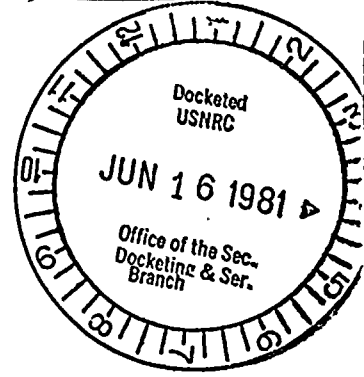
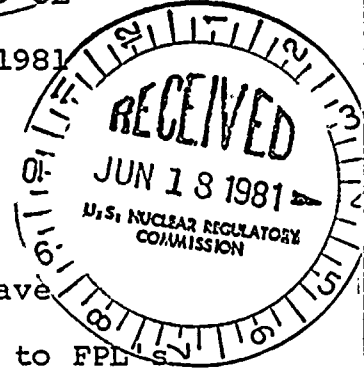


BEFORE THE
UNITED STATES
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
)
Florida Power & Light Company) Docket No. 50-389-0L
)
(St. Lucie Plant, Unit No. 2)) Date: July 16, 1981



MOTION OF FLORIDA CITIES FOR LEAVE TO RESPOND

By petition of April 7, 1981, Florida Cities have requested intervention in antitrust proceedings related to FPL's operating license and consolidation of such proceedings with construction permit antitrust review. FPL states in an answer dated May 26, 1981, that Cities' petition to intervene is moot.

"It is an established principle of NRC practice that antitrust conditions attached to a construction permit remain in effect after the issuance of an operating license. In every case in which antitrust license conditions have been attached to a construction permit, the NRC has extended those license conditions upon the issuance of an operating license for the time span of the license. The Cities allege no basis for suspecting that the Commission would not do the same here.

Accordingly, the Cities' Petition is moot by its own terms. Their intervention is predicated upon the defense of an established tenet of NRC practice which FPL does not contest. On this basis alone, the Cities' Petition should be denied."
(Answer, pp. 4-5)

Additionally, FPL argues that "antitrust contentions are beyond the scope of this proceeding". In a parallel argument the Company states:

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"No Antitrust Review has been Ordered in Connection with the St. Lucie Unit No. 2 Operating License Review."

and that:

"An Operating License Antitrust Review Cannot be Initiated by the Filing of a Petition."

Finally, the Company argues at length and with slight restraint the merits of its position.

FPL appears to argue, but does not quite state, that Florida Cities' rights to relief under an operating license proceeding and construction permit proceeding would be the same. If Florida Cities' Petition is to be denied on grounds that if the petition is dismissed, they lose no rights, then there is no need for response. Further, if FPL arguments are accepted that this Board has no authority to rule one way or the other on antitrust matters or that the Petition is premature, Florida Cities would similarly not seek to respond, although they would then respectfully request that their Petition be forwarded within the Nuclear Regulatory Commission to whoever has the authority to rule and that appropriate procedures be instituted. In all events, they request consolidation with the construction permit proceedings to avoid wasteful duplication of litigation time and effort.

However, if the Board is prepared to rule on the merits, in view of the content and nature of FPL's arguments on the merits, they seek a right to respond no later than July 15, 1981. They note that the July 15th date is requested after consultation

with counsel for Florida Power & Light Company, who does not object to such date, assuming that a response would be appropriate.

CONCLUSION

(1) The Board should rule that the issue is moot because, absent a waiver, the operating license cannot be issued until completion of the antitrust review in the construction permit proceeding and, unless waived, Florida Cities may raise all issues and obtain all relief in the construction permit proceeding that they could obtain in the operating license proceeding; if the issue is thus ruled moot, the Board may dismiss the Cities' Petition;

(2) If not ruled moot, the Board should rule that it has jurisdiction over the Cities' antitrust contentions in this proceeding and grant Cities' leave to respond in accordance with this motion;

(3) If the Board rules that it lacks jurisdiction, it should forward Cities' Petition and this pleading to the appropriate officials of the Nuclear Regulatory Commission or the Commission Staff for a ruling.

Respectfully submitted,



Robert A. Jablon
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June 16, 1981

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Florida Power & Light Company)
(St. Lucie Plant, Unit No. 2)) Docket Nos. 50-389-OL

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served by hand delivery (*) or by deposit in the United States Mail, first class postage prepaid this 16th day of June, 1981.

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