules applicable in the district courts in such cases. Moreover, even courts in such retrospective looking cases have refused to allow open-ended periods for discovery. See, e.g., Austin Theatre, Inc. v. Warner Bros. Pictures, Inc., 30 F.R.D. 156 (S.D.N.Y. 1958) (discovery limited to period beginning ten years prior to filing of amended complaint, on the ground that "it would be unreasonable to give plaintiff a virtually unlimited license to rove at will through the past"). Even in actions commenced in the district courts by the United States, a similar rule has been applied. See, e.g., United States v. Grinnell, 30 F.R.D. 358 (D.R.I. 1962) (general discovery limited to period beginning ten years prior to filing of action).

In spite of these obvious facts, Cities' Request No. 17 seeks all documents concerning three subjects -- competitive aspects of the Company's relationship with other electric utilities, interconnection agreements and coordination -- that are "located in the files of those individuals . . . now . . . or since 1 January 1950 . . . responsible" for analyzing or forecasting with respect to such subjects. Joint Request No. 8 seeks the name of each person who served on a Company committee relating to bulk power supply since January 1, 1955. But, only a very few of the people who comprised Applicant's management even in the late 1960's are now employed by the Company. The company's chief executive officer during the 1950's and 1960's is deceased. Most other executives of that period have retired or are deceased. At best, then, what will emerge even if such vast, expensive and time-consuming discovery is allowed is an unreliable picture sketched only by those fortunate enough to have survived. Needless to say, these problems are not peculiar to the Applicant.

Accordingly, Applicant respectfully submits that discovery and evidence in this proceeding should be limited to the period beginning January 1, 1972. Applicant recognizes that in some isolated situations there may be good cause for an exception to such a rule, but such exceptions should be clearly delineated and held to a minimum. The burden should be on the requesting party to set forth the reasons for each

such exception. This is the practice adopted by the Board in South Dade*/ and recommended by the Manual for Complex Litigation for comparable litigation in the federal courts. Manual for Complex Litigation, Part I, § 4.30.

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*/ The Board in South Dade provided that requests for exceptions to the discovery cutoff date could be made, but only to the extent that information sought respecting events or situations prior to the relevant period related "substantially" to events or situations occurring during the relevant period.

II. Applicant's Legislative Activities Are Protected from Discovery.

Applicant objects to the production of documents relating to its activities with respect to legislative proposals. As those activities cannot be the basis of a finding of inconsistency with the antitrust laws, such materials are not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Furthermore, such production would have a chilling effect on Applicant's exercise of its First Amendment right to petition the government. This objection relates to Joint Request No. 58 and to Cities' Request Nos. 14, 20A, 21(e), 21(f), 29(h), and 34.*/

When Applicant appears before political bodies or offers its views on proposed legislation, it does so under aegis of the First Amendment. See First National Bank of Boston v. Bellotti, __ U.S. __ (1978), 46 U.S.L.W. 4371 (April 25, 1978). There can be no doubt that the antitrust laws must give way in face of such authority.

> "The right of petition is one of the freedoms protected by the Bill of Rights, and we cannot, of course, lightly impute to Congress an intent to invade these freedoms . . .."**/

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*/ The text of these requests is set out in Attachment I.

**/ Eastern Railroad Pres. Conf. v. Noerr Motor Frgt. Co., 365 U.S. 127, 138 (1961).

In Eastern Railroad Pres. Conf. v. Noerr Motor Freight,Inc., 365 U.S. 127 (1961), the Supreme Court declared that a publicity campaign by a group of railroad companies aimed at influencing legislation favorable to their interests and harmful to competing trucking interests could not constitute a violation of the Sherman Act:

> "To hold . . . that the people cannot freely inform the government of their wishes would impute to the Sherman Act a purpose to regulate, not business activity, but political activity, a purpose which would have no basis whatever in the legislative history of that Act." Id. at 137.

The Noerr rule was reinforced in United Mine Workers of America v. Pennington, 381 U.S. 657 (1965), in which the Court stated:

> "Joint efforts to influence public officials do not violate the antitrust laws even though intended to eliminate competition." Id. at 136.

Thus, documents relating to Applicant's concern for legislative affairs and publication of its views on such issues cannot form the basis of a violation of the antitrust laws. Accordingly, such documents are not relevant evidence themselves and cannot lead to the discovery of relevant evidence, which means that efforts to obtain them fail to meet even the minimum standard for discovery. See Rules of Practice, § 2.740(b)(1).

What is worse, discovery of documents related to Applicant's efforts in public and political arenas could not

help but produce a "chilling" effect on its future willingness to speak out and to participate in legislative and administrative decision-making processes. Congress could not have intended such a result in enacting the antitrust laws. Eastern Railroad Pres. Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127, 137 (1961).

The prospect of such a chilling effect upon the exercise of constitutionally protected rights has been sufficient reason to deny discovery and disclosure of records in other areas of law. See NAACP v. Alabama, 357 U.S. 449, 460-62 (1958) (Supreme Court denies Alabama's efforts to obtain NAACP's membership lists, as disclosure would abridge the members' First Amendment rights); Baker v. F & F Investment, 470 F.2d 778 (2d Cir. 1972), cert. denied, 411 U.S. 966 (1973) (although there is no absolute privilege for journalists, their First Amendment rights are entitled to protection and disclosure of confidential news sources will not be ordered where such matters are not at the heart of the moving party's case); cf. Bredice v. Doctors Hospital, Inc., 50 F.R.D. 249, op. adhered to, 51 F.R.D. 187 (D.D.C. 1970), aff'd, 479 F.2d 920 (D.C. Cir. 1973) (minutes and reports of defendant hospital's staff meetings concerning death of plaintiff's decedent not subject to discovery in malpractice action without showing of exceptional necessity, in view of strong public interest in encouraging such meetings, which are designed to evaluate clinical work and improve care).

NRC Licensing Boards have split in their decisions on discovery of documents relating to political activities,*/ and Applicant recognizes that the Board declined to protect such Company documents from discovery in the South Dade proceeding. But Applicant respectfully submits that authorities that have ordered production in the past are not conclusive here.

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*/ (a) Order on Objections to Interrogatories and Document Requests, In the Matter of The Toledo Edison Company and the Cleveland Electric Illuminating Company (Davis-Besse Nuclear Power Station, Unit 1), DKT. Nos. 50-346A, 50-441A (October 11, 1974), p.6: "The objection is sustained on the basis that CEI's activities, if any, in the areas of legislation or constitutional revision do not possess the requisite degree of relevance to these proceedings. Assuming that CEI did undertake legislative activities directed to the enactment of statutes which would affect the competitive position of the new City, these activities nonetheless would not constitute antitrust violations in and of themselves."

(b) Order Ruling on Applicant's Objections to Document Requests . . . In the Matter of Consumers Power Company (Midland Plant, Units 1 and 2), DKT. Nos. 50-329A, 50-330A (Nov. 28, 1972), pp. 2-3:

"Applicant next objects to requests for documents relating to Applicant's political activities. The Department argues that under the guise of appropriate political activities, the Applicant may have practiced a mere sham to engage in forbidden activities. Whether or not Applicant has engaged in unfair practices through political maneuvers is a matter not relevant to the issues in controversy; more particularly, issues pertaining to coordination . . .. The objection is sustained."

(c) Prehearing Order Number Two of Atomic Safety and Licensing Board, In the Matter of Duke Power Company (Oconee Units, 1, 2 & 3; McGuire Units 1 & 2), DKT. Nos. 50-269A, et al. (Nov. 27, 1972). Objections sustained "without prejudice to a renewal thereof on the showing of prerequisites required by law."

Fn. cont'd

For one thing, the decisions ordering disclosure of documents concerning political activities were reached prior to the Bellotti decision. In South Date, for example, Intervenors strenuously argued that the Company's rights were somehow limited because it was a "public corporation" that could not assert rights other than those of its shareholders. Florida Cities' Response to Applicant's Objections to Interrogatories (October 15, 1976), pp. 13-14. Such a position is no longer tenable in light of Bellotti.

For another, where Licensing Boards have allowed discovery, the principal reason given has been the possibility of finding a "sham" or improper purpose to political activities, which could be an exception to the Noerr-Pennington doctrine.*/ There is no allegation of such a sham in this case. In such circumstances, it would be more appropriate for the Board -- if it were disposed to consider granting discovery of these legislative materials at all -- to defer the matter

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Fn. cont'd

(d) Memorandum and Order with Respect to Objections on Discovery Requests and Interrogatories, In the Matter of Louisiana Power & Light Co., (Waterford, Unit 3), DKT. No. 50-382A, (April 19, 1974), pp. 6-10: "In overruling the objection, the Board does not foreclose any argument Applicant may wish to make at the time of hearing with respect to the protection to be afforded these activities. The fact of the activity, if any, is, however, subject to discovery."

*/ The "sham" exception applies to situations in which efforts ostensibly aimed at influencing governmental action are in fact "a mere sham to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor . . ." The Noerr Court was very careful to emphasize that a "genuine effort to influence legislation" is not a sham. 365 U.S. at 144.

until the Intervenors or others had made a prima facie showing that a sham exception may exist.*/

In any event, the inquiries concerning Applicant's legislative activities are so broadly drawn that they cannot fairly be defended as seeking evidence of sham or improper purpose.**/ Instead, Applicant has been served with a host of broad-guage requests which evidence no effort to exclude protected activities from disclosure. See, e.g., Cities' Request No. 14, which seeks all documents since 1955 "relating to . . . means employed by the Company to elicit support for its views in . . . any municipal or state election in Florida." At a minimum, when exercises of First Amendment rights are involved, the requesting parties and the Board have a heavy responsibility to consider the relevance of the matters sought to be discovered to the matters under inquiry and the necessity of the discovery to a proper adjudication. Cf. Baker v. F & F Investment, 470 F.2d 788 (2d Cir. 1972), cert. denied, 411 U.S. 966 (1973); Bredice v. Doctors Hospital, Inc., 50 F.R.D. 249, op. adhered to, 51 F.R.D. 187 (D.D.C. 1970), aff'd, 479 F.2d 920 (D.C. Cir. 1973).

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*/ Wright and Miller advise that,

> "If the court cannot clearly determine whether a privilege exists, it may postpone decision of the question until the factual picture in which the privilege is claimed has been clearly developed."

Wright and Miller, Federal Practice and Procedure, § 2016, p. 126 (1970 ed.).

**/ As discussed below, Applicant also objects to these requests on the basis of overbreadth.

III. Applicant Should not be Required to Respond to Overbroad Requests That Seek Irrelevant Material and Would Impose Substantial Search Burdens.

Consistent with the Commission's Rules, requests for discovery must be limited to matters relevant to the subject matter involved in the proceeding or reasonably calculated to lead to the discovery of admissible evidence. Rules of Practice, § 2.740(b)(1). Especially in complex antitrust cases, such as the instant proceeding, the scope of discovery requests must be carefully scrutinized lest complainants seek to utilize the forum merely to discover information otherwise unavailable about companies with which they do business. "In no event should parties be permitted to use discovery procedures to conduct a fishing expedition . . . ." 10 C.F.R., Part 2, Appendix A, § IV(a), 37 Fed. Reg. 15,139.

Fishing expeditions are not objectionable merely in the abstract. They impose substantial search burdens, which are expensive and time consuming. Just to respond to the interrogatories and document requests properly put by the Joint Request and the Cities' Request, Applicant will have to undertake a massive file search. There can be no justification for expanding that task to obtain materials that will not aid in determining the existing or prospective competitive implications of activities under the license for Unit No. 2 of the St. Lucie Plant.

Set forth below are objections to the requests for discovery which Applicant contends are impermissible under established authorities.*/

Cities' Request No. 7

Applicant objects to producing any materials in addition to rate design studies in response to this request, on the basis of their irrelevance. The additional materials sought concern the Company's decision to make certain filings before the Federal Energy Regulatory Commission ("FERC") and all documents concerning these filings. Besides being privileged,**/ these materials have no conceivable relevance to the particular matters at issue in this proceeding. Ample opportunity is available to discover all the relevant facts about what the Company has done and what the Company is doing with respect to sales of wholesale power, the rates and terms for wholesale service, and any proposals to modify or terminate such service -- the general subject matters of the referenced FERC dockets. See Joint Request Nos. 22, 56, 57, 76, 83(a) and 85, and Cities' Request Nos. 5, 6, 20, 31, 39, 40, 44 and 45. Thus Cities' Request No. 7 is, as to relevant materials, plainly duplicative. Beyond that, it is an invitation to a fishing expedition for information that may be helpful to the

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*/ The text of these requests is set out in Attachment II.

**/ Pursuant to the Memorandum of Understanding among the parties, Applicant does not urge its objections based on privilege at this time.

Intervenors, if at all, in pending proceedings before another federal agency in which one or more of their number may be parties. But that is insufficient to make the materials relevant to matters in this proceeding.

Cities' Request Nos. 14, 24, 26 and 34

Applicant objects to these discovery requests because their subject matter is not limited to facts and issues relevant to this proceeding. For example, Cities' Request No. 14 seeks documents relating to the Company's efforts to present its views in "any municipal or state election in Florida." Even assuming that discovery of such political materials is permissible at all, which Applicant disputes, see Part II supra, this request shows no attempt to limit the inquiry even to a broad issue such as bulk power supply. In South Dade, the Board held that a request pertaining to legislation "possibly affecting competition between electric utilities in the State of Florida" was overbroad because "it could embrace all of Applicant's considerations and activities with respect to legislation."*/ A fortiori, Cities' Request No. 14, which contains no limitation on subject matter at all, is improper.

Cities' Request No. 24 seeks information with respect to all "grants or contracts" received by the Company from governmental agencies, and Cities' Request No. 26 seeks information concerning Company contractors that have received or will receive substantial sums for work on Company nuclear

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*/ Florida Power & Light Company (South Dade Nuclear Units), Docket P-636A, Second Prehearing Conference Order (February 23, 1977), p. 4.

units. Applicant understands that Intervenors contend that nuclear power was developed at government expense; in fact, the Commission has recognized as much. But even if an inquiry as to continuing government bounty therefore may be relevant to issues in this proceeding, which is far from clear, these requests are not so narrowly focused and thus are objectionable on the basis of overbreadth.

Cities' Request No. 34 is broad beyond reason. As a regulated electric utility, Applicant must request "favorable action," usually at several levels of government, before commencing construction or operation of any major facility and before modifying in any respect its rates or terms and conditions of service. In addition, in the routine conduct of its business, Applicant is constantly involved in zoning, property tax and similar matters with scores of local government entities. As well, it must periodically seek federal tax rulings for normal corporate transactions, such as an employee stock option plan. To describe, even "briefly," all of such matters would be a formidable task. Such a task should not be required to be undertaken where the result will not be limited to matters relevant to the issues in controversy in this proceeding.*/

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*/ Applicant is prepared to provide, in response to Cities' Request No. 34 (as modified by the Memorandum of Understanding), a general statement broadly describing the kinds of government "action" which Applicant requests on a regular basis (e.g., licenses for facilities, rate charges, zoning variances, state

Fn. cont'd

Cities' Request Nos. 17, 18, 21, 23, 57(c) and 57(d)

Applicant objects to these requests on the basis of overbreadth and burden. Cities' Request No. 17 would require the Company to search the files of persons at all levels of its structure who had any "responsibility" in three areas -- competitive aspects of the Company's relationship with other electric utilities, interconnection and coordination -- for any documents relating to those areas. These are broad subjects in the context of the business of an electric utility, and many persons employed by Applicant have some measure of "responsibility" for one or more of them. Few of these employees, however, have the power to plan or make policy with respect to these subjects. Applicant submits that the request appropriately could be redrafted to limit the search to the files of individuals with policy-planning or policy-making responsibilities for these subjects. The alternative is to impose a substantial search burden on Applicant, with only partially relevant results.

Fn. cont'd

site approvals). Moreover, Applicant has no objection to providing reasonably detailed descriptions of transactions (such as pollution control financings) that resulted in a sharing by Applicant of the benefits of a tax exemption or capital subsidy available to a governmental body. This kind of response would appear to meet any reasonable purpose that Cities' Request No. 34 may have.

Applicant objects to Cities' Request No. 18 to the extent that it seeks information concerning "any . . . involvement" of the named officials with respect to the three matters set forth -- any of the Intervenors, the Company's construction of nuclear units, and Company policy relating to power supply services. As drawn, the request would appear to require Applicant to list, on a daily or even hourly basis, the activities and meetings of these officials. That is because the three subjects take in very important operational aspects of the business of an electric utility such as the Company -- aspects as to which the named officials might well have some "involvement" on a daily basis. If Intervenors seek such day to day information, they appropriately might secure it by deposition rather than such a burdensome request.

Applicant objects to Cities' Request No. 21 to the extent that it seeks "all documents," in addition to the specific categories of high-level Company communications enumerated in the introductory paragraph of the request, that relate to categories (a)-(g) of the request. Unless such a limitation is imposed, this request would take in virtually every document in the Company's posession concerning its electric utility operations. For example, it would take in routine communications to Company operating personnel regarding implementation of an interconnection agreement. That would plainly be overbroad. Applicant submits that the request appropriately

could be redrafted to cover high-level Company documents concerning the enumerated subjects, such as minutes of meetings of the Company's Board of Directors and executive committee, documents prepared in advance of such meetings, and letters and memoranda to or from Company officers.

As presently drafted, Cities' Request Nos. 23(b) and 23(c) seek any documents containing the words "antitrust" or "competition" that were prepared by or for a named Company official, with no further regard for their subject matter. The requests are in no way limited even to such a broad issue as competition between the Company and municipal electric systems. Accordingly, many such documents would have no conceivable bearing on issues in the present proceeding. The Company should not be put to the task of conducting a dragnet -- of reviewing thousands of pages line by line to see if certain words appear -- to obtain some documents that may be relevant and some that plainly are not.

Cities' Request Nos. 57(c) and 57(d), in addition to their general irrelevance (see p. 25 infra), would require the Company to interview 14 named individuals (No. 57(c)) and all other Company officials and employees (No. 57(d)) to determine when and how such individuals first learned of the FGT-Amoco agreement. Even assuming the relevance of such a general inquiry, the necessary facts could more simply be obtained merely by asking when and how the Company first learned of the FGT-Amoco agreement. When and how 14 or more of its officers or employees gained this information is duplicative and irrelevant, and would require a burdensome investigation.

Cities' Request Nos. 27, 35q and 64

Cities' Request No. 27 seeks copies of the Company's uranium enrichment contracts; Cities' Request No. 35q seeks copies of documents relating to a Company contract for uranium produced as a by-product of phosphate processing; and Cities' Request No. 64 seeks information about damages to and repairs of the Company's existing nuclear units, as well as information concerning "waste storage." Applicant objects to these requests on the basis of their complete irrelevance to the issues before the Board in this proceeding.

Cities' Request Nos. 65 and 66

Applicant objects to these requests on the basis of irrelevance. The document described in Cities' Request No. 65

is an offer made by the Intervenors to settle this proceeding. The document referred to in Cities' Request No. 66 is a similar settlement offer. Both requests seek all Company documents relating to these proposals and all documents relating to matters contained in them. It is a fundamental evidentiary principle that settlement offers are not admissible evidence. See Rule 408, Federal Rules of Evidence and cf. Rule 68, Federal Rules of Civil Procedure. A fortiori, what a party does in considering an offer of settlement would not be admissible evidence. Nor could such materials lead to the discovery of admissible evidence.

There are two bases for this principle. The first is that nothing could do more to deter settlements of litigation -- which are in the public interest -- than public scrutiny of the settlement process. Weinstein & Berger, Weinstein's Evidence, § 408[02], p. 408-14. The second is that offers of settlement and their consideration are irrelevant on the merits, as they often are undertaken to obtain "peace" and cannot be construed as admissions of liability. 4 Wigmore, Evidence § 1061, pp. 28-29 (3d ed. 1940).

The federal courts have denied discovery of papers and related materials concerning negotiations and other proceedings leading to consummation of a settlement. See, e.g., Ayers v. Pastime Amusement Co., 240 F. Supp. 811 (E.D.S.C. 1965); Rohlfing v. Cat's Paw Rubber Co., Inc., 20 F.R. Serv.

541 (N.D.Ill. 1954). A similar rule should be applied here.

Joint Requests Nos. 79-82 and Cities' Request Nos. 57-59 and 72-73

Applicant objects to these requests on the grounds that they are overly broad and extend to subjects which are not relevant to this proceeding. Applicant recognizes the relevance to certain of the issues in this proceeding of facts and understandings of the parties with respect to fuel supply (e.g., the availability and price of alternative fuels to all parties). That subject is covered thoroughly by Joint Request Nos. 54 ("State Company's understanding of past, present and anticipated availability and cost from 1976 to 1990 of natural gas, coal, and oil to FP&L and other Florida utilities.") and 55 ("... all reports and summaries ... which refer or pertain to comparisons of generation alternatives considered by Company with respect to the availability and cost of alternative fuels ..."), and in even more detail in Cities' Request Nos. 11a and 61.

The objected to requests, on the other hand, appear to pertain very specifically to proceedings which are pending before the Federal Energy Regulatory Commission (Florida Gas

Transmission Company, et al., IN 78-2) and in a United States Court of Appeals on appeal of orders of that agency (Sebring Utilities Commission v. FPC, Fifth Cir. No. 77-2972). These proceedings concern, respectively, a possible violation of the Natural Gas Act and whether certain natural gas supplies for which Applicant has contracted are subject to curtailment. Neither issue is within the scope of this proceeding. The objected to requests cannot lead to the discovery of relevant evidence which would not be elicited by the above-mentioned fuel supply requests, to which Applicant makes no objection. To permit the questions pending in court and before another federal agency to be reexamined in the discovery phase of this proceeding would substantially lengthen and complicate the discovery process without leading to the development of any evidence which could affect the outcome of this proceeding.

IV. A Protective Order Should Be Entered To Govern The Disclosure And Use Of Discovered Materials.

Many of the documents and much of the information requested of Applicant comprise commercial and technical information of a highly confidential sort -- the kind of information that is routinely afforded protection from public disclosure and uses non-related to the proceeding at hand. Such protection is available in Commission proceedings (Rules of Practice, § 2.740(c)(6); Consumers Power Co. (Midland Plant, Units 1 and 2), 6 AEC 322 (ASLB 1973)) and in federal court actions (Covey Oil Co. v. Continental Oil Co., 340 F.2d 933 (10th Cir. 1965), cert. denied, 380 U.S. 964 (1965) (documents made available only to counsel and independent certified public accountants and only for the purposes of the case; use for business or competitive purposes prohibited); Tosa Chrysler Plymouth, Inc. v. Chrysler Motors Corp., 55 F.R.D. 41 (D.C. Wisc. 1972); United States v. National Steel Corp., 26 F.R.D. 603 (D.C. Tex. 1960)), and is recommended for complex litigation, such as antitrust cases, in the Manual for Complex Litigation (see, e.g., Part II, § 2.50). Applicant submits that similar protection should be afforded here.

The need for an appropriate protective order is apparent.*/ For example, Cities' Request No. 13 and Joint

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*/ Filed herewith as Attachment III is a form for such a protective order.

Request No. 52 seek disclosure of estimating and escalation factors used by the Company with respect to its physical facilities and operating expenses; Cities' Request Nos. 27 and 35q seek copies of important Company contracts with key suppliers and contractors; Cities' Request Nos. 42, 49 and 52-56 and Joint Request No. 23 seek information about the Company's existing industrial customers and efforts to acquire new ones; and Joint Request No. 27 seek documents which may well pertain to pending negotiations.

These requests, together with others in the Cities' Request and the Joint Request, will require the Company to disclose sensitive operating and financial information -- information which is not required to be made public by any of the state or federal agencies with regulatory jurisdiction over the Company. Accordingly, the basis for entry of a protective order is demonstrated.

In addition, the Intervenors describe themselves as competitors of the Company for wholesale and retail power sales, Joint Petition of Florida Cities' to Intervene (August 6, 1976), p. 12, and in fact negotiate with the Company regularly over terms and conditions for various services. It would be an abuse of Commission process for confidential information furnished by the Applicant in good faith in discovery in this proceeding to be available to such persons for purposes unrelated to this proceeding.

In this regard, Applicant objects to serving on individuals other than outside counsel of record any confidential documents, information or other material in response to discovery requests in this proceeding. Such service would be inconsistent with the protection Applicant seeks -- see sections 5 and 6 of Attachment I. As well, it could be prejudicial to Applicant.*/

In Consumers Power, the Appeal Board held that in passing on requests for protective orders, the Board should consider the injury to the producing party that would result from unrestricted use of produced materials and the extent to which restrictions on access to information would adversely affect the ability of the discovering party "to make meaningful use of [such information] for the purposes for which its discovery was sought and allowed." Consumers Power Co. (Midland Plant, Units 1 and 2), 6 AEC 322 (ASLB 1973). Here, on the one hand, the injury to the Company that would result from free use of its confidential information by its self-described competitors and daily bargaining opponents is apparent, and, on the other hand, the procedures to be imposed by the proposed protective order would not

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*/ Both the Joint Request and the Cities' Request direct that service be made on Mr. Robert E. Bathen, of R. W. Beck & Associates. Mr. Bathen has actively participated, and continues to participate, in negotiation and business dealings with Applicant on behalf of several of the Intervenors. In such circumstances, Applicant does not believe that Mr. Bathen could qualify as an "independent" expert within the intendment of section 6 of the proposed protective order. Accordingly, confidential materials of Applicant should not be provided to him when they are served on counsel.

adversely affect in any way the use of discovered materials by Intervenors' outside counsel or independent experts in preparation for this proceeding. Only illegitimate use of the Company's confidential data would be proscribed. */

Filed herewith as Attachment III is a form for a protective order. Applicant submits that such an order would present a workable method to ensure that full discovery is provided to all parties, that ample opportunity for trial preparation is available to all parties, and that the legitimate expectations of each party respecting the confidentiality of sensitive materials and the integrity of the discovery process are protected. The proposed order covers pre-hearing proceedings only; with respect to the hearing, it merely provides that suitable procedures would be set by further orders of the Board.

* * *

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*/ See Milsen v. Southland Corp., 15 F.R. Serv. 2d 1268 (N.D. Ill. 1972) (ruling that the purpose of discovery is "to enable the parties to prepare for trial with respect to their own bona fide existing claims," the court entered a protective order limiting plaintiff's use of defendant's documents to the pending action).

For the foregoing reasons, Applicant requests that the Board limit the time period for discovery and evidence to the period beginning January 1, 1972, strike the interrogatories and document requests objected to in Parts II and III, and enter a protective order and other appropriate orders to govern the disclosure and use of confidential materials produced in this proceeding.

Respectfully submitted,

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Attorneys for
Florida Power & Light Company

Dated: December 11, 1978

- Attachment I -

DISCOVERY REQUESTS TO WHICH APPLICANT OBJECTS ON THE BASIS OF ITS FIRST AMENDMENT RIGHTS

Set forth below is the text of the items of discovery sought in the Joint Request and the Cities' Request (as modified, where appropriate, by the Memorandum of Understanding among the parties) to which Applicant objects on the basis of its First Amendment Rights.

Joint Request No. 58.

Furnish copies of all documents since January 1, 1965 relating to Company's consideration of any activities with respect to the following proposed state or federal legislation (including local ordinances and consitutional amendments) whether or not enacted:

(1) Documents relating to legislation which could hinder or prevent utilities from building their own electric generating facilities, from obtaining financing, or from doing business with and coordinating activities (such as entering into joint ventures) with other electric utilities.

(2) Documents pertaining to possible legislation designed to alter the tax status or regulatory status of municipally owned or cooperatively-owned utilities in the state of Florida.

(3) Documents related to legislation affecting the price, supply, or availability of natural gas.

(4) Documents related to legislation pertaining to the conversion of utility plants to alternative fuels (e.g., coal).

(5) Documents related to Company's legislative activities with respect to the Department of Energy Organization Act.

(6) Documents related to Company's legislative activities with respect to Powerplant and Industrial Fuel Use Act of 1978, the Energy Tax Act of 1978, the Public Utility Regulatory Policies Act of 1978, the National Energy Conservation Policy Act, and the Energy Tax Act of 1978.

(7) Documents related to the Florida "Grid" legislation.
(8) Documents related to Company's legislative activities relating to nuclear power plant licensing.
(9) Documents related to Company's legislative efforts to define or alter federal, state or local jurisdiction over electric utilities.

Cities' Request No. 14.

Furnish copies of documents since 1955 (including records of expenditures) relating to advertisements, public relations campaigns, or other means employed by Company to elicit support for its views or otherwise relating to any municipal or state election in Florida.

Cities' Request No. 20A.

Furnish copies of documents since 1950 pertaining to each wholesale electric customer of Company or municipality with which Company is interconnected (excluding billing data), including but not limited to, documents relating to communications to or from, or internal documents concerning any taxpayers' or citizens' committee or any similar group or newspaper, or concerning any action taken or proposed by such committee, group or newspaper which were intended to, or would tend towards, (a) inducing customers to purchase electricity from FP&L rather than from some other electric utility, (b) informing or advising customers and/or citizens of the desirbility and merit of creating or continuing with an electric system owned and/or operated by FP&L as opposed to allowing or permitting another electric utility to provide electric service within the municipal corporate limits and (c) inducing electric customers to increase, reduce or modify in any other way the pattern of their electric consumption.

Cities' Request No. 21.

Furnish copies of all documents since 1955, including minutes of meetings of the Board of Directors and the executive committee of Company, documents prepared in advance of meetings (e.g., agenda, memoranda in summary of critique of plans, costs, proposals or status of negotiations), and letters and memoranda to or from Company officers relating to . . .

(e) legislation and constitutional revision directly related to the ability of electric utilities to own, finance, or construct facilities and to sell electricity;

(f) elections in any municipality operating an electric distribution system or proposing to do so . . .

Cities' Request No. 29.

Please supply copies of all documents relating to reports and/or other information provided to the Board of Directors (including documents relating to discussions with or among any Board members) concerning each of the following topics . . .

(h) legislation and/or constitutional revision affecting the ability, authority and/or obligation of electric utilities to own, finance or construct facilities or to sell electricity.

Cities' Request No. 34.

State whether Company has attempted to obtain for itself (a) subsidies, (b) exemptions, (c) waivers, (d) loans or construction funds, (e) or other favorable action by any agency, political subdivision or instrumentality of federal, state or local governments, benefiting Company, including but not limited to actions relating to (1) generating projects and (2) transmission line construction or relocation. Answer for each item; briefly describe Company's attempts relating to each item, including whether Company has been successful.

State whether Company has attempted to obtain for itself exemptions, waivers or other favorable action by any agency, political subdivision or instrumentality of federal, state or local governments, benefiting Company, relating to:

(3) air or water pollution control;
(4) tax rulings;
(5) tax legislation or regulations thereunder;
(6) federal or state regulatory legislation pertaining to electric utilities, including but not limited to amendments to the Federal Power Act, the Atomic Energy Act and Florida statutes, including but not limited to:
  (i) bills affecting the jurisdiction or organization of any governmental agency charged with licensing, supervising, or regulating Company's facilities, rates, or services,
  (ii) bills affecting the ability of municipal or cooperative systems to acquire or own facilities, rates or services.

Briefly describe Company's attempts relating to each item and state whether Company has been successful.

Furnish copies of documents relating to Item (6) above.

Furnish copies of tax requests and rulings (state or federal) and official statements concerning air and water pollution control.

- Attachment II -

DISCOVERY REQUESTS TO WHICH APPLICANT OBJECTS ON THE BASIS OF THEIR OVER-BREADTH AND IRRELEVANCE AND THE SUB-STANTIAL SEARCH BURDEN THEY WOULD IMPOSE

Set forth below is the text of the items of discovery sought in the Joint Request and the Cities' Request (as modified, where appropriate, by the Memorandum of Understanding among the parties) to which Applicant objects on the basis of their overbreadth and irrelevance and the substantial search burden they would impose.

Cities' Request No. 7.

Furnish copies of all rate design studies, documents relating to the decision to file, and all correspondence, memoranda and studies regarding Company's filings in Federal Energy Regulatory Commission Docket Nos. ER78-19 and ER 78-81, et al., ER78-282, ER78-343, ER78-395, and ER78-400. Furnish copies of any wholesale rate design studies conducted by or for Company since January 1, 1970.

Cities' Request No. 14.

Furnish copies of documents since 1955 (including records of expenditures) relating to advertisements, public relations campaigns, or other means employed by Company to elicit support for its views or otherwise relating to any municipal or state election in Florida.

Cities' Request No. 17.

Furnish copies of documents relating to the following subjects, which are located in the files of those individuals who by job or title are now, or have been since 1 January 1950, responsible for preparing analyses of, forecasting the effects of or who have otherwise been in positions of responsibility for such subjects:

a. competitive aspects of Company's relationship with other electric utilities serving, or able to serve, at wholesale or retail in areas overlapping, or in close proximity to, Company's service area;

b. interconnection arrangements with other electric utilities;
c. coordinated system operation, generation and transmission facilities expansion and pooling arrangements involving other electric utilities.

Cities' Request No. 18.

Describe in detail the present and/or past functions of R. G. Mulholland, Tracy Danese, and R. J. Gardner. If their functions have changed, describe each function separately and identify the time period during which each official was responsible for or engaged in such function. Identify specifically any responsibility or involvement each has had concerning: (1) any of the intervenors, individually or collectively; (2) the construction or operation of nuclear units; or (3) corporate policy relating to provision of power supply services, including rates, terms or conditions for the period January 1, 1970 to present.

Cities' Request No. 21.

Furnish copies of all documents since 1955, including minutes of meetings of the Board of Directors and the executive committee of Company, documents prepared in advance of meetings (e.g., agenda, memoranda in summary of critique of plans, costs, proposals or status of negotiations), and letters and memoranda to or from Company officers relating to:

(a) interconnection plans, proposals or agreements with other electric utilities;
(b) recommendations, formulation of policy, development of alternative plans, seeking of opinions, and decisions concerning beginning, continuing, delaying, or abandoning expansions of or additions to generation capacity or transmission system, whether capacity or energy is owned, used, or shared on any basis by Company;
(c) competition at wholesale and retail;
(d) acquisitions by Company of electric utility properties and proposals for such acquisition or invitations to purchase electric utility properties;
(e) legislation and constitutional revision directly related to the ability of electric utilities to own, finance, or construct facilities and to sell electricity;
(f) elections in any municipality operating an electric distribution system or proposing to do so;

(g) consideration of the request of Florida Cities to participate, through ownership of an entitlement share or otherwise, in the present or planned units.

Cities' Request No. 23.

In Florida Power & Light Co., FERC Docket No. ER78-19, et al., (a) FP&L's Mr. Orin Pearson testified (tr. page 1090) that Mr. Robert Gardner (FP&L Vice President, Strategic Planning), is "the corporate individual primarily concerned with the antitrust environment," and (b) Mr. Gardner acknowledged that "competition" is one of the "principal areas of the business environment" with which his department is concerned.

Please provide copies of (a) all documents describing or relating to the delegation of responsibility to Mr. Gardner for "competition" and/or the "antitrust environment," (b) all documents prepared by Mr. Gardner or by those under his supervision relating to "competition" or "antitrust," or (c) all documents relating to communications (written or oral) between Mr. Gardner (and/or individuals under his supervision) and any other FP&L official or agent relating to "antitrust" and/or "competition".

Cities' Request No. 24.

During the period January 1, 1955 to the present has FP&L received any grants or contracts from Federal or State agencies? If so, please (a) identify the sponsoring agency and the date the grant or contract was awarded; (b) state the sums received by FP&L, and (c) summarize the nature of the grant or contract and identify the period during which work or other activities undertaken pursuant to such grant or contract occurred.

Cities' Request No. 26.

Please identify contractors that have received (or shall receive) sums totalling more than $5,000,000 for work on any of FP&L's planned or operating nuclear units.

Cities' Request No. 27.

Please provide copies of FP&L's contracts for uranium enrichment.

Cities' Request No. 34.

State whether Company has attempted to obtain for itself (a) subsidies, (b) exemptions, (c) waivers, (d) loans or construction funds, (e) or other favorable action by any agency, political subdivision or instrumentality of federal, state or local governments, benefiting Company, including but not limited to actions relating to (1) generating projects and (2) transmission line construction or relocation. Answer for each item; briefly describe Company's attempts relating to each item, including whether Company has been successful.

State whether Company has attempted to obtain for itself exemptions, waivers or other favorable action by any agency, political subdivision or instrumentality of federal, state or local governments, benefiting Company, relating to:

(3) air or water pollution control;
(4) tax rulings;
(5) tax legislation or regulations thereunder;
(6) federal or state regulatory legislation pertaining to electric utilities, including but not limited to amendments to the Federal Power Act, the Atomic Energy Act and Florida statutes, including but not limited to:
    (i) bills affecting the jurisdiction or organization of any governmental agency charged with licensing, supervising, or regulating Company's facilities, rates, or services,
    (ii) bills affecting the ability of municipal or cooperative systems to acquire or own facilities, rates or services.

Briefly describe Company's attempts relating to each item and state whether Company has been successful.

Furnish copies of documents relating to Item (6) above.

Furnish copies of tax requests and rulings (state or federal) and official statements concerning air and water pollution control.

Cities' Request No. 35.

Furnish copies of documents which provide the following data concerning each presently existing generating unit on Company's system and such estimated data with respect to each unit under construction or planned. . .

g. copy of Company's agreement with International Mineral Chemical Corporation for uranium material produced as a by-product of phosphate processing, and copies of all documents relating to FP&L's decision to enter into such agreement.

Cities' Request No. 57.

a. Please list all exchanges (including meetings, telephone contacts or other communications) relating to the making, negotiation, agreement, approval or modification (proposed, actual or potential) of Company's T-3 contract with Florida Gas Transmission Company ("FGT") or FGT's warranty contract with Amoco production Company (or related, predecessor or successor companies thereto). State the date and location of all such exchanges; identify all those present and describe their purpose and all matters discussed during them.

b. Furnish copies of all documents relating to such exchanges (excluding invoices and billing data). If the documents provided fully reveal the substance of such exchanges, further description thereof need not be supplied. If the substance of such an exchange is not fully revealed in the documents, please describe it and identify the source of the information provided.

c. With regard to each of the individuals identified below, please (1) state the date at which he obtained initial knowledge of any facet of the agreement between FGT and Amoco Production Company reflected in the document attached hereto as Appendix C; (2) describe the circumstances in which such knowledge was obtained; and (3) provide copies of all related documents and identify any nondocumentary source for Company's response:

Mr. Robert H. Fite	Mr. E. L. Bivens
Mr. Marshall McDonald	Mr. R. J. Gardner
Mr. A. C. Fullerton	Mr. Tracey Danese
Mr. William Preston	Mr. Ben H. Fuqua
Mr. Joseph P. Taravella	Mr. R. Mulholland
Mr. E. A. Adamat	Mr. J. J. Hudiburg
Mr. H. L. Allen	Mr. F. E. Autrey

d. Did any official or employee of FP&L (other than those identified above) have knowledge of any facet of the agreement attached as Appendix C?

If so, please (1) identify the individual(s), (2) state the date and circumstances of initial knowledge, and (3) provide copies of all related documents and identify any nondocumentary sources for Company's response.

Cities' Request No. 58.

Please furnish copies of all documents since 1965 relating to the scheduling or use of natural gas under Company's "T-3" contract or pursuant to any other gas supply agreement between FP&L and Amoco Production Company (or related, successor or predecessor companies), including the amounts, rates and fluctuations of takes.

Cities' Request No. 59.

Please provide copies of all documents relating to the March 22, 1967 letter attached hereto as Appendix C, or to any arrangements or matters referred to in that letter.

Cities' Request No. 64.

Provide detailed information and documentation concerning reported damages to Turkey Point Plant, Units No. 3 and No. 4 and major costs associated with repairs or additions to Turkey Point Units No. 3 and No. 4 and St. Lucie Unit No. 1, including waste storage. State when these units will be off-line for repairs and/or additions.

Cities' Request No. 65.

With regard to the letter attached hereto as Appendix D, please (a) provide all documents relating to the Company's consideration of the letter (b) provide all documents, from the date of FP&L's receipt of the letter to the present, relating to the matters contained in the letter.

Cities' Request No. 66.

With regard to the letter attached hereto as Appendix E, please (a) provide all documents relating to the Company's consideration of the letter (b) provide all documents, from the date of FP&L's receipt of the letter to the present, relating to the matters contained in the letter.

Cities' Request No. 72.

Please furnish copies of all documents since 1965 relating to:

(a) gas supply or availability of natural gas to or of Amoco Production Company ("Amoco"), Austral Oil Company ("Austral"), or Florida Gas Transmission Company ("FGT") (or related, successor or predecessor companies thereof);
(b) the willingness or desire of Amoco, Austral or FGT to sell gas;
(c) the amounts of gas availabe to Company from Amoco, Austral or FGT;
(d) the form of arrangement, terms or conditions under which Amoco, Austral or FGT was willing to sell to, transport, or otherwise provide gas for Company.

Cities' Request No. 73.

Please furnish copies of all documents relating to any sale of natural gas by Amoco Production Company, including but not limited to the warranty gas contract between Amoco and Austral and FGT. Include all documents relating to gas supply availability under such contract, and the price, terms, conditions, operations or scheduling of deliveries under such contract.

Joint Request No. 79.

(a) Exluding invoices, billing data, and furnish all documents relating to the Company's purchase of natural gas including but not limited to contracts with Florida Gas Transmission and its gas suppliers, all correspondence rerelating to gas supply and availability, warranty contracts, price by years since service began delivery under the T-2 and T-3 contracts, monthly invoices for gas supply in each of the months beginning in October, 1973.
(b) Name all persons who had any responsibility relating to the making, negotiation, agreement, approval, continuation or modification (proposed, actual or potential) of the Company's gas transportation arrangements including related production with either Florida Gas Transmission Company or Amoco Production Company (or any predecessors, successors, affiliates, assigns or related companies). State the responsibilities over such matters for each person named.

Joint Request No. 80.

Furnish copies of all documents relating to the MMBtu purchase contract dated March 12, 1965, between Company (Buyer), Amoco Production Company, et al. (i.e., Pan American Petroleum Corp.) (Seller) and Florida Gas Transmission Company (Pipeline), including all possible alternative contracts, related contracts, negotiations resulting in or affecting such contracts and operating agreements, and including all natural gas allocations, curtailments and deliveries.

Joint Request No. 81.

Furnish all copies of all documents relating to Florida Gas Transmission Company's application in Federal Power Commission Docket No. CP65-393 to expand its pipeline facilities, and any alternate or subsequent expansion of Florida Gas Transmission Company facilities relating to the transportation or delivery of natural gas to Company.

Joint Request No. 82.

Furnish copies of all documents relating to the possible, planned or agreed to expansion, extension, substitution, curtailment, modification, or termination of the "T-1" and "T-3" natural gas contracts between Company and Florida Gas Transmission Company (and/or related producer contracts), including disposition of natural gas for other than Company use.

- Attachment III -
Form of Protective Order

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

PROTECTIVE ORDER

It appearing to the Board that preparations for the hearing in this proceeding will require the discovery of documents, information and other materials claimed by one or more of the parties making production to contain proprietary information, confidential business information and/or trade secrets, not known or available to the public, and that the ends of justice will be served by the entry of an order setting forth procedures for and rules governing the production, copying and use of such documents, information and other materials, IT IS THEREFORE ORDERED:

1. This order shall govern all answers, documents and other discovery materials produced by the parties in response to interrogatories, requests for document production or requests for admissions, that are designated confidential in accordance with the procedures set forth in this order, as well as any record of testimony given at any deposition in this proceeding (including exhibits thereto) that are designated confidential in accordance with the procedures set forth in this order.

2. Whenever, in the opinion of any party responding to any discovery request, a response would reveal information which such party (hereinafter the "designating party" or the "producing party") has reason to believe is not known or available to the public and which the designating party believes to constitute proprietary information, confidential business information and/or trade secrets, the designating party shall have the right to designate such information as confidential.

3. The designation shall be made by marking the first page of a document in which such confidential information is contained by a suitable marking, indicating the confidentiality of the information therein, prior to the transmission of a physical copy thereof to any other parties (hereinafter the "receiving parties"). The confidentiality designation shall, whenever possible, take the form of the following designation applied by rubber stamp or other appropriate means to the document:

"CONFIDENTIAL"
or
"IN ACCORDANCE WITH THE PROTECTIVE ORDER OF THE BOARD, THIS MATERIAL SHALL BE TREATED AS CONFIDENTIAL."

Transcripts or portions thereof may be designated confidential before testimony is recorded or by prompt designation after the transcript is received by the witness or his counsel.

4. Documents and information covered by this order need not be filed with the Board; however, all transcripts of depositions, exhibits, answers to interrogatories and other documents and materials, including briefs, filed with the Board that comprise or contain material marked as confidential, or information taken therefrom, shall be filed in sealed envelopes or other appropriately sealed containers on which shall be endorsed the title of this proceeding, an indication of the nature of the contents of such sealed envelope or other container, the word "CONFIDENTIAL" and a statement substantially in the following form: "This envelope containing documents which are filed by [name of party] is not to be opened nor the contents thereof to be displayed, revealed or made public, except under the direction of the Board." No sealed documents which have been filed with the Board may be opened without an order from the Board specifically identifying the person or persons who shall have access to the sealed file, and specifically designating which portions of the sealed file shall be revealed to them.

5. The right of access to all confidential documents, information and materials produced for inspection or which are received by counsel for any party pursuant to discovery in this proceeding shall in the first instance be limited to outside counsel of record of each party, and their legal associates and regularly employed office staff; provided that, with respect

to the federal government parties to this proceeding, staff attorneys and their regularly employed consultants shall not be prohibited by this section 5 from access to any documents, information or materials designated confidential in accordance with this order. No copies of confidential documents or materials shall be made except by or on behalf of attorneys for named parties.

6. At the request of the receiving party's outside counsel, confidential information or copies thereof may, on a need to know basis, be disclosed to such party's independent experts whose technical advice and consultations are being or will be used in connection with this proceeding, provided that, prior to the time of such disclosure, counsel for the receiving party shall inform counsel for the designating party of his intent to reveal the information, the identity of the information to be revealed and to whom it will be revealed. Whereupon, counsel for the designating party shall have seven business days to object to such disclosure. After a timely objection, if the parties cannot resolve the dispute on an informal basis, it may be submitted to the Board for resolution by motion or otherwise.

7. An attorney making disclosure of confidential information to any person other than those described in section 5, whether by consent, Board order, stipulation or the procedures of section 6, shall first require the person to whom disclosure is to be made to execute a written confidentiality

agreement, in the form annexed hereto as Exhibit A.

8. No person shall make public disclosure of any confidential documents, information or material obtained pursuant to discovery in this proceeding.

9. A government party shall promptly notify the designating party if a request for any confidential documents produced by such party is received from a member of the public, pursuant to the Freedom of Information Act or otherwise. The government party shall keep the designating party apprised, on a timely basis, of all administrative and court proceedings arising in connection with any such request.

10. No person shall make use of any confidential information obtained pursuant to discovery in this proceeding other than for purposes of this proceeding.

11. Any specified part or parts of the restrictions imposed by sections 1 through 10 of this order may be terminated at any time by a written stipulation by counsel for each of the parties to this proceeding or by an order of the Board for good cause shown.

12. No party shall be obligated to challenge the propriety of a confidential designation, and a failure to do so in this proceeding shall not preclude a subsequent attack on the propriety of such designation.

13. In the event that the receiving party disagrees with the identification by the designating party of

any documents, information or material as confidential, then the parties first will try to resolve such dispute on an informal basis before presenting the dispute to the Board by motion or otherwise.

14. Nothing in the foregoing provisions of this protective order shall be deemed to preclude any party from seeking and obtaining, on an appropriate showing, such additional protection with respect to the confidentiality of documents, information or other discovery materials, as that party may deem appropriate.

15. This order shall apply solely to the prehearing proceedings in this proceeding. Treatment of confidential information during the hearing in this proceeding and thereafter and the disposition of such information shall be subject to further orders of the Board.

16. Termination of this proceeding shall not terminate these limitations on disclosure of confidential information.

BY ORDER OF THE BOARD.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

_____

Dated:

EXHIBIT A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

AGREEMENT CONCERNING DOCUMENTS COVERED BY
A PROTECTIVE ORDER DATED _____

_____, who maintains his (her) address at _____ _____ and is employed by _____ _____, hereby acknowledges that he (she) has read the Protective Order dated _____ in the above-captioned proceeding, understands the terms thereof, and agrees to be bound by such terms.

_____ _____
Date Signature

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket No. 50-389A
(St. Lucie Plant, Unit No. 2)	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the following:

Applicant's Objections to Discovery Requests and
Motion for a Protective Order

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 December 11, 1978.

J.A. Bouknight, Jr.
Lowenstein, Newman, Reis, Axelrad
& Toll
1025 Connecticut Avenue, N.W.
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Atomic Safety and Licensing
Appeal Board Panel
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Washington, D.C. 20555

Jerome E. Sharfman, Esquire
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Richard S. Salzman, Esquire
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Ivan W. Smith, Esquire
Chairman, Atomic Safety and
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