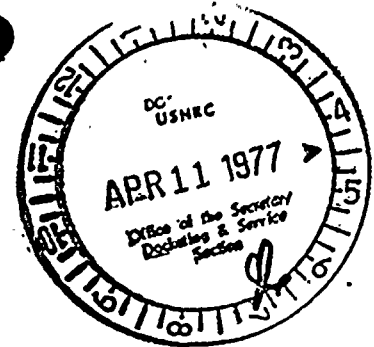


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



Before the Commission

In the Matter of

4/8/77

Florida Power & Light Company
(St. Lucie Plant, Units No. 1 and 2)

)
)
) Docket Nos. 50-335A
) 50-389A

Florida Power & Light Company
(Turkey Point Plant, Units No. 3 and 4)

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

RESPONSE OF FLORIDA POWER & LIGHT
COMPANY TO MOTION FOR CLARIFICATION
OF PROCEDURES

The Florida Municipal Utilities Association and a group of Florida Cities (Cities) have moved that the Commission clarify the procedures that the Cities must follow in order to obtain consideration of a request that proceedings be instituted, on antitrust grounds, to modify operating licenses which Florida Power and Light Company (FPL) holds for three reactors which are now in operation of FPL's system. FPL opposes the Motion for the reasons given below:

Background

On August 6, 1976, the Cities filed a single document containing a "Petition...for leave to Intervene out of Time" with respect to St. Lucie Unit No. 2 (Docket No. 50-389A) and a "Petition to Intervene; and Request for Hearing" as to the

AT
3/

— The three "Operating Plants" are Turkey Points Units Nos. 3 and 4 (Docket Nos. 50-250A and 50-250A, Operating License Nos. DPR-31 and DPR-41) and St. Lucie Unit No. 1 (Docket No. 50-335A, Operating License DPR-67). For reasons stated hereafter, the questions raised by the Cities' Motion do not concern St. Lucie Unit No. 2 (Docket No. 50-389A).

Operating Plants.

On April 5, 1977, subsequent to the date of filing of the Cities' Motion, the Atomic Safety and Licensing Board ruled on the Cities' Petition, granting their request for intervention and an antitrust hearing with respect to St. Lucie Unit No. 2, and dismissing the Petition with respect to the Operating Plants on the basis of Houston Lighting & Power Company (South Texas Project, Units 1 and 2), ALAB-381 (March 18, 1977). ✓

The Licensing Board noted, as Cities indicate in their Motion, that "On October 29, 1976, with reference to 10 CFR Section 2.206, Florida Cities 'lodged' [their Petition] with the Director of Nuclear Reactor Regulation." ✓ The Licensing Board does not say whether the Cities have requested any action by the Director of Nuclear Reactor Regulation, and FPL, likewise, is reluctant to interpret or characterize the Cities' vague letter of October 29, 1976. ✓ However, the Licensing Board stressed that "[t]he papers filed with the Director of Nuclear [Reactor] Regulation are not before us for disposition." ✓

✓ Florida Power & Light Company (St. Lucie Plant, Units 1 and 2; Turkey Point Plant, Units 3 and 4), Dockets Nos. 50-335A, 50-389A, 50-250A and 50-251A, Memorandum and Order of Atomic Safety and Licensing Board (April 5, 1977).

✓ Ibid, at page 5 of slip opinion.

✓ The Cities letter of October 29, 1976, to the Director of Nuclear Reactor Regulation is attached as Attachment A.

✓ Licensing Board Memorandum and Order, p.5.

It is with this background that the Cities' Motion comes before the Commission. The Cities request "that the Commission affirm the authority and jurisdiction of the present licensing board in this matter or otherwise determine the most appropriate procedural mechanism for early resolution of the matter raised by Cities on the merits." ✓

FPL's Position on the Motion

1. The Motion does not point to any basis, nor is FPL aware of any basis, for submittal of a pleading of this sort to the Commission.

2. In light of the Licensing Board's action of April 5, 1977, along with ALAB-381 (supra), there is no apparent reason for any "clarification of procedures." It is quite clear that any request to initiate proceedings to modify a license should be submitted to the Director of Nuclear Reactor Regulation, pursuant to 10 CFR §2.206. ✓

3. An apparent purpose of the Motion is to gain the Commission's implicit approval of the Cities' position that

✓ Motion, p.4.

✓ There never has been any dispute that the Cities' Petition with respect to St. Lucie Unit No. 2, for which no construction permit has yet issued, was properly before the Licensing Board for decision. Licensing Board Memorandum and Order, page 5. The Cities' argument that ALAB-381 does not apply to St. Lucie Unit No. 2 is superfluous, certainly in light of the Licensing Board's intervening action.

"[i]t is clear that the Commission is required under its statutory antitrust mandate to act on Cities' Petition on its merits." FPL's position is that the Commission does not have statutory authority to modify the licenses for the Operating Plants as requested by the Cities. In part, this disagreement involves questions similar to those on which the Commission has requested briefs in another case. /

However, an additional consideration is present here, in that the licenses for FPL's Operating Plants were issued pursuant to Section 104 of the Atomic Energy Act, under statutory provisions which deliberately exempted these plants from the antitrust review provisions of Section 105c. /

FPL would not object to the Commission's ruling on these legal issues prior to any action by the Director of Nuclear Reactor Regulation in response to a properly submitted request pursuant to 10 CFR §2.206. / However, such a ruling

/ See Commission Order of March 31, 1977, in Houston Lighting & Power Company (South Texas Project, Units 1 and 2). Dockets Nos. 50-498A, 50-499A.

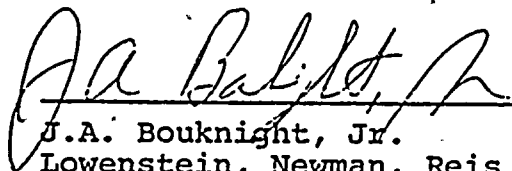
/ See Sections 102c, 105c(2), and (3).

/ However, these legal arguments are not the only basis for denying a request to initiate proceedings to modify the licenses for the Operating Plants. There are sound reasons why the Director of Nuclear Reactor Regulation should not act even if he finds authority to act. Accordingly, the Director should, at some point, be afforded the opportunity to exercise his discretion with respect to any request submitted pursuant to §2.206. It is entirely possible that, if this matter were left for consideration by the Director in the first instance, the Director might deny a request on grounds independent of the question of legal authority.

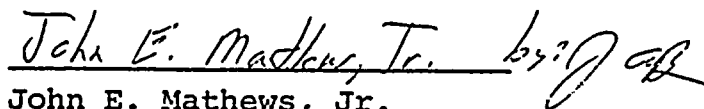
would hardly be in the nature of "clarification of procedures."
If the Commission elects to consider the question of legal authority, FPL requests that the parties be permitted to submit legal briefs before a decision is made. In any event, such basic questions of statutory construction should not be decided implicitly in ruling on a Motion for "clarification of procedures."

WHEREFORE, FPL requests that: the Cities' Motion be denied; and, if the Commission elects to rule upon the legal issues presented by the Cities' request for modification of the Operating Plants licenses, an opportunity for briefs and argument be afforded.

Respectfully Submitted,



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April 8, 1977

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
Florida Power & Light Company)	Docket Nos. 50-335A
(St. Lucie Plant, Units No. 1)	50-389A
and No. 2))	
)	
Florida Power & Light Company)	Docket Nos. 50-250A
(Turkey Point Plant, Units)	50-251A
No. 3 and No. 4))	

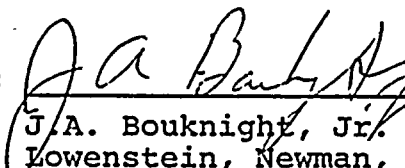
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the following:

RESPONSE OF FLORIDA POWER & LIGHT
COMPANY TO MOTION FOR CLARIFICATION
OF PROCEDURES

have been served on the persons shown on the attached list by hand delivery or deposit in the United States Mail, properly stamped and addressed on April 8, 1977.

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