RELATED CORRESPONDENCE 10/25/77

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DOCKETED USNRC
DEC 20 1977
Office of the Secretary Docketing & Service Section

Ft. Pierce Utilities Authority of the City of Ft. Pierce, Gainesville-Alachua County Regional Electric Water and Sewer Utilities, Lake Worth Utilities Authority, Utilities Commission of New Smyrna Beach, Orlando Utilities Commission, Sebring Utilities Commission, City of Alachua, Florida, City of Bartow, Florida, City of Fort Meade, Florida, City of Key West, Florida, City of Newberry, Florida, City of St. Cloud, Florida, City of Tallahassee, Florida, Florida Municipal Utilities Association,	DOCKET NUMBER PROD. & UTIL. FAC. 50-335A 50-250A, 251A
Petitioners,	
v.	No. _____
Nuclear Regulatory Commission, and the United States of America,	
Respondents.	

PETITION FOR REVIEW

Pursuant to Section 189(b) of the Atomic Energy Act of 1954, 42 U.S.C. §2239(b), and 28 U.S.C. §2342, the Ft. Pierce Utilities Authority of the City of Ft. Pierce, the Gainesville-Alachua County Regional Electric Water and Sewer Utilities, the Lake Worth Utilities Authority, the Utilities Commission of New Smryna Beach, the Orlando Utilities Commission, the Sebring Utilities Commission, and the Cities of Alachua, Bartow, Fort Meade, Key West, Newberry, St. Cloud and Tallahassee, Florida, and the

Florida Municipal Utilities Association ("Florida Cities") respectfully petition this Court for review of the Decision issued on August 23, 1977, by an Atomic Safety and Licensing Appeal Board of the Nuclear Regulatory Commission in Florida Power & Light Co. (St. Lucie Plant, Unit No. 1), Docket No. 50-335A, and (Turkey Point Plant, Units No. 3 and No. 4), Docket Nos. 50-250A and 50-251A, ALAB-428, a copy of which is attached hereto (Attachment A).

On September 8, 1977, Florida Cities petitioned the Nuclear Regulatory Commission for review of the Atomic Safety and Licensing Appeal Board's August 23, 1977 Decision, pursuant to Section 2.786 of the Commission's Rules of Practice, 10 C.F.R. §2.786. In its Order of October 25, 1977, the Commission declined to review ALAB-428, thus making its Appeal Board's action final and reviewable by this Court under 28 U.S.C. §2343. A copy of the Commission's October 25, 1977 Order is attached hereto (Attachment B).

Each of Florida Cities, or its related public authority, owns and operates an electric system for the benefit of its citizens and ratepayers. Nine of the Cities generate some or all of the electricity necessary to meet their loads, while the remainder operate distribution systems and purchase their full requirements at wholesale. 1/ The Florida Municipal Utilities

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1/ Alachua, with somewhat more than half a megawatt share of

(cont'd, p. 3)

Association is a membership organization of municipally owned electric utilities in Florida, established, among other reasons, to assist in solving problems encountered by such electric systems. It sought intervention and a hearing below on behalf of its member cities, and on their behalf seeks review of the Commission's action below.

Florida Power & Light Company ("FP&L") holds the operating licenses for St. Lucie Unit No. 1 and Turkey Point Units No. 3 and No. 4, which comprise by far the bulk of nuclear generating capacity in Florida. 1/ With the exception of FP&L's St. Lucie Unit No. 2 presently under construction 2/, no additional nuclear generation is actively being planned for Florida. 3/

(1/ cont'd) Florida Power Corporation's Crystal River Unit No. 3, purchases the remainder of its requirements from Florida Power Corporation under a partial requirements wholesale for resale contract.

1/ Florida Power Corporation put its 825 mw nuclear generating unit into commercial operation in March 1977.

2/ Contemporaneously with their Petition to Intervene and Request for Hearing as to FP&L's St. Lucie Unit No. 1 and Turkey Point Units No. 3 and No. 4, Florida Cities sought intervention and a hearing in Florida Power & Light Co. (St. Lucie Plant, Unit No. 2), Docket No. 50-389A. The Atomic Safety and Licensing Board designated to rule on Florida Cities' petition granted intervention in Docket No. 50-389A on April 5, 1977. In May 1977, the NRC issued FP&L a construction license in that docket subject to any conditions found to be appropriate as a result of the antitrust hearing ordered. Although FP&L has commenced construction of St. Lucie Unit No. 2, the Company has also been vigorously contesting the Licensing Board's decision and the Appeal Board's affirmance thereof. The matter is now pending before the full Commission.

3/ FP&L filed applications for licenses to construct two

(cont'd, p. 4)

In addition to FP&L's control over the lion's share of operating nuclear capacity and over all nuclear capacity under construction 1/, the Company controls bulk transmission facilities in the State. It serves the largest load in the State; it has described itself as "the nation's fastest growing electric utility." 2/ In its September 1977 financial statement (unaudited), FP&L reported that "[a]fter providing for estimated revenue refunds, there was a net increase of 18% in operating revenue for the twelve months ended September 30, 1977 over the same period for 1976." (p. 3). Florida Power & Light Company enjoys a clear and undenied position of market power in peninsular Florida.

Moreover, the Company has used its dominant position in Florida to enhance and expand its market control to the anticompetitive injury of the smaller publicly owned electric utilities with which it competes. The Department of Justice, in its

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(3/ cont') nuclear units early in 1976. Florida Power & Light Co. (South Dade Plant), Docket No. P-636-A. Florida Cities sought and were granted intervention in that docket and antitrust proceedings were initiated. Early in 1977, FP&L announced that it intended to postpone the proposed South Dade units and proceedings in Docket No. P-636-A have been suspended.

1/ If the Nuclear Regulatory Commission affirms its Appeal Board's decision in St. Lucie Unit No. 2, Docket No. 50-389A (see p. 3, n. 2, supra), and if the Licensing Board after hearing orders the St. Lucie license to be conditioned, FP&L would probably in some way be required to share the advantages of owning St. Lucie Unit No. 2 with its competitors.

2/ November 14, 1973 Advice Letter of the Department of Justice concerning FP&L's proposed St. Lucie Unit No. 2.

Brief to the Commission filed in St. Lucie Unit No. 2, Docket No. 50-389A, has succinctly described the situation from which Florida Cities seek relief:

> "In the present case, there is little doubt that sufficient allegations have been made against FP&L to constitute a situation inconsistent with the antitrust laws that would be created or maintained by the license activities, if they are proven. FP&L has allegedly denied access to nuclear units to virtually all publicly-owned competing electric systems, generally refused to wheel, refused specific wheeling requests, placed unlawful restrictions in wholesale power contracts, refused to sell wholesale power on over half a dozen occasions, preconditioned the sale of wholesale power on anticompetitive terms, subjected competitors to a price squeeze, engaged in illegal territorial agreements and otherwise denied competitors access to coordinated operation and development in an attempt to acquire those competing systems. Furthermore, the Licensing and Appeal Boards had before them a substantial amount of documentary evidence which demonstrated that most of the above-noted allegations have a substantial basis in fact and are not frivolous. . . ." 1/

In large part, the three nuclear units here at issue provide the means whereby FP&L can, without fear of competitive reprisal, engage in the conduct described by the Department of Justice.

FP&L has a virtual monopoly over nuclear facilities. It has been using its dominance over nuclear and other facilities to block smaller systems from alternative power supply sources and markets. Its refusals to deal and other anticompetitive

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1/ Florida Power & Light Co. (St. Lucie Plant, Unit No. 2), Docket No. 50-389A, "Response of the Department of Justice" (November 11, 1977), at pp. 10-11.

conduct threaten the independent existence of at least some smaller systems. The Nuclear Regulatory Commission has continuing jurisdiction under Sections 1, 3, 104, 105, 161, 183 and 186 of the Atomic Energy Act, 42 U.S.C. §§ 2011, 2013, 2134, 2135, 2201, 2233 and 2236, including the authority to revoke a license ". . . for violation of, or failure to observe any of the terms and provisions of this chapter or of any regulation of the Commission," 42 U.S.C. §2236(a).

The Appeal Board below held in ALAB-428 that, since the licensing procedures for FP&L's operating nuclear units have been terminated, the Commission is without jurisdiction to initiate antitrust review of its licensee's activities, citing the Commission's June 15, 1977 Memorandum and Order issued in Houston Lighting & Power Company, et al. (South Texas Project, Unit Nos. 1 & 2), Docket Nos. 50-498A and 50-499A. 1/

While the facts surrounding the South Texas decision are different from those in the instant case in some important respects, the Commission in both cases made its determinations based upon an interpretation of its jurisdiction under the Atomic Energy Act far narrower than intended by Congress, or as has been held previously, by Commission or Courts. The Commission has erroneously interpreted its authority--indeed, its responsibilities--

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1/ The Commission's South Texas decision is presently on appeal before this Court, docketed as Central Power & Light Co. v. NRC, Case Nos. 77-1464 and 77-1654.

under the Act and its refusal to even order an evidentiary hearing to consider the serious antitrust issues raised by petitioners is abusive of its discretion and an abdication of its antitrust enforcement responsibilities under the Act, contrary to Section 189 of the Atomic Energy Act, 42 U.S.C. §2239, and Section 10 of the Administrative Procedure Act as amended, 5 U.S.C. §§702, 703.

It is clearly within the jurisdiction of the Nuclear Regulatory Commission itself to consider the antitrust implications of any activities being pursued under its licenses. This Court has held so. Cities of Statesville v. AEC, 441 F.2d 962 (D.C.Cir. 1969).

WHEREFORE, for the reasons and grounds stated herein, Florida Cities respectfully petition this Court for review of Decisions issued August 24, 1977, and October 26, 1977 by the Nuclear Regulatory Commission in Florida Power & Light Co. (St. Lucie Plant, Unit No. 1), Docket No. 50-335A, and (Turkey Point Plant, Units No. 3 & No. 4), Docket Nos. 50-250A and 50-251A.

Respectfully submitted,

Robert A. Jablon

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December 16, 1977

ATTACHMENT A

SERVED AUG 24 1977

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED USNRC AUG 24 1977 Office of the Secretary Docketing & Service Section

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman
Richard S. Salzman
Jerome E. Sharfman

In the Matter of	
FLORIDA POWER AND LIGHT COMPANY (St. Lucie Plant, Unit No. 1)	Docket No. 50-335A
FLORIDA POWER AND LIGHT COMPANY (Turkey Point Plant, Units No. 3 & 4)	Docket Nos. 50-250A 50-251A

Mr. Alan J. Roth, Washington, D. C., argued the cause for the petitioners, Fort Pierce Utilities Authority, et al., appellants; with him on the briefs were Messrs. Robert A. Jablon and David A. Giacalone, Washington, D. C.

Messrs. J. A. Bouknight, Jr., Washington, D. C., and John E. Mathews, Jr., Jacksonville, Florida, argued the cause and filed a brief for the licensee, Florida Power and Light Company, appellee.

Mr. Benjamin H. Vogler argued the cause for the Nuclear Regulatory Commission staff; Messrs. Lee Scott Dewey and Michael D. Jones on the brief.

DECISION

August 23, 1977

(ALAB-428)

Opinion of the Board by Mr. Salzman in which Mr. Rosenthal joins; Mr. Sharfman joins in part and concurs in the result:

I

A number of Florida municipal electric systems and the Florida Municipal Utilities Association (Florida Cities)

appeal from a Licensing Board order denying their joint petition for leave to intervene out of time and for an antitrust hearing respecting three nuclear power plants.[1/] The plants, owned by the Florida Power and Light Company and operated under Commission license, are Unit No. 1 of FP&L's St. Lucie facility and Units No. 3 and 4 of its Turkey Point facility. The denial was based on our ruling in another case that "a licensing board has not been bestowed with jurisdiction to direct a hearing on antitrust matters -- by a grant of an intervention petition or otherwise -- in the absence of a pending construction permit or operating license proceeding". Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-381, 5 NRC 582, 592 (1977).[2/]

The Commission has allowed our ruling in ALAB-381 to stand (see unpublished Commission order of March 31, 1977, referred to in CLI-77-13, 5 NRC ___ (June 15, 1977) (slip

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1/ LBP-77-23, 5 NRC 789 (April 5, 1977). In the same order, the Licensing Board granted Florida Cities' request for like relief in connection with Unit No. 2 of the St. Lucie facility. We affirmed that action in ALAB-420, 6 NRC ___ (July 12, 1977) (petition for Commission review pending).

2/ Unlike the three operating reactors under present consideration, St. Lucie 2 was the subject of an on-going construction permit proceeding at the time the Licensing Board entered its April 5 order. For this reason the Licensing Board indisputably had the jurisdiction to grant an antitrust hearing with respect to that reactor.

opinion, p. 8)),[3/] and we decline Florida Cities' invitation to reconsider its correctness. Thus, all that the Florida Cities' appeal requires us to decide is whether the Licensing Board justifiably concluded that the ruling governs here. Given the fact that the operating license proceedings for the three reactors were long ago concluded, the answer obviously must be in the affirmative. In these circumstances we ordinarily would have simply affirmed the Licensing Board summarily. A supervening development, however, has prompted us to examine a broader question not presented to, or decided by, the Board below.

Not content with the prosecution of an appeal to us from the denial of its intervention petition for want of Licensing Board jurisdiction to grant it, Florida Cities moved before the Commission for a "clarification of procedures." Interpreting that motion as seeking, inter alia, a declaratory order regarding "the most appropriate procedural mechanism for resolution of the Cities' antitrust allegations respecting the St. Lucie and Turkey Point reactors," the Commission determined that the issues raised by the motion should be first addressed by either us or the

3/ CLI-77-13 is discussed infra, pp. 9-11.

Director of Nuclear Reactor Regulation. CLI-77-15, 5 NRC ___, ___ (June 22, 1977). Upon the receipt of that referral and the briefs of the respective parties in the wake of it, we called for and heard oral argument on whether, even though the Licensing Board may lack the authority at this juncture to trigger a hearing to explore Florida Cities' antitrust grievances, such authority nevertheless resides in the Director of Nuclear Reactor Regulation. On a full consideration of the arguments put before us we hold that that power is lacking. Particularly in light of the Commission's own recent analysis of the statutory scheme, we are constrained to conclude that (with certain exceptions not applicable here) once the operating license proceedings terminated this agency's antitrust responsibilities relating to these reactors came to an end.[4/]

4/ Also before us are motions by two of the Florida Cities, Quincy and Daytona Beach, for leave to withdraw. Quincy's motion is opposed by Florida Power and Light Company. Insofar as the motions are directed to the proceedings now before us -- i.e., respecting St. Lucie Unit No. 1 and Turkey Point Units 3 and 4, the motions are dismissed as moot; insofar as leave is sought to withdraw from proceedings involving two other FP&L facilities, St. Lucie Unit No. 2 and the South Dade plants, these matters are not before us and the motions are therefore denied without prejudice to renewal before the appropriate Licensing Board.

II

The former Atomic Energy Commission licensed the construction of all three nuclear power reactors now before us not as commercial facilities subject to section 103 but as "research and development" reactors under section 104b of the Atomic Energy Act of 1954.[5/] Construction permits for them were issued before section 105c of the Act[6/] (defining Commission antitrust procedure) was amended to its present form in 1970. At the time these permits were issued, prelicensing antitrust review by the Commission was neither required nor expected in the case of section 104b projects. Cities of Statesville v. AEC, 441 F.2d 962 (D.C. Cir. 1969). This of course explains why none was undertaken for these three reactors.

Florida Cities seize upon these circumstances as a reason why this Commission ought to consider the antitrust charges they now level against the licensee of the plants. In their view, if antitrust review is refused, the Commission will have licensed what are in fact three large commercial power plants to operate for 40 years and, Florida

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5/ 42 U.S.C. §§2133, 2134(b).

6/ 42 U.S.C. §2135(c).

Cities stress, the Commission will have done so without ever having given thought to the resulting anticompetitive ramifications.

Were this a matter of first impression, Florida Cities' arguments could not be brushed aside lightly. One need look no further than Judge Leventhal's concurring opinion in Statesville, supra, for an impressive collection of authorities for the proposition that (441 F.2d at 987):

> a statute providing for licensing or other regulation is presumed to permit consideration of antitrust principles, with the harmonizing approach just outlined, unless a contrary intent appears expressly or by necessary implication. 7/

Accord: Gulf States Utilities Co. v. FPC, 411 U.S. 747 759-61 (1973).

But this is not a new matter. The legislative history of section 105c relevant to this point was previously perused by us in the "Grandfather Clause" case. 8/ We there noted that the Congress had considered this class

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7/ Neither the majority nor the dissenters in Statesville disagreed. See 441 F.2d at 974, and 993-95. And see Kansas City Gas and Electric Co., (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559, 568 (1975) and cases there cited.

8/ The Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-323, 3 NRC 331 (1976).

reactors -- viz., those authorized to be built as research and development projects before the 1970 antitrust amendments but which might later be determined to possess commercial utility when an operating license was sought for them -- and elected to exclude them from antitrust review under section 105c (except in limited circumstances not present in this case).[9/]

Florida Cities' response is that antitrust review is nevertheless available before this Commission under section 186a of the Act.[10/] That section, pertaining to license revocations, provides in pertinent part that

> Any license may be revoked for any material false statement in the application or any statement of fact required under section 182, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application * * *.

Florida Cities reason that, because the Commission may refuse an operating license on antitrust grounds (at least where circumstances change following issuance of the construction permit), section 186a empowers it to revoke a license previously granted on those grounds.

9/ See 3 NRC at 340-41.

10/ 42 U.S.C. §2236(a).

Even if we assume arguendo that section 186a means what Florida Cities assert it does, their cause is not advanced. The nuclear power plants in question were licensed under section 104b. As we have already explained, by Congressional mandate antitrust considerations were not grounds for refusing operating licenses to such "research and development" facilities.

Florida Cities would get over this second hurdle by having us give a "common sense" reading to section 186a that requires us to treat these reactors as what they really are: viable commercial generating facilities that could only be licensed today under section 103. There appears to be no support for this reading of the section in the legislative history of the Atomic Energy Act and petitioners cite none. Nor is the "meaning" which Florida Cities ascribe to section 186a necessarily so "plain" as they suggest. But even accepting everything they say, no construction of section 186 need be made here. As we explain in Part III, other grounds compel rejection of their contentions.

III

In its own South Texas decision,[11/] the Commission recently considered at length the extent of its authority to hold antitrust hearings. The precise issue in that case involved when an antitrust proceeding under section 105c may be ordered after a construction permit has been issued but before the necessary additional license to commence operations has been granted. The Commission did not confine its South Texas opinion to that relatively narrow question; instead it chose to address the broad spectrum of NRC antitrust responsibilities. In so doing, it manifested the judgment in no uncertain terms that the NRC's supervisory antitrust jurisdiction over a nuclear reactor licensee does not extend over the full 40-year term of the operating license but ends at its inception.[12/]

11/ Houston Lighting and Power Co. (South Texas Project), CLI-77-13, 5 NRC ___ (June 15, 1977) (petition for judicial review pending). This decision was not rendered on appeal from ALAB-381 (our South Texas ruling, supra) but in an independent proceeding on a staff recommendation that an antitrust hearing be convened in that case in the exercise of the Commission's discretion.

12/ Except perhaps as necessary to enforce the terms of a license or to revoke one fraudulently obtained, or in circumstances where a plant is sold or so significantly modified as to require a new license. See CLI-77-13, supra, 5 NRC at ___ (slip opinion at pp. 25-26).

The Commission said

> that Congress had no intention of giving this Commission authority which could put utilities under a continuing risk of antitrust review. Had Congress agreed with the proposition that this Commission should have broad antitrust policing powers independent of licensing, the statute that emerged from these discussions would have looked quite different. Little attention would have been paid to defining a two-step review process. The terminology of all participants in the drafting process would not have been focused so directly on "pre-licensing" review. And, if a broad, ongoing police power in the antitrust area had been assumed, the language in 105(a) authorizing the Commission to act with respect to licenses already issued, in light of the antitrust findings of courts would have been, if not superfluous, certainly redundant. Consequently, we find that the Commission's antitrust authority is defined not by the broad powers contained in Section 186, but by the more limited schemes set forth in Section 105.

5 NRC at ___ (footnote omitted, emphasis supplied) (slip opinion at 24).

Any lingering doubt about the Commission's view of the limited role Section 186 plays in antitrust matters is put to rest by its further pronouncement in that same case that, on the "question whether Section 186 expands the antitrust hearing settings defined in Section 105, * * * we find that the generality of Section 186 should be treated as subordinate to the specific, limited regime adopted by Congress as recently as the 1970 amendments to the Act." Id. at 13.

To put the whole matter another way, arguments to this Board about the most "common sensical" way to interpret the antitrust provisions of the Atomic Energy Act in general, or section 186 in particular, fall wide of the mark. Whether we agree with those arguments or not, they are made in the wrong forum. Unless and until the Commission elects to modify its South Texas rulings, or is instructed to do so by Congress or the courts, this Board is of course constrained to apply them.

The result for this case is thus ineluctable. Pre-licensing antitrust review of these reactors was proscribed by Congress and, even were that not true, post-licensing review is foreclosed by the Commission's South Texas decision. The Director of Nuclear Reactor Regulation is not an island of independent authority; his office is a piece of the Commission, "a part of the main". Therefore, the Florida Cities need not send to the Director to learn for whom antitrust jurisdiction tolls when an operating license issues; it tolls for him.

For the foregoing reasons, we (1) affirm that portion of the Licensing Board's April 5, 1977 order from which the Florida Cities appeal and (2) declare that the Director of Nuclear Reactor Regulation has no authority to initiate an antitrust review in connection with any of these three power reactors on the basis of the petition now before us.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND LICENSING
APPEAL BOARD

Margaret E. Du Flo
Secretary to the
Appeal Board

[The concurring opinion of Mr. Sharfman follows.]

Concurring Opinion of Mr. Sharfman:

I join in the opinion of my colleagues except with respect to one point. They would affirm the Licensing Board's dismissal of the petition insofar as it relates to the three fully licensed reactors on the basis of their holding in South Texas (ALAB-381, supra) that a licensing board is barred by 10 C.F.R. §2.717(a) from granting a late petition for an antitrust hearing after all environmental and safety proceedings with respect to issuance of the construction permit have concluded. I disagreed with that holding, for reasons which I stated at length in my concurring opinion in that case.[1/] As is true with a denial of certiorari in the Supreme Court, the Commission's election not to review one of our decisions does not necessarily constitute an endorsement of it. In this particular instance, the Commission went out of its way to make that clear. In its own decision on the other aspect of South Texas, it said: "In declining to review ALAB-381, of course, we are not to be taken as having agreed with everything that the Appeal Board had said in that opinion."[2/] The Commission apparently was content simply to let the

1/ 5 NRC 595.

2/ CLI-77-13, 5 NRC ___, ___ (slip opinion, p. 8) (June 15, 1977).

result in ALAB-381, a result in which I fully concurred, stand. I therefore persist in my disagreement with the majority of this Board as to its construction of 10 C.F.R. §2.717(a).

Because, in my view, §2.717(a) does not provide any basis for the denial of the petition, it is necessary, as I stated in South Texas, to see whether the grant of an antitrust hearing after all proceedings on licensing have concluded would be consistent with the legislative intent underlying Section 105c of the Atomic Energy Act.[3/] The Commission has, however, already given us its views in South Texas on the intent of Congress with respect to our antitrust jurisdiction over reactors as to which licenses have already been granted. As the majority opinion shows, those views leave not the slightest room for doubt as to what our decision in this case must be.

3/ 5 NRC at 598-99.

ATTACHMENT B

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED USNRC OCT 26 1977 Office of the Secretary Docketing & Service Section

COMMISSIONERS:

Joseph M. Hendrie, Chairman
Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

In the Matter of FLORIDA POWER & LIGHT COMPANY (St. Lucie Nuclear Power Plant, Unit 1) (Turkey Point Plant, Units 3 and 4)	Docket Nos. 50-335A 50-250A 50-251A

ORDER

The Commission has decided not to review ALAB-428. We note, however, the request of the petitioners that if the Commission fails to grant the Petition, a reference of their allegations be made to the Attorney General.

In a recent decision, In the Matter of Houston Lighting & Power Company (South Texas Project, Unit Nos. 1 & 2), we discussed our antitrust responsibilities, as set forth in Section 105 of the Atomic Energy Act, as amended, 42 U.S.C. 2135. There we stated that "antitrust allegations might be raised outside the license review context. Subsequent allegations that licenses are being used in such a way as to violate the antitrust laws are to be referred to the Department of Justice for investigation and possible enforcement action ...." The Florida Cities petition contains such allegations.

The staff is therefore directed promptly to refer to the Attorney General the allegations of the Florida Cities, as well as "any [related] information it may have [if any] with respect to any utilization of special nuclear material or atomic energy which appears to violate or to tend toward the violation" of any of the antitrust laws. 42 U.S.C. 2135(b).

It is so ORDERED.

By the Commission,

SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.
this 25th day of October, 1977.

CERTIFICATE OF SERVICE

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

Ivan W. Smith, Esquire, Chairman
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Washington, D.C. 20555

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Dated at Washington, D.C., this 16th day of December 1977.

Robert A. Jablon