

RELATED CORRESPONDENCE

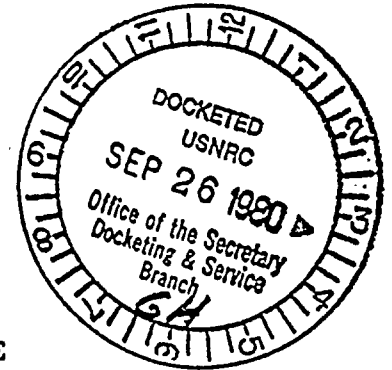
DOCKET NUMBER
PROD. & UTIL. FAC.

50-250A/30-251A
50-335A/30-389A

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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

RESPONSE OF INTERVENOR FLORIDA POWER &
LIGHT COMPANY TO MOTION FOR EXPEDITED
CONSIDERATION

Intervenor Florida Power & Light Company ("FPL")
opposed petitioners' motion for expedited consideration be-
cause petitioners have not shown how their interests or
the public interest would be prejudiced were this matter
to be considered under the Court's normal scheduling.

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The issue in this case is whether the Nuclear Regulatory Commission ("NRC") abused its discretion in determining not to institute a hearing under Section 105a of the Atomic Energy Act of 1954, 42 U.S.C. § 2135(a) until it had an opportunity to consider the result of trial court proceedings on remand from Gainesville Utilities Department v. Florida Power & Light Company, 573 F. 2d. 292 (5th Cir.), cert. denied, 437 U.S. 966 (1978). These remanded proceedings, the NRC determined, could shed light on whether the threshold, jurisdictional test under Section 105a had been met and also whether relief in addition to what may be provided by the trial court was necessary or appropriate.

In asking that this matter be considered out-of-turn, which could prejudice other litigants before this Court anxious to have their cases considered, petitioners do not even suggest that the antitrust violation found by the Fifth Circuit in Gainesville is continuing in effect, thus requiring expeditious consideration by this Court and the NRC. On the contrary, as shown in FPL's brief (pp. 15-17) and not disputed by the petitioners, the conspiracy found in Gainesville terminated long ago. Nor do petitioners contend that they lack forums in which to air asserted antitrust grievances against FPL and that, for this reason, expedited consideration of this case is called for. On the contrary, litigation instituted by petitioners against FPL in the District Court for the Southern District of Florida,

before the NRC, and before the Federal Energy Regulatory Commission demonstrate that expedited consideration of this case is not necessary in order that petitioners may have remedies for asserted antitrust violations.

The only reason advanced by petitioners for expedited consideration of this matter is their contention that, if they were to prevail before this Court and if the NRC were to order a hearing under Section 105a, that hearing could be consolidated with a proceeding pending before the NRC under Section 105c of the Atomic Energy Act, 42 U.S.C. § 2135(c), thus eliminating unnecessary duplication. In view of recent developments in the Section 105c proceeding, however, there is no longer any basis for believing that consolidation of any Section 105a hearing with the Section 105c proceeding is realistic.

As shown by the attached Joint Motion and Stipulation which were filed with the NRC on September 12, 1980, the Department of Justice, the Staff of the NRC, and FPL have reached a full and complete settlement of the differences between them in the Section 105c proceeding.^{1/} If the Joint Motion is granted, this settlement will serve to simplify and expedite that proceeding, a proceeding that would

^{1/} The Stipulation also recites the position of the Government parties with respect to the need for any proceeding against FPL under Section 105a. Even if this Court were to reverse the NRC determination at issue in this case, the NRC would still have to determine whether, if the license conditions attached to the Stipulation go into effect, there is any basis whatever for any Section 105a proceeding against FPL.

be unduly delayed were it to be consolidated with any Section 105a hearing. It is thus apparent that the premise underlying petitioners' current motion--the asserted desirability of a consolidated proceeding were a Section 105a hearing to be held--is invalid. The motion should be denied.

Respectfully submitted,

Herbert Dym / Jaf

Herbert Dym
Covington & Burling
888 16th Street, N.W.
Washington, D.C. 20006

J.A. Bouknight

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

Attorneys for Florida Power &
Light Company

DATED: September 25, 1980

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Response of Intervenor Florida Power & Light Company to Motion for Expedited Consideration" has been served on the following persons by depositing copies in the United States mail, first class, postage prepaid, this 25th day of September, 1980:

Honorable Benjamin R. Civiletti
Attorney General of the United States
U.S. Department of Justice
Washington, D.C. 20530

Sanford M. Litvack, Esquire
Assistant Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Peter G. Crane, Esquire
Office of the General Counsel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

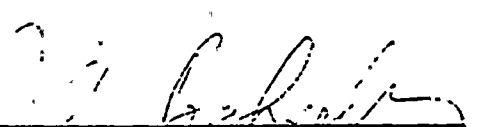
Robert Nicholson, Esquire
James Laskey, Esquire
Appellate Section
Antitrust Division
U.S. Department of Justice
Washington, D.C. 20530

Robert A. Jablon, Esquire
Ron M. Landsman, Esquire
Spiegel & McDiarmid
2600 Virginia Avenue, N.W.
Washington, D.C. 20037

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

Leonard Bickwit, Jr., Esquire
General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stephen F. Eilperin, Esquire
Solicitor
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555


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