

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

3/29/77



In the Matter of:

| | | |
|---|---|---------------------------------------|
| Florida Power and Light Company (St. Lucie Plant, Units Nos. 1 and 2) |) | Docket Nos. 50-335A 50-389A |
| Florida Power and Light Company (Turkey Point Plant, Units Nos. 3 and 4) |) | Docket Nos. <u>50-250A</u> 50-251A |

MOTION FOR COMMISSION CLARIFICATION OF PROCEDURES

On August 6, 1976, Florida Cities*/ filed with the Commission a Petition**/ invoking the Commission's jurisdiction, under Sections 104, 185, 186, 187, and 188 of the Atomic Energy Act (42 U.S.C. Sections 2134, 2235-2238), and requesting, inter alia, that a hearing be instituted to determine whether licenses granted to Florida Power & Light Company in the above-captioned dockets should be revoked or modified due to alleged anticompetitive conduct and conditions under those licenses. On August 13, 1976, an Atomic Safety and Licensing Board was established by James R. Yore, Acting Chairman of the Atomic Safety and Licensing Board Panel, to rule on Florida Cities' Petition.

*/ "Florida Cities" consist of 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.

**/ "Joint Petition of Florida Cities for Leave to Intervene Out of Time; Petition to Intervene; and Request for Hearing," dated August 6, 1976. A copy of the Petition is attached, as are copies of Florida Cities' Reply Brief of October 15, 1976, Staff's Answer of September 17, 1976 and FP&L's Response dated September 1, 1976. Additional copies will be supplied upon request by the Commission. Supporting affidavits and the transcript of oral arguments heard on February 1, 1977 are on file with the Commission.

The Commission Staff, in its Answer dated September 17, 1976, took the position that Cities must use the procedure outlined in Section 2.206 of the Commission's Regulation (10 CFR 2.206) in order to request proceedings to modify, suspend or revoke a license. Cities specifically invoked Section 2.206 in their Reply Brief dated October 15, 1976 and filed a copy of their original Petition with the Director of Nuclear Reactor Regulation by letter dated October 29, 1976. To avoid a conflict or duplication of procedures within the Commission, however, Cities stated in the letter to the Director of Nuclear Reactor Regulation that they would not object to his withholding action under Section 2.206 until after the established Licensing Board had ruled on Cities' Petition. */

Opinion ALAB-381, in Houston Lighting & Power Company (South Texas Project, Units 1 & 2), Docket Nos. 50-498A, 50-499A, was issued on March 18, 1977. Florida Power & Light Co. has lodged that opinion with the Licensing Board in the above-captioned dockets by means of a letter dated March 21, 1977, stating that the opinion is pertinent to its Response to Cities' Petition dated September 1, 1976. Cities believe that case to be inapposite

*/ In response to that letter, Mr. Ford, the Director of Nuclear Reactor Regulation, telephoned Cities' counsel Mr. Jablon to determine why the Petition had been filed pursuant to Section 2.206. Cities' counsel quoted from Staff's Answer and stated that although he believed the matter would be more appropriately resolved by Atomic Safety & Licensing Boards, that are experienced in antitrust matters, he had filed with the Director's office for protective purposes. While Staff has suggested the use of the 2.206 mechanism by Cities as procedurally more appropriate, we believe that FP&L's stance is more substantive: the Company contends that no component of the Commission has jurisdiction to entertain such a Petition.

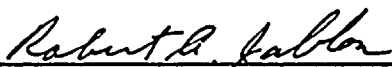
in relation to the St. Lucie No. 2 proceeding, because no construction permit has issued in that proceeding and the safety and environmental review has not yet been completed; the decision is also inapplicable to the Turkey Point Units, Nos. 3 and 4, and the St. Lucie Unit No. 1 because those plants are operating under Section 104 licenses.

It is clear that the Commission is required under its statutory antitrust mandate to act on Cities' Petition on its merits. Florida Cities believe that the procedures initially established by the Commission (or its delegates) is appropriate (i.e., the reference for ruling to the Atomic Safety and Licensing Board). However, although the case is factually distinguishable, the South Texas case raises questions as to the internal procedures by which the Commission may desire to rule on this matter. Further, as to Docket Nos. 50-250A, 50-251A and 50-335A, involving the Section 104 plants, Cities' Petition raises matters of first impression.

In view of the above situation, Florida Cities respectfully request that the Commission clarify procedures. Florida Cities believe the Commission should clarify the authority of the Board, so that an antitrust panel already established may rule upon Cities' Petition for a hearing and intervention. However, the Commission may desire to rule on the matter itself or determine that the Director of Nuclear Reactor Regulation must first rule under Section 2.206 on Cities' request for a modification hearing and show cause order (with a possible reference to the Atomic Safety & Licensing Board).

Since Cities' Petition predominantly raises antitrust issues, and those issues have been fully briefed and partially argued before the established Licensing Board, it appears that the Board (which is experienced in antitrust matters) is the most appropriate forum to rule on the merits. Cities have no objection, of course, to the Commission itself ruling upon their Petition.*/
Since the South Texas Appeals Board decision (and the position of staff counsel) creates doubt as to the proper procedures, to avoid subsequent delay and to protect the rights of the parties, 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 the early resolution of the matters raised by Cities on the merits.

Respectfully submitted,


Robert A. Jablon


David A. Giacalone

Law offices of:
Spiegel & McDiarmid
2600 Virginia Ave. NW
Washington, D.C. 20037

March 29, 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

*/ Cities also have no objection to the Director of Nuclear Regulation handling their Petition under Section 2.206, but the Director's office has little antitrust experience and, thus, may not be the most appropriate forum for the matter. Since the end result of the Director's decision to institute the requested hearing will most probably be the establishment of a Licensing Board to hear the case (see slip pages 20 and 12 of the South Texas opinion, supra), awaiting his decision rather than confirming the Board's authority would probably cause needless delay.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing Motion For Commission Clarification of Procedures* to be served upon the following persons:

William C. Wise, Esquire
Robert Weinberg, Esquire
Suite 200
1019 19th Street, N.W.
Washington, D. C. 20036

William H. Chandler, Esquire
Chandler, O'Neal, Avera, Gray,
Lang & Stripling
P.O. Drawer O
Gainesville, Florida 32601

David A. Leckie, Esquire
Antitrust Division
Department of Justice
1101 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Robert H. Culp, Esq.
Lowenstein, Newman, Reis &
Axelrad
1025 Connecticut Avenue, NW
Suite 1214
Washington, D.C. 20036

Tracy Danese, Esquire
Vice President, Public Affairs
Florida Power & Light Company
P.O. Box 013100
Miami, Florida 33101

John E. Mathews, Jr. Esq.
Mathews, Osborne, Ehrlich,
McNatt, Gobelman & Cobb
1500 American Heritage Life Bldg.
Jacksonville, Florida 32202

J. A. Bouknight, Jr., Esq.
Lowenstein, Newman, Reis &
Axelrad
1025 Connecticut Avenue, NW
Washington, D.C.

Linda L. Hodge, Esq.
Lowenstein, Newman, Reis &
Axelrad
1025 Connecticut Avenue, NW
Washington, D.C. 20036

Lee Scott Dewey, Esq.
Office of Executive Legal
Director
Nuclear Regulatory Commission
Washington, D.C. 20555

Chief, Docketing and Service
Section
Office of the Secretary
Nuclear Regulatory Commission
Washington, D.C. 20555

Ivan W. Smith, Esquire
Atomic Safety and Licensing
.. Board Panel
Nuclear Regulatory Commission
Washington, D.C. 20555

John M. Frysiak, Esquire
Atomic Safety and Licensing
Board Panel
Nuclear Regulatory Commission
Washington, D.C. 20555

Daniel M. Head, Esquire
Atomic Safety and Licensing
Board Panel
Nuclear Regulatory Commission
Washington, D.C. 20555

Dated at Washington, D.C. this 29th day of March, 1977.


David A. Giacalone

* / Without Attachments

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

In the Matter of:

| | | |
|--|---|---------------------|
| Florida Power and Light Company |) | Docket Nos. 50-335A |
| (St. Lucie Plant, Units Nos. 1 and 2) |) | 50-389A |
| |) | |
| Florida Power and Light Company |) | Docket Nos. 50-250A |
| (Turkey Point Plant, Units Nos. 3 and 4) |) | 50-251A |

NOTICE OF APPEARANCE

Notice is hereby given that David A. Giacalone enters
his appearance in the captioned proceeding as attorney for:

Ft. Pierce Utilities Authority of the
City of Ft. Pierce
P.O. Box 3191
Fort Pierce, Florida 33450

Gainesville-Alachua County Regional
Electric Water and Sewer Utilities
P.O. Box 490
Gainesville, Florida 32601

Lake Worth Utilities Authority
114 College Street
Lake Worth, Florida 33460

New Smyrna Beach Utilities Commission
P.O. Box 519
New Smyrna Beach, Florida 32069

Orlando Utilities Commission
400 South Orange Avenue
Orlando, Florida 32802

Sebring Utilities Commission
213 South Commerce Street
Sebring, Florida 33870

City of Alachua
P.O. Box 8
Alachua, Florida 32615

Bartow City Electric Department
250 North Central, Box 1669
Bartow, Florida 33820

City of Daytona Beach
P.O. Box 551
Daytona Beach, Florida

Fort Meade Electric Department
P.O. Box 856
Fort Meade, Florida 33841

Key West Utility Board
P.O. Drawer 1060
Key West, Florida 33040

City of Mount Dora
P.O. Box 176
Mount Dora, Florida 32757

Newberry Board of Public Works
P.O. Box 368
Newberry, Florida 32669

Quincy Municipal Electric Light &
Water Department
P.O. Drawer 941
Quincy, Florida 32351

St. Cloud Electric & Water Department
824 New York
St. Cloud, Florida 32769

Tallahassee Electric Department
2602 Jackson Bluff Road
Tallahassee, Florida 32304

Florida Municipal Utilities Association
P.O. Box 2402
Lakeland, Florida 33803

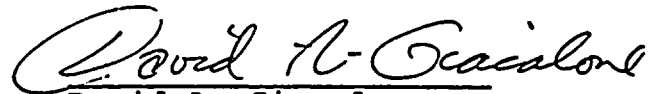
In accordance with 10 CFR Sec. 2.713, the following
information is provided:

The address and telephone number of David A. Giacalone
is: Spiegel & McDiarmid
2600 Virginia Avenue, NW
Washington, D.C. 20037

(202) 333-4500

Mr. Giacalone is eligible to appear as an attorney on behalf of the above-named entities, Florida Cities. He is a member in good standing of the District of Columbia Bar.

Respectfully submitted,

A handwritten signature in cursive script that reads "David A. Giacalone". The signature is written in dark ink and is positioned above the typed name.

David A. Giacalone
Attorney for Florida Cities

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing Notice of Appearance of David A. Giacalone to be served upon the following persons:

William C. Wise, Esquire
Robert Weinberg, Esquire
Suite 200
1019 19th Street, N.W.
Washington, D. C. 20036

William H. Chandler, Esquire
Chandler, O'Neal, Avera, Gray,
Lang & Stripling
P.O. Drawer O
Gainesville, Florida 32601

David A. Leckie, Esquire
Antitrust Division
Department of Justice
1101 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Robert H. Culp, Esq.
Lowenstein, Newman, Reis &
Axelrad
1025 Connecticut Avenue, NW
Suite 1214
Washington, D.C. 20036

Tracy Danese, Esquire
Vice President, Public Affairs
Florida Power & Light Company
P.O. Box 013100
Miami, Florida 33101

John E. Mathews, Jr. Esq.
Mathews, Osborne, Ehrlich,
McNatt, Gobelman & Cobb
1500 American Heritage Life Bldg.
Jacksonville, Florida 32202

J. A. Bouknight, Jr., Esq.
Lowenstein, Newman, Reis &
Axelrad
1025 Connecticut Avenue, NW
Washington, D.C.

Linda L. Hodge, Esq.
Lowenstein, Newman, Reis &
Axelrad
1025 Connecticut Avenue, NW
Washington, D.C. 20036

Lee Scott Dewey, Esq.
Office of Executive Legal
Director
Nuclear Regulatory Commission
Washington, D.C. 20555

Chief, Docketing and Service
Section
Office of the Secretary
Nuclear Regulatory Commission
Washington, D.C. 20555

Ivan W. Smith, Esquire
Atomic Safety and Licensing
.. Board Panel
Nuclear Regulatory Commission
Washington, D.C. 20555

John M. Frysiak, Esquire
Atomic Safety and Licensing
Board Panel
Nuclear Regulatory Commission
Washington, D.C. 20555

Daniel M. Head, Esquire
Atomic Safety and Licensing
Board Panel
Nuclear Regulatory Commission
Washington, D.C. 20555

Dated at Washington, D.C. this 29th day of March, 1977.


David A. Giacalone



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100