

50-3357/389  
Sept 15, 1980

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1099

FT. PIERCE UTILITIES AUTHORITY OF THE  
CITY OF FT. PIERCE, ET AL.,

PETITIONERS,

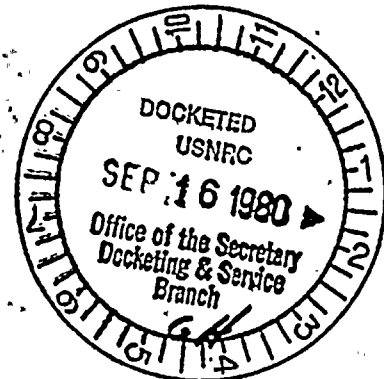
v.

NUCLEAR REGULATORY COMMISSION  
and UNITED STATES OF AMERICA,

RESPONDENTS.

FLORIDA POWER & LIGHT COMPANY and  
THE CITIES OF HOMESTEAD, KISSIMMEE,  
and STARKE, FLORIDA,

INTERVENORS.



ON PETITION FOR REVIEW OF AN ORDER OF THE  
NUCLEAR REGULATORY COMMISSION

MOTION FOR EXPEDITED CONSIDERATION

Petitioners hereby move for expedited consideration of their petition for review of an order of the Nuclear Regulatory Commission. Briefing is completed, so the case can be heard at any time. We have been advised by the Clerk's office that, if the motion is not granted, the case will not be argued until some time in the early months of 1981.

Both antitrust litigation and administrative proceedings suffer from delay, and this case presents egregious examples of delays in both settings:

DS03  
s  
1/0

M

1. Intervenor-Respondent Florida Power & Light Co. conspired in a violation of the Sherman Act, 15 U.S.C. § 1, to allocate markets from the early 1950s and, Florida Cities allege, have continued to act anticompetitively, re-enforcing the harm from that conspiracy to the present day. Suit brought in 1968 by one of the cities, Gainesville, was not finally resolved on the merits -- in the plaintiff's favor -- until a full decade later. See Gainesville v. FPL, 573 F.2d 292, 293 (5th Cir. 1978), cert. denied, 000 U.S. 000 (1979), reflecting the Fifth Circuit's exasperation with the ten-year course of that case. Moreover, further proceedings on remand to determine damages are still pending.
2. Petitioners here promptly sought the relief to which they believe they are entitled under Section 105(a) of the Atomic Energy Act, 42 U.S.C. § 2135(a). NRC failed to act for a year and a half, despite repeated requests; it did not finally issue its short, insubstantial order until shortly after these same petitioners sought mandamus from this Court. 1/.

Expedited consideration by this Court may go some way toward mitigating the effects of these delays.

---

1/ See Brief of Petitioners, pages 6-8, and Reply Brief for Petitioners, pages 3-4.

Petitioners urged NRC to consolidate the proceeding sought in this case with a proceeding under a related statutory provision, Section 105(c) of the Atomic Energy Act, 42 U.S.C. § 2135(c), involving the same parties and similar issues. The question under Section 105(a) is whether FPL planned, constructed or used its three existing nuclear plant licenses in connection with its wholesale customer allocation conspiracy, found in Gainesville v. FPL. The question in the Section 105(c) proceeding is whether FPL's operation of a fourth nuclear plant would create or maintain a situation inconsistent with the antitrust laws. The two proceedings are closely related, and both the Antitrust Division of the Department of Justice and the NRC staff, as well as petitioners, originally urged NRC to combine the two investigations. 1/

The Section 105(c) proceeding is still in discovery stages so that if the Court gave this case expedited consideration, NRC would still be able to conduct the two investigations jointly. Without expedited consideration, the Section 105(a) investigation could follow the Section 105(c) investigation and require all new proceedings.

---

1/ Response of the Department of Justice (August 25, 1978), pages 4-6 (J.A. 29-31); NRC Staff Response to Commission Order of July 27, 1978 (August 25, 1978) pages 5-8 (J.A. 52-55).



Expedited consideration would not be unfair to any party. Except to the extent FPL is interested in postponing any relief against it as long as possible, it will not be hurt by prompt consideration of petitioners' claims. Indeed, FPL as well as petitioners and government respondents will enjoy the economies of consolidated proceedings before NRC.

We are authorized to state that counsel for FP&L do not join in this motion and have not decided whether to oppose it and that counsel for government respondents have not yet taken a position but will indicate their position in a response.

Respectfully submitted,

*Robert A. Jablon*

Robert A. Jablon

*Ron M. Landsman*

Ron M. Landsman

September 15, 1980

Law Offices of:

Spiegel & McDiarmid  
2600 Virginia Avenue, N.W.  
Washington, D.C. 20037  
202-333-4500

Attorneys for Petitioners  
and Intervenors Homestead,  
Kissimmee and Starke, Florida

CERTIFICATE OF SERVICE

I hereby certify that the accompanying final MOTION FOR EXPEDITED CONSIDERATION has been served on the following persons by depositing copies in the United States mail, first class, postage prepaid, this 15th day of September, 1980.

Robert B. Nicholson, Esq.  
James Laskey, Esq.  
Antitrust Division  
U.S. Department of Justice  
Washington, D.C. 20530


Leonard Bickwit, Esq.  
General Counsel  
Stephen F. Eilperin, Esq.  
Solicitor  
Peter G. Crane, Esq.  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Samuel J. Chilk  
Secretary  
Nuclear Regulatory Commission  
Washington, D. C. 20555

Herbert Dym, Esq.  
Covington & Burling  
888 16th Street, N. W.  
Washington, D.C. 20036

J. A. Bouknight, Jr., Esq.  
Lowenstein, Newman, Reis,  
Axelrad & Toll  
1025 Connecticut Avenue, N. W.  
Washington, D. C. 20036

John E. Mathews, Jr. Esq.  
Mathews, Osborne, Ehrlich,  
McNatt, Gobelman & Cobb  
11 East Forsyth Street  
Jacksonville, Florida 32202

  
\_\_\_\_\_  
Ron M. Landsman

Attorney for Petitioners  
and Intervenors Homestead,  
Kissimmee and Starke, Florida