UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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

JOINT MOTION OF FLORIDA CITIES FOR LEAVE TO REPLY TO ANSWERS TO PETITION TO INTERVENE AND REQUEST FOR CLARIFICATION

Florida Cities move that the Board grant them leave to file a reply to the answers submitted by Florida Power & Light ("FP&L") and the Commission Staff to Cities' Joint Petition for Leave to Intervene. Cities also move that the Board set October 15, 1976 as the date for filing such Reply. Section 2.706 may already give a right to reply. In that case, Cities merely requests the Board, for the reasons stated below, to allow Cities to file such Reply no later than October 15, 1976. Should the right to reply be deemed to be discretionary, for the reasons stated below, Cities request leave to file a reply, with the filing date set as October 15, 1976.

I.

INTRODUCTION

Cities claim that Florida Power & Light has monopolized nuclear capacity in the State of Florida and that it

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refuses to enter into an ingegrated power pool or grant general transmissiona access as requested by Cities, thereby substantially increasing Cities' power supply costs and, indeed, limiting their ability to compete. If Cities are correct on the merits, FP&L's use of nuclear power becomes the direct means by which competition is diminished or destroyed.

Cities contend that, within the powers granted the Commission by the Atomic Energy Act, and as defined by case law, the Commission has the authority to prevent nuclear power from being the means of putting utility systems out of business. Cities further contend that, as the agency most directly concerned with the licensing and supervision of nuclear generation, the Commission has the responsibility to so act.

In their answers to Cities' Petition to Intervene, FP&L and Staff have argued that no such authority here exists. Both have made arguments relying on extensive statutory and case citations. The issues raised by Cities have great importance to Florida consumers. The resolution of these issues will determine whether, in its judgment, the Commission has legal authority to deal effectively with abuses of nuclear power. Given the fact that the pleadings in opposition rest on technical interpretations of the law and given the importance of the issues presented, Cities respectfully request the opportunity to respond. They further

wish to discuss the very recent order of the Atomic Safety and Licensing Board granting intervention and an antitrust hearing in Houston Lighting and Power Company (South Texas Projects, Units 1 and 2), Docket Nos. 50-498A, 50-499A (September 9, 1976).

II.

GROUNDS FOR GRANTING LEAVE TO REPLY

NRC Rule 2.714, 10 CFR Sec. 2.714, neither allows nor prohibits replies to answers. They are, therefore, discretionary. This discretion should be exercised so as to promote the goals of the Atomic Energy Act, enable the Board to be fully informed before resolving a complex and important issue, and give fair treatment to all who will be affected by its ultimate decision.

The procedural rules of the Federal courts are analogous and support the usefulness and desirability of reply briefs. Both Rule 28(c) of the Federal Rules of Appellate Procedure and Rule 40(4) of the U.S. Supreme Court Rules allow reply briefs as a matter of right. Rule 7(a) of the Federal Rules of Civil Procedure allows a reply to an answer when ordered by the court. Thus, such reply briefs are an accepted part of adjudication, to be used when they will enhance the tribunal's understanding of the issues in dispute.

FP&L has (at 34-5 of its Response) accused Cities of filing their original Petition with a "casual attitude" or in the attempt to make a mockery of procedural rules

or create chaos. To the contrary, Cities filed the Petition to Intervene with full knowledge of the gravity and import of its filing and with the strong conviction that their claims were fully supportable and that their interests could only be effectively preserved by such action. Especially in view of the unsupported pejorative nature of FP&L's response, fairness dictates a right of reply.

Remarks made by the Staff and FP&L in their answers also show the need for further clarification by Cities. Staff suggests that some confusion exists as to whether Cities invoked the procedural mechanism of 10 CFR Sec. 2.206 in calling for a review of certain operating licenses (at 11 of Staff's Answer) and as to Cities' position on the relationship of the antitrust review in South Dade to their present Petition to Intervene (at pages 6 and 8). These important matters should be clarified before the Board rules on Cities' petition. Staff, at page 4, n. 5 of its Answer, states that the existence of grounds for independent action by the Commission is irrelevant to Cities' motion to intervene. Cities should be allowed to fully explain their position on this contention. FP&L complains, at page 36, n. 63 of its Answer, that Cities has not discussed the burden of petitioners under Section 2.714(a) nor mentioned leading Commission decisions. Since the Board has now received lengthy arguments against intervention grounded on Section 2.714 and related precedents, Cities deserve the opportunity to provide it with their analysis of the authorities cited. FP&L also seems confused about Cities' position as to

the relationship of the South Dade proceedings to its petition to intervene (pp. 50-51 of FP&L's Response); further explanation by Cities will allow the Board to act with full deliberation.

Finally, FP&L has strenuously argued that Cities' Petition to Intervene deprives FP&L of its right to the resolution without delay of antitrust issues involving its St. Lucie 2 plant and that Cities' offer not to block the commencement of construction does not prevent that deprivation or alleged injury to its financial position. (At 52-54). Further explanation of Cities' position that it would not seek to bar construction may remove a major objection to the proposed antitrust hearing. Cities should also be given the chance to show that FP&L's desire for a speedy resolution of the antitrust issues surrounding St. Lucie 2 implies a consensus that may make an antitrust review of the St. Lucie 2 unit prior to or simultaneous with the South Dade antitrust proceeding preferable to all parties.

III.

REQUEST FOR CLARIFICATION BY FP&L

On page 3 of its Response, FP&L argues that:

> Even though the Petition wholly lacks merit, the very fact that it is pending could have an adverse impact upon FP&L's ability to obtain needed capital on favorable terms by the sale of securities to the investing public.

Petitioners do not believe that this is a realistic likelihood. Indeed, investors may be reassured by the knowlege that these questions regarding FP&L activities, and the development of state-wide power supply coordination and cooperation, will be

resolved at the threshold by an administrative agency having the necessary jurisdiction and expertise. FP&L cites no specific facts or evidence to support its contentions, making it difficult for Cities to respond. Prompt clarification would aid Cities in replying to FP&L's Response and would assist the Board in evaluating FP&L's allegations.

Petitioners are prepared, at the threshold of this case, to enter into all appropriate stipulations, procedural and substantive, necessary to eliminate any real adverse impact on FP&L. Accordingly, Petitioners hereby request a statement of particulars from FP&L concerning this matter, along with its recommendations as to desirable stipulations, so that the parties and Commission Staff can take prompt steps. If FP&L takes the view that nothing would suffice except withdrawal of Cities' Petition to Intervene, it should also state its views as to how the Commission can preserve Cities' right to make their instant good faith argument in favor of intervention and antitrust hearings without substantially affecting FP&L's ability to finance on favorable terms.

IV.

PROPOSED DEADLINE FOR FILING REPLY

Cities request that it be given until October 15, 1976 to file a Reply brief. That date has been chosen with reference to other activities and deadlines involving related dockets. In particular, the attorneys for both FP&L and Cities, as well as Staff counsel, have been occupied for some time with data requests by the parties. Those data requests will monopolize

much of counsel's time into the beginning of October. See Order dated September 21, 1976 of the Atomic Safety and Licensing Board, in Docket No. P-636A, setting the final date for service of objections to interrogatories and requests for production of documents as October 8, 1976. Thus, to avoid overlap in deadlines and to provide time for a meaningful Reply by Cities, we have asked that the Board set October 15, 1976 as the date for filing such Reply.

We have been authorized to state that Staff does not contest either our request for leave to file a reply or the October 15th deadline for filing. We understand that FP&L will contest our right to respond.

CONCLUSION

WHEREFORE, for the foregoing reasons, Cities request that the Board grant Cities leave to file a Reply to Answers submitted in response to their Petition to Intervene. Cities further request that the date for such Reply be set as October 15, 1976.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing Petition to be served, by first class mail, upon the following persons:

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Dated at Washington, D.C., this 24th day of September, 1976.

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