

UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of:

Florida Power and Light Company	)	Docket Nos. <del>50-335A</del>
(St. Lucie Plant, Units No. 1 and 2	)	50-389A
	)	
Florida Power and Light Company	)	Docket Nos. 50-250A
(St. Lucie Plant, Units No. 3 and 4	)	50-251A

FLORIDA CITIES' ANSWER IN OPPOSITION TO APPLICANT'S  
MOTION TO STRIKE CITIES' LETTER OF MARCH 29, 1977

Pursuant to 10 CFR §2.730(c), Florida Cities oppose Applicant's "Motion to Strike Cities' Letter of March 29, 1977," dated March 30, 1977. On March 21, 1977, Florida Power and Light Company ("FP&L") submitted a letter to the Board lodging with it the opinion of the Atomic Safety and Licensing Appeal Board in the Matter of Houston Lighting and Power Company (South Texas Project, Units 1 and 2), ALAB-381, Docket Nos. 50-498A and 50-499A, issued March 18, 1977. Not only did the Company lodge the decision, but it explicitly referred the Board to specific pages of the majority and concurring opinions as related to specific pages of FP&L's Response to Cities' original Petition. The clear intent was to buttress authority for its various arguments. On March 29, 1977, Cities submitted a two-page letter in response to FP&L's March 21st letter. Having lodged the opinion along with specific citations, FP&L now asks that Cities' letter of March 29th be stricken. Cities respectfully oppose the Applicant's motion.

Florida Power & Light Company states that it would be unfair to allow Cities to respond, since Applicant was "careful" to submit the South Texas case without argument; it concludes that the Board

*Anti-trust*  
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should not allow its deliberations to be delayed by permitting the Parties to brief the South Texas opinion.

The Commission has no specific rule of practice dealing with the lodging of related opinions after parties have submitted briefs. FP&L's silence on the import of ALAB-381 was, then, self-imposed; but, it was a pregnant silence. The very act of lodging the case manifested FP&L's belief that the Appeal Board's opinion is (in the words of the Motion to Strike) a "pertinent and significant" authority. The clear implication of Applicant's submission of ALAB-381 to this Board was that a higher tribunal had issued a relevant opinion (in which a Licensing Board was found to be without the jurisdiction or authority to institute an antitrust hearing) that is binding authority on this Board. In that context, FP&L's silence was an important omission; it failed to point out to the Board that ALAB-381 is quite probably inapplicable to the present proceeding. Further, FP&L can hardly deny that its specific references to pages of the opinion and to its brief constituted a statement on the merits.

Florida Cities feel that they had an obligation and right to respond. They did so promptly and briefly, with a letter consisting of only two paragraphs of substance (one of which was a footnote explaining Cities' reasons for filing that same day its Motion for Commission Clarification of Procedures). Cities fail to see how such response is unfair to the Company. It certainly caused no delay in the Board's deliberations.

We agree with Florida Power & Light Company that the matter

does not warrant further briefing. On the other hand, should Cities' letter of March 29 be stricken, the Board should also strike the portions of Florida Power & Light Company's letter of March 21, 1977, which attempt to bolster Florida Power & Light Company's contentions on the merits of this case through selective references to pages of the South Texas opinion and to its Response to Cities' original Petition.

For the foregoing reasons, Florida Cities respectfully oppose Applicant's Motion to Strike or, in the alternative, request that, should the Board strike Cities' letter of March 29, it also strike the argumentative second paragraph of Florida Power & Light Company's letter of March 21, 1977.

Respectfully submitted,

  
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April 1, 1977

Attorneys for the Fort Pierce Utilities Authority of the City of Fort Pierce, the Gainesville-Alachua County Regional Electric Water and Sewer Utilities, the Lake Worth Utilities Authority, the Utilities Commission of the City of New Smyrna Beach, the Orlando Utilities Commission, the Sebring Utilities Commission, and the Cities of Alachua, Bartow, Daytona Beach, Fort Meade, Key West, Mount Dora, Newberry, Quincy, St. Cloud and Tallahassee, Florida, and the Florida Municipal Utilities Association

CERTIFICATE OF SERVICE

I hereby certify that I have this day cause the foregoing Florida Cities' Answer in Opposition to Applicant's Motion to Strike Cities' Letter of March 29, 1977 to be served upon the following persons:

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Dated at Washington, D.C. this 1st day of April, 1977.

  
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