

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of

7/26/77

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

Florida Power & Light Company)
(Two Nuclear Units))

Docket No. P-636A

RESPONSE OF FLORIDA POWER & LIGHT COMPANY
TO "MOTION OF CITY OF QUINCY TO WITHDRAW
FROM THESE PROCEEDINGS AS AN
INDIVIDUALLY NAMED PARTY"

On July 18, 1977, the City of Quincy, Florida, filed motions to "withdraw. . . as an individually named party" from each of the above-captioned proceedings. For the reasons stated below, Florida Power & Light Company (FPL) requests that the Appeal Board withhold action on the motions and permit the Atomic Safety and Licensing Board which is designated to conduct any further proceedings with respect to any such docket to act upon the motions in the first instance.

1. In each instance, Quincy states that while it desires "to withdraw its participation. . . as an individually named party", it "wishes to continue to participate indirectly as a member of the Florida Municipal Utilities Association ('FMUA'). . . which has requested intervention in order to protect generally the rights of each of its members." Quincy's stated purpose is "to be able to assert a general public interest in license conditions

. . . without having to bear the costs and burdens associated with individual and active participation in lengthy, complex large-scale litigation."

2. FPL does not acquiesce in the concept of indirect participation in proceedings before the Commission, nor does it agree that FMUA has any interest in these proceedings other than as is derived from its members which are also individually-named intervenors.*/

3. It is apparent, in any event, that the status of FMUA's "members" which are not individually named parties to these proceedings is in need of clarification. The status of "party" is important in at least three respects. A "party" is (i) entitled to request relief, and, upon the denial of the request, to seek judicial review as an aggrieved party, (ii) subject to all of the discovery provisions contained in 10 CFR Part 2, Subpart G; and (iii) bound by the results of the proceeding for purposes of res judicata and collateral estoppel. As Quincy apparently envisions it, the indirect participation sought by the motions would entitle it to the rights described in (i), above, while relieving it from the obligations of discovery or from being bound

*/ FPL's position in this respect is stated at page 6 (footnote 8) of "Applicant's Response to Joint Petition of Florida Cities", submitted on May 26, 1976, in Docket No. P-636A.

by an unfavorable outcome. This should not be permitted under any circumstances.

4. What is required in the first instance is a clear definition of FMUA's role in these proceedings. If, as FPL contends, FMUA may not appear as representative or agent for entities which are not themselves parties, Quincy's motions for withdrawal should be granted without any provision for indirect or any other participation in these proceedings.^{*/} If, on the other hand, FMUA is to be permitted to act in a representative capacity for entities not directly before the Commission, each entity desiring to avail itself of such representation should be required to submit itself to discovery as a party and to provide sufficient evidence of authorization of its representation by FMUA to assure that the real party in interest will be bound by the Commission's decision.

5. In any event, the matter does not appear to be one which should be addressed in the first instance by an appellate tribunal. Docket P-636A is not before the tribunal in any context. The Appeal Board's jurisdiction with respect to Docket No. 50-389A terminated with issuance of a decision on July 12, 1977, and with

^{*/} If Quincy desires to have its view of the public interest before the Commission it can do so by offering a limited appearance statement pursuant to 10 CFR §2.715.

expiration of the time for filing of petition for rehearing thereof. Although Dockets Nos. 50-250A, 50-251A and 50-335A are before the Appeal Board at this time, there is no need for the Appeal Board's dealing with the "indirect participation" question at this stage. If the Cities' appeal is rejected, there will be no further proceedings. If it is granted, an Atomic Safety and Licensing Board will be designated to conduct further proceedings, and the question may be resolved there.

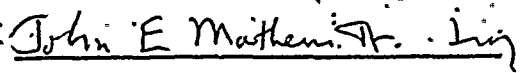
WHEREFORE, FPL respectfully requests that the Appeal Board withhold action on the motions and refer them for action to the respective Atomic Safety and Licensing Boards which are designated to conduct further proceedings, if any are required, in each of the dockets identified in the caption.

Respectfully submitted,



J. A. Bouknight, Jr.
Linda L. Hodge
Lowenstein, Newman, Reis and Axelrad
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036
(202) 833-8371

DATE: July 26, 1977



John E. Mathews, Jr.
Mathews, Osborne, Ehrlich, McNatt
Gobelman & Cobb
1500 American Heritage Life Building
Jacksonville, Florida 32202
(904) 354-0624

Counsel for Florida Power & Light Company

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the following:

Response of Florida Power & Light Company to "Motion of City of Quincy to Withdraw From These Proceedings as an Individually Named Party" 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 July 26, 1977.

By: _____

Linda L. Hodge

Counsel for Florida Power
& Light Company

Commissioner Richard T. Kennedy
Office of the Commissioner
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Commissioner Victor Gilinsky
Office of the Commissioner
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Robert M. Lazo
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555

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

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

Jerome F. Sharfman
Atomic Safety and Licensing
Appeal Board
U. S. Nuclear Regulatory
Commission
4350 East West Highway
Bethesda, Maryland 20014

Michael C. Farrar
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
4350 East West Highway
Bethesda, Maryland 20014

Richard S. Salzman
Atomic Safety and Licensing
Appeal Board
U. S. Nuclear Regulatory
Commission
4350 East West Highway
Bethesda, Maryland 20014

Lee Scott Dewey
Counsel for the Staff
U. S. Nuclear Regulatory
Commission
7735 Old Georgetown Road
Bethesda, Maryland 20014

Robert A. Jablon, Esquire
Daniel J. Guttman, Esquire
2600 Virginia Avenue, N.W.
Washington, D. C. 20037

William H. Chandler, Esquire
Chandler, O'Neal, Avera,
Gray, Lang & Stripling
P. O. Drawer 0
Gainesville, Florida 32602

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

David A. Leckie
Antitrust Division
Department of Justice
P. O. Box 7513
Washington, D. C. 20044

C. R. Stephens, Supervisor (20)
Docketing and Service Station
Office of the Secretary of the
Commission
Washington, D. C. 20555

Secretary
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Jerome Saltzman
Chief, Antitrust and Indemnity
Group
Nuclear Reactor Regulation
U. S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing .
Board Panel
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Alan S. Rosenthal, Esquire
Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555