

7/11/80

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

NRC Docket Nos. 50-250A
50-251A

STAFF'S ANSWERS TO ORLANDO'S NOTICE OF
WITHDRAWAL OF INTERVENTION AND FLORIDA CITIES
COMMENTS CONCERNING ORLANDO'S WITHDRAWAL

By Motion of June 20, 1980, the Orlando Utilities Commission (Orlando) has requested leave to withdraw its intervention in the above-captioned docketed proceedings and in the proposed NRC proceeding under Section 105(a) of the Atomic Energy Act involving the Fifth Circuit Court of Appeals' decision in Gainesville Utilities Department v. Florida Power & Light Co., 573 F.2d 292, cert. denied, 439 U.S. 966 (1978).^{*/} Orlando's request for withdrawal from these proceedings is based upon a recent settlement between it and Florida Power & Light Company (FP&L) that reportedly resolves the antitrust problems raised by Orlando in its petitions to intervene in these matters. A copy of the agreement for this settlement was submitted to this Licensing Board on June 12, 1980.

* / See Florida Power & Light Company (St. Lucie Plant, Units 1 and 2 and Turkey Point Plant, Units 3 and 4) 8 NRC 6 (July 27, 1978). In that opinion, the Commission requested that the parties comment as to whether a §105(a) proceeding involving FP&L should be initiated. After receiving these comments, the Commission decided not to initiate such a proceeding at that time. 10 NRC 767 (Dec. 21, 1979). Florida Cities have appealed that decision and the case is now pending before the U.S. Court of Appeals for the District of Columbia Circuit.

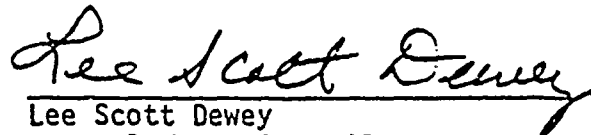
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By Motion of July 7, 1980, Florida Cities have commented upon the proposed withdrawal of Orlando's intervention. While they do not oppose the withdrawal, they contend that at a minimum the same relief granted to Orlando should be granted to all intervenors. They also specifically request an opportunity to argue this position before any final action is taken that would foreclose them from receiving any rights that are contained in the Orlando settlement.

Staff does not oppose Orlando's request for withdrawal of intervention in the NRC proceedings. Insofar as Florida Cities' comments concerning equal treatment for all intervenors are concerned, we point out that the St. Lucie Unit 2 proceeding which is presently in progress in Docket No. 50-389A will give intervenors an opportunity to establish the type and amount of relief to which they are entitled. Whether their relief should be more, less, or the same amount afforded to Orlando under the terms of the Orlando-FP&L settlement is a matter to be established during that proceeding. The factual situation in any particular case will govern the relief granted. Furthermore, Staff believes there is no reason to delay the withdrawal of Orlando's intervention pending a resolution of the relief that other intervenors are entitled to receive.

Respectfully submitted,


Lee Scott Dewey
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 11th day of July 1980.

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

NRC Docket Nos. 50-250A
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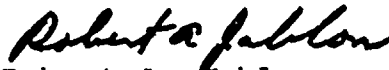
laws and utility regulation prohibit undue discrimination on the part of a utility possessing control of essential facilities, such as Florida Power & Light. See Associated Press v. United States, 326 U.S. 1 (1945); Otter Tail Power Co. v. United States, 410 U.S. 366 (1973); Federal Power Act, Sections 205, 206, 16 U.S.C. §824(d), (e). Absent justification, the Board cannot appropriately permit some utilities to obtain nuclear access and ancillary rights without similar opportunities being made available to all. In so stating, Florida Cities do not mean that the Orlando settlement should be rejected, since it was entered into voluntarily between the parties, but rather that the settlement (which is a contract) may create at least equivalent rights for other intervenors.

At this point, neither Orlando nor FPL has requested that the Board formally approve their settlement. Further, it is Florida Cities' understanding that Florida Power & Light, the Department of Justice and the NRC staff have been negotiating a proposed settlement, which may provide for additional relief. 1/

1/ Based upon the information concerning this settlement that has been available to them, Florida Cities do not believe that they will be able to accept or endorse this settlement.

Before any final action is taken that would foreclose them from arguing to the Board that they are entitled to rights similar to those contained in the Orlando settlement, and other relief as may be appropriate, Florida Cities request the establishment of procedures so that they may be heard as to these issues.

Respectfully submitted



Robert A. Jablon
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July 7, 1980

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Florida Power & Light Company)
(St. Lucie Unit No. 1))

Docket No. 50-389A

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served on the following by deposit in the United States mail, first class, postage prepaid, this 7th day of July, 1980:

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