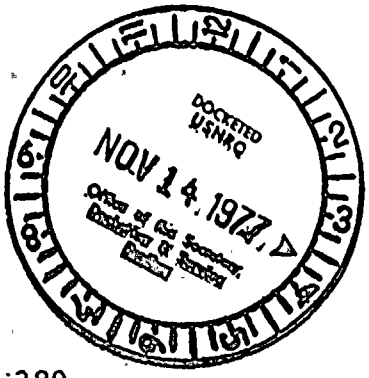

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

ANSWER IN OPPOSITION TO
PETITION FOR COMMISSION REVIEW

In accordance with 10 CFR §2.786(b)(3), Florida Power & Light Company ("Applicant" or "FPL") files this answer to Intervenors' Petition for Commission Review.

1. Summary of the decision or action of which review is sought. The instant petition is directed at the "alternative sites" aspects of the Initial Decision of the Licensing Board, authorizing the grant of a construction permit for St. Lucie Unit No. 2 (April 19, 1977, 5 NRC, at 1038), as affirmed by the Appeal Board in ALAB-435 of October 7, 1977.

Earlier decisions of those bodies are also relevant to the instant petition. In ALAB-335 of June 29, 1976, 3 NRC 830, the Appeal Board decided unfavorably to Intervenors all but one of 45 exceptions to a Partial Initial Decision of the Licensing Board concerning site suitability and environmental matters. 1 NRC 101, Supplemented, 1 NRC 463 (1975). With respect to the exception decided in favor of Intervenors,

compliance with the Commission's siting criteria and population standards was without merit, it noted that, because of errors in the alternative site evaluation, there still remained "the possibility that there exists some better site, population and all other factors considered." 3 NRC supra, at 832; see also 834.

The subsequent hearings before the Licensing Board and its Initial Decision of April 19, 1977, were in large part devoted to this issue. The Licensing Board permitted Intervenors to undertake extensive discovery on matters relating to alternative sites during the period of July through November of 1976. All discovery requests, including multiple sets of interrogatories and requests for the production of documents, were satisfied. Intervenors sought and received information concerning the identity and geographical location of every alternative site for the plant, detailed reasons why such sites were or were not viable alternatives, the existence of any other proposed sites in Florida for nuclear generation, a detailed description of the site evaluation technique utilized by the Staff, etc. In the December 1976 and January 1977 hearings, most of seven days were devoted to matters relating to alternative sites. The Board heard testimony from six witnesses for the NRC Staff, four for Applicant, and two witnesses from Intervenors. The Staff described in detail the nature and extent of its review of the application for St. Lucie Unit No. 2 as it related to the consideration of alternative sites in 1973-1974, prior to the issuance of the

Partial Initial Decision, and in 1976 subsequent to the issuance of ALAB-335. One of Intervenors' witnesses sought to demonstrate that St. Lucie Unit No. 2 should not be constructed on the site on Hutchinson Island because another site, the Martin site, represented a better alternative. Tr. 6192 et seq. Applicant's witnesses described the significant advantages of building St. Lucie Unit No. 2 on Hutchinson Island adjacent to St. Lucie Unit No. 1. Applicant's witnesses also described in detail why the environmental cost benefit analysis would not be materially affected by any differential in radiation dose exposure that might result from moving the plant. Tr. 5203; 4881; 6372-6373.

The proceedings before the Appeal Board in connection with ALAB-335, and later before the Licensing Board on remand, disclosed that, prior to the issuance of the FES in 1974, the Staff's evaluators did not visit any specific possible alternative site to Hutchinson Island and had not in fact compared that site to a specific identifiable alternative site. Rather, the Staff used a "best characteristics" or "best regional" analysis of comparative sites. Information was developed concerning various regions in Florida and appropriate criteria (e.g., transmission costs, population density, environmental impacts) were applied to each in a process of comparison and elimination. After eliminating three regions, the remaining two were broken down into subregions. After a similar process of elimination, comparison was made between the actual characteristics of the proposed St. Lucie Unit No. 2 site and the "best possible characteristics" of a generalized inland region

and a generalized coastal region. Initial Decision, paras. 8-10; 5 NRC supra, at 1042-1044.

In addition, however, in 1976 the Staff made actual visits to specific sites that were considered to be the possible alternatives to the Hutchinson Island site and examined five of them by aerial survey, on-site examination, or both. It reviewed the available technical literature concerning these sites and made a detailed comparison of each. See testimony of J. R. Young, pp. 19-21, Table 2 (following Tr. 5443); Initial Decision, para. 18; 5 NRC supra, at 1047.

In the Initial Decision here sought to be reviewed the Licensing Board did not condemn the "best characteristics" methodology used in 1973 and 1974 as such, nor did it eliminate from the record any material related or used with respect to it. Rather, it held that use of the methodology without more was inadequate "in the circumstances of this case." Initial Decision, paras. 10, 17; 5 NRC supra, at 1044, 1047. It concluded that "actual inspection of particular alternate sites could readily and easily have been performed by the Staff and was called for in the circumstances of this case." Initial Decision, para. 13; 5 NRC supra, at 1044. The "circumstances" emphasized by the Licensing Board were, first, the identification by Applicant, in a 1973 amendment to its Environmental Report, of two specific sites it was developing that were "suitable for either fossil or nuclear generation": the Martin site, which Applicant had described as "a cooling pond site," and the South Dade site, which it described as

"a cooling pond or cooling tower site"; and, second, the Staff's view -- not conveyed to the Applicant -- that responses it had received to some of its information requests were inadequate.[1/] Initial Decision, paras.14, 15, pp.11-13; 5 NRC supra, at 1044-1046. The Licensing Board concluded that the reasons for the Staff's not insisting on more satisfactory and detailed responses were "trivial at best and inexcusable in the circumstances" and that a site visit to Martin, the cooling pond side, would have prevented errors in the Staff's initial regional alternate site analysis concerning cooling water availability and limitations on liquid waste disposal. The Licensing Board noted that these errors were in fact corrected by the subsequent, August 1976, site visit. Ibid.

The position of Intervenors before the Licensing Board during the proceeding that led to the Initial Decision was that the Martin site represented a superior alternative to the Hutchinson Island site. The Licensing Board dealt with this contention in detail and rejected it (Initial Decision, paras.19-26; 5 NRC supra, at 1047-1050), then went on to conclude on the basis of the totality of the evidence before it, including the Staff's alternative site reviews in both 1973-1974 and 1976, that

> ". . .the evidence shows that there is no reason to believe that there exists some better site, population and all other factors considered, than Hutchinson Island for St. Lucie 2 (Tr. 6000-6002)."

Initial Decision, para.28, 5 NRC supra, at 1050. In reaching this conclusion, the Licensing Board noted that at Hutchinson Island St. Lucie Unit No. 2 would occupy only about five acres

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1/ The Staff did not ask any further questions of FPL or otherwise indicate to it that its responses were inadequate. (Tr. 5833-5835, 6286-6287)

of the 300 acres already covered by St. Lucie Unit No. 1; that the environmental impact of St. Lucie Unit No. 2 at that site would be significantly less than at any other site; that no additional transmission lines would have to be constructed; that construction elsewhere would create a delay of at least four and one-half years; and that there would be large economic advantages relating to the cost of shared facilities and the cost of delay, were the plant to be constructed at a site other than on Hutchinson Island. On the basis of extensive briefing, including oral argument in connection with Intervenors' stay request (which was denied (ALAB-415; 5 NRC at 1435, June 28, 1977)), the Appeal Board adopted as its "own the essence of the [Licensing] Board's well-reasoned opinion . . ." (ALAB-435, supra, Slip Op., p.4).

2. The decision below is not erroneous and this proceeding does not present an appropriate occasion for Commission review. The petition does not take issue with the two basic findings of the Licensing Board which were in essence adopted by the Appeal Board: that the Hutchinson Island site is in fact a superior alternative to the Martin site; and that "the evidence shows there is no reason to believe that there exists a better site, population and all other factors considered, than Hutchinson Island for St. Lucie 2. . ." Instead, it suggests (pp.6-8) that the Commission should use review of the proceedings below to establish as a general, undeviating, rule that NEPA review always requires the consideration of specific identified alternative sites. No case, however, is cited for this proposition and none exists. Neither the statute itself nor any decision

under NEPA imposes so inflexible a standard. Rather, those cases establish that the test is a practical and realistic one. What has to be considered is "information sufficient to permit a reasoned choice among the alternatives." See, e.g., NRDC v. Morton, 458 F.2d, 827, 836 (D.C.Cir. 1972).

Even if Intervenors' proposition should be established, it would not change the result reached in the decision sought to be reviewed. In fact, specific identified alternative sites were considered by the Staff in 1976, were extensively considered at the remand hearing, and that consideration formed the basis for the Licensing Board's decision. In other words, what Intervenors wish to be required was in fact done here.

In their "Second issue" (p.8), Intervenors appear to suggest that the 1976 review of identified alternative sites was so superficial and inadequate as to fail to meet the requirements of NEPA. The short answer to this contention is contained in what the Licensing Board emphasized: the total consideration of alternative sites in this proceeding, including the work done in 1973 and 1974, the review of technical literature, and the 1976 site visits made it possible for the Staff to prepare a detailed comparison of the Hutchinson Island site to the other sites (Initial Decision, para. 18; 5 NRC supra, at 1047). The Staff's alternative site comparison withstood the test of challenge in an adjudicative hearing and led to the Licensing Board's conclusion as to the superiority of the Hutchinson Island site, a conclusion not questioned in the instant petition.

As a "third issue" (pp. 8-10) for Commission review, Intervenors suggest that the Commission should not allow an applicant to control the input of data to a regulatory agency by not providing adequate answers to questions or adequately disclosing possible alternative sites.[2/] Again, this is not a matter that calls for Commission intervention in this proceeding. Intervenors' concern has already been addressed by both the Licensing Board and the Appeal Board. The Initial Decision concluded that the 1973-1974 Staff review was inadequate in large part because it did not follow up on what it regarded as inadequate responses to requests for information (Initial Decision, para. 14; 5 NRC supra , at 1044-1045). The Appeal Board, too, criticized the Staff's performance. ALAB-335, supra, Slip Op. at pp. 5-7. The need for vigorous and critical Staff review has therefore already been established, and a full and satisfactory analysis has, in fact, been conducted in this proceeding. Issuance of a pronouncement such as Intervenors desire would not change the result reached. The thorough review called for has now been conducted, not only

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2/ In this connection, Intervenors refer to Applicant as developing the Martin site "almost clandestinely" (p.10). The record is wholly lacking in support for this characterization, particularly in view of the specific references to that site, cited by the Licensing Board, and the wide dissemination of information concerning the Martin site to state and federal agencies (Tr. 6314-6317). The implication is absurd.

by the Staff but also by the Licensing Board, and has formed the basis for the decisions below.

Respectfully submitted,

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Dated: November 14, 1977

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached "Answer in Opposition to Petition for Commission Review" has been served by mail this 14th day of November, 1977, on the persons shown on the attached service list, by hand delivery or deposit in the United States Mail, properly stamped and addressed.

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