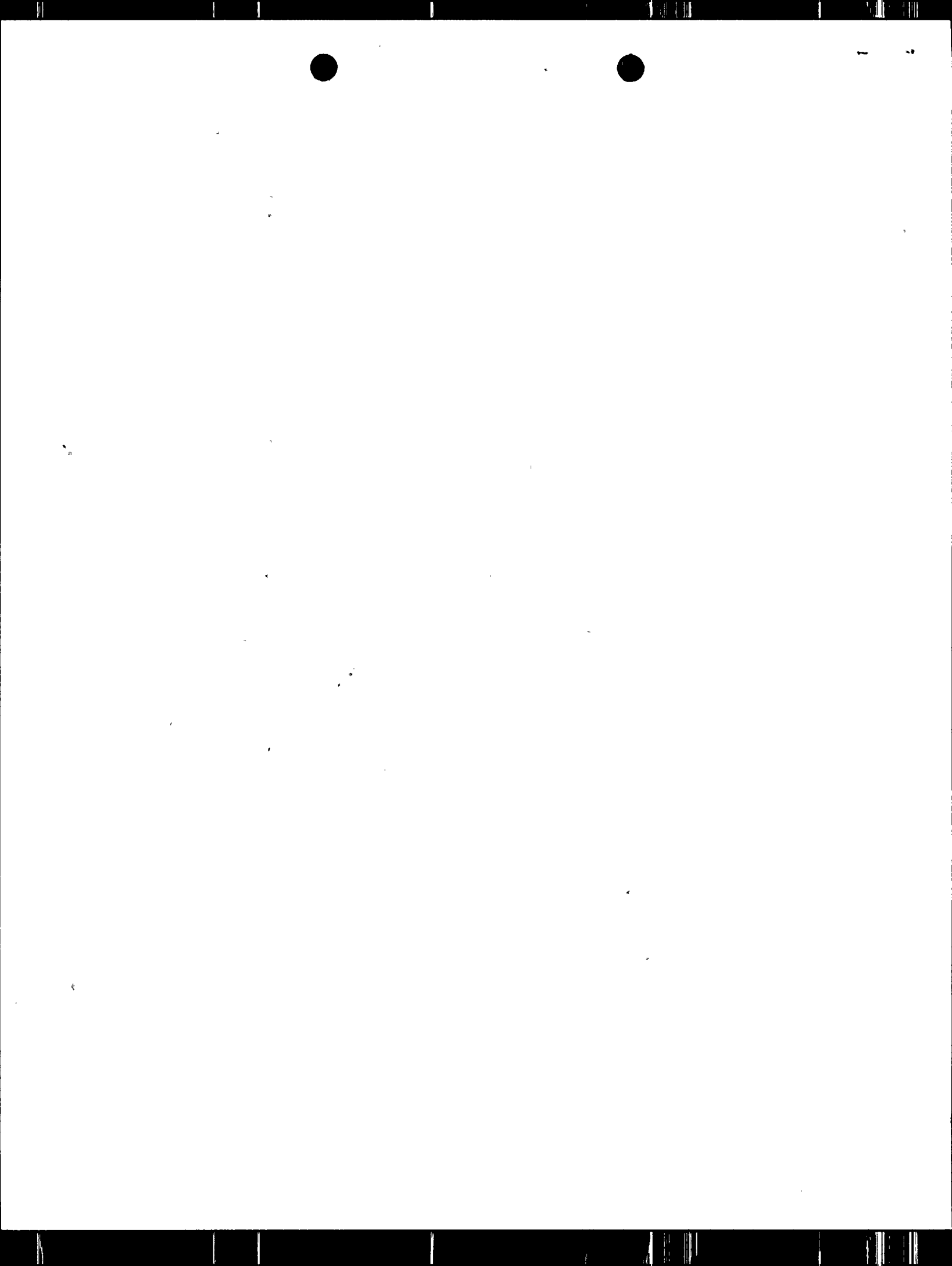


Act, in view of the decision of the United States Court of Appeals for the Fifth Circuit in Gainesville Utilities Department v. Florida Power & Light Company (Gainesville) 573 F. 2d 292 (1978). The Department filed its response to that Order on August 25, 1978. On August 14, 1978 the Court of Appeals issued a stay of its mandate in Gainesville. Based on that stay, on August 18, 1978 Florida Power & Light Company (FP&L) filed a Motion for Recall of Order in Light of Changed Circumstances (Recall Motion).

FP&L, relying on the stay of the mandate issued by the Fifth Circuit Court of Appeals, urges this Commission to take an action which would in all likelihood lead to a delay in the 105a proceeding, the 105c proceeding presently pending before an NRC Licensing Board or both. The stay of the Gainesville decision will be in effect only until September 13, 1978 or until the Supreme Court disposes of FP&L's request for review. The chance of the Supreme Court granting such review is miniscule as very few petitions for writs of certiorari are granted. The likely consequence of waiting several months for the certiorari petition would be that this Commission will be faced with the prospect of either initiating a separate 105a proceeding or consolidating such proceeding with the ongoing 105c proceeding. As more fully explained in The Response of the Department of Justice filed August 25, 1978, either of these courses of action could

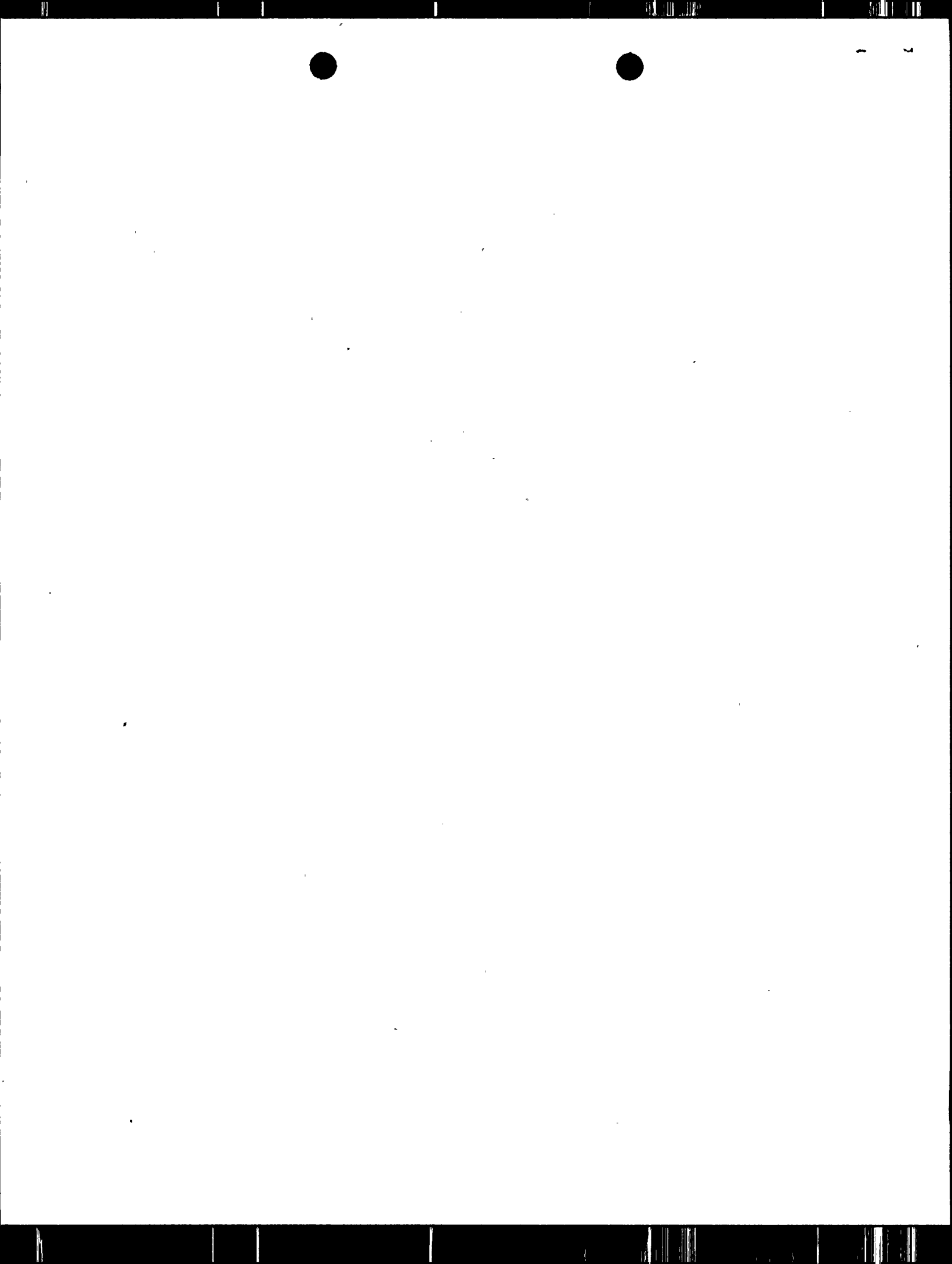


lead to delays in finally determining FP&L's antitrust liability and removing the cloud that now exists over the Company's Nuclear Regulatory Commission licenses and permit.

The wiser course of action would be for this Commission to initiate a 105a proceeding now which can run concurrently with the 105c proceeding. If, in the future, some event occurs which makes it inappropriate to continue that 105a proceeding the Commission can stay or sever that proceeding. Under these circumstances, FP&L will not be prejudiced in any way; since the issues in both proceedings are similar, at worst FP&L will only have to engage in a minimal amount of additional discovery in litigating the 105a proceeding. All parties can prepare for both hearings concurrently by conducting simultaneous or combined discovery. Most importantly, there will be no delay in finally adjudicating FP&L's liability.

Lastly, the Department would note that since the parties have already filed their responses to the Commission's July 27, 1978 Order, FP&L's Recall Motion should be denied as being moot.

In view of the above and the reasons stated in the Response of the Department of Justice filed August 25, 1978 the Department urges this Commission to deny FP&L's Recall



Motion, to initiate a 105a proceeding now and to consolidate said proceeding with the 105c proceeding that has been ordered with respect to FP&L's St. Lucie No. 2 nuclear unit.

Respectfully submitted,

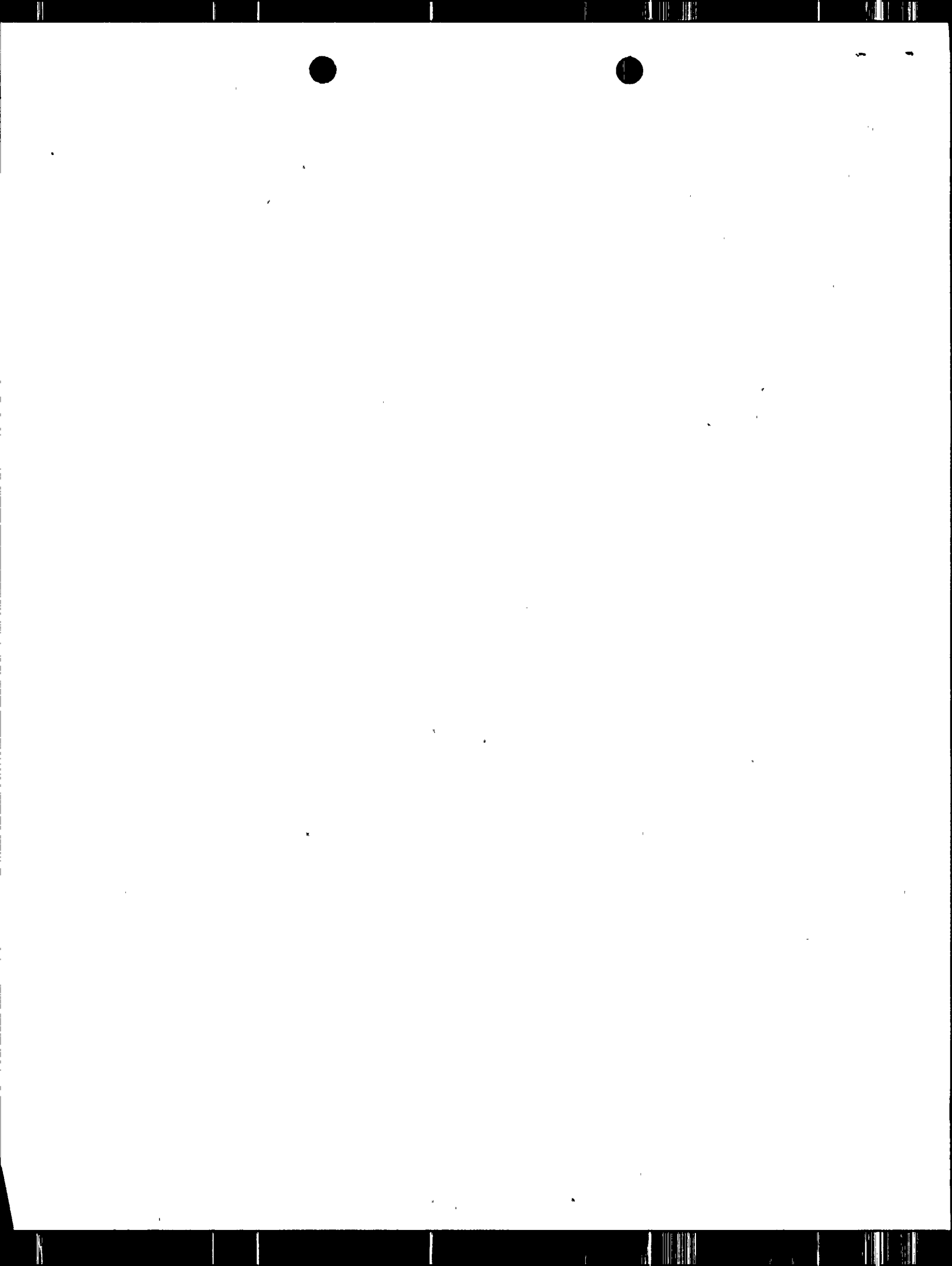
John H. Shenefield  
Assistant Attorney General  
Antitrust Division

Donald A. Kaplan  
Acting Chief  
Energy Section  
Antitrust Division

*Melvin G. Berger*  
\_\_\_\_\_  
Melvin G. Berger  
Attorney, Energy Section  
Antitrust Division

August 28, 1978





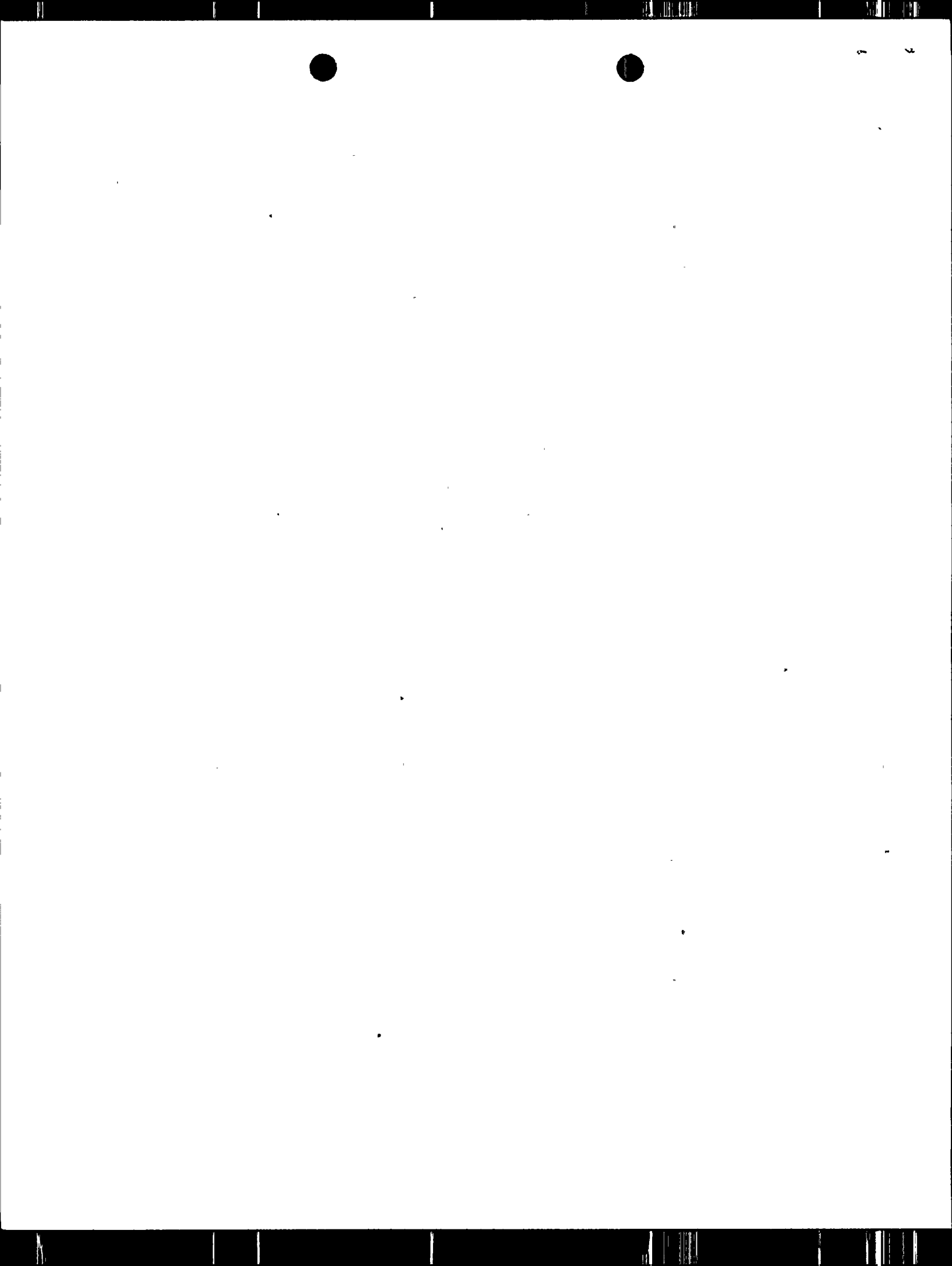
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket No. 50-335A
(St. Lucie Plant, Unit Nos. 1	)	50-389A
and 2)	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket No. 50-250A
(Turkey Point Plant, Unit Nos. 3	)	50-251A
and 4)	)	

Certificate of Service

I hereby certify that copies of ANSWER OF THE DEPARTMENT OF JUSTICE TO FLORIDA POWER & LIGHT COMPANY'S MOTION FOR RECALL OF ORDER IN LIGHT OF CHANGED CIRCUMSTANCES have been served upon all of the parties listed on the attachment hereto by hand or by deposit in the United States mail, first class of airmail, this 28th day of August, 1978.

*Melvin G. Berger*  
\_\_\_\_\_  
Melvin G. Berger  
Attorney  
Department of Justice  
Antitrust Division



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
FLORIDA POWER & LIGHT COMPANY	)	Docket No. 50-335A
(St. Lucie Plant, Unit Nos. 1	)	50-389A
and 2)	)	
	)	Docket No. 50-250A
FLORIDA POWER & LIGHT COMPANY	)	50-251A
(Turkey Point Plant, Units Nos. 3	)	
and 4)	)	

SERVICE LIST

Ivan W. Smith, Esq.  
Chairman, Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Valentine B. Deale  
1001 Connecticut Ave., N.W.  
Washington, D.C. 20036

Robert M. Lazo, Esq.  
Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Docketing and Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Joseph Rutberg, Esq.  
Lee Scott Dewey, Esq.  
Office of Executive Legal  
Director  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

J. A. Bouknight, Jr., Esq.  
Lowenstein, Neuman, Reis  
& Axelrad  
1025 Connecticut Ave., N.W.  
Washington, D.C. 20036

Robert A. Jablon, Esq.  
2600 Virginia Avenue, N.W.  
Washington, D.C. 20037

Jerome Saltzman  
Chief, Antitrust & Indemnity  
Group  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Tracy Danese, Esq.  
Vice President for Public  
Affairs  
Florida Power & Light Co.  
Post Office Box 013100  
Miami, Florida 33101

John E. Mathews, Jr., Esq.  
Mathews, Osborne, Ehrich,  
McNatt, Gobelman & Cobb  
1500 American Heritage Life  
Building  
Jacksonville, Florida 32202



Robert E. Bathen  
R. W. Beck & Associates  
Post Office Box 6817  
Orlando, Florida 32803

Dr. John W. Wilson  
Wilson & Associates  
2600 Virginia Avenue, N.W.  
Washington, D.C. 20037

Commissioner Joseph M. Hendrie  
Office of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner Victor Gilinsky  
Office of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner Richard Kennedy  
Office of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner Peter Bradford  
Office of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

