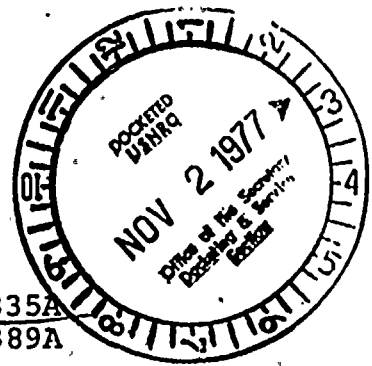


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

11/1/77



In the Matter of

Florida Power & Light Company
(St. Lucie Plant, Units 1 and 2)

Docket Nos. 50-335A
50-389A

Florida Power & Light Company
(Turkey Point Plant, Units 3
and 4)

Docket Nos. 50-250A
50-251A

OPPOSITION OF FLORIDA POWER &
LIGHT COMPANY TO CITIES' MOTION
TO LODGE DOCUMENTS

Florida Cities ("Cities") have filed a "Motion to Lodge Documents" which requests that certain documents (described therein by a number and summary) "be permitted to be lodged with the Commission and made a part of the decisional record." (Motion, p. 1.) Cities refer to their request in a number of ways. While entitled "Motion to Lodge", the request is also described as a supplement to a petition to intervene (Motion, p. 9). In fact, the Motion is an unfair attempt to place before the Commission selected bits and pieces of evidence of alleged anti-competitive conduct in an effort to influence the Commission in its consideration of Docket No. 50-389A.

Florida Power & Light Company (FPL) opposes the motion.

The Motion refers in its caption to Docket Nos. 50-250A, 50-251A and 50-335A, as well as to Docket No. 50-389A. The first three of these proceedings are no longer pending before the NRC in any context. / The other proceeding, Docket No. 50-389A

/ See letter from Director of Nuclear Reactor Regulation denying request for issuance of order to show cause, dated September 9, 1977; Commission Order denying the Cities' petition to review ALAB-428, dated October 25, 1977.

(St. Lucie Unit No. 2) is now pending before the Commission on review of ALAB-420. Two specific questions have been designated for review, and neither concerns in any way the allegations made in the Cities' motion. This consideration alone should be dispositive. —

The prejudicial nature of the offering supplies an independent additional ground for denial. Even if the materials referenced in the Motion were pertinent to some question now before the Commission (which they are not), the Commission's rules do not, for good reason, provide that evidentiary material may be "lodged" by pleading and "made part of the decisional record" in an adjudication. Documents and testimony are received in evidence in accordance with settled procedures, so that witnesses may be cross-examined and documents placed in context through the testimony of witnesses other than the sponsor of the material. The unfairness of conducting adjudications on the basis of materials selected and freely characterized by counsel for one party are illustrated by this Motion. —

—/Cities' citation to Scenic Hudson Preservation Conf. v. FPC, 354 F.2d 608 (2d. Cir. 1965) is not apt. The question there was whether the FPC properly rejected, solely on the basis of untimeliness, testimony which was central to matters under adjudication in a proceeding. The only question before the Commission here is whether to institute a proceeding upon a late petition. The Commission is not here engaged in making findings on substantive antitrust issues. Indeed, substantive antitrust questions are not even included in the issues set down for review.

—/Needless to say, FPL disagrees sharply with the allegations and characterizations in the Motion. FPL believes that, if exposed to an evidentiary hearing, it would be demonstrated that some of the factual allegations, and particularly several of those relied upon in the quoted portions of Dr. Taylor's testimony (pp. 8-9), are simply not true; in other instances, the meaning of documentary evidence has been distorted in the characterizations contained in the Motion. Neither the Taylor testimony, nor any of the documents tendered have been admitted into evidence by the FERC or subjected to cross-examination or responsive testimony in the FERC proceeding.

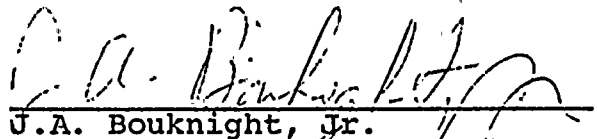
The request for leave to amend the Cities' petition for intervention comes some 45 months after the date to file a petition for intervention in the only matter now before the Commission (Docket No. 50-389A); some 14 months after the petition was filed; after the Licensing Board and the Appeal Board have acted upon the petition; and after the Commission has narrowed the issues for determination to two specific legal questions. The Cities' August 1976 petition consisted primarily of allegations of "recent anti-competitive practices" by Applicant, allegedly supported by pounds of documents appended to the petition and supporting affidavits. The materials referenced in the instant Motion involve the same allegations. Those allegations are not now before the Commission, because the Licensing Board was unable to find that "the alleged recent anti-competitive practices by Applicant have so materially changed [Cities'] circumstances that these practices alone constitute substantial good cause for the lateness of their petition." (Licensing Board Order of April 5, p. 20) The Appeal Board did not upset this finding or rely in any way on those allegations in affirming the Licensing Board's order granting the petition. (ALAB-420).

Now, at this late date, when the Commission's consideration has narrowed to other issues -- those which the Appeal Board determined in ALAB-420, the Cities wish to remind the Commission of the flavor of their initial petition and, while none of these inflated allegations have ever been sustained by any tribunal, to inform the Commission that there is now at least one staff member in one administrative agency who is prepared to give them some credence. There being no established procedure for communicating such matters to the Commission, the Cities chose to file their Motion.

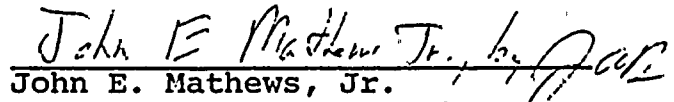
The Motion is not appropriate under any established NRC procedure and is not relevant to any matter now pending before the Commission. Acceptance of the tendered materials for "lodging" or as a supplement to the Cities' petition would be extremely prejudicial to FPL.

WHEREFORE, FPL respectfully requests that the Commission deny the Motion, and that the Commission disregard the Motion's contents for purposes of its adjudication in this proceeding.

Respectfully submitted,



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November 1, 1977

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NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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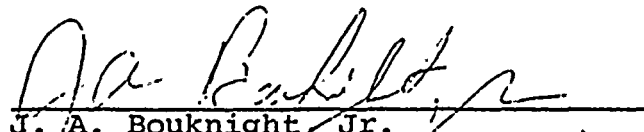
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the following:

OPPOSITION OF FLORIDA POWER &
LIGHT COMPANY TO CITIES' MOTION
TO LODGE DOCUMENTS

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 November 1, 1977

By:


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November 1, 1977

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