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 50-251 Turkey Point Plant, Unit 4, Florida Power and Light C 05000251
 50-335 St. Lucie Plant, Unit 1, Florida Power & Light Co. 05000335
 50-389 St. Lucie Plant, Unit 2, Florida Power & Light Co. 05000389

AUTH.NAME AUTHOR AFFILIATION
 SHEA,K.H. Florida Power & Light Co.
 SHEA,K.H. Newman & Holtzinger
 RECIP.NAME RECIPIENT AFFILIATION

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SUBJECT: Forwards application for exemption from certain requirements of 10CFR50.54(W).

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NEWMAN & HOLTZINGER, P.C.

1615 L STREET, N.W.

WASHINGTON, D.C. 20036

202-955-6600

JACK R. NEWMAN
JOHN E. HOLTZINGER, JR.
HAROLD F. REIS
MAURICE AXELRAD
J. A. BOUKNIGHT, JR.
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JOSEPH E. STUBBS
JADE ALICE EATON
BRIAN R. GISH
COUNSEL

WILLIAM E. BAER, JR.
DOUGLAS L. BERESFORD
PATRICIA A. COMELLA*
DAVID B. DRYSDALE*
JANET E. B. ECKER
JILL E. GRANT
JONATHAN W. GREENBAUM
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ROBERT H. SOLOMON
CHARLES C. THEBAUD, JR.
NANCY A. WHITE

ROBERT LOWENSTEIN
HERBERT B. COHN
OF COUNSEL

*NOT ADMITTED IN D.C.

August 3, 1988

U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

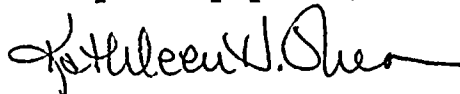
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Gentlemen:

Re: Turkey Point Units 3 and 4
Docket Nos. 50-250 and 50-251
St. Lucie Units 1 and 2
Docket Nos. 50-335 and 50-389

On behalf of Florida Power & Light Company, we submit the enclosed Application for Exemption from Certain Requirements of 10 C.F.R. § 50.54(w). Our check in the amount of \$150.00 in payment of the application fee is enclosed.

Very truly yours,



Kathleen H. Shea

KHS:pg

Enclosures

cc: U.S. Nuclear Regulatory Commission, Region II
Senior Resident Inspector, USNRC, Turkey Point
Senior Resident Inspector, USNRC, St. Lucie

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of)	
FLORIDA POWER & LIGHT)	
COMPANY application for)	Docket No. 50-250, 50-251,
exemption from certain)	50-335, and 50-389
requirements of 10 C.F.R.)	
\$50.54(w))	
_____)	

APPLICATION FOR EXEMPTION
FROM CERTAIN REQUIREMENTS OF
10 CFR \$50.54(w)

Pursuant to 10 C.F.R. \$50.12, Florida Power & Light Company ("FPL") hereby applies for exemption from certain requirements of 10 C.F.R. \$50.54(w) (the "Property Insurance Rule"), as described below. In support this application, FPL states as follows:

1. FPL holds NRC power reactor operating licenses for four nuclear plants (Turkey Point Units 3 and 4, and St. Lucie Units 1 and 2). Accordingly, it is subject to the requirements of the Property Insurance Rule and is an "interested person" under 10 C.F.R. \$50.12(a). FPL is entitled, pursuant to that section, to apply to the NRC for an exemption from the requirements of 10 C.F.R. Part 50, including the Property Insurance Rule.^{1/}

^{1/} Additionally, FPL has joined with the Edison Electric Institute ("EEI"), the Nuclear Utility Management and Resources Council and certain other power reactor licensees in a Petition for Rulemaking filed on June 21, 1988, which requests that this rule be suspended and ultimately amended.

2. The Property Insurance Rule currently requires licensees such as FPL to maintain \$1.06 billion of onsite property damage insurance. Sections (w)(3) and w(4) also require, respectively, that the insurance have a priority for paying the costs of placing a reactor in a safe and stable condition and decontaminating it, and that proceeds subject to this priority be payable to a separate trust. Under Section (w)(5)(i)", these decontamination priority and trust requirements must be reflected in the licensees' property insurance policies by October 4, 1988.

3. FPL does not believe that insurance is presently available from responsible insurers that would comply with the trust requirements of the Property Insurance Rule (including the identification of an acceptable, willing trustee). FPL has no assurances that any such insurance will become available by October 4, 1988. FPL's NEIL-II policy currently contains a decontamination liability priority, and FPL understands that NML and ANI, its other onsite property damage insurers, are willing to incorporate a similar priority into their policies. However, neither NML nor ANI has yet amended its policies to incorporate a priority. If they do so before October 4, 1988, FPL will not need an exemption from the decontamination priority requirement; otherwise, FPL will need the exemption until the priority is incorporated. Accordingly, compliance with the trustee requirement of the Property Insurance Rule will be impossible for FPL, and compliance with the decontamination priority

requirement will be impossible unless and until its property insurers all amend their policies to incorporate a priority. Requiring FPL to comply with Section (w)(5)(i) of the Property Insurance Rule in the face of this unavailability of insurance policies containing the necessary terms and conditions would clearly be an "undue hardship . . . significantly in excess of those contemplated when the regulation was adopted" 10 C.F.R. §50.12(a)(2)(iii) (one of the six bases for exemption).

4. FPL further submits that the trustee requirement of the Property Insurance Rule is unnecessary, unworkable, ineffective, and will likely be counterproductive. In support of this contention, FPL strongly concurs with, and incorporates herein by reference, the Argument in Support of Petition contained in the Petition For Rulemaking filed by the Edison Electric Institute, the Nuclear Utility Management and Resources Council and certain power reactor licensees, including FPL, on June 21, 1988. In brief summary, FPL shares the concerns expressed in the Petition that the trustee arrangement will not be effective to shelter funds from bondholders, is unnecessary to ensure clean up by bankrupt utilities, and may not be feasible because of the unavailability of prospective trustees. In view of these problems, application of the trust requirement to FPL "would not serve the underlying purpose of the rule [and] is not necessary to achieve the underlying purpose of the rule." 10 C.F.R. §50.12(a)(2)(ii) (another basis for exemption).

5. FPL also notes that, when the NRC adopted the requirement that insurance proceeds subject to the decontamination priority be payable to a "separate trust," it obviously assumed that an entity acceptable to the NRC could be found to serve as trustee. Thus far at least, that assumption is incorrect. As explained in the June 21, 1988, Petition for Rulemaking referred to above, there are serious questions of trustee availability which apparently were not considered by the Commission when it adopted the rule. One major problem is that any institution that serves as bond trustee for the securities of an NRC licensee would likely have a conflict of interest if it were asked to serve as the independent trustee for that licensee under the Property Insurance Rule. There may well be an institutional conflict which would make an entity unacceptable if it serves as bond trustee for any utility. In addition, several potential corporate trustees have indicated that they would accept only ministerial functions, declining to exercise judgment in making payments. They may also require indemnification against any potential liability. The financial incentive for serving as special trustee is not clear. Normally a trustee is paid a fee for managing the assets of the trust but this trust would be an unfunded, standby arrangement with no assets to manage until such time as an accident occurred. Even then, the trust would serve basically as a conduit and hold assets only briefly. The trust requirement,

therefore, rests on factual assumptions which are invalid, and there accordingly exist "other material circumstance(s) not considered when the regulation was adopted which justify grant of the exemption requested." The public interest will not be served by a requirement which cannot in fact be met. 10 C.F.R. § 50.12(a)(2)(vi) (another basis for exemption).

6. The Petition for Rulemaking requests that, pending completion of rulemaking, the NRC suspend or otherwise relieve licensees from compliance with the trustee requirement of the Property Insurance Rule. FPL strongly supports that request, as well as the proposed rule amendments contained in the Petition. In the event the NRC determines that it can grant the relief requested in the Petition on an industry-wide basis before October 4, 1988, this application will become moot, and FPL would have no objection to the NRC dismissing the application or consolidating it with the Petition. However, if the NRC determines that it cannot grant timely, relief on an industry-wide basis, FPL respectfully requests that the NRC grant FPL an exemption from the Property Insurance Rule, as specifically set forth in Paragraph 7 below.

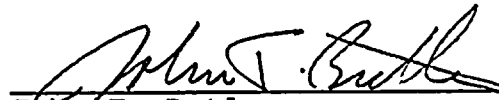
7. On the basis of the foregoing, FPL requests the NRC to exempt it from the trustee requirement of the Property Insurance Rule, and further requests exemption from the

decontamination priority requirement unless and until there are generally available markets for onsite property insurance policies containing appropriate decontamination priorities and totalling \$1.06 billion or more in coverage limits.

Dated: August 1, 1988

Respectfully submitted,

Co-Counsel:
Kathleen H. Shea
Newman & Holtzinger
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036
Telephone: (202) 955-6600


John T. Butler
Steel Hector & Davis
4000 Southeast Financial
Center
Miami, Florida 33131-2398
Telephone: (305) 577-2939