



UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION

Florida Power & Light Company ) Docket Nos. 50-335A  
(St. Lucie Plant, Unit No. 2) )  
)  
Florida Power & Light Company ) Docket Nos. 50-250A  
(Turkey Point Plant, Units ) 50-251A  
No. 3 and No. 4) )  
September 20, 1977

ANSWER OF FLORIDA POWER  
& LIGHT COMPANY IN OPPOSITION  
TO PETITION FOR REVIEW

Pursuant to 10 CFR §2.786(b)(3), Florida Power & Light Company ("FPL") responds to Florida Cities ("Cities") Petition For Review, dated September 8, 1977. Cities seek review of ALAB-428, a decision issued August 23, 1977, by the Appeal Board in the above-captioned dockets. That decision affirms an April 5, 1977, decision of the Licensing Board<sup>1/</sup> established by the Commission to rule on Cities' untimely petition for leave to intervene and request for an antitrust hearing. FPL opposes Cities' Petition For Review in all respects.

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<sup>1/</sup> Florida Power & Light Company (St. Lucie Plants, Units No. 1 and 2; Turkey Point Plant, Units No. 3 and 4), LBP-77-23, 5 NRC 789 (1977).

Summary of the Decision of Which  
Review is Sought

On August 6, 1976, Cities filed a petition for leave to intervene and request for initiation of antitrust proceedings to modify or revoke the operating licences held by Applicant for Turkey Point Units No. 3 and 4 and St. Lucie Unit No. 1 (the "Operating Plants"). These plants are presently operating under licenses received by FPL under Section 104b of the Atomic Energy Act ("Act").<sup>2/</sup>

In its Memorandum and Order of April 5, 1977, the Licensing Board dismissed Cities' petition as to the Operating Plants on the ground that it lacked jurisdiction to grant the petition, citing the Appeal Board's South Texas Decision.<sup>3/</sup> The Appeal Board affirmed in ALAB-428, and Cities' request for Commission review followed.

Cities have taken two other actions relating to this request for review. On October 29, 1976, Cities "lodged" their August 6, 1976 petition with the Director of Regulation. On April 18, 1977, after the Licensing Board's unfavorable decision,

2/ Cities also docketed the untimely petition in Docket No. 50-389A, with respect to Applicant's St. Lucie Plant, Unit No. 2. The Licensing Board ruled favorably on Cities' petition in its April 5, 1977, decision, and the Appeal Board affirmed. Florida Power & Light Company (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-420, NRC \_\_\_\_\_ (July 12, 1977).

3/ Houston Lighting and Power Company (South Texas Project, Units 1 and 2), ALAB-381, 5 NRC 582 (1977).

Cities requested the Director of Nuclear Reactor Regulation to act on their filing under 10 CFR §2.206 to require FPL to show cause why the Operating Plant licenses should not be "revoked, amended or modified". The Acting Director denied Cities' request by letter of September 9, 1977.<sup>4/</sup>

On March 29, 1977, Cities filed with the Commission a pleading entitled "Motion for Commission Clarification of Procedures". In a memorandum and order dated June 22, 1977, the Commission denied that motion, ruling that the matter was not properly before it and that the issues raised by Cities should in the first instance be addressed by the Appeal Board or the Director of Nuclear Reactor Regulation after briefing.<sup>5/</sup>

The Decision of Which  
Review is Sought is  
Clearly Correct

The instant Petition raises no new important questions of antitrust law or policy. ALAB-428 merely applies principles earlier established by this Commission, and the Petition For

<sup>4/</sup> Letter Edson G. Case to Robert A. Jablon, dated September 9, 1977, in Dockets 50-335A, 50-250A and 50-251A.

<sup>5/</sup> Florida Power & Light Company (St. Lucie Plant, Units Nos. 1 and 2; Turkey Point Plant, Unit Nos 3 and 4), Commission Memorandum and Order, CLI-77-\_\_\_\_, \_\_\_\_ NRC \_\_\_\_ (June 23, 1977).



Review does no more than reiterate Cities' continuing and emphatic disagreement with those principles. It suggests no new basis for that disagreement or significant distinguishing factor in this proceeding.

The Appeal Board's conclusion in ALAB-428 stands on two fully independent grounds. First, the Appeal Board concluded that, except in limited circumstances not present in this case, NRC authority over antitrust matters "does not extend over the full 40-year term of the operating license but ends at its inception."<sup>6/</sup> This result was clearly mandated by the Commission's earlier conclusion that its antitrust authority is defined "not by the broad powers contained in section 186, but by the more limited scheme set forth in section 105. . .;" that the 1970 amendment to the latter section established a "particularized regime" relating to the consideration of antitrust matters by the Commission; that that regime focuses upon the licensing process and does not lodge "ongoing antitrust enforcement responsibility. . . in this agency;" and that only "traditional antitrust remedies are available. . . both licenses having been granted. . ." <sup>7/</sup> The Appeal Board's determination here involved

<sup>6/</sup> ALAB-428, Slip Op. pp. 7, 9.

<sup>7/</sup> Houston Lighting and Power Company, (South Texas Project, Unit Nos. 1 and 2) CLI-77-\_\_\_\_\_, \_\_\_\_\_ NRC \_\_\_\_\_ (June 15, 1977), Slip Op. pp. 9, 18, 19, 21, 24; see also pp. 13, 15.

did no more than follow those principles, and the Cities make no effort to distinguish the Commission's South Texas holding. Instead, the petition (E.g., pp. 4, 6, 7) merely reiterates the Cities' view of the "broad powers" contained in section 186. That view has already been presented to the Commission by the Cities<sup>8/</sup> in the South Texas proceeding and has already been rejected.

The second, independent, ground for the Appeal Board's conclusion was that the antitrust review provisions of section 105(c) do not apply to licenses, such as are here involved, issued pursuant to section 104(b) of the Act. The Appeal Board emphasized what is indisputable -- that when the 1970 amendments were enacted "Congress had considered this class of reactors . . . and elected to exclude them from antitrust review under section 105c (except in limited circumstances not present in this case)." ALAB-428, supra, Slip Op. pp. 6-8. Except for again invoking

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8/ See "Brief Amicus Curiae of Florida Cities", filed with the Commission in Docket Nos. 50-498A and 50-499A, May 11, 1977.

section 186<sup>9/</sup> and its description (p. 9) of the conclusion as "surprising", the petition does not even suggest where the error lies.

Conclusion

Wherefore, FPL respectfully requests that the Commission deny Cities' Petition For Review of ALAB-428.

Respectfully submitted,



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Dated: September 20, 1977

9/ Cities again cite a particular passage from dicta in Cities of Statesville v. AEC, 441 F.2d 962 (D. C. Cir. 1969), in support of their theory of the general police powers of the NRC in anti-trust matters. (Petition For Review, pp. 8-9). As the Cities construe that passage, it would negate both the holding in the case and Congress' subsequent action in 1970. As noted by the Commission in South Texas "[t]his dictum is a weak foundation upon which to build a claim of such wide ranging powers." Slip Op. at p. 23.

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In the Matter of )  
 )  
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(St. Lucie Plant, Unit No. 1) )  
 )  
Florida Power & Light Company ) Docket No. 50-250A  
(Turkey Point Plant, Unit Nos. ) 50-251A  
3 and 4) )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the following:  
"Answer of Florida Power & Light Company in Opposition To  
Petition For Review"  
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

A handwritten signature in black ink, appearing to read "Linda L. Hodge", written over a solid horizontal line.

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